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**NEWS CLIPS**

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# More Lockouts as Companies Battle Unions

the New York Times

By [STEVEN GREENHOUSE](#)

America's unionized workers, buffeted by layoffs and stagnating wages, face another phenomenon that is increasingly throwing them on the defensive: lockouts.

From the Cooper Tire factory in Findlay, Ohio, to a country club in Southern California and sugar beet processing plants in North Dakota, employers are turning to lockouts to press their unionized workers to grant concessions after contract negotiations deadlock. Even the New York City Opera locked out its orchestra and singers for more than a week before settling the dispute last Wednesday.

Many Americans know about the highly publicized lockouts in professional sports — like last year's 130-day lockout by the National Football League and the 161-day lockout by the National Basketball Association — but lockouts, once a rarity, have been used in less visible industries as well.

"This is a sign of increased employer militancy," said Gary Chaison, a professor of industrial relations at Clark University. "Lockouts were once so rare they were almost unheard of. Now, not only are employers increasingly on the offensive and trying to call the shots in bargaining, but they're backing that up with action — in the form of lockouts."

The number of strikes has declined to just one-sixth the annual level of two decades ago. That is largely because labor unions' ranks have declined and because many workers worry that if they strike they will lose pay and might also lose their jobs to permanent replacement workers.

Lockouts, on the other hand, have grown to represent a record percentage of the nation's work stoppages, according to Bloomberg BNA, a Bloomberg subsidiary that provides information to lawyers and labor relations experts. Last year, at least 17 employers imposed lockouts, telling their workers not to show up until they were willing to accept management's contract offer.

Perhaps nowhere is the battle more pitched than at American Crystal Sugar, the nation's largest sugar beet processor.

Last summer, contract negotiations bogged down, with the company insisting that its workers agree to higher payments for health coverage, more outsourcing and many other concessions. Shortly after the 1,300 unionized workers — spread among five plants in North Dakota, Minnesota and Iowa — voted overwhelmingly to reject those demands, the company locked them out and hired replacement workers.

That was on Aug. 1, more than five months ago, and since then the workers and their families have been scrounging to make ends meet. Some face foreclosure and utility disconnection notices.

American Crystal has hired more than 900 replacement workers to keep its plants running. Federal law allows employers to hire such workers during a lockout, although they cannot

permanently replace regular employees. Employers can pay the replacements lower wages, although as is the case with American Crystal, the companies sometimes need to offer higher wages and help pay for housing to attract replacements.

With many private-sector labor unions growing smaller and weaker, and with public-sector unions under attack in numerous states, some employers think the time is ideal to use lockouts, a forceful approach they were once reluctant to use.

Many employers, though, say they have little choice.

Robert Batterman, a labor lawyer who represents employers, said whether it was the N.F.L. or Sotheby's, which locked out 43 art handlers in Manhattan last July, "the pendulum has swung too far toward the employees, and the employers are looking in these tight economic times to get givebacks."

"Employers," he continued, "are using lockouts because unions are reluctant to do what the employers consider reasonable in terms of compromising. Employers are looking to reset their collective bargaining relations."

After being out of work since Aug. 1, Paul Woinarowicz, a warehouse foreman employed at American Crystal Sugar for 34 years, sees another rationale for lockouts.

"It's just another way of trying to break the union," said Mr. Woinarowicz, a member of the bakery and confectionery workers union. "People here in the Red River Valley are really mad at American Crystal. It was just like a knife stuck in your heart."

With American Crystal earning record profits before the lockout, the workers strongly opposed its push for concessions. Mr. Woinarowicz noted that the company's most recent quarterly report showed a sharp decline in production and profits — a development the workers said showed the lockout was taking a toll. American Crystal said the drop was due to a smaller sugar beet crop and higher operating costs.

American Crystal accuses union negotiators of being inflexible and denies that it is seeking to break the union. For many employers, lockouts have proved highly successful. Last July 17, Armstrong World Industries locked out 260 workers at its ceiling tile plant in Marietta, Pa., after they rejected the company's offer as stingy on pensions and health coverage.

After being locked out for five months, the workers accepted a contract only slightly different from the one they had originally voted down. Union officials said the workers knew Armstrong had the upper hand.

There have been several recent lockouts at hospitals, often after nurses engaged in a one-day walkout. To hire replacement nurses from a staffing company, hospitals often have to commit to hiring them for at least a week, so a one-day nurses' strike is often followed by a four-day lockout. But at some health care facilities, like West River nursing home in Milford, Conn., where management locked out 100 workers on Dec. 13, companies see lockouts as a way to wrest concessions and set an example for workers at their other facilities.

DeMaurice Smith, executive director of the National Football League Players Association, said the football, hockey and basketball leagues ordered lockouts in recent years for a clear reason: to gain leverage in negotiations.

“The lockout is designed to put you at a distinct disadvantage,” he said, saying it places huge pressures on players who typically have short professional careers. The National Hockey League’s lockout of 2004-5 canceled an entire season.

Mr. Smith said, “A lot of players have careers of two or three years, and you might get a player who asks, ‘At what point is this fight worth one-third of my career?’ ”

For Jeannie Madsen, a lab technician at American Crystal, the lockout has meant strains for her and her fiancé, also a worker there. With her former husband also locked out and suspending child support payments, she said she could not afford new school clothes and shoes for her children and had to stop paying her daughter’s orthodontist bills. She said Wells Fargo would soon foreclose on her home.

“What’s most upsetting is that it’s affecting the lives of many innocent children,” she said.

The sides are holding occasional negotiations but remain deadlocked.

Ms. Madsen said the company was continually putting up barriers to a settlement, essentially pressing the workers to surrender. Company officials did not return phone messages, but Brian Ingulsrud, the company’s vice president for administration, wrote in an editorial for a Fargo newspaper that “American Crystal Sugar remains committed to good-faith negotiations.”

## **Bernie Sanders: We Must Stop This Corporate Takeover of American Democracy**

By Bernie Sanders

January 21, 2012

The corporate barbarians are through the gate of American democracy. Not satisfied with their all-pervasive influence on our culture, economy and legislative processes, they want more. They want it all.

Two years ago, the **United States** supreme court betrayed our Constitution and those who fought to ensure that its protections are enjoyed equally by all persons regardless of religion, race or gender by engaging in an unabashed power-grab on behalf of corporate America. In its now infamous decision in **the Citizens United case**, five justices declared that corporations must be treated as if they are actual people under the Constitution when it comes to spending money to influence our elections, allowing them for the first time to draw on the corporate checkbook - in any amount and at any time - to run ads explicitly for or against specific candidates.

What's next ... a corporate right to vote?

Don't laugh. Just this month, the **Republican National Committee filed an amicus brief in a US appeals court** contending that the natural extension of the Citizens United rationale is that the century-old ban on corporate contributions *directly* to candidates and political parties is similarly unconstitutional. They want corporations to be able to sponsor candidates and parties

directly while claiming with a straight face this would not result in any sort of corruption. And while, this month, they take no issue with corporations being subject to the existing contribution limits, anyone paying attention knows that eliminating such caps will be corporate America's next prize in its brazen ambition for absolute control over our elections.

The US Constitution has served us very well, but when the supreme court says, for purposes of the first amendment, that corporations are people, that writing checks from the company's bank account is constitutionally-protected speech and that attempts by the federal government and states to impose reasonable restrictions on campaign ads are unconstitutional, our democracy is in grave danger.

I am a [proud sponsor of a number of bills that would respond to Citizens United](#) and begin to get a handle on the problem. But something more needs to be done - something more fundamental and indisputable, something that cannot be turned on its head by a rightwing supreme court.

That is why I have introduced a resolution in the Senate (introduced by Representative Ted Deutch in the House) calling for an amendment to the US Constitution that says simply and straightforwardly what everyone - except five members of the United States supreme court - understands: corporations are not people with constitutional rights equal to flesh-and-blood human beings. Corporations are subject to regulation by the people. Corporations may not make campaign contributions - the law of the land for the last century - or dump unlimited sums of money into our elections. And Congress and states have broad power to regulate all election spending.

I did not introduce this lightly. In fact, I have never sought to amend the Constitution before. The US Constitution is an extraordinary document that, in my view, should not be amended often. In light of the supreme court's Citizens United decision, however, I see no alternative. The ruling has radically changed the nature of our democracy. It has further tilted the balance of power toward the rich and the powerful at a time when the wealthiest people in this country have never had it so good.

At a time when corporations have more than \$2tn in cash in their bank accounts, make record-breaking profits and swarm Washington with their lobbyists 24 hours a day, seven days a week, for the highest court in the land to suggest that there is just not enough corporate "speech" in our system defies the bounds of reason and sanity. The ruling already has led to plans, for example, by industrialist brothers David and Charles Koch to steer more than \$200m - potentially much more - to conservative groups ahead of election day 2012. Karl Rove has similar designs.

Does anybody really believe that that is what American democracy is supposed to be about? I believe that the Citizens United decision will go down as one of the worst in our country's history - and one that demands an amendment to our Constitution in order to restore sovereign power to the people, as our nation's founders intended.

If we do not reverse it and the culture of corporate dominance over our elections that it has exacerbated, there will be no end to the impact that corporate interests have on our campaigns and our democracy.

## **UP commits \$1 billion to Nebraska infrastructure, makes UPS' peak performance grade**

On Friday, [Union Pacific Railroad](#) Chairman, President and Chief Executive Officer Jim Young and Nebraska Gov. Dave Heineman announced the Class I plans to spend \$1 billion over the next several years to improve its infrastructure in the state.

Among the capital investments, the railroad would spend \$220 million on new rail, ties, and other materials and work to increase capacity and fluidity on its busy corridor through Nebraska, which averages about 125 trains daily. UP also would spend \$206 million on a multi-year project calling for new crew change buildings, a bridge over the Elkhorn River, and new technology and track between Fremont and Missouri Valley; and \$70 million to expand capacity at Bailey Yard in North Platte via track additions and technology upgrades.

"We're proud that Union Pacific has been part of Nebraska for 150 years," said Young in a prepared statement, adding that the investment renews the railroad's commitment to helping stimulate business and job growth in the state.

UP also announced on Friday that it achieved a perfect peak season in 2011 for United Parcel Service by delivering 100 percent of the company's fall-peak freight without a service failure.

UPS' peak season runs from the Tuesday following Thanksgiving to Christmas Eve. During the peak, UP delivered thousands of UPS containers and trailers carrying hundreds of packages each.

"Our goal is to always provide UPS with flawless service, and that is especially important during the peak season," said John Kaiser, UP's vice president and general manager of intermodal, in a prepared statement.

In addition, UP announced that *Bloomberg BusinessWeek* ranked the Class I No. 5 on its 2012 list of the top 50 performing companies. The rankings are based on a company's one- and five-year risk-adjusted returns, consensus analyst recommendations and projected earnings growth.

"Our employees' focus on safety, service and efficiency, along with our record levels of capital investment, are creating excellent value for our customers, increasing profitability for Union Pacific and generating greater rewards for our shareholders," said Young.

1/24/2012 12:00:00 PM Labor

## **BLET members ratify Amtrak contract**

On Friday, members of the [Brotherhood of Locomotive Engineers and Trainmen](#) (BLET) ratified a new collective bargaining agreement with [Amtrak](#). The final ballot tally indicated 77.5 percent voted in favor of the pact.

The five-year agreement includes 10 general wage increases totaling 14 percent, compounding

to 15 percent, over the life of the contract. The contract runs through Jan. 1, 2015, with retroactive pay to July 1, 2010, BLET officials said in a prepared statement.

Also under the contract, employee cost-sharing amounts for health and welfare coverage is capped at \$181.62 per month as of July 1, 2011, \$201 as of July 1, 2012, and \$230 as of July 1, 2013. In addition, vision care and medical coverage is extended up to age 26 for eligible dependents.

The contract covers more than 1,400 locomotive engineers who operate Amtrak passenger and commuter trains.

## **Railway Age**

January 24, 2012

**Norfolk Southern late Tuesday reported a series of significant records for 2011: Railway operating revenues reached \$11.2 billion, up 17%; income from railway operations climbed 20% to \$3.2 billion; net income was \$1.9 billion, up 28%; and diluted earnings per share increased 36% to \$5.45.**

“Norfolk Southern achieved all-time records for revenues, operating income, net income, and earnings per share during 2011, and set fourth-quarter records for revenues, net income, and earnings per share,” said Norfolk Southern CEO Wick Moorman. “In 2012 we will remain committed to enhancing our service product, maintaining the safety and quality of our rail network, improving operational efficiency, and supporting growth. Our strong capital program of \$2.4 billion will include substantial investments along our Crescent Corridor, a public-private partnership to create a high-capacity, truck-competitive intermodal freight rail route between the Gulf Coast and Northeast.”

“As part of this program of projects, we plan to open intermodal terminals in Alabama, Pennsylvania, and Tennessee later in the year. Facilities such as these relieve congested freight lines and highways, and are proven centers for creating jobs and economic development.”

## **CN quarterly earnings beat Street**

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Written by [Douglas John Bowen](#)

**Canadian National Tuesday reported net earnings of C\$592 million, or C\$1.32 per share, up 18% from C\$503 million or C\$1.08 per share in the same quarter a year ago. Adjusted earnings of C\$1.30 handily surpassed Wall Street consensus estimates of C\$1.24. Revenue rose 12% C\$2.38 billion, a record, that also surpassed Street estimates of C\$2.30 billion.**

CN noted that its operating ratio for the quarter was 64.7%, up 1.3 points from the fourth quarter of 2010.

Said CN President and CEO Claude Mongeau, "Solid operational and service performance helped CN deliver exceptional financial results for the fourth quarter and 2011 as a whole.

Mongeau said CN believes "the gradual improvement in the North American economy will continue in 2012." CN hopes to increase its profit by 10% in 2012, despite the weight of a pension expense of about \$120 million this year.

Tuesday, January 24, 2012

## CSX 4Q, full year set records; Street shrugs

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Written by [Douglas John Bowen](#)

**CSX Corp. said late Monday fourth-quarter earnings of 43 cents per share, up 13% from 38 cents per share in the fourth quarter of 2010, as it recorded revenue of about \$3.0 billion and operating income of \$841 million. CSX also notched an operating ratio of 71.5%.**

"CSX once again delivered record earnings per share while investing in resources to support high customer service levels and growth in the near- and long-term," said Michael J. Ward, chairman, president and chief executive officer. "Our performance in 2011 has set a strong foundation for growth, and CSX remains committed to achieving a 65 percent operating ratio by no later than 2015."

CSX generated record performance in revenue, operating income, operating ratio and earnings per share for the full year as well. Revenue increased 10% to \$11.7 billion, while operating income rose 11% to \$3.4 billion. The Class I railroad's operating ratio for the full year improved to 70.9%, and its earnings per share improved 24% to \$1.67.

Despite the record-setting, Wall Street appeared unappreciative Tuesday, noting CSX earnings of 43 cents per share fell short of analyst expectations by a penny. Shares of CSX stock were down roughly 3.9% in early Tuesday afternoon trading on the New York Stock Exchange.

Tuesday, January 24, 2012

# KCS notches records for 4Q, full year

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Written by [Douglas John Bowen](#)

**Kansas City Southern late Monday said it had notched record fourth-quarter revenue of \$530 million, up 11% from the comparable quarter in 2010, while generating operating income of \$150 million, up 11% from \$135 million a year ago.**

KCS's operating ratio for the quarter was 71.6%, compared with 71.8% in the fourth quarter of 2010.

Fourth-quarter diluted earnings per share of 87 cents was up from 50 cents per share in the fourth-quarter of 2010. Excluding debt retirement costs, adjusted diluted earnings per share for the fourth quarter of 2011 was \$1.01, compared with 62 cents in the fourth quarter of 2010.

KCS said the revenue growth was "led by a 30% increase in Automotive and a 29% increase in Intermodal revenues. Coal was also strong with revenues growing by 20% in the fourth quarter of 2011. Industrial and Consumer Products were up 8% over 2010. Agriculture and Minerals revenue grew 2%."

For the full year 2011, revenue was a record \$2.1 billion, up 16% over 2010, KCS said, noting it was the first time KCS generated annual revenue above \$2 billion. Full-year operating income was \$612 million, a 26% increase over the prior year, and the company's 2011 operating ratio was 70.9% compared with 73.2% in 2010. Diluted earnings per share for full year 2011 were \$3.00 compared to \$1.67 for 2010.

"KCS's solid fourth quarter put the final touches on a successful 2011," stated David L. Starling, president and chief executive officer (and Railway Age's 2012 Railroader of the Year). "The Company can point to notable achievements in all areas, including marketing and sales, finance and operations. For the first time in our railroad's 125 years, we attained over \$2 billion in revenue and 2 million in carloads.

Starling noted that "with the help of continually improving system-wide operating efficiency, KCS again improved its annual operating ratio. Our progress was recognized both in the credit and equity markets with upgrades to our credit ratings and a 42% increase in our stock price for the year.

"KCS continues to have abundant growth prospects and is very well-positioned to be a leading growth company in the transportation industry. We believe that in 2012, KCS will continue on a growth trend similar to that of the past year with mid-single digit increases in volumes and pricing. We are also committed to further improvements in our operating ratio for 2012."

# UP posts record low employee injury rate

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Written by Luther S. Miller, Senior Consulting Editor

**Union Pacific Railroad employees achieved a record low 1.15 reportable injury rate in 2011, the best performance on record in the company's 150-year history, according to a UP announcement Tuesday.**

"Employees surpassed their previous best rate of 1.37, established in 2010, by 16.5%. From 2002-2011, Union Pacific employees improved their reportable injury rate by 525," said the railroad.

This rate is the total number of injuries reportable to the Federal Railroad Administration per 200,000 worker hours, which is equivalent to 100 employees working a full year.

"Our Total Safety Culture initiative and identifying and standardizing best practices are important factors in our safety performance improvement," said Bob Grimaila, Union Pacific vice president-Safety, Security and Environment. "Employees participating in Total Safety Culture combine teamwork and best practices as we strive to achieve our ultimate goal of zero incidents or injuries."

1/25/2012 11:00:00 AM Capex

## **NS boosts capital spending by 12 percent for 2012**

During its fourth-quarter earnings conference yesterday, [Norfolk Southern Corp.](#) announced it has budgeted \$2.4 billion for capital spending in 2012, up 12 percent compared with 2011's \$2.16 billion budget. Replacement and core spending will total about \$1.6 billion, or 67 percent of the total budget, said Executive Vice President and Chief Information Officer Deborah Butler.

NS plans to spend \$840 million on roadway projects, including rail, tie and ballast programs, and bridge and culvert replacements. The budget also allocates \$322 million for facilities and terminals, such as mechanical shops, industrial products facilities and intermodal terminals along NS' Crescent Corridor intermodal route between New Jersey and Louisiana. The railroad plans to complete three Crescent Corridor terminals this year in Alabama, Pennsylvania, and Tennessee. The facilities/terminals budget also will help fund a multi-year initiative to expand and update NS' locomotive servicing facility, said Butler.

In terms of rolling stock, the Class I has budgeted \$212 million for locomotives, including alternative power units, rebuilds and upgrades, and emission kits. NS plans to purchase 35 new locomotives this year, said Butler. The railroad also has budgeted \$346 million for freight cars, including new and re-bodied coal cars, intermodal containers and chassis, and merchandise cars. Coal car replacements will be a big driver of the capex budget for the next couple of years, said Butler.

"We're continuing a multi-year investment in new coal cars as our existing fleet ages out," she said. "And in addition, we're ramping up the coal car re-body program in 2012."

The 2012 capex budget also includes \$134 million for infrastructure projects, such as network improvements for coal and merchandise traffic, and public/private partnership projects associated with the Crescent Corridor and Chicago Region Environmental and Transportation Efficiency Program.

"Our infrastructure investments are specifically designed to relieve congested lines and improve capacity and velocity on Atlanta roads," said Butler. "New projects for 2012 will focus on the Birmingham-Atlanta corner and our north-south line between Chattanooga and Cincinnati."

Other budget items include \$197 million for other miscellaneous projects, \$92 million for technology and \$247 million for ongoing positive train control (PTC) work. PTC spending is up from \$146 million in 2011 and "in line with our plans to ramp up spending as the 2015 deadline approaches," said Butler.

"Funding will be used to upgrade communication and signals, to purchase and install onboard network devices on locomotives and to continue the complex process of integrating PTC with our other operating systems," she said. "Even with recent changes in the regulations, we still anticipate the total spending on PTC will exceed \$1 billion."

Thursday, January 26, 2012

## 4Q freight car orders soar 51.4%, RSI says

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Written by [Douglas John Bowen](#)

**Railroad freight car orders increased 51.4% in the fourth quarter to 16,434, compared with 10,853 car orders for the same quarter last year, according to the Railway Supply Institute. Orders in the quarter fell relative to the third quarter, which totaled 20,165 orders.**

Car deliveries for the fourth quarter totaled 16,693, up from 7,333 in the fourth quarter of 2010 and also up from 12,519 in the third quarter of 2011.

Car manufacturers had a backlog of 64,575 cars in the fourth quarter, substantially more than the 22,658 in the fourth quarter of 2011 and fractionally higher than the 65,044 cars on backlog in the third quarter of 2011.

Thursday, January 26, 2012

## CP posts higher revenue, lower net income

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Written by Luther S. Miller, Senior Consulting Editor

**Canadian Pacific Railway Thursday reported fourth-quarter net income of C\$221 million and diluted earnings per share of C\$1.30, including 22 Canadian cents per share income tax benefit. For the full year, the company reported net income of C\$570 million, down from last year, and diluted earnings per share of C\$3.34.**

“We exited 2011 having made meaningful progress on the three pillars of our Multi-Year Plan: driving growth, expanding network capacity to safely and efficiently support higher volumes and controlling costs. During the fourth quarter we delivered record asset velocity, a direct link to better service, positioning us for a lower operating ratio,” said Fred Green, president and CEO. “We begin 2012 with operating momentum, excellent service levels and a stronger, more resilient rail network. We are aggressively executing on our Multi-Year Plan, which is instrumental in creating long-term value for shareholders.”

Total fourth-quarter revenue was C\$1.4 billion, an increase of C\$114 million from the prior-year quarter. Operating expenses increased C\$109 million to C\$1.1 billion.

Total 2011 revenue was C\$5.2 billion, an increase of C\$196 million. Operating expenses were C\$4.2 billion, an increase of C\$345 million

Operating income was C\$967 million, a decrease of C\$149 million. Net income was C\$570 million, a decrease of C\$81 million. Diluted earnings per share were C\$3.34 per share, a decrease of 51 Canadian cents per share.

“Our operational metrics are a leading indicator of both customer satisfaction and financial results. The operational improvements we have already achieved will now begin to drive enhanced financial results in the first quarter of 2012 and, as we continue to execute on our Multi-Year Plan, further operational improvements will deliver financial benefits,” added Green. “Given our recent market successes and operating trends, we can now with confidence, narrow our target operating ratio range to 70%-72% in three years and we have no intention of stopping there.”

Thursday, January 26, 2012

## U.S. rail traffic rises again, AAR says

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Written by Douglas John Bowen

**U.S. freight carload traffic in early 2012 rose again, up 1.6% for the week ending Jan. 21, the Association of American Railroads reported Thursday. U.S. intermodal volume moved up even more, advancing 3.0% for the week measured against the comparable week in 2011.**

AAR said 14 of the 20 carload commodity groups it measures posted increases compared with the same week in 2011. Leading the gainers was metallic ores, up 50.8%; also showing strength were petroleum products, up 26.8%, and motor vehicles and equipment, up 16.7%. Declining groups included grain, down 10.7%, and farm products excluding grain, down 10.5%

Canadian freight carload volume for the week ending Jan. 21 also rose, up 3.5% percent compared with the same week last year, and Canadian intermodal volume also rose, up 4.8%. Mexican freight carload volume failed to follow suit, down 11% compared with the same week last year, but Mexican intermodal rose 27.6%.

Combined North American freight carload volume for the first three weeks of 2012 on 13 reporting U.S., Canadian, and Mexican railroads was up 0.8% compared with the same period in 2011, while intermodal notched a 1.4% gain.

## *A British Perspective.....*

### Big business v the NLRB

The backlash from the business lobby and GOP allies over union recognition rules shows what organised labour is up against

- 
- **John Logan**
  - [guardian.co.uk](http://guardian.co.uk)
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In a long-awaited and controversial move, the National Labour Relations Board (NLRB) has issued new rules designed to streamline the process for union certification (that is, union recognition) elections, which currently allows employers significant latitude to delay the vote and undermine employee free choice. The response from the business community and the GOP has been uniformly (and predictably) negative.

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In characteristically over-the-top language, Senator Mike Enzi of Wyoming – ranking Republican on the Senate labour committee – called the proposals "a gift to organised labour" by a "runaway agency". The US Chamber of Commerce attacked a "blatant attempt to give unions the upper hand by limiting the ability of employers to exercise their free speech rights". And former Republican appointee to the NLRB Peter Schaumber cautioned that an employer "will be faced with an election only days away ... without the ability to express itself on the issue of unionisation to its employees".

According to the board's critics, delaying litigation and speeding up access to information on election issues will mean that employees will only get to hear one side of the story – the union side – and thus make uninformed and unwise choices. Under the new election regime, they argue, the employers will be "ambushed" by union campaigns and will have no opportunity to express themselves.

Employers won't have adequate opportunity to communicate their views on unions? Really?

What does the evidence tell us about how and when employers communicate their views on unions to employees? Let's ignore the many and significant other advantages that employers

enjoy under the current system of NLRB elections. Let's ignore that employers have exclusive access to employees at work during working time. Let's ignore that during organising campaigns, employers frequently force their employees to attend group and individual "captive audience" anti-union meetings (which, in any other context, would be considered a form of false imprisonment). Let's ignore that a regrettably high number of campaigns are tarnished by allegations of employers firing pro-union employees (most employees would consider getting fired a fairly clear indication of their employer's views on the subject). And let's ignore that most unions have now given up on the official NLRB election process because they consider it so biased in employers' favour.

When do employers start to communicate their anti-union message? All of the evidence suggests that employers do not wait until the start of an official NLRB election period. These are not 10-21 day campaigns that employers fear (double the length of union elections in Canadian provinces, where employers are also restricted more tightly in what they can say to employees), even though the proposed new rules do not specify any time period for elections. These are not even the 57-day campaigns that were the average for union certification elections in 2008. They are, effectively, year-round, 365-day anti-union campaigns. External "union avoidance" consultants advise that employers "should design a strategy for communicating ... from day one of 'new hire orientation'". Employers frequently include unambiguous statements of their opposition to unionisation in all employee handbooks. Large employers such as Walmart, Home Depot and Staples show anti-union films to new hires as part of their inductions. (Several of these movies have recently found their way to the web.) And, perhaps most compelling of all, large corporations frequently hire internal union avoidance experts for high-level human resource positions. One recent ad states: "Union avoidance is key to this position."

In the Alice-in-Wonderland reality that now dominates conservative rhetoric on labour issues, the NLRB first tried to "intimidate" Boeing, an immensely powerful corporation with political connections at the highest levels of government. Now, it is attempting to prevent all employers from communicating with their employees on issues related to unionisation.

The new rules streamlining the union certification process will, in fact, prevent some of the worst abuses that allow unscrupulous employers to undermine employee free choice through dilatory tactics. But the NLRB system as a whole will continue to provide employers with significant advantages over employees who are trying to form unions. Under the new rules, employers will continue to be able to communicate forcefully and repeatedly their opposition to unionisation.

Employers' dismay is unconvincing, and their arguments and those of their political allies are disingenuous. The sole reason for opposing the election proposal is the desire to make it more difficult for employees to exercise their right to choose a union. It is unsurprising that Republicans would cry wolf over changes that protect the right to organise. What this manufactured outrage really demonstrates is employers' complete unwillingness to give up their stranglehold over the current system of union organising. Unfortunately, these relatively modest changes are unlikely to challenge that in any fundamental way.

## Yesterday's Deception, Today's Correction

By Christopher Petrella

January 26, 2012

Dear Gov. Mitch Daniels and your Republican Brethren,

Your response to [President Obama's State of the Union](#) last night was deceitful, historically tenuous, and politically unsophisticated. George Orwell once said that "in a time of universal deceit, telling the truth is a revolutionary act."

M.D. "The percentage of Americans with a job is at the lowest in decades."

TRUTH: Daniels speaks truth without context. Yes, the [unemployment rate](#) is indeed the highest it has been since 1983, but it has actually [fallen by 1.5%](#) since its peak in December, 2009.

M.D. "In three short years, an unprecedented explosion of spending, with borrowed money, has added trillions to an already unaffordable national debt. And yet, the President has put us on a course to make it radically worse in the years ahead."

TRUTH: Over the course of President Obama's first three years he and Congress increased the [national debt](#) by 41%. And in Ronald Reagan's first three years? You guessed it. He increased the national debt by 55%.

M.D. "The federal government now spends one of every four dollars in the entire economy."

TRUTH: Yes, but since 1980 federal spending as a percentage of GDP has changed very little. Since Reagan's first term Republicans presidents have spent on average 21.53% of GDP on [federal programs](#), Democrats, 21.6%.

M.D. "The President's grand experiment in trickle-down government has held back rather than sped economic recovery."

TRUTH: Just two weeks ago President Obama detailed his plan to supplant six current federal agencies with one in order to create a "[more efficient and lean](#)" government. The move is projected to save taxpayers \$3 billion over ten years. Republicans still refuse to support his proposal.

M.D. "Those punished most by the wrong turns of the last three years are those unemployed or underemployed tonight, and those so discouraged that they have abandoned the search for work altogether."

TRUTH: Mitch, please. The National Bureau of Economic Research has indicated time and again that the U.S. has been in a [recession](#) since December, 2007. (Recessions are typically defined as two or more quarters of negative growth.) 2012-2007? That's five years, Mitch, not three.

Moreover, in December, 2011 Republicans [proposed legislation](#) to "cut 40 weeks from the duration of federal unemployment compensation and allow states to require the unemployed to pass drug tests in order to receive benefits."

M.D. "And no one has been more tragically harmed than the young people of this country, the first generation in memory to face a future less promising than their parents did."

TRUTH: Real wages in the [U.S. began falling](#) in 1975 when Barack Obama was 14 years old.

M.D. "So 2012 is a year of true opportunity, maybe our last, to restore an America of hope and upward mobility, and greater equality. The challenges aren't matters of ideology, or party preference; the problems are simply mathematical, and the answers are purely practical."

TRUTH: Problems and solutions are never "[simply mathematical or purely practical](#)." If they were, then why would those living in states that receive the largest federal subsidies regularly vote "small government" republicans into office?

M.D. "The routes back to an America of promise, and to a solvent America that can pay its bills and protect its vulnerable, start in the same place. The only way up for those suffering tonight, and the only way out of the dead end of debt into which we have driven, is a private economy that begins to grow and create jobs, real jobs, at a much faster rate than today."

TRUTH: Though Republicans have won 9 of these last 16 [presidential elections](#), Republican administrations have averaged less annual growth (1.3%) than their [Democratic counterparts](#) (2.5%) since WWII.

M.D. "Contrary to the President's constant disparagement of people in business, it's one of the noblest of human pursuits."

TRUTH: Really??!? Since Mitch Daniels is an avowed Christian it is only proper to consult the Bible on matters of virtue. If about 20% of U.S. GDP is a product of our financial sector, then I wonder what the "Good Book" has to say about interest and usury.

"If you lend money to any of my people who are poor among you, you shall not be like a moneylender to him; you shall not charge him interest." (Exodus 22:25)

"You shall not lend him your money for usury, nor lend him your food at a profit." (Leviticus 25:35-37)

"He who does not put out his money at usury, nor does he take a bribe against the innocent. He who does these things shall never be moved." (Psalm 15:5)

"One who increases his possessions by [usury](#) and extortion Gathers it for him who will pity the poor." (Proverbs 28:8)

M.D. "Out here in Indiana, when a businessperson asks me what he can do for our state, I say 'First, make money. Be successful. If you make a profit, you'll have something left to hire someone else, and some to donate to the good causes we love.'"

TRUTH: According to the [U.S. Federal Reserve](#), American businesses are currently sitting on at least \$1.9 trillion in profits at a time when 25 million Americans are un- or underemployed.

M.D. "Decades ago, for instance, we could afford to send millionaires pension checks and pay medical bills for even the wealthiest among us. Now, we can't, so the dollars we have should be devoted to those who need them most.

TRUTH: We now send millionaires pension checks in the form of record low [capital gain tax rates](#) (15%) initiated by President George W. Bush in 2003.

M.D. "The mortal enemies of Social Security and Medicare are those who, in contempt of the plain arithmetic, continue to mislead Americans that we should change nothing."

TRUTH: [Social security](#) is already solvent for the next 26 years. One strategy for ensuring its availability for our children is to raise the ceiling on income subject to it from \$106,800 to at least \$180,000.

M.D. As a loyal opposition, who put patriotism and national success ahead of party or ideology or any self-interest, we say that anyone who will join us in the cause of growth and solvency is our ally, and our friend. We will speak the language of unity."

TRUTH: The language of unity? In July, 2011 Senate Minority Leader Mitch McConnell (R-KY) maintained that the Republicans' number one goal remains the [defeat of President Obama in 2012](#). Does Daniels doesn't know the difference between comity and comedy?

M.D. "Republicans will speak for those who believe in the dignity and capacity of the individual citizen..."

TRUTH: As long as by "individual citizen" we don't mean women, right? Remember last February when the GOP-controlled House voted to cut not only all of [Planned Parenthood's](#) \$75 million in federal funding for family planning but also the entire \$317 million Title X budget. Title X money subsidizes screening and treatment for sexually transmitted diseases, breast and cervical cancer testing, prenatal care, sex education, and birth control? Got dignity?

M.D. "There is nothing wrong with the state of our Union that the American people, addressed as free-born, mature citizens, cannot set right."

TRUTH: Born free? In December, 2010 Senate Republicans blocked the [DREAM Act](#), an immigration measure that would have provided a conditional path to legal residency for hundreds of thousands of young immigrants first brought to the U.S. without documentation by their parents.

## **Jan 26, 2012 Issues: Labor, Worker Rights**

**WASHINGTON – Rep. George Miller (D-CA), the senior Democrat on the House Education and the Workforce Committee, asked the Department of Justice today to look into evidence uncovered by a National Labor Relations Board Inspector General investigation that found Board Member Brian Hayes engaged in employment discussions with a law firm with business before the agency.**

**“The Board plays a critical role in adjudicating and administering the rights of employees and employers under our nation’s labor law and Board members must be free of coercion and undue influence when executing their responsibilities,” Miller wrote. “Therefore, I respectfully request that the Department of Justice further investigate the circumstances surrounding the employment discussions between Member Hayes and Morgan Lewis and any other issues the Inspector General brings to your attention related to his investigation.”**

**The NLRB Inspector General investigation found that Member Hayes and an attorney with Morgan Lewis had a number of conversations beginning in late September or early October about potential employment if he were to resign his position on the NLRB. As part of those conversations, an attorney with the firm, according to Hayes, stated that “if you ever decide to resign we’d like to talk to you.”**

**During that time, some had been calling on Hayes to resign in order to incapacitate the NLRB, preventing it from issuing case decisions or new rules, including a rule to reform union elections. Hayes’ resignation would have denied the NLRB a quorum, stopping any action to advance the election rule, among other things.**

**Concerned about improper efforts to incapacitate the NLRB, Miller asked member Hayes to turn over communications discussing his resignation or potential future employment. Hayes refused to comply.**

**While not part of Miller’s Department of Justice referral, the Inspector General also found that a letter that member Hayes sent to Congress criticizing the rulemaking process for the election rule contained false statements and misrepresentations. The letter was apparently sent in the same time frame as or shortly after discussions between member Hayes and the law firm. The firm relies upon the letter in a federal lawsuit that it filed on behalf of its clients attempting to overturn the election rule.**

**The Inspector General concluded: “We also determined that, although the letter sent by Member Hayes to the Committee on Education and the Workforce communicates his opinion regarding the rule making process, it contained inaccurate statements of fact...Overall, the letter to the**

**Committee creates the impression that Member Hayes and his staff were excluded from the rule making process. That impression is not completely accurate."**

## **U.S. GDP grew at fastest pace in 1.5 years in fourth quarter 2011**

**By [Peter Whoriskey](#), Updated: Friday, January 27, 10:24 AM**

The nation's on-and-off economic recovery has picked up its pace, the Commerce Department reported Friday, with the U.S. economy growing at an annualized rate of 2.8 percent for the end of 2011.

That rate is the fastest recorded in a year and a half, and it follows three quarters of growth below 2 percent.

Over all of 2011, the economy grew at a rate of 1.7 percent.

But behind the accelerating growth figures lurked lingering signs of trouble, especially for the nation's households, and questions about whether the economy's growth rate is sustainable, economists said.

U.S. stocks opened slightly weaker on the news, and the Dow Jones Industrial Average was down about half a percent by mid-morning.

With the state of the economy expected to be a key element of the 2012 presidential campaign, the details of the Commerce Department report on gross domestic product - the value of goods and services produced in the United States - reflected the frailty of the overall economy despite record corporate profits.

Some of the acceleration in growth rate was triggered by consumer spending, which rose by two percent. But that was achieved in part because people saved less - the personal savings rate fell again, as it has for each of the last four quarters. In addition, even though employment is up, disposable personal income is slightly less than it was a year before.

"That's a very disappointing outcome," said Paul Ashworth, chief U.S economist for Capital Economics. "You would expect that the income earned by everybody would be going up."

The other key reason for the growth in GDP is that companies built up their inventories of goods. Several economists suggested that those inventories will exceed sales, meaning that companies are likely to slow down production.

"The current build rate appears out of line with demand," said Steven Ricchiuto, chief economist at Mizuho Securities USA, noting that the inventory buildup was largely auto-related.

More generally, while the tentative recovery seems to be lifting businesses, and adding some jobs, households appear to be under considerable strain.

With this year's growth, the nation's GDP now exceeds its size before the recession. And the GDP numbers come on the heels of 22 straight months of job increases, with the economy adding 200,000 jobs in December.

But employment numbers continue to lag far behind their pre-recession levels of more than three years ago, and this disconnect spreads a sense of gloom among many households.

The employment level is still down about 6 million from its peak of about 146 million just before the downturn.

"That's why people feel we're still in recession," said Gus Faucher, senior economist at PNC Financial Services.

Many firms, though profits are high, are reluctant to hire.

"Businesses have just been really really scared by what we've been through," Faucher said. "Once they're convinced things won't go to hell again, there will be some demand for labor. We're getting close to that point."

The numbers released Friday also underscored the stop-and-start nature of the recovery thus far: While the economy grew at a 3 percent pace in 2010, it slowed to a 1.7 percent rate in 2011.

The slowdown defied predictions made at the beginning of 2011, when many economists forecast a year of robust growth. Then a combination of the earthquake in Japan, the monetary troubles in Europe and the debt ceiling standoff in Congress [put the economy off course](#).

Now many forecasters and businesses are fearful of being too optimistic.

"Even though things feel better at the moment, people don't want to make the same mistake," said Mark Zandi, chief economist at Moody's Analytics. "The forecasts are much more cautious. This collective psyche is very fragile."

Moreover, he said, fear about the potential impact of Europe's economic woes and the still-troubled U.S. housing market keep a steady drag on the economy.

"As long as home prices are falling, and they still are, it's hard to get enthusiastic about anything," Zandi said.

Staff writer Sarah Kliff contributed to this report.