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

NEWS CLIPS

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Freight traffic slump continues

March 30, 2009

U.S. freight carload traffic remains mired by the nation's economic woes, the Association of American Railroads says, down 14.7% for the week ended March 21 compared with the comparable week in 2008. Loadings were down 13.0% in the West and 17.0% in the East. Intermodal volume fell 12.9% from last year. Total volume of 29.3 billion ton-miles was down 13.6% from the year-ago period. Eighteen of AAR's 19 carload freight commodity groups showed declines.

Canadian freight carloads fell 22.0% for the week, while intermodal declined 13.2%. Mexican railroads defied the overall weekly trend in carload freight, reporting an increase of 53.9% for the week, and a rise of 26.4% in intermodal traffic as well.

For the first 11 weeks of the year, U.S. railroads reported cumulative carload volume down 15.6%, and intermodal down a nearly identical 15.5%, compared with the comparable period in 2008. Canadian railroads reported cumulative volume was down 19.0% from last year, while intermodal fell 11.7%. Mexican railroads for the first 11 weeks saw carload traffic decline 6.6%, while intermodal also fell, by 17.6%.

Declining Chances Give Rise to Alternatives

By Alec MacGillis
Washington Post Staff Writer
Sunday, March 29, 2009; A05

With the prospects for a landmark pro-union proposal looking increasingly shaky in Congress, senators in both parties are seeking other ways to reform labor laws, potentially reshaping what many expected to be a defining showdown of Barack Obama's presidency.

The Employee Free Choice Act, also called "card check," was dealt two blows last week. Whole Foods, Costco and Starbucks proposed a "third way" to reform labor laws that threatened to draw away conservative Democrats from card check. More damaging was the announcement by Sen. Arlen Specter (R-Pa.) that he would reverse his earlier support for the bill.

This has left its supporters struggling to line up 60 senators to avoid a filibuster. Meanwhile, an increasing number of members of Congress are broaching a new question: Is there another way to help out organized labor?

"This is not the time or the place" for card check, said Sen. Blanche Lincoln (D-Ark.), who backed the bill in 2007. "To continue to attempt to bring up something that has already worked its way into being so divisive and distracting is unproductive."

The stakes go beyond the entrenched camps of business and organized labor. In a time of rising anti-corporate sentiment and awareness of income inequality, how Obama and congressional leaders decide to craft pro-union legislation will help determine the outlines of the post-recession economy and the shape of the Democratic Party.

More than a third of private-sector workers belonged to unions in the early 1950s; today, less than 8 percent do. As unions declined in the past three decades, wages have lagged behind rising productivity.

Unions still win more than half of the elections held at workplaces, but fewer organizing efforts are even attempted. Nearly half of new unions do not secure a first contract -- the law requires only that employers bargain in "good faith."

The card-check bill would let workers form a union by getting a majority in a workplace to sign pro-union cards, instead of having to hold a secret-ballot election, as most employers now insist on; toughening penalties for employer violations; and requiring binding arbitration, similar to that used with public-sector unions, when employers and unions cannot agree on a first contract within 120 days.

Unions say the bill would let workers express their preference free of employer threats and prevent employer stalling during bargaining. Employers say it would expose workers to union intimidation and force them to give up control over how they run their business.

Few expect a true compromise, given how polarized the sides are. But Obama himself has signaled that he is open to alternatives that could gain broader backing, even as he continues to promote support for the bill.

Even many on the business side concede that the laws need updating. The last major reform was the anti-union Taft-Hartley Act of 1947, and complaints about the slow-moving National Labor Relations Board are legion.

"Labor law reform is long overdue," said Mike Asensio, a Columbus, Ohio, lawyer with Baker Hostetler who represents corporations. Joel Rogers, a pro-labor law professor at the University of Wisconsin, called the rules "ossified."

Alternative ideas run the gamut. The retailers' plan leaves out card check and mandatory arbitration, but strengthens penalties, proposes fixed election dates to give employers less time to exert pressure, and improves unions' access to workers. Unions called it inadequate; business reaction was mixed.

Specter, who faces a primary challenge next year, listed a series of reforms he could support, among them a requirement that elections be held within three weeks after organizers request one, tougher penalties for employers that illegally fire workers and steps to promote bargaining.

Rogers supports card check but said there may be other ways to limit intimidation by employers, such as exceedingly high penalties. "The problem is not secret ballot versus card check, it's the fear that workers have," he said.

But Robert Bruno, a labor relations professor at the University of Illinois at Chicago, doubts reforms short of card check can work. It is unrealistic, he said, to create neutral, civic-style elections in workplaces dominated by employers.

Employers "would have to agree to an environment where they give up a lot of control, a lot of prerogative," he said.

An equivalent debate is underway on the business side. While some warn against any compromise, others say that if Congress does not take up limited reforms, card check could get a second wind. Specter himself warned of this, saying in an interview that if he loses in his primary to his conservative rival, the Democrats will definitely win his seat and gain a 60th vote.

"The business community has to look at the potential for my not being there after 2010," he said. He also amended part of last week's statement, in which he had said he might support card check in the future if lesser reforms don't work. He said in the interview that was intended only to encourage serious labor reform, and that he would never vote for card check.

David Radelet, a Chicago lawyer who represents corporations, said Specter's 2010 warnings should be heeded. "It does create pressure for the business community to get something done now," he said.

Keith Smith, director of employment policy at the National Association of Manufacturers, said his group is asking its members which reforms they might accept. "We're going to see something again soon. It's all a matter of what it look like and how it will move," he said.

Union leaders say they can still get 60 senators by amending the bill in committee but without undermining its fundamentals.

Business groups warn against this and say the debate will not advance until union supporters scrap the bill and start over. "If they make it all or nothing, they enhance their chances of getting nothing," Asensio said.

3/27/2009 High-Speed Rail

CSX willing to help spur high-speed rail on Empire Corridor, Schumer says

Earlier this week, Sen. Charles Schumer (D-N.Y.) met with CSX Corp. Chairman, President and Chief Executive Officer Michael Ward in Washington, D.C., to discuss the Class I's involvement in bringing high-speed rail to upstate New York.

The state hopes to obtain a portion of the $8 billion included in the American Recovery and Reinvestment Act for high-speed rail. State officials plan to provide 110 mph passenger-rail service on the 430-mile Empire Rail Corridor between Niagara Falls, Albany and New York City.

The New York State Department of Transportation (NYSDOT) has commissioned a study to assess the feasibility of adding a third track dedicated for passenger rail alongside existing track. Because CSX owns the right of way, the state would have to sign a lease or purchase agreement with the Class I to add the infrastructure. During the meeting with Schumer, Ward indicated "a willingness to work with the state so all parties benefit from an upgrade to high-speed rail," Schumer said in a prepared statement.

The senator also noted that priority No. 1 is to bring the rail corridor to a state of good repair, particularly by adding double track between Schenectady and Rensselaer to alleviate a bottleneck, and upgrading the Livington Avenue Bridge over the Hudson River that connects Albany and Rensselaer. Ward said he'd help advance both projects, which are included in Gov. David Paterson's New York State Rail Plan, Schumer said.

Amtrak details stimulus funding projects March 26, 2009

Amtrak has released a list of capital projects to be funded by $1.3 billion from the American Recovery and Reinvestment Act. Submitted to the Federal Railroad Administration, the highlights of the list include railcar and locomotive restoration to augment the current fleet, projects to bring stations into compliance with the Americans with Disabilities Act, facility improvements, track, bridge and signal replacements and upgrades.

The investment package is broken down into two separate accounts: one for railroad and station capital projects funded at $845 million and one for security and life safety projects, funded at $450 million. Following are examples – not a comprehensive list – of some of the projects to be performed with ARRA funding.

Railcars and locomotives
Amtrak shops in Beech Grove, Ind., will rebuild 20 out-of-service Superliner and one Viewliner railcar ($19.3 million) and 15 locomotives ($13 million) and the Amtrak shops in Bear, Del, will rebuild 60 out-of-service Amfleet railcars ($58.5 million). This equipment can be used throughout the Amtrak system.

ADA Compliance
More than 200 stations in 40 states will receive needed upgrades and improve accessibility for disabled persons ($40 million).

Other station projects
Replacement of the existing Auto Train passenger station in Sanford, Fla., ($10 million) will be carried out, and the Wilmington, Del., station will receive more than $20 million for renovation.

Amtrak-owned bridges, track and maintenance facilities
This includes major investments such as the Niantic River Bridge replacement in Connecticut ($100 million), the renewal of 10 other bridges in Delaware, Pennsylvania, Connecticut and New York ($65 million) construction of a maintenance facility in Los Angeles ($25 million) and Seattle ($35 million), improvements to the Chicago facilities ($47.5 million) and the Miami (Hialeah) maintenance facility ($25 million).

Security and life safety investments
The $450-million Security and Safety fund will be used for investments in security measures that reduce infrastructure vulnerabilities and enhance incident management at Amtrak facilities nationwide, including stations, bridges, tunnels, maintenance facilities and other buildings.

Enhancements to safety installations include projects such as fire detection and suppression systems and improved emergency egress from buildings and tunnels. Projects in this category also involve expansion of Positive Train Control safety systems in the Northeast Corridor ($50 million) and Michigan ($10 million).

A full rundown of Amtrak projects can be found on a special page posted on Amtrak's website.

Va. to Fund Intercity Train Service

Debut Expected By End of Year

By Jennifer Buske
Washington Post Staff Writer
Thursday, March 26, 2009; B01

Mass transit options should increase by year's end, as Virginia officials finalize an agreement for the first state-funded intercity train service in the state.

The Commonwealth Transportation Board has allocated $17.2 million in its six-year transportation plan for a three-year pilot program to run two trains along the corridors of interstates 95 and 81. The trains would travel from Richmond and Lynchburg, respectively, to Washington and on to New York, stopping at some Virginia Railway Express stations and Union Station, said Jennifer Pickett, a spokeswoman for the Virginia Department of Rail and Public Transportation.

"Transportation needs to be about choices for moving freight and for moving people," Gov. Timothy M. Kaine (D) said this week in announcing the plan. "In the past, Virginia has not been as big an investor in mass transit, but we've been able to shift that balance and put a greater percentage of resources into our rail and public transportation."

The project is one that Kaine has advocated since he took office more than three years ago, and transportation officials said they hope to have the service running between October and December. If it is deemed successful, state officials said, the service will continue after the three-year pilot.

"I am a pro-rail and a pro-public transit person," Kaine said. "I think if you look at the future of transportation in this country, it will be about providing more options. . . . I'm very excited about this."

To begin the service, the state has had to make about $31 million worth of station and rail improvements along the Lynchburg line, which is owned by Norfolk Southern, said Pierce R. Homer, Virginia secretary of transportation. The state is close to completing $131 million in improvements on the Richmond-based line run by CSX Corp.

"The commonwealth has made a significant investment in this corridor, which has led us to the ability to run more trains," said Kevin Page, chief of rail transportation for the state. "We need to move forward and make use of our investments."

Homer said the final piece of the project will be contracting with Amtrak to operate the service. Amtrak owns the Northeast rail corridor on which the trains would operate.

"Amtrak is thrilled and very pleased that Virginia is going to support intercity passenger service; this is a very big thing and will be a boon for people in Virginia and for Amtrak," said Cliff

Black, a spokesman for Amtrak. "We are working closely with [the state] and hope to have an agreement in place soon."

Schedules for the service have not been finalized because they must be coordinated with freight trains, Amtrak and VRE service, Pickett said. Ticket prices will vary based on the route but are likely to follow Amtrak pricing guidelines, she said.

Under the proposal, the Lynchburg train would leave about 7:43 a.m. and reach Union Station about 11:20 a.m., Pickett said. The Richmond-based train would leave about 7 a.m. and arrive at Union Station by 9:15 a.m. Both trains would continue to New York, and then turn around and arrive back in the District between 4 and 5 p.m. to take commuters home.

The trains would also stop at some VRE stations along the Manassas and Fredericksburg lines, giving commuters more options. Riders wanting to take the state-funded trains could pay a $10 "step-up" fee as they now do when boarding Amtrak-operated trains.

"I'm very much in favor of this," said John Jenkins, who has served on the VRE Operations Board for nearly 25 years. "It will give us more connections to Washington and New York, and I think that is one of the great advantages of it. This is a major accomplishment that will help move people in and out of the region."

Kaine said implementing the service is likely to pave the way for other mass transit projects, particularly now that the country is under an administration that, he said, "recognizes the value" of rail investments.

"We've been in a situation with some conflict between Congress and the future of rail, but I think that has changed," he said. "This administration is a real believer in passenger rail."

State and rail officials said the service would also boost the economy of the communities served, especially in the Lynchburg corridor, an area with less mass transit.

"This is an incredibly important economic development tool for us, and I believe it will open more economic doors for all of us in the commonwealth," said Del. Shannon Valentine (D-Lynchburg). "There has been a significant demand for this service, and it's exciting to see we are very close to seeing this come to fruition."

Specter Will Vote To Block Union Bill

Decision Is a Blow to 'Card Check'

By Alec MacGillis
Washington Post Staff Writer
Wednesday, March 25, 2009; A06

Sen. Arlen Specter (Pa.), the only Republican senator who did not actively oppose the Employee Free Choice Act in the previous Congress, said yesterday that he will vote to block it this year, dealing a blow to the pro-labor legislation.

Supporters of the bill need 60 votes in the Senate to stave off a filibuster. They were hoping to reach that by winning all 59 Democrats and independents (assuming Al Franken is seated from Minnesota before a vote occurs) and hanging onto Specter, a moderate from a state with a strong union presence.

But Specter is facing a primary challenge from the right, most likely a rematch against former congressman Pat Toomey, and a vote for the Employee Free Choice Act, dubbed "card check," would only add to Republican ire against him. Recognizing this, the AFL-CIO raised the possibility of urging its members to back Specter in the general election if he supported the bill.

In his statement yesterday, Specter said he had always had reservations about the bill, which would make it possible for workers to form a union if a majority sign pro-union cards, without a secret-ballot election; stiffen penalties for employer violations; and require mandatory arbitration if a union and an employer can't reach a contract in 120 days. While he agreed with unions that the current system is broken, he said he prefers more limited reforms, particularly during a recession.

Only if more limited reforms prove ineffective, he said, "then I would be willing to reconsider [card check] when the economy returns to normalcy."

The announcement dismayed labor supporters, but they vowed to press on for 60 votes. Specter's statement is "a disappointment and a rebuke to working people," said AFL-CIO President John Sweeney. "We do not plan to let a hardball campaign from Big Business derail the Employee Free Choice Act or the dreams of workers."

Business groups were triumphant. "No other Republican senator has given any indication he would be willing to vote [against a filibuster], and you need 60 votes," said Keith Smith of the National Association of Manufacturers. "This is a key development."

Opinion: The Children's Investment who?

By William C. Vantuono, Editor, Railway Age

Last year's contentious proxy battle involving CSX and activist hedge fund The Children's Investment Fund Management UK LLP is a fast-fading memory. TCI did manage to get four of its candidates seated, but *none* of the changes for which TCI was pushing—sweeping structural and management changes, leveraging CSX to junk credit status, doubling shipper rates over 10 years, freezing or scaling back capital investment—have come to pass, and there's no reason to believe they ever will.

As CSX chief executive Michael Ward, *Railway Age's* 2009 Railroader of the Year, told us in the January issue, "The proxy contest was quite heated. But TCI now has four board members seated. We had one board meeting since finalization of the results. So far, it's been very good. We've been spending a lot of time filling them in on a bunch of inside information about the company. Obviously, there's only so much they can know about the company as to where it's heading from outside public records, so we've been having them in for orientation sessions to review what some of our longer term plans are. The attitude of all of the board at this point is, we've been creating great value for our shareholders here over the last five years, and all of us want to continue to do that. If there are good ideas that can help us do that, we're going to embrace them. One thing that was part of their philosophy was that the company ought to be extremely leveraged. I think they changed that viewpoint, given what's going on in the credit markets. They do agree with our philosophy that we should be an investment-grade company. So far there's been no acrimony."

At the March 17 Railroader of the Year award presentation in Chicago, Ward reiterated what he said in January: The board is focused on maintaining CSX as an investment-grade company.

How is CSX doing? On March 23, in a spectacular railroad stock recovery (a day that saw the Dow Jones Industrial Average rise 6.75%), CSX led the parade, rising 12.13%, followed by Kansas City Southern, up 9.99%; Norfolk Southern, up 9.49%; Union Pacific, up 8.65%; and BNSF, up 8.63%.

What of TCI, which *Railway Age* strongly criticized in its December 2007 issue (above) as "driven by short-term financial interest and a fundamental lack of understanding of the railroad industry and how it functions"?

TCI registered its biggest annual loss in 2008—43%. According to the Financial Times, TCI co-founder Snehal Amin has resigned. Amin, an American who oversaw TCI's proxy battle with CSX, left earlier this month after Chief Operating Officer James Wilk departed. Wilk had been in the job 10 months. Amin was the last co-founder of TCI still working with Chris Hohn, manager of the $9.5 billion hedge fund. Hohn, one of the four elected to the CSX board, has announced that he will not seek re-election and will depart in May.

Maybe Hohn was a bit disappointed that none of his grand vision for CSX would come to pass, especially when he would have to trek from London to Jacksonville once a month.

Does anybody really care?

March 25, 2009

Labor Agency Is Failing Workers, Report Says

By STEVEN GREENHOUSE

The federal agency charged with enforcing minimum wage, overtime and many other labor laws is failing in that role, leaving millions of workers vulnerable, Congressional auditors have found.

In a report scheduled to be released Wednesday, the Government Accountability Office found that the agency, the Labor Department's Wage and Hour Division, had mishandled 9 of the 10 cases brought by a team of undercover agents posing as aggrieved workers.

In one case, the division failed to investigate a complaint that under-age children in Modesto, Calif., were working during school hours at a meatpacking plant with dangerous machinery, the G.A.O., the nonpartisan auditing arm of Congress, found.

When an undercover agent posing as a dishwasher called four times to complain about not being paid overtime for 19 weeks, the division's office in Miami failed to return his calls for four months, and when it did, the report said, an official told him it would take 8 to 10 months to begin investigating his case.

"This investigation clearly shows that Labor has left thousands of actual victims of wage theft who sought federal government assistance with nowhere to turn," the report said. "Unfortunately, far too often the result is unscrupulous employers' taking advantage of our country's low-wage workers."

The report pointed to a cavalier attitude by many Wage and Hour Division investigators, saying they often dropped cases when employers did not return calls and sometimes told complaining workers that they should file lawsuits, an often expensive and arduous process, especially for low-wage workers.

During the nine-month investigation, the report said, 5 of the 10 labor complaints that undercover agents filed were not recorded in the Wage and Hour Division's database, and three were not investigated. In two cases, officials recorded that employers had paid back wages, even though they had not.

The accountability office also investigated hundreds of cases that it said the Wage and Hour Division had mishandled. In one, the division waited 22 months to investigate a complaint from a group of restaurant workers. Ultimately, investigators found that the workers were owed $230,000 because managers had made them work off the clock and had misappropriated tips. When the restaurant agreed to pay back wages but not the tips, investigators simply closed the case.

In another case, the accountability office found that workers at a boarding school in Montana were not paid more than $200,000 in overtime. But when the employer offered to pay only $1,000 in back wages as the two-year statute of limitations approached, the division dropped the case.

"We have a crisis in wage theft, and the Department of Labor has not been aggressive enough in recent years," said Kim Bobo, executive director of Interfaith Worker Justice, a group that advocates for low-wage workers. "The new secretary of labor says she's the new sheriff in town, but I'm concerned she's facing the wild, wild West of wage theft."

Secretary of Labor Hilda L. Solis said she took the report's findings seriously.

"I am committed to ensuring that every worker is paid at least the minimum wage," Ms. Solis said, "that those who work overtime are properly compensated, that child labor laws are strictly enforced and that every worker is provided a safe and healthful environment."

Ms. Solis said the Wage and Hour Division planned to increase its staff by a third by hiring 250 investigators — 100 of them as part of the federal stimulus package — "to refocus the agency on these enforcement responsibilities" and "ensure that contractors on stimulus projects are in compliance with the applicable laws."

Ms. Solis said the hirings would "reinvigorate the work of this important agency."

Ms. Solis's predecessor, Elaine L. Chao, often defended the Wage and Hour Division, saying it had concentrated on larger, tougher cases, and secured back wages for more than 300,000 workers a year and collected more than twice as much annually as the division had done in the final years of the Clinton administration.

The report concluded that the Wage and Hour Division had mishandled more serious cases 19 percent of the time. In such cases, the accountability office said, the division did not begin an investigation for six months, did not complete an investigation for a year, did not assess back wages when violations were clearly identified and did not refer cases to litigation when warranted.

"When you have weak penalties and weak enforcement, that's a deadly combination for workers," said Representative George Miller, Democrat of California, who, as chairman of the House Education and Labor Committee, asked the accountability office to do the report. "It's clear that under the existing system, employers feel they can steal workers' wages with impunity, and that has to change."

Mr. Miller, whose committee is scheduled to hold a hearing on wage and hour enforcement on Wednesday, said he would push to enact tougher penalties for wage violations and laws that made it easier for workers to join class-action lawsuits.

The report said undercover agents recorded Wage and Hour Division officials urging workers who complained to file lawsuits. And on one recording, an investigator appeared to back off quickly on demanding back pay when an undercover agent posing as a wage-violating employer said he was financially stretched.

According to the report, the employer said, "Well, you know, like I said, all of our contracts have dried up, we really don't have anything coming in, so. ... ."

The investigator responded, "O.K., so you're not in a position where you can pay him?"

When the employer said no, the investigator seemingly gave up, saying he would let the worker "know that he has a private right of action to pursue the funds."

The report expressed dismay with that approach. "Low-wage workers may be unable to afford attorney's fees or may be unwilling to argue their own case in small-claims court," it said, "leaving them with no other options to obtain their back wages."

3/24/2009 Labor

BMWED, Soo Line agree on tentative contract

Canadian Pacific's Soo Line Railroad subsidiary and the Brotherhood of Maintenance of Way Employees Division (BMWED)/IBT recently reached a tentative agreement.

Subject to membership ratification, the pact is expected to be finalized by May 1. Details of the agreement — which would cover about 500 Soo Line MOW workers — weren't released.

Last month, the BMWED and Soo Line reached a framework settlement, which led to the tentative agreement.

"Our membership has patiently waited through four long years of bargaining to have the opportunity to vote on a new agreement," said BMWED Midwest System Federation General Chairman Mark Wimmer in a prepared statement.

Late Breaking Rail Industry News

RailComm provides yard automation system at CSX Erwin Terminal **March 23, 2009**

RailComm has provided a wireless control yard system at CSX Transportation's Erwin Terminal in Tennessee. Three RailComm Local Control Panels provide remote control to 31 GE Transportation System HydraSwitch power switch machines. RailComm's Domain Operations Controller system is configured to control all switches individually, as well as provide eNtrance eXit routing functionality. Primary control can be passed from the DOC® system to any of the Local Control panels. On handoff, a dialog box appears that requires the dispatcher to enter the name of the crew member who is granted Local Control Panel authority

RailComm's 2.4GHz RADIANT™ data radios provide a wireless communications network to link the office and control panels with the field locations.

3/23/2009 Labor

Amtrak to provide remainder of workers' back pay by May 1

On May 1, thousands of Amtrak employees are due to receive the remainder of back pay owed to them under labor contracts the national intercity passenger railroad inked with a handful of unions last year, according to the United Transportation Union.

Under the agreements, Amtrak owed back pay retroactive to July 1, 2002, totaling $573 million. However, because the railroad didn't have sufficient funds to pay the entire amount in a single fiscal year, Amtrak agreed to provide the back pay over two fiscal years.

So far, the railroad has paid about $428 million of the contract settlement. The remainder of the funds will come from a combination of congressional appropriations and Amtrak general funds.

3/23/2009 Litigation

Feds sue UP for failing to prevent drug trafficking; government, not railroad, controls border-crossing cars, Class I says

The U.S. Department of Justice (DOJ) recently filed two lawsuits against Union Pacific Railroad seeking a total of $37 million in penalties for allegedly failing to prevent the use of its rail cars to smuggle large quantities of narcotics into the country.

Government officials claim the cars carried cocaine and marijuana across the border at ports of entry in Calexico, Calif., and Brownsville, Texas.

UP has a substantial ownership-interest in Ferrocarril Mexicano S.A. de C.V. and partners with the Mexican railroad to offer customers the ability to move merchandise north and south between Mexico and the United States, the lawsuits state. In accordance with U.S. law, the owner or person in charge of a vehicle bound to the United States is required to submit to the U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP), a manifest that accurately identifies all merchandise on board the vehicle, the DOJ said.

On 37 separate occasions between November 2001 and October 2006, UP submitted manifests and CBP officials found more than 4,000 pounds of marijuana on the railroad's cars heading northbound from Mexico to the United States, the DOJ claims. CBP imposed mandatory penalties totaling $33.6 million to date, but UP "failed and refused to pay the civil penalties," the suits state.

"Railroad companies and other freight carriers must take seriously their obligations under the law to take appropriate action to prevent the use of their vehicles to smuggle narcotics and other contraband into the United States," said Karen Hewitt, U.S. attorney for the southern district of California, in a prepared statement. "This civil complaint marks an important step toward addressing the repeated failure of the largest railroad company in North America to prevent rail cars bound for travel throughout the United States from being used to smuggle significant amounts of narcotics."

However, as UP officials explained in a lawsuit filed against DHS in July 2008, it is the government, not the Class I, that takes initial control over rail cars entering the country from Mexico, UP officials said in an email. CPB is "punishing Union Pacific for drug smuggling that the company has no ability to prevent," they said, adding that the railroad has exceeded its legal obligations and will defend itself against "these duplicative lawsuits."

UP initiated the lawsuit against DHS last year because railroad officials believe CBP is violating federal law in taking legal actions when the Class I has no ability to prevent the drug trafficking, UP officials said. For years, UP has been a strong supporter of CBP in protecting U.S. borders and preventing illegal drugs from entering the country. In addition, the Class I has provided millions of dollars in annual financial support, constructed buildings for CBP, trained federal officers, and deployed its own private police and K-9 squads, UP officials said.

Soo Line, BMWED reach Tentative Agreement

The National Mediation Board said that a tentative collective bargaining agreement was reached on March 18, 2009, between the Soo Line Railroad and the Brotherhood of Maintenance of Way Employes, a division of the International Brotherhood of Teamsters, representing the craft and class of maintenance-of-way employees.

Mediation was guided by NMB Mediator Terri Brown.

The agreement is subject union-membership ratification.

Virginia commits state funds to add Amtrak service
March 23, 2009

In a first for "The Old Dominion State," Virginia will provide $25.2 million in state funding to run two round-trip Amtrak trains serving Washington, D.C., over a three-year period. One train would link the nation's capital with Lynchburg, Va., adding a second frequency over Norfolk Southern right-of-way used by Amtrak's *Crescent*. A second round trip would add more Amtrak service between Richmond and Washington, over right-of-way owned by CSX Transportation.

Current plans call for Lynchburg service to begin Oct. 1, with the added Richmond trains beginning operations on Dec. 15.

Amtrak's Board of Directors is expected to approve the move at its next meeting in April. At a meeting March 12 in Washington with members of the Railway Supply Institute, Amtrak President and CEO Joseph Boardman noted that Richmond was, in some ways, becoming "the true southern terminus" of the Northeast Corridor.

Virginia will pay Amtrak $17.2 million to operate the two round-trip trains, while $8 million will be used to rehabilitate cars and locomotives for the new service. Each train will consist of up to eight passenger coaches, a business-class coach, and a café car.

State officials anticipate ridership of 42,000 for the added Richmond frequency, and 51,000 per year on the Lynchburg service. Both trains will depart from their respective Virginia cities bound for Washington during the morning, returning from Washington in the evening, as part of Amtrak's Northeast Regional service reaching as far north as Boston on Amtrak's Northeast Corridor.

Though Amtrak provides eight trains each way per day between Richmond and Washington, early-morning northbound service from Richmond to Washington is covered only by the *Silver Meteor*, a long-distance train originating in Florida, departing at 5:09 a.m. when on schedule. The next train northbound departs at 12:37 p.m. The proposed new morning train from Richmond, originating and departing from Staples Mill Station at 7:00 a.m., likely could provide a more punctual alternative for potential "short-distance" Amtrak customers, especially business and day-trip riders traveling to and from Washington.

Virginia is the 14th state to assist Amtrak intercity passenger in some fashion. Amtrak expects the new services to generate significant "induced demand": Virginia will get revenue credit for any ticket purchased for the new services, even if the purchase occurs outside of Virginia from any portion of the NEC.

Executives Detail Labor Bill Compromise

By Alec MacGillis
Washington Post Staff Writer
Sunday, March 22, 2009; A02

As business and labor gird for battle over legislation that would make it easier for workers to organize, the debate could be transformed by a "third way" proposed by three companies that like to project a progressive image: Costco, Starbucks and Whole Foods.

Like other businesses, the three companies are opposed to two of the Employee Free Choice Act's components -- a provision that would allow workers to form a union if a majority sign pro-union cards, without having to hold a secret-ballot election, and one that would impose binding arbitration when employers and unions fail to reach a contract after 120 days.

But the companies' chief executive officers say they also recognize that just opposing the legislation, commonly called "card check," is not enough because of the widespread perception in Democrat-dominated Washington that there is not a level playing field between labor and business. So the CEOs have come up with ideas they hope will form the basis of new legislation.

Their proposal would maintain management's right to demand a secret-ballot election and would leave out binding arbitration. The proposal would keep the third main element of card check -- toughening the penalties for companies that retaliate against workers before union elections or refuse to engage in collective bargaining. But it would also toughen penalties for union violations, and it would make it easier for businesses to call elections to try to decertify a union.

To address labor's concern that businesses intimidate workers before elections, it would set a fixed period in which an election must be held, limiting the delays that give employers time to exert pressure. The proposal does not specify what the time period should be.

The proposal would also provide unions equal access to workers before elections -- for instance, by allowing organizers to address workers on a lunch break in the company cafeteria just as management can.

"We wanted to see what we can do to come up with a compromise position that is going to address the concerns of labor and also protect the sanctity of the collective bargaining process and secret ballot," said Costco Wholesale chief executive James D. Sinegal.

Starbucks chief executive Howard Schultz cast the proposal in more defensive terms. "The way the wind is blowing, we're heading toward a bill that is not the right approach," he said. "My responsibility is to not be a bystander but to offer a voice of reason, offer a more positive alternative that levels the playing field."

The effort is being led in Washington by Lanny Davis, a former special counsel to President Bill Clinton. Davis said he had approached about 20 Senate offices and gotten an overwhelmingly encouraging response. The Employee Free Choice Act has majority support in both chambers, but there are signs it may have trouble getting a filibuster-proof 60 votes in the Senate, where several centrist Democrats who previously supported it are expressing reservations.

Sen. Mark Pryor (D-Ark.), a centrist who is ambivalent about card check, praised the companies' proposal. "I appreciate a good-faith effort that could result in a reasonable compromise on what has become a highly polarizing matter," he said.

Davis said he thought that the proposal would intrigue President Obama, who as a senator was a co-sponsor of the card-check bill in 2007 but signaled in an interview before his inauguration that he was also open to other proposals to help organized labor. "This is consistent with President Obama's overall approach of avoiding polarized positions and looking for third-way ideas," Davis said.

The business lobby has been warning against any moves to tweak card check just enough to give centrists cover to support it. And word that a compromise is circulating from three "progressive" companies prompted business groups to warn yesterday against premature compromise.

But it is possible that the proposal will generate even greater opposition among unions and their supporters in Congress. Some business groups say they are open to limited changes in organizing rules, separate from card check -- a position not so far from what the three companies propose.

Labor unions, though, are adamant that workers be able to choose to organize via card check so they can avoid employer intimidation before elections. They say binding arbitration is needed because so many companies refuse to bargain -- nearly half of new unions never even get a contract.

The three CEOs are at odds with those planks. Whole Foods Market chief executive John Mackey said that binding arbitration is "not the way we normally do things in the United States" and that allowing workers to organize without a secret ballot "violates a bedrock principle of American democracy."

And the CEOs also do not share the labor movement's underlying belief that the decline of organized labor has contributed to income inequality and the economy's current imbalance. "That so few companies are unionized is not for a lack of trying but because [unions] are losing elections -- workers aren't choosing to have labor representation," Mackey said. "I don't feel things are worse off for labor today."

Of the three companies, only Costco has a substantial minority of employees that are unionized -- about a fifth of its hourly employees belong to the Teamsters, with whom it has good relations. Starbucks and Whole Foods have resisted most unionizing efforts.

Giving organizers the ability to use card check, Schultz said, would lead to a slew of separate bargaining units at a company like his, leading to "havoc and significant cost and disruption." Mackey had an even grimmer view. "Armed with those weapons, you will see unionization sweep across the United States and set workplaces at war with each other," he said. "I do not think it would be a good thing."

Freight traffic doldrums continue
March 20, 2009

U.S. freight traffic for the week ended March 14 fell 15% from the comparable week a year ago, the Association of American Railroads reported, though traffic was up 1.5% from the previous week. Loadings fell 14.2% in the West and 16.1% in the East. U.S. intermodal volume dropped an even steeper 18.3%. Eighteen of AAR's 19 carload freight commodity groups declined from 2008 levels.

Total volume was estimated at 29.6 billion ton-miles, down 14.0% from the comparable week in 2008.

Canadian freight traffic fell 21.4% for the week compared with year-ago levels, while intermodal declined 11.3%. Mexico's two major railroads, however, reported freight traffic rose 15.2% for the week compared with a year ago, while intermodal declined a relatively modest 4.3%.

For the first 10 weeks of 2009, U.S. freight traffic fell15.7% from the comparable 2008 period; Canadian freight fell 18.7%, and Mexican freight declined 10.0%. U.S. intermodal declined 15.8%, Canadian intermodal fell 11.6%, and Mexican intermodal dropped 19.9%, for the 10-week period compared with 2008.

Combined North American rail volume for the first 10 weeks of 2009 on 14 reporting U.S., Canadian, and Mexican railroads totaled 3,464,158 carloads, down 16.1% from 2008, while intermodal fell 15.2%.

3/19/2009 Government Post

Obama tabs UTU's Szabo as FRA administrator

Yesterday, President Obama announced his intention to nominate United Transportation Union (UTU) Illinois State Legislative Director Joe Szabo as Federal Railroad Administrator. The post requires Senate confirmation.

If he's confirmed, Szabo would become the Federal Railroad Administration's (FRA) 13th administrator — and first from the ranks of rail labor — since the agency was founded in 1967.

A fifth-generation railroader, Szabo began his railroading career in 1976 with the Illinois Central Railroad (IC), where he worked as a yard switchman, road trainman and commuter-rail conductor. In 1987, he joined Metra when IC sold its commuter-rail division.

In 1984, Szabo was elected secretary/treasurer of UTU Local 1290. He later became a legislative representative. In 1992, he was elected vice chairperson of the Illinois State Legislative Board, and in 1996, was elected state legislative director. Szabo also has been serving as a vice president of the Illinois AFL-CIO.

In addition, Szabo represented the UTU on the FRA's Rail Safety Advisory Committee, where he participated in the drafting of rail safety regulations.

The Transportation Trades Department (TTD) of the AFL-CIO approved the nomination.

"Joe Szabo's background and work experience make him uniquely qualified for this position. Because of his first-hand knowledge of the industry, he will hit the ground running to maximize the safety of our nation's railroads for workers and the public," said TTD President Edward Wytkind in a prepared statement. "With the Obama Administration's support for Amtrak and commitment to developing high speed and commuter rail in this country, the FRA Administrator will play an important role in ushering in a new era in passenger rail transportation."

Meanwhile, the FRA recently named Karen Rae deputy administrator, according to the UTU.

She most recently was deputy commissioner for policy and planning of the New York State Department of Transportation, a post responsible for rail, aviation and public transportation. Rae previously served as deputy secretary for local and area transportation at the Pennsylvania DOT, director of the Virginia Department of Rail and Public Transportation, and general manager for the Austin, Texas, Metropolitan Transportation Authority.

Rail employment down 2.1% in 12 months

March 19, 2009

U.S. Class I railroads employed 159,511 workers in mid-January 2009, 2.11% fewer than in mid-January 2008, the Surface Transportation Board reported in new statistics posted Wednesday.

The biggest decline was in the transportation (train and engine) category, where employment was down 6.95% to 63,187. The number of professional and administrative workers declined 0.35% to 13,753.

But the numbers improved in the four other categories, led by an 8.44% increase in transportation (other than train and engine) employment to 7,312. The number of maintenance of way and structures employees increased 1.47% to 34,449; maintenance of equipment and stores employment rose 0.86% to 30,689; and the number of executives, officials, and staff assistants was up 0.03% to 10,121.

- MARCH 18, 2009

Unionizing Fight Focuses on 3 States

By KRIS MAHER and BRODY MULLINS

The battle over a bill that would ease union organizing is zeroing in on lawmakers in three state, Pennsylvania, Arkansas and Colorado.

Business and labor are pressuring three key senators who are up for re-election in 2010, sparing little expense as they ratchet up television and radio ads, and recruit well-connected lobbyists.

"This is truly one of those defining votes," said Terry Madonna, a professor of political science at Franklin & Marshall College in Lancaster, Pa. The senators, he said, "run the risk of incurring the wrath of the business community and labor in ways that are not likely to be forgiven."

In Arkansas, Wal-Mart Stores Inc., which is bitterly opposed to the bill, has hired a Democratic lobbyist -- and former staffer of Sen. Blanche Lincoln -- to help defeat the bill. Meanwhile, on Monday, the AFL-CIO hosted a candlelight vigil with union members, religious leaders and state politicians outside the Capitol building in Little Rock to urge passage of the bill.

In Pennsylvania, the state AFL-CIO has discussed having its members register as Republicans to back Sen. Arlen Specter in a tough primary fight he faces next year -- if he supports the bill.

Another target is newly appointed Sen. Michael Bennet of Colorado, who has no track record on the bill but who faces an election in 2010. Andy Stern, president of the Service Employees International Union, visited Sen. Bennet the day the bill was introduced last week to discuss its importance. The SEIU has said a "no" vote on the bill would affect its support for the Democrat in 2010.

Meanwhile, the Center for Union Facts, a business-backed group, has been running TV ads in Colorado arguing the bill would hurt job creation, and a state business group met with Sen. Bennet.

At this point, lawmakers don't seem to be getting an unmistakable message from the public. A Gallup poll released Tuesday showed that 53% of respondents backed the concept of increased unionization, with 39% opposed. But the poll also found only 12% are following the issue very closely, and an earlier Gallup poll last year found only 35% in favor of unions having greater influence.

The Employee Free Choice Act, introduced in the Senate and the House last week, would allow workers to choose unionization by signing cards, without the company's knowledge, rather than by voting in a union election. Now, companies can insist on an election and mount a campaign against the union.

The senators have said they will decide how to vote on the legislation based on its merits, and not allow election-year politics to influence their vote.

"I have had meetings with Wal-Mart representatives, as well as several constituent groups on both sides of this issue," said Sen. Lincoln. "I will continue to hear their views, and as I've stated previously, my first priority remains strengthening the economy and putting 90,000 Arkansans back to work."

Wal-Mart spokeswoman Daphne Moore said executives and managers from "across the country have voiced their concern to senators from several states, including Arkansas."

On Tuesday, Sen. Specter reiterated that he supports a labor-law overhaul, but that he has not voted for passage of the bill. In 2007, he voted to have debate on the bill. "This is the most hotly contested issue in a long time," he said. "I'll vote my conscience."

In Colorado, Sen. Bennet noted that the bill was introduced just last week. "I will work with all interested parties to make the best decision for Colorado," he said.

Pro-business organizations have spent millions on ads in key states in the past year. The Center for Union Facts ran $20 million in ads in 2008 against the bill. Labor unions have mounted their own media campaign, with the labor-backed American Rights at Work spending $10 million on ads backing the legislation since Labor Day.

March 17, 2009

Majority Receptive to Law Making Union Organizing Easier

But most Americans not closely following news about union bill in Congress

by Lydia Saad

PRINCETON, NJ -- A new Gallup Poll finds just over half of Americans, 53%, favoring a new law that would make it easier for labor unions to organize workers; 39% oppose it. This is a key issue at stake with the Employee Free Choice Act now being considered in Congress.

The poll reveals sharply differing reactions to the issue within the general public according to political orientation. Most Democrats (70%) say they would favor a law that facilitates union organizing, while a majority of Republicans (60%) say they would oppose it. Independents lean in favor of such a law, 52% vs. 41%.

As originally proposed, the 2009 Employee Free Choice Act (in its House and Senate versions) strengthens the "majority signature" or "card check" basis for union organizing by automatically unionizing any workplace in which a majority of workers have signed a union authorization card. The act would eliminate employers' ability to call for secret-ballot elections (although employees can still call for one), and would make changes to enforcement of labor protections and contract-settlement procedures. Thus far, the proposal has not been a prominent item in the mainstream national news; however, it has sparked fierce union-versus-business debate in Washington and appears headed toward a close vote in the U.S. Senate.

By their own admission, most Americans are not paying very close attention to the congressional debate on this issue. According to the March 14-15 survey, only 12% of U.S. adults say they are following news about the union-organizing bill "very closely" and another 22% say they are following it "somewhat closely." Nearly two-thirds of Americans say they are following it less closely than that (26%), or not at all (39%).

Those most closely following news about the union-organizing bill are the most opposed to the general concept of a law making it easier for unions to organize: just 40% are in favor; 58% are opposed. The bill enjoys its highest support -- 58% -- among those not following the bill at all.

Bottom Line

Previous Gallup polling has shown that Americans are fundamentally sympathetic to labor unions, and these underlying attitudes are no doubt reflected in their general support for legislation characterized as making it easier for workers to unionize. For example, Gallup's annual polling on workplace issues, conducted each August, has found consistently high approval of labor unions in recent years, including a 59% approval rating last summer. The current level of support for a new law facilitating more union membership -- 53% in favor -- is only slightly less favorable to unions.

The current findings could bode well for the pro-union side of the issue as it ramps up the public-information component of its lobbying efforts, particularly at a time when corporate America has serious image problems. Americans appear to be a sympathetic audience for a basic argument behind the law if it is described simply as making it easier for unions to organize.

At the same time, Americans have barely begun to pay attention to the issue. The 12% who are following it "very closely" is exceptionally low relative to public attention to other news issues Gallup has measured over the last two decades. And, while Americans are broadly supportive of labor unions, Gallup's August 2008 Workplace survey found only 35% in favor of unions having greater influence. In this context, with the arguments against card check yet to be fully aired and debated, it could be a troubling sign for unions that no more than 53% of Americans immediately support this fundamental aspect of the card-check bill.

The Employee Free Choice Act is a complex piece of legislation with numerous components, making it difficult to assess overall support for the bill among a population that is largely unaware of it. General support for the idea of "making it easier for unions to organize" as measured in the current poll is telling, but not necessarily indicative of public reaction to the bill if and when the political debate spills over into news headlines. Future Gallup polling will explore public reaction to specific aspects of the bill's provisions, and will continue to monitor overall support for the concept of making it easier for workers to unionize.

Survey Methods

Results are based on telephone interviews with 1,024 national adults, aged 18 and older, conducted March 14-15, 2009, as part of Gallup Poll Daily tracking. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ±3 percentage points.

Interviews are conducted with respondents on land-line telephones (for respondents with a land-line telephone) and cellular phones (for respondents who are cell-phone only).

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

Amtrak's Boardman paints a bright picture

March 16, 2009

Following an infusion of $1.3 billion in capital (over and above the $13 billion over five years authorized last year) and indirect access to $8 billion in state-administered funds under President Obama's economic stimulus program, Amtrak President and CEO Joseph Boardman is faced with determining how best to invest this near-windfall within a relatively short time frame.

"We have to deliver the things people expect—now," Boardman said in a March 12 meeting with the Railway Supply Institute Passenger Transportation Committee. Federal Railroad Administration stimulus package language stipulates that projects falling under Amtrak's $1.3 billion portion must be completed by February 2011. Given the long-term nature of rail capital projects, Amtrak wants to clarify whether "completed" means "substantially completed" or "finished," Boardman said. The $8 billion, whether or not some of it goes to an Amtrak project (for example, upgrading New York State's entire Empire Corridor to 110 mph), must be spent within three years, according to the guidelines.

Amtrak's needs, Boardman said, cover the spectrum from short-term to wish-list, so some programs will fall under economic stimulus, others under general capital outlays. There's an immediate need to replace aging Heritage Fleet baggage cars and diners, using the existing Viewliner platform. Amfleet, the durable stainless-steel single-level cars that have served Amtrak well for the better part of 40 years, can be refurbished yet again, but they will eventually need replacement. GE P40 diesel locomotives need rebuilding, and the Northeast Corridor's reliable but aging AEM7 electric locomotive fleet needs replacement. Amtrak will be applying for a RRIF loan to replace the AEM7s. High speed Acela Express trainsets are now 10 years old and will soon need refurbishment.

Boardman mentioned "next-generation Acela" services, in terms of both equipment and infrastructure. Trip times on the south (New York-Washington) end of the NEC could be reduced to two hours, 15 minutes with constant-tension catenary capable of supporting speeds above 150 mph, rebuilding of the notoriously slow tunnel approaches to Baltimore Penn Station, curve realignment in some areas, and numerous other improvements whose effect would be cumulative. Longer-term, Boardman said NEC electrification could be extended as far south as Richmond, Va., and the State of Virginia would support that. Ideally, a larger portion of the Atlantic seaboard from Maine to Virginia is a good candidate for electrification and high speed rail service .

Boardman said that the $8 billion in state-administered stimulus funds designated for high speed rail would be best-spent on improvements to existing freight/passenger corridors to enable higher-speed service (110 mph). He said that reducing trip time between city pairs is a far more important consideration than top speed. Higher-speed rail, he said, "is competitive and realistic." Maglev isn't.

Already, said Boardman, "serious discussions" are taking place with Illinois, Missouri, and Wisconsin about developing the Chicago-St. Louis and Chicago-Milwaukee corridors, both of which are part of the Midwest High Speed Rail initiative. Other states have passenger rail plans in various development stages. For example, the 245-mile Atlanta-Charlotte corridor (over Norfolk Southern) is served by one train per day, the *Crescent*. It's a six-hour trip that takes place during the night. Replacing the short-haul flights between those cities—and all the hassles involved with air travel—with convenient, downtown-to-downtown higher-speed rail service, would reduce airport congestion and offer business travelers a much more comfortable, productive trip. Atlanta-Charlotte is part of NS's Crescent Corridor, a public-private partnership to increase freight rail capacity in the Southeast.

Given the broad scope of national intercity passenger rail needs and the intense competition for funds, $8 billion won't go very far, Boardman said. Not clear at this point is whether the stimulus funding is a "down payment" on an extended period of national passenger rail development, or a one-shot infusion of capital.

Though NEC ridership has dipped (Boardman attributes this to a decline in business travel caused by the recession), ridership on Amtrak's long-distance trains has increased, compensating for the downturn in NEC revenues. Amtrak carried nearly 29 million passengers in 2008, the highest number ever in its 38-year history, and the numbers are expected to grow, perhaps to as high as 35 million annually. Long-distance services, Boardman said, "look very solid, and it's important to consider them within the context of surface transportation connectivity of all modes."

"Amtrak must be ready to provide more service when the economy starts moving again," Boardman said. With that in mind, a consistent, dependable source of annual capital is needed. "We can deal with having to ask Congress every year for operating support," he said. Capital funding shouldn't be subject to that process, and Boardman hopes that changes will be made to that effect when SAFETEA-LU is reauthorized later this year.

March 16, 2009

Railroad Bailout May Offer a Model for Detroit

By LOUIS UCHITELLE

As General Motors and Chrysler struggle to remain solvent, the railroad bailout of a generation ago could offer a template to the Obama administration — one in which the federal government would run the auto companies until they are back on their feet.

That was a different age, of course. Congress was very much on board, supervising the reorganization of the bankrupt Northeastern railroads and then forming Conrail, in 1976, to run them. The auto companies, in contrast, are being pushed by the White House and Congress to reorganize themselves and remain private corporations, owned by shareholders.

Conrail presided over huge cutbacks in rail operations, leaving the railroad system with much less track and roughly half the number of employees. By 1981, it was turning a profit hauling freight, and eventually its operations were sold back to privately operated lines.

Five years after Conrail's creation, Ronald Reagan became president and gave government takeovers a bad name by popularizing the view that government was inept in the marketplace. The Obama administration, respectful of this continuing view, wants the automakers to stand on their own, with only temporary federal loans to get them through the hard times.

"The ideological debate already in progress," said Peter Cappelli, a management professor at the University of Pennsylvania's Wharton School of Business, "is whether government should actually direct the auto companies, stepping into management, or passively give them more loans, and then get out of the way."

The railroad failures in the Northeast, vividly evident in the 1970 bankruptcy of the Penn Central network, endangered an industry that President Gerald Ford and Congress considered vital to the nation's well-being. The American-owned automakers are similarly regarded as vital; if not all three, then at least General Motors and Ford. Automaking in this country might not survive, this argument goes, without American companies at its core.

Their footprint in manufacturing is huge. Even now, no other industrial sector, except perhaps pharmaceuticals, spends more on research than the Big Three, according to the Center for Automotive

Research in Ann Arbor, Mich. The automakers are also the principal customers for the nation's 6,000 independent auto parts makers.

"The hit to the parts makers if one or two of the Big Three disappeared would be so great that Toyota and Honda would have difficulty operating here, and they have said so publicly," said Sean McAlinden, the center's chief economist.

The Obama administration's reaction, so far, has been to appoint a task force that is sorting out the viability of G.M. and Chrysler. The goal of the task force is to determine whether the automakers' plans for survival — even the best laid plans — justify the risk of billions more in bridge loans, on top of the $17.4 billion already lent. The goal is to keep the companies alive, and out of bankruptcy, until auto sales climb back to a level that would permit them to survive on their own.

For that to happen, vehicle sales nationwide would have to reach at least 12.5 million to 13 million a year, G.M. said in the survival plan that it submitted to support its case for more federal loans. Ford and Chrysler offer similar estimates. The annualized sales rate in February, in contrast, was only nine million. And months may pass before that rate climbs back to 12.5 million or 13 million — a pace associated with upturns in the economy or milder recessions than this one.

Whatever the dangers of persistently weak sales, "the task force does not seem to be going in the direction of running the auto companies, even though that might be a fine idea," said Dan Luria, research director for the Michigan Manufacturing Technology Center, who has spoken with some of the 21 task force members.

None has spoken publicly yet. But there are eerie similarities in the unwinding of the railroads in the 1970s and the American-owned automakers today.

Hurricane Agnes, sweeping through the Northeast in 1972, did roughly the same damage to the railroads as the devastating recession is doing today to the auto industry. The hurricane flooded hundreds of miles of track, precipitating more bankruptcies among already weakened railroad companies operating lines from Boston west to Chicago and St. Louis.

The biggest bankruptcy was in 1970, when Penn Central went under, leaving lenders, mainly banks, holding $100 million in suddenly worthless commercial paper. In what turned out to be a preview for today, the Federal Reserve pumped reserves into the damaged banks, just as it is doing now on a broader basis.

More to the point, if the auto companies declared bankruptcy, shedding their debts, then Washington would be under pressure to cover a shortfall of more than $30 billion in retiree benefits, mainly for health care.

The Obama task force itself has a rough parallel in the railroad crisis. Congress created a similar commission in 1973, on the heels of Agnes, to lay out a course of action that would make the railroads workable in their competition with truckers for freight. About 12,000 miles of underused track were abandoned, the work force was cut to 50,000 from 100,000, and unprofitable passenger services were jettisoned.

The American auto companies are similarly slimming down, but ad hoc in response to a recession that has destroyed their sales. Factories have been closed, car models dropped and 235,000 auto workers have lost their jobs in the last year, or 25 percent of those making vehicles and parts.

Pay is also shrinking. With the tacit agreement of the United Automobile Workers, wage rates are gradually being cut to the levels paid by the foreign auto companies assembling vehicles here, in nonunion plants.

"The U.A.W. realized that bailout money would not be provided unless it brought wages and even benefits into line with those of the transplants," said Harry Katz, a labor economist and dean of Cornell's School of Industrial and Labor Relations. "That was the standard that moderate Democrats accepted."

Despite the cost cutting, the American auto companies may need federal loans for many months to stay afloat. Faced with that same situation in the 1970s, Congress created Conrail to run bankrupt freight lines in the Northeast and Midwest.

Five years later, the government-run company earned its first profit. In time Conrail disappeared, its operations sold to commercial railroads that dominate freight traffic today across the country and do so profitably.

But there is a difference. Railroads, regulated for decades, had come to be viewed as public utilities, and federal ownership was not unimaginable, said John McArthur, dean emeritus of the Harvard Business School and a Penn Central bankruptcy trustee.

"Discussions about the American railroad system and its shortcomings went on all through the first half of the 20th century," he said, "and when the crisis came, there was a consensus how to proceed. Today, our society has yet to decide whether we want government-owned auto companies."

3/16/2009 Government Posts

Obama tabs Puchala for NMB seat, Mulvey for STB chairmanship

President Obama has nominated Linda Puchala as a National Mediation Board (NMB) member and appointed Frank Mulvey acting chairman of the Surface Transportation Board (STB), according to the United Transportation Union.

Currently a senior NMB mediator and associate director of the board's Alternative Dispute Resolution Services, Puchala's nomination requires Senate confirmation.

She would take the seat of Read Van de Water, who's term expired. Puchala would join Harry Hoglander and Elizabeth Dougherty on the three-member board. Puchala joined the NMB in 1999 after an airline career that included a stint as president of the Association of Flight Attendants.

The Transportation Trades Department (TTD) of the AFL-CIO hailed Puchala's nomination.

"Linda is a true professional in the field of labor relations, and has dedicated herself to fostering productive collective bargaining and resolving labor-management disputes," said TTD President Edward Wytkind in a prepared statement. "The Obama Administration has demonstrated its belief in the importance of a fair and balanced collective bargaining process."

Meanwhile, Mulvey will succeed former STB Chairman Charles Nottingham, who will become a board member. Mulvey, who joined the STB in 2004, previously was democratic staff director for the House Committee on Transportation and Infrastructure's Railroad Subcommittee. Prior to that post, he served the U.S. Department of Transportation as deputy assistant inspector general for rail, transit and special programs, and the U.S. General Accounting Office as assistant director.

President Obama still needs to fill the seat of Douglas Buttrey, who resigned from the STB on March 13.

3/16/2009 Reorganization

KCSR combines labor relations, HR departments

Kansas City Southern Railway Co. (KCSR) recently reorganized its human resources (HR) and labor relations departments and combined the units into one department.

The combined department will be headed by Senior Vice President of Human Resources John Derry. Former VP of Labor Relations Emerson Bouchard has retired, KCSR officials said in an item posted on the "KCS News" Web site.

The railroad promoted Jim Albano from general director to assistant VP of labor relations. He will serve as the senior labor officer and report to Derry. KCSR also promoted Janet Robinson from HR manager to labor director and Jeanie Uhlrich, from HR staffing manager to labor manager. Kathy Alexander will continue to serve as a labor director.

Joining the HR team are Tammy Hardge, field HR manager, and Stacy Beecher, HR representative, who will report to Director of Employee Relations Matt Brazeal, KCSR said. The railroad also named Michelle Kelly manager of compensation and benefits. She will report to General Director of Compensation and Benefits Bridget Compton.

The medical management team comprising Tim Carter, Diane Murdock and Linda Harrington has moved from the safety to HR department and will be managed by Compton.

Labor Union Bill Raises Broader Capitalism Issues

Economic Downturn Intensifies Rhetoric of Workers, Businesses

By Alec MacGillis
Washington Post Staff Writer
Sunday, March 15, 2009; A02

The Employee Free Choice Act seemed destined to be a relatively narrow clash between unions and employers. But amid the economic downturn, it is turning into a debate over fundamental questions of American capitalism.

After years of girding for this fight, labor supporters and business groups are scrambling after the bill's reintroduction last week to adapt their long-established arguments to suit the crisis. For those opposed to the bill, which would make it easier to form unions, the new message was that it would be a disaster for businesses reeling from the recession.

"In a time when we have an economy that's already struggling, we can't put more burdensome regulations on employers," said Sen. John Thune (R-S.D.). "This is a job killer for our economy when we really don't need it."

The bill's supporters are pointing to the downturn as the ultimate proof of their arguments that labor's decline has helped put the economy out of balance and that only by restoring workers' purchasing power can the nation return to broadly shared prosperity.

"In 1935, we passed the Wagner Act that promoted unionization and allowed unions to flourish, and at the time we were at around 20 percent unemployment. So tell me again why we can't do this in a recession?" said Sen. Tom Harkin (D-Iowa), invoking the pro-labor changes of the New Deal. "This is the time to do it. This is exactly the time we should be insisting on a fairer playing field for people to organize themselves."

The bill, first introduced in 2003, gives workers the choice of whether they want to organize by getting a majority of workers to sign pro-union cards, instead of having to hold secret-ballot elections. As it stands, it is up to employers to decide which method is used, and most require elections. The bill increases the penalties for employers who retaliate against employees and mandates binding arbitration when employers do not agree to a contract within three months after a union election.

Unions say the bill is needed because employers intimidate or retaliate against workers before elections, making the votes something less than true democracy; and because employers often merely go through the motions of negotiating, nearly half of new unions fail to get a first contract. Employers say that forming unions without secret ballots violates American notions of democracy and exposes workers to union coercion. Mandatory arbitration, they assert, is an intolerable intervention.

But the environment in which the bill is being debated has further ratcheted up the rhetoric, revealing a divide as wide as that on any other major issue on President Obama's agenda. The two sides put forth starkly different versions of both history and present-day reality, making it hard to imagine how the two sides could compromise.

The pro-labor version of history starts during the New Deal with the Wagner Act (better known as the National Labor Relations Act), which expanded the rights of private-sector workers to unionize. The Fair Labor Standards Act of 1938 established the minimum wage and 40-hour workweek.

"The truth is that Franklin Roosevelt passed those laws under similar circumstances, and from 1945 to 1974, we had an era where workers' wages and productivity was joined together," said Andrew Stern, president of the Service Employees International Union. "It was probably the most tested economic stimulus of any public policy that has worked for us."

In the telling of labor supporters, the decline in private-sector union membership -- from a peak of 36 percent in the early 1950s to 7.5 percent today, a level not seen since 1900 -- is a result not only of economic shifts but also of an increasingly pro-employer tilt in labor policy. As they see it, the decline of unions has contributed to the growing income inequality over the past three decades, when economic productivity has outpaced wage growth.

Lawrence H. Summers, the National Economic Council director, has long been regarded warily by unions, but in a speech Friday at the Brookings Institution, he made roughly this case for boosting organized labor.

"If we want to propel this economy forward [and] have a sound expansion, it has to be an expansion whose benefits are more broadly shared," he said. That involves tax policy and education, he said, but also "goes to the question of having a healthy and well-functioning trade union movement. . . . It is hard to avoid the conclusion that the way in which our labor laws have functioned, and have been enforced and been acted on over many years, have not been constructive from the point of view of having a healthy trade union movement. And an attempt to redress that balance seems to me something that is appropriate at such a time."

In the other side's version of history, organized labor played a small (and probably negative) role in the climb out of the Depression, and postwar prosperity had far more to do with technological advances and American economic dominance, which allowed manufacturers to reward workers with wage gains and benefits. Globalization produced a much more competitive climate in which unions hamstrung companies and contributed to the demise of industries such as steel and auto manufacturing.

The decline of unions, in this telling, is the result of the decline of manufacturing and of workers' realization that unions are not in their self-interest. To link the current crisis to a slide in labor strength is ludicrous, they say.

"They're trying to wave a wand to explain the origins of a tornado," said University of Chicago law professor Richard A. Epstein, a leading opponent. "If you want to look at the factors that account for the ups or down of the economy, labor policy -- which has been totally constant -- would be 83rd on the list."

Price V. Fishback, an economics historian at the University of Arizona, said both sides overstate their case. The growth of unions did lead to wage gains both in union and non-union companies, he said. But to attribute mid-century prosperity to unions is going too far -- for one thing, union density began to go into decline in the early 1950s, after the passage of the anti-union Taft-Hartley Act.

"It's a much more complex set of things than either side is talking about," Fishback said.

The bill's opponents go on to say that expanding union membership via "card check" would reverse a natural trend when business can least afford it. "It's very clear that things have changed from the 1940s, '50s and '60s, and we need to change, as well," said Pennsylvania building contractor Jerry Gorski, the national chairman of the Associated Builders and Contractors. "Just to go back to the old ways and say unions get a certain amount of pay is not a help to our society."

Anne Layne-Farrar, an economist with the consulting firm LECG who produced a study predicting job losses if the bill passes, said in a conference call organized by employers that increased productivity had not resulted in larger wage gains in recent decades because the growth was mostly the result of technology. "If the productivity of labor went up, then the wages of labor would go up," she said.

Bill Samuel, the AFL-CIO's chief lobbyist, scoffed at this logic. "So, the [business community] no longer believes in the unique power of the American workforce?" he asked. The opponents' shift from emphasizing the bill's alleged undemocratic nature to its job-killing potential, he added, also undermined one of business's long-standing rhetorical stances: that it is not opposed to unions per se but only to corrupt and coercive unions.

"The mask has come off, and now it's clear that the Chamber of Commerce is against unions. Now they're saying they just don't want to see unions grow and have access to collective bargaining," he said. "There are a lot of members of Congress who are not necessarily supporters [of the bill] but recognize there is a problem to be fixed, and the Chamber is going to lose them because of this attitude. The majority of members are not anti-union."

Chamber general counsel Steven J. Law countered by refining the Chamber's argument, saying it is opposed not to all unions but to a sudden surge in union growth. "Rapid unionization would have an economic impact," he said.

The bill's opponents say their case against passing it amid a recession is taking hold in the Senate, where it needs 60 votes to overcome a filibuster. Sen. Blanche Lincoln (Ark.), a key centrist Democrat, questioned the bill's timing, telling the Associated Press last week, "The question is: Is there a need for this legislation right now?"

But House Education and Labor Committee Chairman George Miller (D-Calif.) expressed confidence that most in Congress would reject employers' warnings about further job losses. "The members of Congress who support this legislation know exactly what's at stake and have respect for these workers, and don't think that [the workers] are trying to negotiate themselves out of a job," he said. "Everyone's aware of the economic condition, and everyone understand this proposal . . . is compatible with it."

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Administration Is Open to Taxing Health Benefits

By JACKIE CALMES and ROBERT PEAR

WASHINGTON — The Obama administration is signaling to Congress that the president could support taxing some employee health benefits, as several influential lawmakers and many economists favor, to help pay for overhauling the health care system.

The proposal is politically problematic for President Obama, however, since it is similar to one he denounced in the presidential campaign as "the largest middle-class tax increase in history." Most Americans with insurance get it from their employers, and taxing workers for the benefit is opposed by union leaders and some businesses.

In television advertisements last fall, Mr. Obama criticized his Republican rival for the presidency, Senator John McCain of Arizona, for proposing to tax all employer-provided health benefits. The benefits have long been tax-free, regardless of how generous they are or how much an employee earns. The advertisements did not point out that Mr. McCain, in exchange, wanted to give all families a tax credit to subsidize the purchase of coverage.

At the time, even some Obama supporters said privately that he might come to regret his position if he won the election; in effect, they said, he was potentially giving up an important option to help finance his ambitious health care agenda to reduce medical costs and to expand coverage to the 46 million uninsured Americans. Now that Mr. Obama has begun the health debate, several advisers say that while he will not propose changing the tax-free status of employee health benefits, neither will he oppose it if Congress does so.

At a recent Congressional hearing, Senator Ron Wyden, an Oregon Democrat whose own health plan would make benefits taxable, asked Peter R. Orszag, the president's budget director, about the issue. Mr. Orszag replied that it "most firmly should remain on the table."

Mr. Orszag, an economist who has served as director of the Congressional Budget Office, has written favorably of taxing some employer-provided health benefits and using the revenue savings for other health-related incentives. So has another Obama adviser, Jason Furman, the deputy director of the White House National Economic Council.

They, like other proponents, cite evidence that tax-free benefits encourage what Mr. McCain called "gold-plated" policies, resulting in inefficient and costly demands for health care and pressure on employers to hold down workers' pay as insurance expenses rise. And, they say, the policy discriminates against those — many of whom are low-income workers — who do not have employer-provided coverage.

When Senator Max Baucus, Democrat of Montana, advocated taxing benefits at a recent hearing of the Finance Committee, which he leads, Treasury Secretary Timothy F. Geithner assured him that the administration was open to all ideas from Congress. Mr. Geithner did, however, allude to the position that Mr. Obama had taken as a candidate.

The administration's receptivity to the idea is owed partly to the advocacy of Mr. Baucus, whose committee has jurisdiction over tax policy and health programs, and to support from Republicans. There is less enthusiasm among Democrats in the House, though the health debate is at an early stage and no comprehensive plans are on the table.

Also, Mr. Obama's own idea for raising revenues for health care — limiting the income tax deductions that the most affluent taxpayers claim — has run into opposition not only from Mr. Baucus but also from his counterpart in the House, Representative Charles B. Rangel, Democrat of New York, who is chairman of the Ways and Means Committee.

Mr. Obama's proposed limit on deductions would raise an estimated $318 billion over 10 years, or half of his proposed "health care reserve fund." That is a fraction of the revenues that could be raised from taxing employer-provided health benefits.

In the campaign, Mr. McCain estimated that taxing all health benefits would raise $3.6 trillion over a decade — "a multitrillion-dollar tax hike," one Obama advertisement said.

The Congressional Budget Office says that including health benefits in taxable income could mean $246 billion in additional revenue for a single year. Stopping short of full taxation, as Mr. Baucus and others suggest, would mean less new revenue.

The latest government figures, for 2007, show that 70 percent of the 253 million people with health insurance received at least some of their coverage through employers. Employment-based insurance covers three-fifths of the population under 65.

Those who want to tax benefits in whole or in part make two main arguments. They say the tax exclusion is a generous subsidy that insulates employees from the true costs of health care, leading them to demand more of it and driving up overall costs. Critics also say the policy is unfair because it favors higher-income people. "It's too regressive," Mr. Baucus said. "It just skews the system."

But in a blueprint for health legislation that he issued last November, Mr. Baucus said taking the exclusion on health benefits out of the tax code would go "too far" and "cause widespread disruption in employer-based health benefits." Mr. Obama has also said he wants to preserve employer-provided coverage. Mr. Baucus, in his paper, cited other options, like taxing benefits above some value, taxing only wealthy employees or both.

However the proposal is devised, advocates will not have an easy time selling it.

Republicans, like Mr. McCain and former President George W. Bush before him, tend to favor taxing the benefits to finance other incentives for people to buy their own insurance. But given Mr. Obama's use of the issue in his campaign, Republicans are unlikely to support a change unless the president himself proposes it, a senior adviser to Senate Republicans said.

Many Democrats, especially House liberals, are opposed. "It's a dumb idea," said Representative Pete Stark of California, chairman of the Ways and Means Subcommittee on Health. "We have to maintain as much as we can of the employer payments."

Administration officials often say they will not repeat the mistakes of former President Bill Clinton, whose plan for universal health insurance collapsed in 1994. But Frank B. McArdle, a health policy expert at Hewitt Associates, a benefits consulting firm, said, "If President Obama agrees to cut back the tax break for employee health benefits, he will risk repeating one of Mr. Clinton's errors by disrupting health insurance for people who have it and like it."

Some big businesses consider nontaxable employment benefits a tool for recruiting and retaining workers. The United States Chamber of Commerce opposes eliminating the exclusion on health benefits, but James P. Gelfand, senior manager of health policy, said the group had not taken a position on limiting it.

Organized labor, a pillar of the Democratic Party base, considers the benefits among the union movement's historic achievements for the middle class. But a split could be developing between the manufacturing unions, which have negotiated rich benefit packages, and the growing service employees unions, which include many low-wage workers without generous benefits.

Alan V. Reuther, legislative director of the United Automobile Workers, said: "These proposals would represent a tax increase on working families. They would undermine good health care coverage."

But at the Service Employees International Union, which was an early supporter of Mr. Obama, Dennis Rivera, the coordinator of the union's health care campaign, said that while his organization was "predisposed not to agree to the taxing of health benefits," he would wait to pass judgment. The union, Mr. Rivera said, wants to see how any tax changes fit into the overall effort to revamp the health care system. "We need to see the total picture," he said.