

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



**NEWS CLIPS**

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# Contracts Now Seen as Being Rewritable

By [MARY WILLIAMS WALSH](#) and JONATHAN GLATER

Contracts everywhere are under assault.

The depth of the recession and the use of taxpayer dollars to bail out companies have made it politically acceptable for overseers to tinker with employment agreements.

So federal and local governments are looking for ways to pare payouts, endangering the promises made before the financial storm to people like Wall Street traders, automobile workers and garbage collectors.

“We run roughshod over some contracts and not over others,” said David A. Skeel, a law professor at the [University of Pennsylvania](#), about economic downturns. “Right now, employment contracts seem to be the type of contract that is viewed as eminently rewritable.”

The [Treasury Department](#) is seeking broad powers to seize troubled companies and rewrite contracts like the ones promising bonuses at the [American International Group](#). Some A.I.G. employees, meanwhile, have been pressured by officials into repaying their bonuses to the giant insurance company rescued by the government.

Across the country, Vallejo, Calif., just got permission in bankruptcy court to tear up its contracts with firefighters and other workers. In Stockton, the city manager is studying whether to follow Vallejo’s lead.

In Michigan, Gov. [Jennifer M. Granholm](#) just ordered the city of Pontiac put under emergency financial management, after it failed, among other things, to rein in the cost of police, fire and trash collection services.

And [President Obama](#)’s auto task force, after replacing the top management at [General Motors](#), is looking for ways to overhaul the contracts that [G.M.](#) and [Chrysler](#) have signed with unionized workers.

Honoring any type of contract can be hard in a down economy, but financial agreements, like the ones between A.I.G. and its derivatives counterparties, are so far faring better.

The possible ripple effects of not keeping those financial contracts, or defaulting, have raised alarms and prompted arguments that it would be too dangerous to void them. After all, the collapse of [Lehman](#)

[Brothers](#) is widely blamed for paralyzing the credit markets last fall, which may in turn have prompted the Federal Reserve to stand behind A.I.G.'s derivatives contracts, making its trading partners whole.

Employment agreements have enjoyed no such help. In the past, the belief that voters would make their disdain known has at least discouraged politicians from using a heavy hand.

Now, though, officials in the Obama administration may be looking ahead to a rescue of the automakers, an enormous challenge that could be simplified, from the government's point of view, if kept out of court and under tight administration control. That would make it easier to change the terms of contracts governing retiree benefits, said David L. Gregory, a law professor at [St. John's University](#) in New York.

"The issue is, how can the government calibrate and contour and control the process of reorganization," without the time, expense and compromise inherent in bankruptcy, Mr. Gregory said. "The executive branch is proposing to do what the bankruptcy courts have had the exclusive prerogative to do."

This month, the town of Vallejo demonstrated not only that it was possible for a city to tear up its union contracts in bankruptcy, but that it was even easier for a city to do so than for a company. The precedent may matter.

Municipalities do not file for Chapter 11 bankruptcy protection; they use Chapter 9, which has different terms and a much smaller body of legal precedent. Municipal bankruptcies are so rare that until the Vallejo ruling, it was not clear whether a city could get out of its union contracts in Chapter 9.

Unions representing Vallejo's public employees tried to argue that state labor laws protected the contracts. But the federal judge handling the bankruptcy, Michael S. McManus, wrote that federal bankruptcy law trumped the state labor law. He also observed that Congress could have set tougher standards for municipalities voiding their labor contracts — it did so for companies. But such bills died in committee.

After reaching his decision, the judge gave both sides one more chance to try to negotiate less-onerous concessions.

"The world is watching, and I don't say that with pride, because we never wanted to file a Chapter 9," said Marc A. Levinson, a partner with Orrick, Herrington & Sutcliffe who is representing Vallejo in the bankruptcy. The city ran out of money last year, after promising benefits that it could not afford when the recession drove down tax receipts.

Vallejo's bankruptcy is being closely watched because its problems mirror those in many communities that have promised benefits that now look unsustainable. In many places the benefits have been locked in with statutory and constitutional guarantees.

"That's why Vallejo is so important," said James E. Spiotto, a Chapter 9 specialist with the firm of Chapman & Cutler in Chicago. "Chapter 9 and bankruptcy is the land of broken promises." He said unions were better off negotiating concessions now than landing in bankruptcy court and ending up with no contract at all.

But entirely different rules apply to bonded debt, and to a related problem plaguing some communities: derivatives. Chapter 9 was never meant to be a place where governments could get out of their bonded debt, Mr. Spiotto said.

Derivatives are largely untested, but the issue may reach a decisive point in Jefferson County, Ala., which is entangled in interest-rate swaps. The swaps were intended to shield the county from rising interest rates after it issued a large amount of variable-rate debt to pay for a new sewer system.

The swap arrangements broke down amid last year's turmoil in the credit markets, leaving Jefferson County with \$3.2 billion in debt that it can neither pay nor refinance. Some officials are now calling for a Chapter 9 filing; others are against it.

Alabama's governor, [Bob Riley](#), has written to the Treasury secretary and the Federal Reserve chairman, asking for help in stretching out Alabama's financial obligations, rather than repudiating them.

The Treasury secretary, meanwhile, is working on a much broader initiative to give the federal government the power to modify the contracts of the financial institutions it takes over. The proposal raises several new issues, because it would eliminate the judicial oversight of bankruptcy proceedings and the opportunity for affected parties to challenge the changes.

The goal is to speed up reaction time to crises, said Lisa Hill Fenning, a retired bankruptcy judge who now practices at Dewey & LeBoeuf in Los Angeles. "Traditional ways of dealing with these problems are too complicated and would take too long," Ms. Fenning said. "They're trying to cut through red tape."

*The following was written by our own Director of Safety, Rick Inclima;*

## **EFCA Will Give Workers Equal Power**

Editor, Times-Dispatch:

Regarding the recent letter, "Pro-EFCA Arguments Don't Hold Water," from Elizabeth Martin: She correctly notes that "according to the George Meany Institute for Labor Studies, typically 25 percent of employees who signed a [union representation] card later voted no in the privacy of a secret election." What Martin fails to point out is this is precisely why the Employee Free Choice Act is necessary.

Under current law, employers routinely mount sophisticated anti-union campaigns utilizing the high-priced "union avoidance" consultants in an overt attempt to influence the outcome of the secret ballot. During such campaigns, workers are routinely required by the employer to participate in mandatory, captive-audience meetings where professional anti-union "hired guns" indoctrinate workers with misinformation about unions. Workers are prohibited from participating and debating the issues in an open and democratic forum. Company managers routinely fire union supporters and use fear and intimidation to browbeat employees into voting against the union.

Under current law, employers have the option of recognizing card check as an expression of the workers' desire to be represented by a union. Under the EFCA, that option of recognizing card check will be extended to the workers as well. The EFCA does not do away with the secret ballot. If one-third of the workers want to have a secret ballot election rather than a card check recognition, they will get one under the law.

Union avoidance consultants provide employers with their anti-union services under the terms of a negotiated contract. The EFCA will simply provide American workers with a similar ability to work under a negotiated contract. What's wrong with that?

Rick Inclima. Columbia, MD.

March 31, 2009, 3:12 pm

## **West Wing Actors Take the Hill**

By [Kate Phillips](#)

Richard Schiff, Martin Sheen and Bradley Whitford from the TV show, “The West Wing” appeared on Capitol Hill on Tuesday.

If Josh Lyman were the “acting president’s” Rahm Emanuel on TV’s now-defunct show, “[The West Wing](#),” then perhaps Toby Ziegler would be David Axelrod.

At least that’s what the former actors, Bradley Whitford and Richard Schiff, suggested today as they appeared at the opposite end of Pennsylvania Avenue on Capitol Hill to promote union-organizing legislation that is, for the time being, stalled in Congress despite an extremely high-pitched public relations battle on both sides.

And their remarks were particularly partisan. After joking that he couldn’t really be Mr. Emanuel because he wasn’t allowed to swear in his television roles, Mr. Whitford remembered that it would’ve been the 82nd birthday of Cesar Chavez, former head of the United Farm Workers. (And owner of the Si, Se Puede chant adopted by President Obama during his campaign, as the president noted in a statement today.)

“I promise you on the lives of my children we will never ever celebrate Grover Norquist day,” Mr. Whitford said, referring to the conservative Grover Norquist, head of Americans for Tax Reform. “It’s just not going to happen.”

The actors spent quite a bit of time promoting what’s known as the Employee Free Choice Act, legislation that would allow for easier organizing by workers. Strong opposition by business lobbies and Republicans has helped stall the issue, as the Senate and the House wade through other measures like the \$787 billion stimulus package and the \$3.6 trillion budget.

In his short talk today, Martin Sheen, the former President Bartlet on the TV show, alluded to the recent pronouncements by or ambivalence of several senators, including Senator Dianne Feinstein, Democrat of California. He called her reluctance to support the legislation a “disappointment,” as well as the decision by Senator Arlen Specter, Republican of Pennsylvania, to oppose it. The waverings by other Democrats and moderate Republicans have effectively squelched the bill for now in the Senate, which does not have the votes to move forward.

The actor often quoted scripture in his TV role, and he invoked a little parable today about fighting hard enough to bear scars, and told the supporting audience, “This is by far not a lost cause.”

As for his own union credentials, Mr. Sheen said that he began life as a caddy at a golf club in Dayton, Ohio, where he and his fellow workers founded what he later learned was the first caddy union in the United States. It didn't last very long, he added.

After the event today, Mr. Whitford, who is on the board of American Rights at Work, the organization sponsoring the event today, and Martin Sheen, the "acting president," hopped off one of the trams that run between buildings and wended their way through the basement of the Senate side of the Capitol building. The two were also meeting with various members of Congress. ([Video of the news conference here.](#))

Before the actors even began their advocacy this morning, the opposition (via the prolific fingers of Danny Diaz) emailed statements poking at the event.

"Today's event on Capitol Hill with actors who played fictional political powerbrokers addressing a fictional problem is like a work of fiction that would be better suited for a comedy if their proposed 'solution' wasn't so devastating to our nation's economy," said Katie Packer, executive director of the Workforce Fairness Institute. "Job creators don't need policy prescriptions from out-of-touch, Hollywood elite who want to drive up costs and encourage a hostile takeover of American small businesses."

**April 2, 2009**

**A WORLD OF HURT**

## **In System to Resolve Workplace Injury, Ill Will on All Sides**

By **STEVEN GREENHOUSE**

TONAWANDA, N.Y. — The sprawling DuPont plant along the Niagara River here can be a grim place, but less so on the days when the company hands out coupons to reward workers for a few weeks without injury.

Called “safety bucks,” the coupons look like real money and can be redeemed at Red Lobster, Home Depot and several other businesses in the area.

For some workers who risk their fingers and bones to make Corian, the stonelike countertop material that is the plant’s major product, the coupons have become a modest blessing and benefit. But other workers regard them as a curse, as a way to mobilize peer pressure against workers who might consider reporting an injury.

“You know that if you report an injury, everybody says, ‘You son of a bitch,’ ” said Dan Austin, who worked at the plant for 30 years. “I’ve heard people say, ‘So-and-so reported an injury and it’s going to cost us our safety bucks this month.’ ”

Companies across the state have recently introduced reward programs to curtail injuries, in part to keep their workers safe, in part to cut down on workers’ compensation claims, which managers cite as a huge factor in the high cost of doing business in New York.

“There are an awful lot of situations where people aren’t truly injured on the job,” said Gregory Harden, the president of Harden Furniture, a 380-employee company based in McConnellsville. “I tend to be a little cynical. Monday is always the day with the highest injury rate for us. Someone comes in on Monday, and their back is really sore for whatever reason, and they end up missing a few weeks of work.”

The state’s multibillion-dollar workers’ compensation system is plagued by many shortcomings: endless delays, suspect doctors, and a rudimentary form of justice that prevails as employees and employers seek to survive.

But perhaps the most powerful way to appreciate how the system has failed is to see what it has done to New York’s workplaces. A century ago, when the state created its workers’ compensation system, the goal was a no-fault insurance program that would foster workplace harmony by resolving disputes over injuries without litigation or recrimination.

Today, however, employers and employees are still at war over workplace injuries, a war marked by mistrust and fear. Each side is angry; each side has its own powerful evidence to justify that anger.

Workers say companies are going to extraordinary lengths to cut back on claims: contesting injuries, checking on workers at home, even firing those who file for benefits.

Employers say that the compensation system is so expensive, so riddled with fraudulent claims, that they



need to take aggressive steps to curb their costs. A single injury can easily cost \$10,000, and sometimes several hundred thousand dollars when a badly maimed worker draws benefits for life.

Though no independent study has established that claimant fraud is rampant, many executives say the system is skewed against them by judges who favor claimants and by malingerers who collect benefits when they are well enough to work.

The state is putting reforms in place to reduce costs for companies and ease tensions in the workplace, but it remains unclear how much they will help. And the economic downturn has only added to the pressure to control costs.

So to cut back on claims, some factories are using scoreboards to record days passed without an injury. Some companies reward workers who report no injuries with a banquet featuring a lottery with a cash prize. Other plants play safety bingo: if there are enough consecutive injury-free days, one worker gets bingo and wins a cash jackpot.

“It keeps everybody’s mind on safety because every day when they come in, that bingo board is right next to the time clock,” said Ed Prunier, safety manager at Ball Metal Container in Saratoga Springs.

Some companies are also using a less fun-filled program, known as progressive discipline. At the DuPont plant here, workers face five progressive steps when they suffer repeated injuries deemed to be partly their own fault: verbal warning, written warning, probation, five-day suspension and dismissal.

“There’s like a philosophy that unless your arm is falling off, don’t tell anybody, take the pain, don’t go the emergency room,” said Jerry Graves, a DuPont machine operator who injured his thumb. “Say you smashed your finger with a hammer at home.”

Experts say it is difficult to estimate how often employers in New York retaliate against workers who file compensation claims because there is no tracking of such data. But several studies have found that the perception of widespread retaliation has contributed to the decline in the number of compensation claims in New York and nationwide in recent years.

“There are lots of people out there who aren’t filing claims because it’s not worth the hassle and because of the fear of retaliation by the employer,” said Leslie Boden, a professor of public health at [Boston University](#).

Legal experts say New York makes it easy to fire workers who file claims. The law bars retaliation, but states that as long as an employer has a “valid reason,” like a prolonged absence, the firing is legitimate.

Some of the workers most affected by efforts to curtail claims are immigrants, who make up an increasing part of the state’s blue-collar work force. Many of them do not know about the compensation system, and when they get hurt, their employers often pressure them not to apply for benefits, worker advocates said.

“Their bosses tell them, ‘Don’t go to the hospital. Don’t say it happened at work. I’ll take care of you. I’ll take care of your medications.’” said Gonzalo Mercado, executive director of El Centro del Imigrante, a workers’ center on Staten Island. “In most cases, the employer never does any of that.”

Gerver Lopez, for example, was putting up aluminum siding in May 2007 when the scaffolding broke and he fell to the ground, hurting his spine.

Mr. Lopez, an immigrant from El Salvador, could not get up. He said his boss shouted: “Don’t call an ambulance. I don’t want no trouble. I have 30 houses to do, and I don’t want to lose any of them.”

An uncle drove him to Nassau University Medical Center, and doctors there told him that he would never walk again, he said. By the time his two-and-a-half-month stay ended, his medical bills topped \$45,000.

Now 22, he remains paralyzed, and is supported by his mother, a waitress.

“The boss said he was going to pay for everything and I shouldn’t say anything,” Mr. Lopez said. “He didn’t give me a penny.”

Hurt on the Job

Fred Willette followed his father into metal grinding, a world of dangerous dust and deafening noise.

At Kodak, where he worked for several years, a machine would collect the dust spun off by his efforts. But when he took a similar job at Addison Precision Manufacturing, a metal-parts factory in Rochester, he said his new bosses did not want to spend the \$3,000 for such a machine.

“They said, ‘All we have to do is provide you with a dust mask,’ ” Mr. Willette said.

So for seven years, he said, he did what he was told, grinding tools that are used to make parts for rockets, snowmobiles and medical equipment.

Then the [shortness of breath](#) began. One day he passed out and was rushed to the emergency room, the first of several trips. The doctors initially thought it was [asthma](#). But on a return visit, a doctor asked him what he was grinding. “Tungsten carbide with cobalt,” he replied.

It turned out he had hard-metal pulmonary disease, which, like [black lung disease](#), can be hobbling, even fatal.

Mr. Willette said that in March 2000 he told his bosses he was going to apply for workers’ compensation to tide him over until he recovered. They fired him the next day, he said, a position the company disputes.

“They were saying: ‘You’re a liability. You’re getting all these people involved. We don’t need you,’ ” he said. He was 48 at the time.

Robert Grey, a claimant lawyer, said New York’s law against retaliation “is close to useless, both as a deterrent and a remedy.”

The courts have said employers can fire a claimant who misses too many days or if they need to hire someone to do the claimant’s work. As a result, lawyers seldom pursue retaliation cases, said Michael T. Berns, a member of the state Workers’ Compensation Board until last June. “The burden of proof is with the claimant,” he said. “It’s a very difficult burden.”

Some states take a tougher stance. In Oregon, claimants retain the right to be reinstated to their job within three years of filing a claim, so long as they are still able to do the job.

Mr. Willette said that even after he was dismissed, the company challenged his claim. A private investigator for its insurance carrier began parking outside his house and trailing him to the doctor and the supermarket, he said.

“At first we thought it was the police,” Mr. Willette said. “But the cops said, ‘He’s a private investigator watching you.’ ”

Rodney Champagne, one of the owners of Addison Precision, declined to discuss Mr. Willette’s case. “I’m

not really interested,” he said.

But the company’s insurer said in official filings that the [lung disease](#) stemmed largely from [smoking](#), not metallic dust. The company’s chief executive, Robert Champagne, said during the compensation trial that he was concerned about his workers’ safety and that Mr. Willette had not been fired for filing a claim. He was sent home, he said, because he was upset and shaky at work and had not brought in a requested note about the medication needed to control his stress-related [seizures](#).

After leaving Addison, Mr. Willette held a few lower-paying jobs for a few months, but his breathing did not improve, and he slipped into a depression for nearly a year. He felt too short of breath for his favorite pastime, fishing.

Now he spends his days watching television. Occasionally he visits his father, gathering strength to go out for an hour or two by using an oxygen tank at home.

He now receives benefits, \$278 a week. But because the company challenged his claim, those benefits did not start until 18 months after he was let go.

“You feel very low from what they put you through,” he said. “They try to grind you down.”

### Fearing Fraud

As the sixth president in the Curtis Screw Company’s 100-year history, Paul Hojnacki wants the company to survive another century in Buffalo, the city where it was founded.

But Mr. Hojnacki is so angry about the state’s workers’ compensation system that he sometimes talks of moving the factory, which makes precision auto parts. He denounces the delays in settling cases, complains about the “pro-worker judges” and about the way some employees, he said, are allowed to milk the system. Most of all, he indicts the costs.

Curtis Screw, he said, spent \$4,900 per employee in 2007 for workers’ compensation coverage for its 220 workers, more than 10 times what it cost at its factory in Cornelius, N.C.

“The cost of this monstrosity,” he said of the system, “has to be taken into consideration because it’s driving businesses out of New York State.”

Mr. Hojnacki said the compensation bill represents 2.5 percent of the Buffalo plant’s revenues, at a time when manufacturers often have profit margins of 3 percent. At the plant, where wages average \$15.50 an hour, compensation costs translate into \$2.50 for every hour that employees work, he said.

One of the reforms the state has pushed through in recent years reduced compensation premiums for many companies by 20 percent, but Curtis Screw self-insures, so it has yet to see any savings.

“New York State, prior to the reform, was one of the most expensive states in the country for workers’ comp,” said Kenneth Adams, the president of the [Business Council of New York State](#). “With these reductions in premiums, the cost of workers’ comp for most employers has fallen into line with the average of other states. But if you’re in manufacturing, it can still be a significant cost.”

Mr. Harden, whose family-owned furniture company was founded in 1844, bristles at paying \$1,800 per employee for compensation insurance. He complains that a compensation judge in 2004 ordered his company to pay \$400 in weekly death benefits for life to the widow of a driver who died of [pneumonia](#) while making a delivery in Texas.

“It wasn’t from anything on the job,” Mr. Harden said of the death. While acknowledging that some compensation was in order, he said, “we feel the terms of our payments are excessive.”

Mr. Hojnacki says he is similarly upset by the \$200,000 his company pays out annually to 15 former employees who have been classified as having permanent partial or permanent total disabilities. Nearly all of them, he said, were terminated for poor performance, then filed for compensation.

“We have 15 people that we terminated that we cut a check to every week, some that date as far back as 1993-94,” he said. “It’s absolutely ludicrous. Even with the workers’ comp reforms, this legacy cost we literally have to pay until these people pass.”

The Buffalo factory self-insures because Curtis Screw finds it cheaper to pay its compensation costs itself, rather than use an outside insurer. Mr. Hojnacki said his yearly compensation expenses include \$850,000 to cover medical expenses for current workers, replacement wages for those workers and state assessments to finance the comp system.

Mr. Hojnacki cited a machinist who worked at Curtis Screw for several years and then filed a claim for a back injury.

“We did surveillance on him,” Mr. Hojnacki said. “We had a videotape where this individual was doing work on his house, lifting sheets of drywall and carrying them around and taking them from the outside to the inside by himself. We took it to the judge. The judge ruled, ‘We find that the individual was having a good day.’”

The worker was classified as having a permanent partial disability, for which, Mr. Hojnacki said, the company pays him \$400 a week.

“The workers’ comp judges are totally sympathetic with the workers,” he continued. “One judge told me, ‘It’s workers’ comp. It’s not employers’ comp.’”

One reason that Curtis Screw’s costs are so high, Mr. Hojnacki acknowledged, is that his company has so many injuries, including a half-dozen workers who have had costly surgery for carpal tunnel problems. None of his workers in North Carolina have ever received compensation for such an injury, he said.

“We have 25 injuries each year, and of the 25 the vast majority are legitimate situations where people scrape a finger or slip or twist a knee,” he said. “The vast majority of workers, they can’t wait to be released from workers’ comp and come back to work. For them, workers’ comp is exactly what it should be — it compensates them for the short period they’re out. But then there’s this small group of employees that play the system.”

Mr. Hojnacki said that with his company facing competition from China, high energy costs and a devastating downturn in the auto industry, it cannot afford to be saddled with illegitimate compensation claims.

“It’s just devastating that you can have people who take advantage of the system,” he said. “They are taking money that we could be sharing with other workers.”

#### Safety Pays

At [FTT](#) Manufacturing in Geneseo, the safety bingo pot starts at \$25 and increases \$2 for every day without an injury. Each day a number is drawn, and workers keep tabs on their game cards.

If someone gets bingo after 20 days, the winner receives \$65, but the pot continues to grow until an injury

is reported. The maximum pot is \$150.

“We didn’t want to give them something cheesy — where people say ‘big deal,’ ” said Wade Smith, co-director of FTT’s safety programs.

Within a year of introducing the game, he said, injuries fell by a third at the company, which makes high-precision parts for many industries.

The game was set up for FTT by an outside firm, [Safety Pays](#), which has sold bingo games to more than 3,000 companies and is converting the clamor over compensation costs into profits.

Safety Pays provides a format for the game, plus bingo boards, cards, balls and “Winner’s Circle mini-posters.”

“The individual,” Safety Pays says in its advertising brochure, “who at one time alleged the occasional ‘[backache](#)’ in order to get a couple of extra days off will be hard-pressed to do so when his co-workers are anticipating a financial windfall by winning a jackpot.”

Mr. Smith said injured employees are never subjected to more than some good-natured “locker room pressure.”

But many safety advocates and labor unions are worried about the growth of such programs, which the [Occupational Safety and Health Administration](#) considered banning in the 1990s.

Robert K. McLellan, former president of the American College of Occupational and Environmental Medicine, told the House Education and Labor Committee last year about a worker who told his doctors he had hurt himself at home when the injury had really happened on the job. The worker later admitted lying because he did not want his co-workers to lose a promised steak dinner.

Last year, the committee’s staff criticized these programs, saying in a report, “Since workers are human and inevitably make errors, the consequence of rewards or [punishment](#) is often a failure to report incidents, rather than a reduction of injuries.”

Seth Marshall, founder of Safety Pays, says the games promote healthy peer pressure that increases everyone’s focus on safety and discourages workers from reporting fraudulent injuries.

At the DuPont plant here, officials base performance bonuses in part on how many injuries occur at the plant. But they say they never want to deter the reporting of legitimate injuries.

“All safety incidents, regardless of size, are to be reported and investigated,” said Beth Turner, DuPont’s director of global operations safety, health and environment.

Wendy Hughes, however, says she believes DuPont punished her when she crushed her thumb one day in 2002. The brakes of her forklift failed, she said, and when she tried to stop the forklift with her leg, her thumb got caught between it and a cabinet.

Doctors did a [bone graft](#) and inserted six pins in her thumb. She said DuPont seemed eager not to have her report a lost-time accident to OSHA, so her supervisors ordered her to return to the factory directly from the emergency room.

Ms. Hughes said she was not given any days off to recuperate. Instead, she was ordered to spend her days biding time in the factory’s break room. When other workers complained about seeing her there, she said management ordered her to spend each day inside a four-by-six closet where protective work clothes were

stored. DuPont declined to discuss her case, citing privacy concerns.

“All my co-workers started saying things like, ‘We’re not going to get any performance-based bonus,’ ” she recalled. “ ‘There go our safety bucks for the quarter.’ ”

**April 3, 2009**

## **No Laughing Matter at the Office**

It sounds like a grim sweatshop joke, but the federal agency that’s supposed to enforce justice in the American workplace has been found in willful violation of its own workers’ rights. The Equal Employment Opportunity Commission has been blithely violating the Fair Labor Standards Act, according to an arbitrator who found that the agency has been forcing its employees to work overtime and not paying them for it. Instead, according to the arbitrator, the agency concocted a “fiction” that its workers “requested” only compensatory time instead.

The ruling is one more reminder of how the Bush administration gutted every regulatory agency it could get its hands on. The administration apparently saw no political advantage in doing something about helping workers who dared to complain about bias. On an immediate level, the arbitrator is presenting the Obama administration with another high-agenda item for its long list of government repairs.

The E.E.O.C. — once a credible investigator of workplace grievances — lost about a quarter of its staff across the Bush years. The commission shed investigators, lawyers and labor specialists — even as it was increasingly swamped with complaints from workers in the private sector. In 2008, there were 95,400 allegations of job bias, a rise of 26 percent in just two years. Given the current economic agonies, the toll continues to rise.

President Obama touched on the E.E.O.C.’s problems in the campaign. Now that he is in the White House, he needs to repair, replenish and demand a major attitude change forthwith. And Congress needs to provide full support to restore the E.E.O.C. to something more than a laughingstock.

4/3/2009 Safety

### **UTU forms task force to help FRA reduce worker fatalities**

Last year, employee on-duty fatalities reached 19, making 2008 one of the worst years for worker fatalities, according to the [Federal Railroad Administration \(FRA\)](#).

"If we do not turn back this trend, we will shatter that record [this year]," said FRA Associate Administrator for Railroad Safety and Chief Safety Officer Jo Strang in a letter sent to rail labor unions. "The industry has already witnessed seven fatalities in both the operating and non-operating crafts."

Strang called on the unions to provide help in reversing the troubling safety trend. To that end, the [United Transportation Union \(UTU\)](#) has appointed a four-person task force charged with crafting an action plan in conjunction with the FRA aimed at reducing workers' safety risks on the job. The task force will coordinate efforts with UTU National Legislative Director James Stem.

"I expect the task force to seek partnerships with the railroads on a national basis, and for the carriers and UTU task force to work closely with the FRA to investigate the root causes of these tragedies," said UTU International President Mike Futhey in a prepared statement. "I expect the effort to produce an effective solution that includes best practices and techniques to improve situational awareness and keep situational awareness it at its highest level."

The task force will build on efforts of the FRA's Switching Operations Fatalities Analysis (SOFA) working group, which includes railroad and union representatives.

"The SOFA working group has achieved notable success in identifying risk reduction strategies in rail yards," said Futhey.

Meanwhile, the [Brotherhood of Maintenance of Way Employes Division \(BMWED\)](#) has reported that 12 major accidents involving track workers in the first quarter caused five track worker fatalities, four serious injuries and three near misses.

Last year, seven roadway workers were struck and killed by trains or MOW equipment — the highest death toll since 1997, the BMWED said.

"Sadly, 2009 has begun where 2008 left off, with two additional roadway worker fatalities occurring in January in New York and Arizona," said BMWED National

President Freddie Simpson. “This unacceptable toll has to stop and I am calling upon every single member to help us end this tragic cycle of death and sorrow.”

**April 4, 2009**  
**EDITORIAL**

## **A Blow to Workers’ Rights**

When Congress passed the Age Discrimination in Employment Act, it gave older Americans a broad right to sue for discrimination. But the Supreme Court has narrowed that right with a 5-to-4 ruling that union members cannot file lawsuits when their contracts call for arbitration of age-discrimination claims. The decision, which reversed the court’s precedents, sets back antidiscrimination law significantly.

A group of New York City building-services workers sued after they were moved from positions like night lobby watchman to less desirable assignments, including cleaning jobs. The workers charged, among other claims, that they had been reassigned based on age.

The contract negotiated by the workers’ union required employees to submit claims of discrimination to binding arbitration. The workers sued in federal court, asserting that their job reassignments violated the federal age-discrimination statute and other laws. The employer moved to dismiss the suit, arguing that the union contract required that the claims be arbitrated.

The Federal Court of Appeals for the Second Circuit denied the motion, citing a 1974 Supreme Court case, *Alexander v. Gardner-Denver Company*. It held that collective bargaining agreements cannot waive workers’ rights to sue under federal antidiscrimination laws.

The Supreme Court reversed, in an opinion by Justice Clarence Thomas. In the majority’s view, the union agreed to the arbitration clause, and it was binding on all of its members.



The four dissenters, in an opinion by Justice David Souter, had by far the better argument. Rights that Congress grants, they argued, cannot be waived in a collective-bargaining contract. Union contracts represent group rights — and unions often sacrifice the interests of a minority of their members for the good of the whole.

Laws like the Age Discrimination in Employment Act give individuals a right to sue for discrimination — no matter what deal their union decides to strike for the workers as a group. The dissenters protested that the majority was too quick to abandon the well-established, 35-year-old precedent of *Gardner-Denver*.

The fight over who will hear these claims matters because workers who have been discriminated against are more likely to get a fair hearing in federal court than in arbitration. That is why employers are eager to arbitrate — and it may be why the court's most conservative justices voted in favor of compulsory arbitration.

When Congress passed the Age Discrimination in Employment Act, it protected Americans from discrimination on the basis of age — and gave them the chance to vindicate that right in federal court. There is no reason to believe, as the court's majority apparently does, that Congress intended this right to sue to be so weak that unions could freely bargain it away.

## Coal volume slump leads freight traffic decline

April 6, 2009

U.S. freight carload traffic for the week ended March 28 declined 24.4% from the comparable week in 2008, the Association of American Railroads reported, with coal traffic slumping significantly. U.S. intermodal traffic also fell, down 15.4%. Volume of an estimated 26.6 billion ton miles was down 23.8% from the year-ago period.

Canadian freight carload traffic for the week was down 24.7%, while intermodal declined 16.3%.

AAR said a decline in coal shipments impacted the month of March and 2009's first-quarter numbers significantly, as did weather-related woes. "A blizzard in the Wyoming coal fields, flooding in the Midwest, and other weather-related problems added a 'kick them when they're down' element to the month, dropping already depressed rail traffic levels even further in March," said AAR Senior Vice President John T. Gray.

U.S. coal traffic fell 20.9% in the week ended March 28 compared with last year, and was down 4.2% for the quarter compared with 2008's first three months.

Overall, U.S. freight carload traffic in March fell 17.3% compared with the 2008 counterpart month; intermodal traffic fell 14.9%. For the quarter, U.S. freight carload traffic declined 16.3% compared with the first quarter of 2008; intermodal traffic fell 15.5%.

Canadian rail carload traffic fared similarly, down 21.7% in March 2009 from March 2008 levels; Canadian intermodal traffic in March fell 13.3%. For the first quarter of 2009, Canadian rail carloadings plunged 19.5% compared with the 2008 quarter; Canadian intermodal traffic for the quarter was down 12.1%.

Though U.S. rail carloadings of coal fell during the first quarter, impacting overall volume, other commodities suffered even more in percentage terms, including motor vehicles and equipment (down 51.8%), metals and metal products (down 52.1%), and grain (down 22.4%).

## Drifting Right, Lincoln Comes Out Against EFCA

*By Alec MacGillis*

As members of Congress returned home for their two-week recess, Sen. Blanche Lincoln (D-Ark.) today wasted no time in delivering a major blow to the fading hopes of the Employee Free Choice Act. Lincoln, whose backing would be needed for the legislation to get a filibuster-proof 60 votes and who previously supported the bill, [has been signaling](#) that she is turning against it, but had not yet been as explicit as she was today at a meeting of the Little Rock Political Animals Club in Arkansas.

"I cannot support that bill," Lincoln told the club, one attendee [recounted to Arkansas Business](#). "Cannot support that bill in its current form. Cannot support and will not support moving it forward in its current form."

Better known as card-check, the legislation would make it easier for workers to form unions.

Lincoln's shift on EFCA is not the only rightward tack she has taken in recent weeks as she looks ahead to her 2010 reelection race. She has also made headlines for a provision she put forward with Sen. Jon Kyl (R-Ariz.) that would slash the estate tax rate by raising the tax exemption from \$7 million to \$10 million per couple and lowering the top rate from 45 percent to 35 percent.

Proponents of the bill -- which passed 51-48 in the Senate but was not included in the House's version of the budget, and so awaits its fate in a conference committee -- say it would spare successful small businessmen, farmers and entrepreneurs from unfair taxation.

Opponents say that it would cost the Treasury \$250 billion and would benefit only the very wealthiest families -- and precious few farmers and small businessmen. Already, the Tax Policy Center estimates, only the wealthiest three-tenths of a percent of estates will pay taxes under the 2009 rates, which President Obama has proposed to extend.

Underlying the debate is an interesting subtext regarding charitable giving that also placed Lincoln at odds with her president.

To help pay for expanded health care, Obama's budget proposed a decrease in the tax deductions that wealthy taxpayers -- those earning \$250,000 or more -- can claim for their charitable giving and mortgage interest payments.

Opposition to the proposal was swift, as congressmen in both parties, charities and universities said reducing the charitable deduction savings for wealthy taxpayers would result in a big drop in giving. Obama countered that [any decrease in giving](#) would be minimal and that charities and universities' losses would be more than offset by the stronger economy and broader health coverage he said his plans would produce.

Lincoln seized on concerns about reduced giving in explaining why she was ambivalent about Obama's plan. In an interview late last month, she said she was worried about a drop in giving to Arkansas universities and nonprofits and didn't see the current deduction rates as inequitable. Wealthy taxpayers "get more [deductions] because they give more" in taxes, she said. "From the nonprofit standpoint, it's an incentive to give a bigger gift, and I think a lot of people do, if you look at the bigger givers."

She noted that Arkansas ranks near the top in per-capita charitable giving. Asked whether Obama's tax change would affect that giving much, considering that Arkansas ranks near the bottom in per-capita income, she said she thought it would, because, she conjectured, much of the state's giving actually comes not from average citizens but from the ranks of the big business headquartered in the state. And some of these wealthy Arkansans have been hit by the recession, too, she said. "Some of those big givers, they may not have a college fund and retirement fund like I do, but they've seen their funds cut in half, and they're going to change their giving habits somewhat," she said.

A few days after this interview, Lincoln and Kyl presented their estate tax cut -- which opponents say it would do far more to reduce charitable giving than Obama's proposed change in deduction rates would, because wealthy people would have far less of a tax incentive to give. The [Center on Budget and Policy Priorities estimates](#) that charitable giving by the wealthiest would drop about 10 percent -- a much steeper drop than they estimate will occur under the Obama giving tax changes.

Now that Lincoln has turned against it, card-check looks likely to be on hold for the time being. Expect, though, to hear much more on Congress' return in two weeks about the clashing claims on charitable giving and tax reform, at the center of which now stands Blanche Lincoln.

4/7/2009 Employment

### **U.S. Class I workforce shrinks some more in February, STB data shows**

The U.S. Class I workforce continued to contract in February. As of mid-February, the workforce stood at 156,997, a 1.6 percent decrease compared with mid-January's level and 3.7 percent drop from February 2008's count, according to the [Surface Transportation Board's](#) most recent employment data.

Transportation (train and engine) ranks shrank 2.9 percent from mid-January's level to 61,333. The workforce segment also decreased 9.6 percent from February 2008's count.

The transportation (other than T&E) workforce totaling 7,175 declined 1.9 percent compared with mid-January's level, but increased 6.3 percent year over year. Executives/officials/staff assistants totaling 10,135 posted the only month-over-month and year-over-year gains at 0.1 percent and 0.2 percent, respectively.

## Compromise bill getting close

April 7, 2009

A draft version of the so-called railroad/shipper compromise bill that the staffs of House Transportation & Infrastructure Committee Chair James Oberstar (D-Minn., top left) and Senate Commerce, Science, and Transportation Committee Chair Jay Rockefeller (D-W.Va., bottom left) have been crafting for the past few weeks with input from the carriers, shippers, and rail labor is expected to be ready by April 10.

Though details are still sketchy, it's widely believed that the bill will reauthorize and enlarge the Surface Transportation Board and revoke regulatory review exemptions for several rail-shipped commodities. Those exemptions were put in place by the STB's predecessor agency, the Interstate Commerce Commission, shortly after passage of the Staggers Act in 1980; they apply even if the ratio of rate revenue to railroad variable costs exceeds 180%. During his November 2007 second-term confirmation hearing, STB Acting Chairman Francis P. Mulvey indicated he opposed the exemptions.

Washington sources say that Oberstar's and Rockefeller's staffers that handle railroad matters, John Drake and Stephen Gardner, respectively, are working closely together to draft the compromise bill. Drake has moved temporarily to the Senate Commerce Committee to finish the draft with Gardner, who will reportedly soon be departing Rockefeller's staff to join Joe Boardman's Amtrak staff.

Meanwhile, Sen. Herb Kohl (D-Wisc., top right), Chairman of the Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, is expecting his Railroad Antitrust Enforcement Act of 2009 (S. 146) legislation to be introduced on the Senate floor next month. The House version of the bill, H.R. 233, sponsored by Rep. Tammy Baldwin (D-Wisc., bottom right), is expected to be marked up by the House Judiciary Committee next month.

Washington sources say the anti-trust legislation is little more than an attempt to keep pressure on the railroads to accept and support the Oberstar/Rockefeller compromise bill. "The entire purpose of the Oberstar/Rockefeller initiative is to quickly end the railroad/shipper squabble and allow the House T&I and Senate Commerce committees to move on to other pressing issues," says one source. "This is especially true for Oberstar, who wants to get working full time on the successor to SAFTEA-LU, which expires in September. If the draft compromise bill gains the support of railroads, shippers, and rail labor, there would be no impediment to its movement and passage."

4/8/2009 MOW

### **UP to improve Kansas line; BNSF to upgrade track in Wisconsin, Minnesota**

By early September, [Union Pacific Railroad](#) expects to complete upgrades to a Linwood-to-Topeka, Kan., line.

The \$18 million project calls for installing more than 30 miles of rail, removing and installing 17,700 ties, spreading 15,400 tons of ballast and renewing road surfaces at 85 grade crossings. Crews will replace rail between April 4 and May 8; a second crew will replace ties between August 29 and early September.

In 2007 and 2008, UP invested about \$95 million on capital projects in Kansas. This year, the Class I plans to spend \$1.8 billion to improve track infrastructure systemwide.

Meanwhile, [BNSF Railway Co.](#) last week began upgrading a line between East Winona, Wis., and St. Croix Tower, Minn. A 43-person crew is replacing 90,000 ties at a rate of more than 1,300 per day. The \$10.5 million project is scheduled to conclude in July.

BNSF plans to spend about \$2 billion this year to improve infrastructure by refreshing track, signal systems and structures, and upgrading freight cars and technologies.

## Train crew jobs down nearly 10% in year

April 9, 2009

New Class I railroad employment figures released Tuesday by the Surface Transportation Board show that the number of men and women employed to operate trains--the official category is transportation (train and engine)--declined 9.57% to 61,333 between February 2008 and February 2009.

Total railroad employment in that period was down 3.74% to 156,997. Professional and administrative employment was down 1.34% to 13,642.

Four employment categories registered increases during the 12-month period: transportation (other than train and engine), up 6.30% to 7,175; maintenance of way and structures, up 0.31% to 34,390; maintenance of equipment and stores, up 0.07% to 30,322; and executives, officials, and staff assistants, up 0.23% to 10,135.

In mid-February 2009, employment was highest on Union Pacific, at 49,964, followed by BNSF Railway, 38,141; Norfolk Southern, 29,687; CSX, 28,404; CN/GTW, 5,573; Kansas City Southern, 2,917; and Soo Line, 2,411.