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Randall Brassell, Director of Communications
Telephone: 615-521-4097 (Fax) 615-824-2164
email: rbrassell1@aol.com

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Lines Shift a Bit on a Senate Labor Bill

By STEVEN GREENHOUSE

As labor leaders and Senate Democrats work intensely to cobble together 60 votes in the Senate to salvage a bill that would make it easier to unionize, the lines of possible compromises are taking shape.

Several Democrats have voiced opposition to the bill's "card check" provision, which would generally require employers to recognize a union as soon as a majority of employees signed cards supporting it.

While most Democrats back the bill, an all-out lobbying effort by business has helped persuade several Democrats to oppose it. Labor complains that under current law companies often intimidate workers into voting against unions during lengthy antiunion campaigns. But businesses object that card check would bypass secret ballot elections and allow union organizers to bully workers into signing cards.

To win more support and prevent any intimidation, Senate Democrats are considering a proposal pushed by Senator Dianne Feinstein, the California Democrat. In a procedure similar to the early voting that precedes elections in many states, workers could sign cards and mail them to the National Labor Relations Board. If a majority mailed cards, the board would order the employer to recognize the union, as it now does when a majority of workers vote for a union through secret ballots.

To obtain a filibuster-proof 60 votes in the Senate, the bill's supporters would need the support of all 57 Democrats, the two independents — and at least one other senator, perhaps Al Franken of Minnesota, if he is seated.

Tom Harkin of Iowa, the bill's chief sponsor in the Senate with Edward M. Kennedy of Massachusetts, has held intense talks in recent days with several Democrats, including Ms. Feinstein and Arlen Specter of Pennsylvania, who recently left the Republican Party.

Mr. Harkin said, "There is one thing that won't work, and that is the status quo." He added, "Another key point is not to have these long drawn out elections that become an all-out war."

Mr. Specter announced in March that he would oppose the bill, as written, objecting to card check and a provision that calls for arbitration if management and labor do not agree on a contract within 120 days of a union winning recognition. Business has denounced that provision, saying government arbitrators should not dictate a company's wages and working conditions.

Several unions have signaled they would support a challenger to Mr. Specter in a Democratic primary unless he shows more support for the bill.

In an interview on Wednesday, Mr. Specter said, "I have long believed that labor law reform is urgent." He said he had talked with labor leaders, but still had strong reservations about the bill. "I'm prepared to work hard to find an answer to the issue." He said he would consider quick elections instead of card check.

Several union leaders said they might support changes that would call for holding secret-ballot elections within a week or two of the labor board ordering an election, thereby preventing long, acrimonious campaigns.

Mr. Specter said, "I would support quicker elections but not too quick," declining to be specific.

Randel K. Johnson, the United States Chamber of Commerce's vice president for labor affairs, criticized quick elections. "Employers need a decent amount of time to tell their side of the story," he said. "That's probably about 45 days." He said the Senate should delay any labor law change pending hearings. "America deserves better than some senators trying to cobble together a deal to please the unions in a rush to get something done."

But Mr. Harkin said, "If the Chamber of Commerce says they're opposed to everything, then they're not going to be a player." He cited a proposal by Mr. Specter that might help preserve the arbitration provisions. Under it, the arbitrator would choose between offers by an employer and by a union. "The last, best offer idea might have legs," Mr. Harkin said.

Several labor leaders said they would accept legislation with fast elections only if it included arbitration and tougher penalties for companies that break labor laws. One view is to wait until 2011 to push for sweeping labor law changes, on the assumption that Democrats will enlarge their Senate majority in the 2010 elections.

EPA: “Difficult years” through 2010

The latest freight car report from Economic Planning Associates doesn’t have a whole lot of good things to say, but those who can ride the storm out should begin to see improvements by early next year.

Following is EPA President Peter Toja’s (pictured) analysis:

“The recession rides the rails. The continued contraction of economic activities through the first quarter of this year has served to slam railroad revenues. Not only was the drop in first quarter haulings severe, but it was also widespread.

“Against this backdrop, it is not surprising to note that railcar orders in the first quarter amounted to only 2,374 cars, the lowest quarterly level since the recession-impacted period of 1982-83. And, with assemblies amounting to 7,657 units, first-quarter backlogs dropped to 26,171 cars, the lowest level since the first quarter of 2003.

“At the same time, we are leery of the Greenbrier portion of the backlogs, which is destined for GE as part of a multi-year agreement. Much has appeared in the media regarding GE’s desire to delay, postpone, or change existing orders for covered hoppers and tank cars. And, given the weak economy, extremely low traffic levels, and the financial hardships suffered by GE Capital, we are doubtful that any meaningful number of these cars will be assembled in the near term.

“With some 20% of the various fleets on the sidelines, the recession in full force, a sharp decline in railcar loadings, and the constrained financial environment, the outlook for railcar deliveries this year and next continues to dim.

“Given the economic and financial environments as well as our analyses of customer market activities, both 2009 and 2010 will be difficult years for the railcar industry. It now appears that carbuilders will survive primarily on backlogs this year. 2010 will also be weak in terms of assemblies, but improvements in new orders throughout the year will lead to a pickup in future rail car deliveries.

“Based on first quarter assemblies and the solid backlogs in coal cars, tank cars, and covered hoppers, we anticipate deliveries of 25,600 railcars in 2009. While orders will begin to pick up next year, extremely low backlogs will serve to keep assemblies at 16,500 units in 2010. Nonetheless, the pickup in orders will lead to an upturn in deliveries beginning in 2011 and extending through 2014.

“Beginning in 2011, far stronger economic activities will provide support for certain railcar assemblies while an improvement in the financial environment and higher equipment utilization rates stimulate replacements of aged railcars. Technological advances as well as legislative measures will also play a role in promoting the demand for a variety of railcars.

“After two dismal years, we look for railcar deliveries to rebound moderately to 29,000 cars in 2011 and then expand annually to the level of 58,000 units in 2014.”

5/11/2009 Federal Budget

President Obama proposes FY2010 budget appropriations for New Starts program, high-speed rail and Amtrak

Last week, the Obama Administration released detailed FY2010 budget recommendations for all federal programs.

The Administration is proposing $10.3 billion for surface transportation programs, slightly higher than the FY2009 appropriation. The budget proposal assumes any transportation funding growth is subject to a new surface transportation authorization bill. The current surface transportation legislation is set to expire in September.

"The Administration is developing a comprehensive approach for surface transportation reauthorization," according to an American Public Transportation Association Legislative Alert, citing the budget submission. "Consequently, the budget contains no policy recommendations for programs subject to reauthorization. Instead, the budget displays baseline funding levels for all surface transportation programs."

The Administration also proposes $1.8 billion for capital investment grants, including $604.3 million for five projects under the New Starts program and five projects under the Small Starts program. (For a list of the recommended New Starts projects, follow this link, and for details on the recommended Small Starts program, follow this link.) In addition, the spending plan would include funding for 29 projects currently under way that have received federal funding commitments in previous years.

As previously promised, the budget also recommends $1 billion for high-speed and intercity passenger-rail service, the first of a five-year program to build on the $8 billion included for high-speed rail in the American Recovery and Reinvestment Act (ARRA). The Administration also proposed $1.5 billion for Amtrak in FY2010, slightly higher than the railroad's $1.49 billion FY2009 appropriation.

However, the Administration proposes reduced funding for the Rail and Public Transportation Security Grants program from $400 million (plus $150 million in ARRA funds) in FY2009 to $250 million in FY2010. The 9/11 Commission Recommendations Act authorizes $900 million for transit security grants in FY2010.

May 12, 2009

Workers Pressure Bank to Keep Clothier's U.S. Plants Open

By STEVEN GREENHOUSE

DES PLAINES, Ill. — Hartmarx, known for its Hart Schaffner & Marx and Hickey Freeman suits, and for making President Obama's inauguration tuxedo and topcoat, has long been America's leading clothier for men. Now its workers want to make the company, which is in bankruptcy, a leader in a different way.

Hoping to save their jobs and start a national movement, Hartmarx workers are pressuring Wells Fargo, the company's main creditor, to approve the sale of Hartmarx to a buyer that would keep it alive instead of liquidating it, and most likely putting its celebrated labels on suits made overseas.

Seeing a political and public relations opening, the workers and their union are arguing that Wells Fargo, having received $25 billion in the bank bailout, should keep a 122-year-old American company like Hartmarx in business and preserve some 3,600 jobs.

At a protest rally and meeting on Monday at the Hart Schaffner & Marx factory here, one lawmaker made clear that saving Hartmarx was a personal crusade. Representative Phil Hare, who worked for 13 years as a clothing cutter at the company's plant in Rock Island, Ill., said that if Wells Fargo sold Hartmarx to a buyer that liquidated it, "I promise you I will be their worst nightmare."

"I will say to Wells Fargo again," he continued, "you need to do the right thing, the correct thing. You need to stand up for the American worker, like Congress stood up for the banks when times were tough."

At a news conference outside the plant, union leaders announced they would set up a nationwide toll-free number and clearinghouse that other embattled workers can contact if their plants were threatened with closing.

The idea is that the labor movement will fight to pressure companies and companies' bankers, especially ones that have received federal bailout money, to keep plants open.

Responding to the protests, Wells Fargo said on Monday that Hartmarx has been in default on the financing the bank has provided since the company filed for Chapter 11 bankruptcy protection.

"Advancing more funds with no reasonable likelihood of being repaid is not consistent with sound banking," the bank said.

At Monday's rally, most of the 650 workers at the plant in this Chicago suburb crowded into the lunchroom and voted to stage a sit-in if Wells Fargo takes steps to liquidate their company — and jobs.

"If the banks are going to pull the plug and pull us down, we will fight," said Ruby Sims, president of the Workers United union local at the plant. "We're going to do whatever it takes to keep our jobs."

The workers stood and cheered. Coming from Chicago's South Side as well as China, Greece, Mexico, Poland and a dozen other countries, many earn around $12 an hour. One held a placard saying, "Wells Fargo You Took Our Tax $$$$ Save Our Jobs."

To step up pressure on Wells Fargo, the workers have turned to powerful allies in Washington, most notably Barney Frank, chairman of the House Financial Services Committee, and Senator Charles E. Schumer of New York, where the Hickey Freeman plant, in Rochester, employs 800 workers. Employees are hoping that Mr. Obama, too, will pull some strings for them.

There has been no word from the White House on the dispute.

Hartmarx filed for bankruptcy on Jan. 23, three days after Mr. Obama's inauguration, after its sales plunged by around 40 percent late last year, largely because of the Wall Street crisis and large-scale layoffs there. Company officials involved in the bankruptcy proceedings said Hartmarx felt forced to file for bankruptcy after Wells Fargo reduced its credit line by $25 million.

Saying that Hartmarx has been unable to repay $114 million in debt, Wells Fargo issued a statement on Monday that was a mixture of optimism and pessimism about the company's future.

"We want them to stay in business so we can earn all of their business and help them succeed financially," Wells Fargo said.

But the bank added, "Despite extensive marketing, Hartmarx has no credible offers to be acquired, but the bank group continues to work with Hartmarx to find potential buyers."

Senator Schumer as well as union and company officials said that three companies have made reasonable offers to buy Hartmarx. Two of them, Emerisque of London and Yucaipa of California, have indicated they would keep Hartmarx operating, while the other, Mistral Equity Partners of New York, is said to plan to liquidate Hartmarx and most likely continue using the Hart Schaffner and Hickey Freeman brand names, while producing those brands overseas. The three companies declined comment.

At the lunchtime rally, workers protested that Wells Fargo was not extending the factory credit to buy the fabric needed to produce its line of fall suits, a move they fear will push Hartmarx closer toward liquidation.

Joe D'Amico, an employee for 42 years and a "front presser" for sports jackets and suit coats, voiced pride about the plant's products.

"Obama's suits went right through my hands," Mr. D'Amico said. "My belief is the government gave the banks money to give out to industries in need, but I feel the banks are covering their own backs, and don't want to lend the money out to save people's jobs."

Senator Schumer said there were buyers who would keep the company in business. "They are in the final stages of putting together their bids," he said in a telephone interview. "Wells Fargo ought to give them the time they need to assemble a bid that would keep the workers working. Not to do so would certainly hurt the economy in several states, including New York, and might not serve their shareholders well either."

Union leaders said they hoped their campaign and threats of a sit-in would help preserve Hartmarx just as a six-day sit-in at the Republic Windows and Doors factory in Chicago in December helped lead to a new company's buying the plant and reopening it, after the previous owner closed it.

Wells Fargo said it "empathizes with the employees and communities affected by the decisions made by Hartmarx," including its decision to file for bankruptcy. The bank also said that it continued to finance the company's operations even though in 2007 and 2008 the apparel company lost more than $30 million.

Hartmarx's chief executive, Homi Patel, does not hide his desire to keep the company operating. "Brands that have been around for 100 years made by American craftsmen are highly desirable properties," he said in a telephone interview. "There are several bidders, and we hope that all parties will ensure that we maximize the proceeds while also doing right by our workers and other stakeholders."

5/12/2009 Union Leadership

BLET: Knight becomes national VP; Radek to retire from VP post

The Brotherhood of Locomotive Engineers and Trainmen (BLET) recently named Willard Knight national vice president. He most recently was general chairman of the 59,000-member-union's Norfolk Southern-Eastern Region General Committee of Adjustment, a position he held for 18 years.

In 2006, Knight was elected as third-alternate vice president; in 2007, he was promoted to the BLET's advisory board. A former Norfolk & Western Railroad locomotive engineer, Knight joined the union in 1974 and later served as a local chairman, then general chairman.

The BLET also announced that National VP and Director of Arbitration Richard Radek is retiring. He also joined the union in 1974 and later served as secretary-treasurer of Division 404 (Chicago) and local chairman.

In 1981, Radek joined the union's international staff and was assigned to the National Railroad Adjustment Board in Chicago. When an arbitration department was established in 1991, he became director of arbitration.

National VP Marcus Ruef will assume Radek's arbitration director duties, the BLET said. He previously served as assistant director of arbitration from 1997 to mid-2006.

5/12/2009 Transportation Bill Talk

SAFETEA-LU reauthorization debate will drag on into September, Stifel Nicolaus' Larkin says

The reauthorization of the federal surface transportation bill likely be debated for the rest of the current fiscal year, which ends Sept. 30, Stifel Nicolaus Co. Inc. analyst John Larkin said in a research note issued Monday.

Larkin hosted a conference call Friday regarding potential changes to truck regulations with guest speaker Oliver Patton, the Washington editor of *Heavy Duty Trucking* magazine. Rep. James Oberstar (D-Minn.) is pushing to have a six-year reauthorization bill prepared by the beginning of June, but that it's unlikely that the House and Senate will agree on a measure before the existing bill expires, Larkin said in the note, which summarized the call.

The major sticking points include the size of the appropriation (the current bill is $286 billion and Oberstar reportedly is considering $450 billion) and funding mechanism (options include increasing the national fuel tax — which isn't likely — tolls, public-private partnerships, vehicle miles taxes, etc.).

A national freight transportation policy is a definite possibility since the U.S. Department of Transportation is working on a study to develop a plan that "attempts to optimize freight flows across our country," while also being realistic about highway and rail infrastructure, Larkin noted.

"This freight policy could be dovetailed with the surface transportation reauthorization bill to attempt, at least, to allocate the dollars in such a way as to allow for an efficient freight transportation system," Larkin said.

He believes such a system would allow room for economic expansion while minimizing logistics costs, maximizing energy self-sufficiency and minimizing the system's carbon footprint.

In addition, more rules and regulations likely are forthcoming under the new Administration, including a different enforcement of hours-of-service rules and tougher drug-testing methodology. Truck size and weight laws also could be revised, Larkin said.

Patton's remarks during the conference call "reinforced our notion that government regulation of the trucking industry is going to be more extensive in the future," he said. "The sum total of all the laws, rules and regulations currently implemented or proposed would have the net effect of further reducing freight transportation capacity."

— By Desiree J. Hanford. A Chicago-based free-lance writer, Hanford covered the equities market, including transportation, for Dow Jones & Co. for 10 years.

Card Check and Gut Check

By Harold Meyerson
Thursday, May 14, 2009

If our nation was governed by business's version of democratic choice, we would hold elections to determine the winner, but nearly half the time the incumbent would remain in power even if he lost.

In its campaign to derail the Employee Free Choice Act (EFCA), business has fearlessly depicted itself as the defender of elections and the secret ballot as well as the foe of the dread "card check" -- the process, championed by unions and included within EFCA, that would allow workers to sign union affiliation cards rather than compelling them to go through a ratification election in which harassment and firings of workers are all too common.

But the kind of democratic choice that business favors is choice without consequence -- a position made clear by its opposition to the other key component of EFCA: binding arbitration between company and union if they've been unable to agree on a contract within 120 days of a union winning the election. A study of first-contract negotiations by John-Paul Ferguson and Thomas A. Kochan of MIT's Sloan School of Management makes clear why such arbitration is needed. After surveying 22,000 unionization campaigns between 1999 and 2004, the authors found that even after a majority of workers voted for a union, they actually reached a contractual agreement with management (which is currently under no legal obligation to come to an agreement) only 56 percent of the time.

Heads, management wins. Tails, the employees lose.

It's a lovely system for businesses that don't want to pay higher wages or accord their workers some rights, and they've been fighting hard to keep it that way. They've managed for now to cow some cowable Democratic senators, which is why Iowa Democrat Tom Harkin, who is trying to steer EFCA through the Senate, is negotiating with a number of his colleagues. "It's a moving target," Harkin says.

That it's moving at all is the result of Arlen Specter's hop from Republican to Democratic ranks, which has compelled Specter to look to his left instead of his right to see where his next opponent is coming from. Just as the threat of defeat in next year's Republican primary concentrated Specter's mind and sped him out of the GOP, so the threat of a union-backed opponent in the Democratic primary -- spurred by Democrats' bewilderment and anger at Specter's post-conversion opposition to the president's budget, his cheering on the spectral candidacy of Minnesota Republican Norm Coleman and his opposition to card check -- has prodded Specter to find some middle ground on reforming labor law. (It takes a rare talent to alienate not just the party you're leaving but also the party you're joining, yet Specter's been up to the task.)

Labor, Harkin and his fellow liberals are willing to make changes to EFCA to win the support of their Democratic colleagues, so long as those changes don't perpetuate management's ability to avoid unionization by threatening workers and refusing to negotiate contracts. Accordingly, the scramble is underway for modifications to card check and binding arbitration that still meet labor's goals.

Rather than give the arbitrator the right to impose a contract, some senators, Specter among them, have expressed interest in a form of arbitration used in baseball to settle contract disputes. In a baseball arbitration, the union and management submit their proposed contracts to the arbitrator, who tries to get them to narrow their differences, asks for their final offers and chooses the one he finds more reasonable.

Among the suggested alternatives to card check are proposals to shorten the currently open-ended period between the request for election and the actual vote (today, management can stall a vote almost indefinitely) and to allow workers to vote by mailing their ballots to the National Labor Relations Board in Washington, which (like absentee voting) would preserve the secret ballot but enable workers to escape the regimen of threats they often encounter in the weeks preceding an election.

If, after all the negotiations, Harkin and the unions conclude that the only bill that's enactable in this congressional session is too watered down to protect workers trying to unionize, they would, understandably enough, not want it to go forward. In that case, why don't the Democrats just put the original bill -- card check, binding arbitration and all -- to a vote and see which of their members choose to go on record against protecting those workers? If Specter and his fellow waverers wish to avoid that vote and the wrath it would incur among their onetime union backers, they'd do well to support the alternative provisions that restore Americans' rights in the workplace.

BNSF send two crews to Montana, Wyoming for $15-millon project
May 14, 2009

BNSF is sending two maintenance-of-way crews to Wyoming and Montana in mid-May to replace more than 150,000 ties and almost 35 track miles of rail between Casper, Wyo., and Silesia, Mont. The project is expected to be completed by September and will cost about $15 million.

“Expanding and maintaining our infrastructure along this stretch of track and throughout the system not only allows us to provide customers with efficient and reliable rail service, but it also benefits the overall efficiency of America’s supply chain,” said Dave Freeman, BNSF vice president, engineering.

BNSF expects to spend about $2 billion this year to keep the railway’s infrastructure strong by upgrading technologies and refreshing track, signal systems, structures and freight cars.