

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



NEWS CLIPS

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Have contract, can't furlough

Two court victories over unpaid-leave plans offer hope, precedent to public employees.

Tresa Baldas

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A pair of recent court rulings are giving unions new and potentially potent ammunition against furloughs of public employees.

On Aug. 18, a federal judge struck down a furlough plan in Prince George's County, Md., holding that the plan violated the U.S. Constitution by unilaterally cutting wages guaranteed through collective bargaining. On July 29, a state judge in Hawaii issued a similar ruling, saying a furlough violated the state constitution and criticizing officials for ordering unpaid leave without first negotiating with public employee unions.

Furloughs are the strategy du jour in states and municipalities hard hit by the recession. To date, more than 728,500 public employees in at least 21 states have taken or will soon be forced to take furloughs, according to the National Conference of State Legislatures. If other courts agree, the argument that furloughs illegally ignore union contracts could have wide implications: More than 3 million public employees nationwide are covered by collective-bargaining agreements, according to U.S. Department of Labor statistics.

Already, in furlough battles across the country, word of the Hawaii and Maryland rulings is spreading quickly. Bruce Lerner of Washington's Bredhoff & Kaiser, who represented the Fraternal Order of Police in the Maryland case, said he has received a handful of phone calls from unions that want to see his complaints and arguments. And unions in Ohio and Florida have called the Fraternal Order of Police, expressing interest in resurrecting failed furlough challenges, said a police union official.

In California, where state employees are suing in state court over furloughs ordered by Gov. Arnold Schwarzenegger, Paul E. Harris III, chief counsel of the Service Employees International Union Local 1000 in Sacramento, said he plans to cite the Maryland ruling in upcoming oral and written arguments. "We hope to achieve similar results here," he said.

THEY HAD A CONTRACT

As in the Maryland case, California employees are targeting the furloughs as contract violations. SEIU Local 1000 alleges that state employee furloughs announced in December and July are illegal pay cuts, and that Schwarzenegger used false pretenses to declare a state of emergency so that he could order unnecessary furloughs without prior negotiation. Harris described the Maryland ruling as "persuasive authority" for the California court.

Persuasive maybe, although the ruling must survive on appeal first, said Peter Conrad of New York's Proskauer Rose, who handles labor disputes on behalf of employers. That said, he's not counting on a reversal, and he predicted that unions will use this "to the maximum extent possible."

Unions will have a lot of fodder to use, Lerner said. During oral arguments before the U.S. District Court for the District of Maryland, he compared Prince George's County to a lawyer who loses his job and calls the mortgage company claiming he can't pay his loan, only to get caught later with a huge savings account. Or, in this case, \$97 million in reserve funds that the county could have tapped, said Lerner.

It was a detail that didn't go unnoticed. "[A]lthough the County suggests to the Court that it faced dire circumstances and had no other reasonable alternatives, the record suggests otherwise," Judge Alexander Williams Jr. ruled on Aug. 18. He concluded that county furloughs ran "roughshod" over the unions "who in good faith negotiated a binding contract."

Prince George's County is appealing to the U.S. Court of Appeals for the 4th Circuit. William Wilkins, the former chief judge of that court, has been tapped to represent the county in the appeal. Wilkins, now a partner in the Greenville, S.C., office of Columbia, S.C.-based Nex sen Pruet, declined comment.

MESSAGE: CALL UNION

In Pennsylvania, the fight has a slightly different flavor. Elaine Williams of Philadelphia's Willig, Williams & Davidson will argue on Sept. 16 before the Pennsylvania Supreme Court that, during the summer, the state unlawfully forced thousands of employees to work without paychecks. Pennsylvania's payless paydays grew out of a plan to furlough workers last year because of a budget impasse in the state Legislature. Council 13 of the American Federation of State, County, and Municipal Employees sued, and a state court ruled that the governor could either furlough everyone or require everyone to work without pay until a budget passed.

The ruling prompted the governor this year to order state employees to work without pay. A supplemental appropriations bill was approved earlier this month — everyone has now been paid — but the union still wants the state Supreme Court to declare the payless payday unlawful.

Unions and furloughs were also an issue in a New Jersey case. In April, the state appellate court reached a mixed result, upholding the government's power to initiate furloughs in an economic crisis, but staying a plan for "staggered layoffs." That kept 33,000 members of the New Jersey State Policemen's Benevolent Association from being furloughed.

Police union spokesman Jim Ryan said the Maryland and Hawaii decisions bolster what unions have been saying all along about furloughs: "They undermine the credibility of a collective-bargaining agreement."

Herbert Takahashi of Honolulu's Taka hashi Vasconcellos & Covert, who represented the Hawaii unions in their toppling of the governor's furlough program, said, "Furloughs are — in effect — a reduction in wages, which are a core subject of collective bargaining."

The Hawaii State Teachers Association and the United Public Workers sued Gov. Linda Lingle in state court. Judge Karl Saka moto held that because the state constitution gives public employees the right to collectively bargain, the state cannot make "unilateral changes on matters that are subject to manda tory bargaining." Hawaii is appealing.

Not all unions are crying foul, said lawyers who have helped draft government furlough plans that were not legally challenged. Tim Yeung of the Sacramento office of San Francisco's Renne Sloan Holtzman Sakai said most of his firm's 40 municipal clients have initiated furloughs — negotiated first with the unions — and none have been challenged. The unions "understand that the only alternative to furloughs would be layoffs," he said.

Yeung also doubts the Maryland ruling will affect California cases. "It seemed like the [Maryland] court was trying to second-guess the county's fiscal practices, and that's something the courts just aren't equipped to do," he said.

Zachary Hummel, a partner in the New York office of Bryan Cave, said a third of his public clients have furloughed employees, and none have been sued. He added that each government employer either negotiated the furlough with the union or convinced the union there were no other options. Public employers must make the effort to show "that what you did was a reasonable response to an economic necessity," he said.

U.S. rail traffic: Still down, still improving

August 31, 2009

The Association of American Railroads reported Thursday that U.S. rail traffic "continues to show slight improvement with rail carloadings at their highest level since early March."

Carload traffic for the week ended Aug. 22 totaled 279,478 originated cars, down 16.1% from the corresponding week in 2008. Loadings were down 14.22% in the West and 18.9% in the East.

U.S. intermodal volume totaled 193,207 trailers or containers, down 16.2% from last year. Container volume was off 10.2% and trailer volume was down 38.2%. Total volume for the week ending Aug. 22 was estimated at 29.8 billion ton-miles, down 15.6%.

All 19 freight commodity groups were down except the nonmetallic mineral category, which eked out a 1.3% increase. Declines ranged from 5.7% for petroleum products to 49.3% for metallic ores.

Canadian railroads reported 64,267 originated carloads for the latest week, down 15.3%, and

41,971 trailers or containers, down 19.2% from 2008.

Mexican railroad reported originated volume of 11,461 carloads, down 1.4% from last year, and 6,279 trailers or containers, off 3.1%.

Combined North American rail volume for the first 33 weeks of 2009 on 13 reporting U.S., Canadian, and Mexican railroads totaled 11,063,767 carloads, down 19.6% from last year, and 7,642,421 trailers and containers, down 17.1%.

9/1/2009 MOW

North Carolina DOT, city team up with Class Is to build connector track

Later this month, the North Carolina Department of Transportation (NCDOT), [CSX Transportation](#), Carolina Coastal Railway, [Norfolk Southern Railway](#) and the city of Greenville, N.C., plan to launch construction of a new connector track in Greenville.

The track will be installed between a CSXT line and Carolina Coastal Railway line to provide a direct north-to-east connection for rail traffic moving through downtown Greenville. The connector also will reduce motorists' waiting periods at grade crossings and eliminate "difficult train movements" between Arlington Boulevard and Howell Street, NCDOT officials said in a prepared statement.

The city currently is acquiring necessary right of way for the connector track.

September 2, 2009

Low-Wage Workers Are Often Cheated, Study Says

By [STEVEN GREENHOUSE](#)

Low-wage workers are routinely denied proper overtime pay and are often paid less than the minimum wage, according to a new [study](#) based on a survey of workers in New York, Los Angeles and Chicago.

The study, the most comprehensive examination of wage-law violations in a decade, also found that 68 percent of the workers interviewed had experienced at least one pay-related violation in the previous work week.

"We were all surprised by the high prevalence rate," said [Ruth Milkman](#), one

of the study's authors and a sociology professor at the [University of California](#), Los Angeles, and the [City University of New York](#). The study, to be released on Wednesday, was financed by the Ford, Joyce, Haynes and Russell Sage Foundations.

In surveying 4,387 workers in various low-wage industries, including apparel manufacturing, child care and discount retailing, the researchers found that the typical worker had lost \$51 the previous week through wage violations, out of average weekly earnings of \$339. That translates into a 15 percent loss in pay.

The researchers said one of the most surprising findings was how successful low-wage employers were in pressuring workers not to file for workers' compensation. Only 8 percent of those who suffered serious injuries on the job filed for compensation to pay for medical care and missed days at work stemming from those injuries.

"The conventional wisdom has been that to the extent there were violations, it was confined to a few rogue employers or to especially disadvantaged workers, like undocumented immigrants," said [Nik Theodore](#), an author of the study and a professor of urban planning and policy at the [University of Illinois](#), Chicago. "What our study shows is that this is a widespread phenomenon across the low-wage labor market in the United States."

According to the study, 39 percent of those surveyed were illegal immigrants, 31 percent legal immigrants and 30 percent native-born Americans.

The study found that 26 percent of the workers had been paid less than the minimum wage the week before being surveyed and that one in seven had worked off the clock the previous week. In addition, 76 percent of those who had worked overtime the week before were not paid their proper overtime, the researchers found.

The new study, "Broken Laws, Unprotected Workers," was conducted in the first half of 2008, before the brunt of the recession hit. The median wage of the workers surveyed was \$8.02 an hour — supervisors were not surveyed — with more than three-quarters of those interviewed earning less than \$10 an hour. When the survey was conducted, the minimum wage was \$7.15 in New York State, \$7.50 in Illinois and \$8 in California.

Labor Secretary [Hilda L. Solis](#) responded to the report with an e-mail statement, saying, "There is no excuse for the disregard of federal labor standards — especially those designed to protect the neediest among us." Ms.

Solis said she was in the process of hiring 250 more wage-and-hour investigators. “Today’s report clearly shows we still have a major task before us,” she said.

The study’s authors noted that many low-wage employers comply with wage and labor laws. The [National Federation of Independent Business](#), which represents small-business owners, said it encouraged members “to stay in compliance with state and federal labor laws.”

But many small businesses say they are forced to violate wage laws to remain competitive.

The study found that women were far more likely to suffer minimum wage violations than men, with the highest prevalence among women who were illegal immigrants. Among American-born workers, African-Americans had a violation rate nearly triple that for whites.

“These practices are not just morally reprehensible, but they’re bad for the economy,” said [Annette Bernhardt](#), an author of the study and policy co-director of the [National Employment Law Project](#). “When unscrupulous employers break the law, they’re robbing families of money to put food on the table, they’re robbing communities of spending power and they’re robbing governments of vital tax revenues.”

When the Russell Sage Foundation announced a grant to help finance the survey, it said that low-wage workers were “hard to find” for interviews and that “government compliance surveys shy away from the difficult task of measuring workplace practices beyond the standard wage, benefits and hours questions.”

The report found that 57 percent of workers sampled had not received mandatory pay documents the previous week, which are intended to help make sure pay is legal and accurate. Of workers who receive tips, 12 percent said their employer had stolen some of the tips.

One in five workers reported having lodged a complaint about wages to their employer or trying to form a union in the previous year, and 43 percent of them said they had experienced some form of illegal retaliation, like firing or suspension, the study said.

In instances when workers’ compensation should have been used, the study found, one third of workers injured on the job paid the bills for treatment out of their own pocket and 22 percent used their health insurance. Workers’ compensation insurance paid medical expenses for only 6 percent of the

injured workers surveyed, the researchers found.

Surface trade with Canada and Mexico down 31.5% in year

September 2, 2009

Trade using surface transportation between the U.S. and its NAFTA partners Canada and Mexico was down 31.5% in June 2009 from June 2008, the sixth straight month with a year-to-year decline greater than 27%, according to the Bureau of Transportation Statistics of the U.S. Department of Transportation.

The value of U. S. rail imports dropped 47.2% to \$4.3 billion. Exports declined 40.1% to \$2.7 billion.

Motor carrier imports dropped 26.8% to \$17.9 billion, with exports down 23.9% to \$18.9 billion.

Pipeline imports declined 50.5% to \$3.7 billion, while exports dropped 50.6% to \$219 million.

U.S.–Canada surface transportation trade totaled \$31.0 billion in June, down 36.6% compared to June 2008.

U.S.–Mexico surface transportation trade totaled \$19.7 billion, down 21.8%.

Change To Win, China Trade Unions Sign First Formal Agreement

Reaffirm Commitment to Further Exchanges, Cooperation and Communication

September 2, 2009

WASHINGTON, DC – Change to Win and the All-China Trade Unions (ACFTU) signed an historic agreement during a meeting yesterday in Beijing, China reaffirming both parties commitment to further exchanges, cooperation and communication in the changing global economy. The agreement, signed by Change to Win chair Anna Burger and ACFTU Vice-President Ms. Sun Chunlan, will help build a new generation of solidarity that lifts labor standards, supports workers interests and holds corporations accountable.

“This historic visit brings together two great union federations that share a common vision of advancing workers’ interests in China and around the world,” said Change to Win chair Anna Burger. “By reaffirming our commitment to further exchanges and cooperation, we can help ensure that all workers share in the benefits of the global economy. Our employers are global, our unions must also be global.”

During the meeting, labor leaders discussed next steps following the formal agreement which include: exchanges around creating green jobs in China and the U.S., joint research on global companies operating in the U.S. and China, bringing workers from global companies together to share experiences

with labor's involvement in the economic recovery and practices in organizing, and developing trade policies that will advance workers' interests.

Change to Win unions, which represent six million American workers, share common employers with millions of Chinese workers throughout the service, transportation and industrial sectors. The ACFTU represents 219 million workers in China and has collective bargaining agreements covering 80 percent of the Fortune 500 global companies with operations in China. Those collective bargaining agreements include all Wal-Mart workers, thus recognizing their right to union representation in China -- a right that is denied to Wal-Mart workers in the United States.

U.S. rail carloads at highest level this year

September 4, 2009

The Association of American Railroads reported Thursday that U.S. rail carloadings for the week ended Aug. 29 were at their highest level since the week ended Dec. 13, 2008. Railroads originated 285,580 carloads in the latest week, down 16.2% from the same week in 2008.

U.S. railroad intermodal traffic of 202,553 trailers or containers was down 15.66% from last year. Container volume fell 9.4% and trailer volume dropped 38.7%.

All 19 carload commodity groups were down, with declines ranging from 8.7% for farm products not including grain to 42.1% for metals and metal products.

Canadian railroads reported volume of 65,256 cars for the latest week, down 17.9% from last year, and 43,274 trailers or containers, down 17.2%. Mexican railroads reported originated volume of 12,286 cars, down 18.22%, and 6,446 trailers or containers, off 11%.

Total North American rail volume for the first 34 weeks of 2009 on 13 reporting railroads added up to 11,426,889 carloads, down 19.4% from last year, and 7,894,694 trailers and containers, down 17%.

FEDERAL UNEMPLOYMENT STATISTICS

Friday, September 4, 2009

Employers Cut 216,000 Jobs in August; Unemployment Rate Rises to 9.7 Percent

Unemployment rate was higher than analysts' expectations of 9.5 percent last month.