



# Law *for* Labor

*News that's important to you, from people you're important to.*

## Politics, Organizing, and the Future.

### An interview with Tompkins-Cortland County Building Trades President Dave Marsh

Interview By: Richard D. Furlong

Dave Marsh is a lifelong resident of New York State who comes from a family of six children. He resides outside of Ithaca, with his wife, Carol, and two children, Ryan and Colin.

Dave has been a member of Laborers Local 589 since 1986. In addition, Dave is President of the Tompkins-Cortland County Building Trades Council ("Council"). Holding these positions, Dave is the primary spokesperson for over 2,000 construction workers who labor in the Cortland-Tompkins County area.



Dave Marsh

women to contractors, developers and customers. For those contractors who value hard work and the best skills in the industry, the unionized worker is the best option. Our New York State-certified apprentice programs and our journeyman upgrade training programs are second to none.

#### **Dave, from your perspective as President of the Tompkins-Cortland County Building Trades Council, what do you see as labor's greatest strengths? What about its vulnerabilities?**

The chief strength of the Union craft movement is the ability to supply skilled and hardworking men and

In my view, the chief vulnerability that we face is the lack of legal weapons at our disposal to withstand the attacks of the anti-union contractors, politicians, etc. We are forever hearing about how "union workers are overpaid" and yet people don't seem to make the connection that a contractor's ability to lowball his bid is

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## Workers' Compensation Claims Understanding All You're Entitled To.

By: Keith Williams

When a person is injured or contracts an illness from his or her work activities, s/he is often entitled to receive benefits under the Workers' Compensation Law. An injured worker cannot sue his or her employer. Thus it is important that the worker understand the benefits available under the Workers' Compensation Law. Many workers miss out on benefits that they may be entitled to because they are simply uninformed. Generally, the benefits in a Workers' Compensation claim fall into two categories - medical treatment and lost wages.

### LOST WAGE BENEFITS

Most people think that a worker who is unable to work due to an injury or illness is automatically entitled to the maximum rate of compensation or two-thirds of his/her average weekly wage. While this is sometimes the case, often it is not. The Workers' Compensation Law provides for many different types and levels of wage reimbursement to an injured or ill worker.

### How do they compute my lost wage benefits?

First, all lost wage claims are based on the worker's average weekly wage for the year before his or her injury.

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# Workers' Compensation Claims

## Understanding All You're Entitled To.

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The average weekly wage of an injured worker is computed using his/her earnings over the entire year prior to the injury or the onset of the worker's illness. Teachers, outside workers, and other employees who have seasonal breaks in their work schedule cannot be assured that their benefits will be measured against their gross weekly wages when they are working. Also all wages you earn for the preceding year apply, including lost time reimbursement from the union. The second factor that is reviewed in determining lost wage benefits is the medical report showing disability. Often a doctor will state that a person cannot perform their own job, but will suggest that s/he is able to perform some light duty work.

### Can I get comp and unemployment benefits at the same time?

A common misconception is that a person is entitled to the total disability rate if s/he cannot do his/her own job. If there are any jobs that a person can perform (even for a different company) then the injured worker will likely only collect a partial rate of compensation.

However, if this is the case, that person may be entitled to unemployment benefits as well as partial compensation benefits. Is the person ready, willing and able to work? Is s/he looking for a job so as to meet the criteria for unemployment and workers' compensation benefits? If so, both benefits can be claimed. If you are also receiving sickness and accident benefits check with your union to find out if unemployment benefits are also allowed.

### What if I return to work but make less money due to my injury?

Frequently, a person is able to return to work in a light duty status but must take a lower paying job or miss out on overtime hours because of medical restrictions. If that person loses money because of his/her restrictions (as compared to the average wage before injury) s/he may be entitled to two-thirds of this amount as compensation.

For example, if a worker who earned \$900.00 per week before an injury is partially disabled, and the employer brings the individual back to work making only \$600.00 per week because of medical restrictions, the worker would be entitled to two thirds of the difference in compensation or \$200 per week ( $\$900 - 600 = 300 \times 2/3 = 200$ ). This benefit encourages employers to take injured workers back at light

duty positions and at the same time does not penalize a worker for returning to work as soon as medically possible. Additionally, since Workers' Compensation benefits are not taxable, the injured worker is taking home approximately the same amount that s/he was making before the injury.

### MEDICAL BENEFITS

#### Can I choose my own doctor?

Most workers know that they are entitled to receive medical care when they get hurt at work. However many don't realize that they have the right to see a doctor of their own choosing, as long as that health care provider is licensed to treat Workers' Compensation patients. Often an employer will tell an injured worker who to see, but this is improper unless the worker is part of a collective bargaining agreement that specifically limits the choice of medical care. This would be called a Preferred Provider Organization (PPO). Remember, the only way for a represented employer to use a PPO is for it to be negotiated by your union. Additionally, most injured

workers do not realize that they are entitled to get a second opinion paid for under the Workers' Compensation Law.

#### Can I get reimbursed for mileage or prescriptions?

Another benefit commonly overlooked by injured workers is the right to receive reimbursement for mileage traveled to their health care providers. Injured workers are also entitled to reimbursement for co-pays or direct payments that they may make for medical care related to their injury. The current reimbursement rate is for trips to health care providers. With a quick call to the workers' compensation department at Lipsitz Green Scime Cambria your members can receive the proper reimbursement forms for their claim.

Many workers miss out on benefits that they may be entitled to because they are just uninformed. The attorneys, representatives and staff of Lipsitz Green Scime Cambria's Workers' Compensation department assist thousands of injured workers in their claims every year. Often a simple phone call can make the difference to an injured worker who is struggling to make it through the difficult times after an injury or illness.

Keith Williams is a licensed workers' compensation representative, focused on the representation of injured workers. He can be reached at (716) 849-1313, or [ktwilliams@lglaw.com](mailto:ktwilliams@lglaw.com)



**“workers miss out on benefits that they may be entitled to because they are simply uninformed.”**

# Pension Protection Act of 2006

## Important Information on the New Laws

By: Mark Stulmaker

The Pension Protection Act of 2006 (“PPA”) makes sweeping changes to the laws regulating retirement plans, most significantly to laws regulating the funding of multi-employer.

Prior to the start of the 2008 Plan Year, the fund’s actuary will be required to certify whether the fund is in an endangered or critical status. If the fund is certified as endangered or critical, the trustees must notify the PBGC, the DOL, participants and beneficiaries, and the bargaining parties within 30 days. The notice for a fund in critical status must also advise the participants that subsidized retirement benefits for those not in pay status might be reduced.

Generally, a fund is in endangered status if it is less than 80% funded or it has an accumulated funding deficiency in the current plan year or is projected to have one in succeeding plan years. A fund meeting both tests is considered seriously endangered.

A fund will be considered in critical status if it is less than 65% funded and is projected to have a funding deficiency in one of the next four plan years.

Endangered pension funds must adopt a “funding improvement plan,” and critical funds must adopt a “rehabilitation plan” before the 331st day of the plan year and then communicate the plan to the bargaining parties within 30 days after its adoption.

A funding plan for an endangered pension fund must increase the funding percentage by one-third of the difference between the current funded percentage and 100% over a ten-year period.

A funding plan for seriously endangered pension funds must increase the funding percentage by 20% over a fifteen-year period.

If the bargaining parties are unable to agree on a funding improvement plan, a default option kicks in with reductions in future accruals to the maximum extent permitted and increased contribution rates to the extent neces-

sary to meet the funding target.

A rehabilitation plan for pension funds in critical status must bring the fund out of critical status within ten years. Critical plans would be able to reduce or eliminate subsidized early retirement benefits for participants who had not retired before the trustees noticed that the plan



was in critical status, as well as benefit increases effective within five years of the fund attaining critical status.

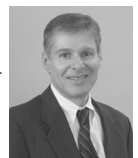
If the bargaining parties do not reach an agreement for a rehabilitation plan, the default option is triggered which again would entail maximum reductions in future accruals and needed contribution increases.

Effective immediately, the PPA permits contributions to defined contribution plans up to six percent of participant compensation, even when combined with a defined benefit plan. The combined limit would be calculated without regard to defined benefit plans effective in 2008.

Also, the new law permanently eliminates the 100% of compensation limit on benefits.

In an upcoming article, we will deal with changes to 401(k) and profit sharing plans brought about by the PPA.

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**“ Endangered pension funds must adopt a ‘funding improvement plan’ ”**

## Labor Limelight: Dave Marsh

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directly tied to his willingness to drive the wages and benefits of his workers through the floor. Far too often our social and political policies reward those who “offer low bids” without realizing that there is a price to be paid for that “low bid.”

**Within the AFL-CIO, there has been a historic debate about whether to prioritize political/legal reform or organizing. What is your take?**

This is a tough question for me as I sort of have one foot in both camps. However, given the historic ability of the AFL-CIO to bring about political and legal reforms and given the stark difficulties that unions have had with respect to organizing, I think it makes more sense to stick with the program that has led to the greatest amount of success, namely gaining political and legal reforms. This is the position of my International Union and it is a position that I share.

**“The chief role of the unions is to act as a catalyst, as an educator...”**

**When you talk to non-union workers, what do they tell you? What do you say to them?**

What I hear from non-union workers is that they do desire to work union. They do desire to have the lifestyle that comes with working union but they are afraid that if they attempt to organize their place of work, they will be exposed and then fired. This is a real fear and I understand it. I try to assure non-union workers that they can organize, that they have legal rights under the law that can be exercised if the contractor retaliates and that there comes a point in everyone’s life when it is necessary to stand up even in the face of great odds. I try to give non-union workers a comfort level and sometimes this involves speaking with them in areas away from the job-site and the boss. But I also feel compelled to tell workers that there are no guarantees and that the Labor Board doesn’t always work the way that it should. In the end, I view my role as being there to help workers decide what is in their best interests and to give them the tools to achieve their goals.

**Construction unions have been criticized for being exclusionary toward women and minorities. What steps have Local 589 and the Building Trades Council taken to reach out to those brothers and sisters who historically have been left behind?**

Both Local 589 and the Building Trades Council have recognized that there does need to be improvement with re-

spect to the inclusion of women and minorities. So in terms of bringing in new members, there are special efforts made to enroll women and minorities in our state certified apprentice programs. Above and beyond that, the Building Trades Council has partnered with management to form a Skilled Trades Diversity Council. The Skilled Trades Diversity Council, as its name suggests, aggressively seeks to recruit women and minorities into the craft unions. The Federal Mediation and Conciliation Service recently granted the Skilled Trades Diversity

Council \$120,000 to be utilized over an 18-month period. The purpose of the grant is to increase job opportunities among disenfranchised and dispossessed groups of workers. The grant will help the Trades reach out to contractors so that they become willing participants in the hiring of women and minorities. It will also help train potential apprentices with respect to skills that they will need to succeed in the various apprentice programs. The Skilled Trades Diversity Council also holds a careers and construction day event each year. This event brings in several hundred individuals who examine what is available with respect to training, and what is the nature of construction work. So, we are making progress but indeed we have a ways to go.

**The war in Iraq. Hurricane Katrina. Bought and paid for politicians. The disappearance of the middle class. Secret wiretapping by the President. These are not good times. What role do you see the labor movement playing in putting the United States back together?**

The chief role of the unions is to act as a catalyst, as an educator, and to create a positive vision of the future. This is particularly true given the policies of the current administration which, quite frankly, can most charitably be described as disastrous. When I talk to workers, I am sometimes amazed that they don’t vote their own self-interests when they enter the voting booth. Often they vote with respect to “wedge issues.” But I think that people are finally waking up and beginning to value good jobs, and they are alarmed at where the country is going. Once again, the labor movement’s role in setting the ship straight is to educate people that there can be a different way, but only if people are brave enough to stand up to the Cheney/Fox News crowd who are tearing our country

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# Labor Limelight: Dave Marsh

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apart. We have bottomed-out, I am convinced, and now it is time to make gains.

## How does your position as a labor leader bring you joy? Frustration? Explain.

Quite simply, helping people brings me the greatest joy. To be able to help people both in their professional and personal lives and to use those skills with which I have been blessed to make people's lives better is what brings me joy on a personal level.

Probably my chief frustration is not being able to accomplish everything that I wish to accomplish during the

course of the day. I try to map out a fairly aggressive agenda, on a daily basis and of course like most people I'll be lucky to get half of it done. This can be frustrating but I realize that my frustration should be tempered by the knowledge that I've given it my best effort.

In the end, I really love this job, I love representing working people and the joys that I feel far outweigh any frustrations.

Richard D. Furlong serves as special counsel, practicing in the areas of labor relations, union administration matters, and other labor advocacy matters. He can be reached at (716) 849-1333, ext. 451 or [rfurlong@lglaw.com](mailto:rfurlong@lglaw.com)



# Beware of Medication Errors

## A far too common danger.

By: Laraine Kelley

This month the government's Institute of Medicine issued a report warning that medication errors injure more than 1.5 million Americans each year. Even more shocking is the report's finding that **on average, a hospitalized patient is subject to at least one medication error per day.** These findings follow prior reports by the Institute of Medicine which acknowledged that **"as many as 98,000 Americans die in hospitals each year as a result of medical errors ... [which] exceeds deaths attributable to motor vehicle accidents (43,458), breast cancer (42,297) or AIDS (16,516)".** Add to that errors occurring in outpatient clinics, retail pharmacies, nursing homes and home care settings and you can see that poor medical care can be harmful to your health.



Medical mistakes frequently include errors or delays in diagnosis, mistakes in the performance of an operation, procedure or test and the most common - medication mistakes - which alone kill 7000 people each year. That is more than the number of people who die from workplace accidents. In fact, the Institute of Medicine has concluded that health care is a decade or more behind other high-risk industries in its attention to ensuring basic safety and has publicly stated: "(t)hese stunningly high rates of medical error - resulting in deaths, permanent disability, and unnecessary suffering - are simply unacceptable...."

To protect themselves, patients and their families must get involved. You must ask questions of doctors, nurses, residents, interns, pharmacists and anyone who is a part

of the care and treatment plan. The internet can provide patients with good sources of information on all types of medical issues. Getting information concerning the hospital and the doctors you have chosen is also important. The old saying "an ounce of prevention outweighs a pound of cure" can be a good reminder that when it comes to medical care and treatment, asking lots of questions and gathering as much knowledge as possible can help prevent medical errors.

If you or a family member believes they have been harmed due to a medical error, our medical malpractice attorneys, nurse/paralegals and medical experts can provide answers. Laraine Kelley heads our medical malpractice group and with more than 20 years of experience in this field, her medical and legal knowledge is invaluable in assessing what went wrong, determining if malpractice has occurred and fighting to get the answers and the benefits due an injured person or their family.

Laraine Kelley is a senior partner, practicing the areas of medical malpractice. She can be reached at (716) 849-1333, ext. 352 or [lkelly@lglaw.com](mailto:lkelly@lglaw.com)



# New Addition to the Labor Law Team

## John Lichtenthal joins Lipsitz Green Scime Cambria LLP

Lipsitz Green Scime Cambria LLP is proud to announce the addition of John M. Lichtenthal to the firm's Labor Department.

John comes to Lipsitz Green with experience in labor advocacy, having worked with the union-side labor law firm of Satter & Andrews in Syracuse, NY.

Advocating for the rights of union members in the workplace is something John was doing even before entering the legal profession. As a teacher at Niagara Wheatfield High School for five years - John served as a content specialist and as a union representative for the Niagara Wheatfield Teachers Association, an affiliate of New York State United Teachers and the American Federation of Teachers, AFL-CIO.

John graduated from UB Law School with honors and experience in trial advocacy. He was published in the UB Human Rights Law Review for his article, "The Patriot

Act and Bush's Military Tribunals: Effective Enforcement or Attacks on Civil Liberties?"

Outside of practicing law, John has recently taken an active role in some of the regions political groups. He is a member of the Working Families Party and becoming actively involved with the Council for Economic Justice.



If you would like to learn more about John or the service Lipsitz Green's labor law department provides - you can contact John at [jlichtenthal@lglaw.com](mailto:jlichtenthal@lglaw.com) or visit the firm's website at [www.lglaw.com](http://www.lglaw.com).

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# Solidarity School begins.

Free courses designed for union members

On January 10, 2007 - the doors opened to the Richard Lipsitz, Sr. Solidarity School. The school offers a series of courses - free of charge - for all union members. The program's curriculum is specifically designed to empower union members and union leaders with detailed "know-how" in many essential areas of labor law and union administration.



*Attendees of Solidarity School benefit from the interactive nature of each class - getting pinpoint answers to their specific questions on the topics being explored.*

Each course will be taught by highly experienced members of the Lipsitz Green Scime Cambria Labor Department - including Robert Boreanaz, Richard Furlong, Eugene Salisbury, Richard Lipsitz, Sr., John Lichtenthal, and Keith Williams.

Below, you will find detailed descriptions of the school's course offerings as well as specific dates for each course. One course will be taught each month. Courses are taught over two class sessions. The sessions take place on the 2nd and 4th Wednesday of each month. All classes will be taught at the Lipsitz Green Scime Cambria office—located at 585 Aero Drive in Cheektowaga, NY. All classes begin at 5:30 p.m. and end at 7:30 p.m. Those who attend will enjoy refreshments, which are served at each class.

## Winning at the NLRB

Tired of having your NLRB charges go nowhere? This course will cover strategies proven to increase unions' chances of success at the NLRB. This course is not about this case or that case; rather, it is about winning tactics and how to make the rules work for you. (January 10<sup>th</sup> and 24<sup>th</sup>)

## Arbitrations: How to prepare, present, and win the case

Whether you are a rookie or seasoned veteran of the arbitration process - this course will make you an all-pro. We'll teach you how to analyze, prepare, and present arbitration cases - whether they include discipline or contract interpretation issues. We'll cover everything from framing the issue, pre-hearing information requests, the rules of evidence, issuing subpoenas, examining witnesses and writing the post-hearing brief. Mock hearings and guest presentations from prominent arbitrators will be part of the curriculum. (February 14<sup>th</sup> and 28<sup>th</sup>)

## Workplace Safety & Workers' Compensation

The plight of the injured worker in New York is a disgrace. Our seasoned Workers' Compensation lawyers and Licensed Representatives will explain the rules and strategies that will enhance your ability to help the injured worker in her/his quest for a just award. (March 14<sup>th</sup> and 28<sup>th</sup>)

## Effective Organizing

Organizing is about power. It's about timing. It's about knowing your opponent and lastly - it's about being completely conversant with the applicable legal rules. By the end of this course, there won't be a union-buster/lawyer around who will be able to out maneuver you and your organizing committee. (April 11<sup>th</sup> and 25<sup>th</sup>)

## Offensive Bargaining

Faced with an employer that thinks workers make too much? This course will teach you how to turn the tables and go on the offensive during bargaining. Tactics both at the bargaining table and away from the table will be covered in depth. (May 16<sup>th</sup> and 30<sup>th</sup>)



*Richard Lipsitz, Sr. shares his insight and experiences with a Solidarity School class.*



Lipsitz Green  
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## *What's Inside?*

### News & Information for The Labor Community Including:

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- **Solidarity School:** Free courses specifically designed for union members

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