

BLET Comments to OSHA WBAC, 1/29/13

My name is Vincent Verna. I am Director of Regulatory Affairs for the Brotherhood of Locomotive Engineers and Trainmen, which is a Division of the Teamsters Rail Conference.

On behalf of the BLET, I welcome the opportunity to address the Committee on your commencement of work on issues relating to OSHA's Whistleblower Laws pursuant to Federal Railroad Safety Act at 49 U.S.C. Section 20109.

Becoming a whistleblower is a hard decision for our members to make. A culture of harassment and intimidation by rail carrier management has continued, although it is being weakened daily thanks to OSHA's enforcement measures. As a result, we can point to many examples where the law's protections have benefited our members who have reported unsafe conditions or actions.

In accordance with Section 20109, an employee covered by The Federal Railroad Safety Act is protected from retaliation for engaging in certain protected activities, including:

Providing information to, causing information to be provided to, or otherwise assisting in an investigation by a federal, state or local regulatory or law enforcement agency, any member or committee of Congress, or the railroad about an alleged violation of any federal law, rule, or regulation related to railroad safety and security, or about gross fraud, waste or abuse of funds intended for railroad safety or security;

Refusing to violate or assist in the violation of any Federal law, rule, or regulation related to railroad safety or security;

Filing or testifying in a proceeding under one of these laws or regulations;
Notifying or attempting to notify the railroad or the Secretary of Transportation of a work-related personal injury or illness;

Reporting hazardous safety or security conditions, refusing to work under certain conditions, or refusing to authorize the use of any safety- or security-related equipment, track or structures under certain circumstances when the employee believes the equipment, track, or structures are in a hazardous

safety or security condition; and

Requesting medical or first-aid treatment or following orders or a treatment plan of a treating physician.

Despite these protections, whistleblowing remains an unknown option for far too many BLET members. Our goal is to foster a railroad culture where whistleblowing becomes a standard option in our safety toolkit. When one of our members is presented with an unsafe condition at work, they should never have to think twice about whether it is a good idea to report or not due to potential retaliation by the railroad.

In an effort to reduce unsafe conditions, railroad management should commend whistleblowers as early warning systems who create a safer workplace. A robust system is needed where the messenger is rewarded rather than punished, and where reporting unsafe conditions or actions is seen as routine rather than an act of courage that puts your job on the line. While we believe the law provides our members with excellent protections, the implementation and enforcement of the law, as well as education about the laws protections, remain a mystery to the BLET members who should share full enjoyment of its benefits.

The BLET congratulates and applauds the members of the Whistleblower Protection Advisory Committee and your willingness to work towards these ends. The BLET is open to assist you in providing our members with the law's protections whenever it is necessary to do so.

Thank you.

BMWED Comments to OSHA WBAC, 1/29/13

Hello. My name is Rick Inclima, Safety Director for the Brotherhood of Maintenance of Way Employees Division of the Teamster Rail Conference. You will also hear today from our Rail Conference partner, the Brotherhood of Locomotive Engineers and Trainmen.

The two rail unions of the Teamster Rail Conference, along with ten other national rail labor unions, collectively represent 165,000 railroad workers covered by the Federal Railroad Safety Act, Section 20109 Whistleblower provisions.

We congratulate all of you for your appointment to the WPAC. The BMWED and the Teamster Rail Conference look forward to working with you to improve FRSA enforcement and end the persistent pattern of management intimidation against employees not to report unsafe conditions, accidents, and on-the-job injuries.

I want to offer my assistance to help you understand an industry that is very much outside the norms of most commercial enterprises. For example, few people know that the railroad industry has its own labor laws (RLA), is not generally governed by usual environmental laws or antitrust laws, is not subject to the worker's compensation system, is not covered by Social Security, and many other differences.

For instance, virtually every single on-the-job injury is met with a formal investigation, where the railroad is judge, jury and jailer. In over 99.9% of these investigations, the railroad employee is found guilty of nefarious charges such as "inattentiveness", "not being careful," or other similar charges. Lost time, up to and including dismissal, is the penalty. Railroad workers know this, and they are often intimidated not to report an on-job injury due to the certainty that they will be charged and disciplined or dismissed if they do report.

The BMWED has had the genuine pleasure of working with Dr. David Michaels, Richard Fairfax, the National Directors of the Whistleblower Office and their staff, Area Directors, Solicitors -- even to the level of Field Investigators. With the help of these able and committed people, we have made some progress, but much more needs to be done.

There are still substantial changes that need to be made in the rail industry, and it will be hard work against well financed and entrenched railroad managers who truly believe that retaliation and intimidation are important tools for profitability and control over their workers. 150 years of ingrained culture will not be changed by a few WB merit findings. It will take continued effort and determination, and the BMWED is willing and able to help OSHA and this Committee in this long-overdue effort.

We also welcome the opportunity to work with the railroads to address some of these issues, as we have done with a signed safety agreement between BMWED and Union Pacific Railroad. The "safety bypass" agreement with UPRR has greatly reduced whistleblower cases and discipline investigations against BMWED members on the UPRR. Under the bypass agreement, BMWED productivity is up, injuries are down, whistleblower cases are down, and joint root-cause analysis by a Labor/Management committee results in remediation and abatement of hazards. BMWED believes this successful program could be a model for the industry.

OSHA has also made great strides in the area of FRSA enforcement, but there is room for improvement, both in policy-making and in the management of lower level employees. We must guard against investigators deferring to railroad disciplinary investigations where the carrier is always judge, jury and jailer. We must improve the training of OSHA investigators and give them the support and resources required to do their jobs in a timely and thorough fashion. And we must find ways to improve uniformity in the application of the law among the various OSHA Regions.

BMWED and the Teamster Rail Conference look forward to open and honest dialogue with all of you. We remain at your disposal and will assist this committee in any way possible, formally and informally. When we, together, get it 'right', not only do rail workers get the protection they so desperately need, the public and our communities are protected through prevention of catastrophic railroad accidents.

Thank you all for your willingness to do this hard work. We offer our unique knowledge and expertise to assist the committee in the critical role you will play in improving the fairness, efficiency and transparency of whistleblower investigations. Thank you!