STATEMENT OF
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SENATE SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY AND SECURITY
ON
RAIL SAFETY REAUTHORIZATION

May 22, 2007

Chairman Lautenberg, Senator Smith, and members of the Subcommittee, let me first thank you for the opportunity to testify this morning and to present the views and concerns of transportation workers as you embark on efforts to reauthorize the federal rail safety program. As this Committee knows, the Transportation Trades Department, AFL-CIO (TTD) consists of 32 member unions in all modes of transportation, including those that represent hundreds of thousands of rail workers in the freight, passenger and commuter sectors. There is no question that we have a vested interest in the topic of today's hearing and, in fact, have joined with you and other members of this Committee in pursuit of policies that will enhance the safety and security of this critical industry.

The workers who operate and maintain our nation's rail system and equipment are critical to the safe and efficient movement of goods and people throughout our country. But for their dedication and professionalism, commerce in this country would come to an immediate standstill. Yet, for more than a decade the safety concerns of rail workers have been ignored in the legislative process as the railroad lobby has stonewalled every attempt to update our rail safety laws. It is long-past time to move meaningful rail safety legislation.

As we talk about rail safety initiatives, it is important to recognize that we are not dealing with an industry that can claim it does not have the resources to comply with common-sense safety directives. The freight railroads have pocketed $25 billion in profits over the past six years according to their own annual reports. Yet, this same railroad industry has effectively blocked rail safety legislation since the last reauthorization bill expired in 1998.

Let me mention of a few specific areas of concern that rail labor has advocated for years and place the need for rail safety authorization in some context for the Subcommittee.[1] I should also note that House Transportation and Infrastructure Committee Chair Jim Oberstar (D-MN) and

[1] Attached are two documents: "Safety Proposals by the Railroad Operating Crews," submitted by the United Transportation Union (UTU) and testimony to the House Railroads, Pipelines and Hazardous Materials Subcommittee by the Brotherhood of Railroad Signalmen (BRS).

Railroads Subcommittee Chair Corrine Brown (D-FL) have introduced a strong rail safety bill, H.R. 2095, which addresses many of these issues and which we have endorsed.

Reporting and Employee Protections

First, the railroad industry can never be safe if employees are intimidated and harassed when they report accidents, injuries and safety problems. Our members continue to face retribution, harassment and intimidation for reporting accidents and potential safety and security problems. As I have reported to this Committee before, there is a pervasive culture in the railroad industry that tamps down reporting. In the railroads' quest for Harriman safety awards and glowing safety reports, in reality, safety is compromised. Workers are routinely forced into "team" reporting where groups of workers are rewarded for filing no injury reports in a given time period. This means that when a worker severs a finger, for example, he may forego treatment or face pressure from his team – a convenient way for management to use co-workers to do their intimidating for them.

Safety measures in the railroad industry are based on FRA's data collection from accident and incident reports. Since workers are so soundly and routinely discouraged from actually submitting reports, the FRA's data is inherently flawed. Likewise, rules, regulations, penalties and fines that are based on accident and incident reports are misaligned as well.

Workers should not have to choose between job security and the security and safety of the rail transportation system – yet that is what is happening today. The stories I hear from members are shocking – yet are common. Members injured on the job are denied medical care until company representatives arrive on the scene and then convinced by the injured worker they need urgent care. They are accompanied to the hospital or doctor by supervisors. Supervisors "remind" injured workers that taking a prescription drug would make the case reportable to the FRA. We have reams of paper documenting harassment and intimidation of workers with respect to accident and injury reporting. It is a pervasive problem in the industry that has gone unchecked for too long and must be addressed by Congress.

Strong whistleblower language is key to improving rail safety. Clearly, if Congress can find the will to protect those who report financial security problems as it did in the Sarbanes-Oxley Act, the same should be expected for rail workers. We were disappointed that the Administration failed to recognize the need for whistleblower protections for workers in its bill, but are pleased that the Oberstar-Brown bill includes strong whistleblower provisions. We also believe the section in H.R. 2095 assuring injured workers of prompt medical attention is important, and we support its inclusion your bill.

Fatigue

It is well documented that fatigue is a factor in many rail accidents. The catastrophe in Macdona, Texas that resulted in three deaths should have been a wake up call. According to the National Transportation Safety Board (NTSB), the probable cause of that accident was train crew fatigue. And at the core of the issue were Union Pacific's train crew scheduling practices. With

record profits and an overloaded system, it is unconscionable that the railroad industry refuses to hire the workers they need and instead make employees work dangerously long hours.

Operating crews often put in 12-hour days, then have to wait on their train “in limbo” for hours more until a replacement crew arrives, and then must return to work 10 hours later (or face retribution from their employer). Limbo time refers to the time consumed between completion of the maximum allowable 12-hour shift and the time when an employee is completely released from service. The railroads have taken advantage of an erroneous interpretation of the hours of service regulations and now regularly compel crews to remain at the work place to guard stationary trains until a relief crew is available for service. This "relieved but not released" status means workers are forced to remain on duty for hours and hours after completing a 12-hour shift. The railroads will tell you that eliminating limbo time will create impossible scheduling problems, but let’s be clear: the reason eliminating limbo time is problematic for the railroads is because it has become a major component of their routine scheduling practices. Limbo time was not a problem prior to the Supreme Court decision in 1996 (which held that time waiting for deadhead transportation is limbo time and therefore neither time on duty or time off duty). Eliminating limbo time in its entirety is the only meaningful way to end its routine abuse.

For signal workers, the manipulation of hours of service has become commonplace. While the 12-hour law applies to signal employees, there is an exception that allows employees to work up to four additional hours "when an 'actual emergency' exists and the work of the employee is related to the emergency." Railroads have exploited this exception to the extent that now almost all signal work is classified as an emergency. Signal employees routinely work 16-hour days.

When the Hours of Service (HOS) Act was expanded to include signalmen in 1976, it was intended to be a 12-hour law. And, it should be noted, that is how the railroads originally applied the law. If, for example, signal personnel were working on a signal problem and were approaching the 12-hour work limit they would inform their supervisor and the supervisor would make a decision if the individual would finish the work within the time limit, or if another employee would be called to finish the repair work. However, through gradual “creep” by the railroads the law has become a 16-hour law. Signal employees today are instructed to work up until the 16-hour limit before they call for any relief personnel. In some cases, the railroads authorize outright violation of the HOS Act and order their signal employees to continue working until they are finished with the repair work.

Of greater concern, is that employees can be required to work 20 hours in a 24-hour period without adequate rest. Let me illustrate a typical duty time example for you: on Sunday evening a signalman goes to sleep at 9:00 p.m. and awakens at 5:00 a.m. to arrive for his regular Monday shift of 7:00 a.m. to 3:30 p.m. Under current law, at 3:30 p.m. his “rest” period starts. At 11:30 p.m. he is considered fully rested and a new 24-hour clock begins, despite the fact that he may have just gone to sleep at 10:00 p.m. After less than two hours of sleep he then receives a call to work at 12:00 a.m. on Tuesday. He works four additional hours and is finished with the trouble call at 4:00 a.m. He then travels home and has to return for his regular shift at 7:00 a.m. The cumulative effect of the law on the individual is that he is allowed to work a total of 20 hours of service within a 32-hour period without rest. You can imagine the situation exacerbated further when the railroads tack on their additional four “emergency” hours. The HOS Act should be

amended to require that employees performing signal work receive at least 8 hours of rest during a 24-hour period.

Furthermore, scheduling continues to be a major problem for railroads and their employees. Unless employees know in advance what time they must report to work, they cannot properly prepare with adequate rest. Our railroads operate on a continuous schedule, 24 hours a day, 7 days a week from coast to coast. Rail workers do not have typical 9 to 5 work hours. However, with the technology available today there is no reason why every rail worker cannot know his or her schedule in advance and be able to plan (i.e., rest, family time, personal time, commute time, etc.) accordingly.

Each rail carrier has an information delivery system which is commonly referred to as a "lineup" that is used to advise crews who are subject to call 24/7 regarding their status. Our members constantly complain of problems with these "lineups." It is absolutely essential that employees have early and reliable information about the date and time when they will be required to report for duty. Moreover, workers' rest time should not be interrupted by communications from their employers.

Adequately addressing the fatigue issue will require collaboration and cooperation as do all human factor issues in our industry. Having said that, we are committed to finding solutions to make our railroad safer and believe that there are several common-sense fixes that can be addressed immediately. The elimination of limbo time is essential. Guaranteed time off and shortened work days will result in better rested, better prepared and more efficient employees.

Training

The current training structure for rail workers is woefully inadequate. Despite the industry's claim that it will need to hire 80,000 more workers just to maintain the current movement of freight, it continues to ask its workers to do more with less. Industry leaders will tell you about their railroads' extensive training programs and detailed security plans. Let me tell you what rail workers – the workers who move trains, fix track, maintain grade crossing signals, repair train cars and work on-board – are telling me. I hear first hand about an overworked, understaffed workforce that is ill-equipped to manage the capacity crunch facing our railroad system.

New hires have not kept pace with retirements in our aging workforce. As a result, new hires are commonly steered through shortened, one-size-fits-all training programs. Despite the hype you will hear about new state-of-the art training centers, our members continue to be frustrated by inadequate training programs. We know from reports in the field and exit interviews that new employees are resigning and leaving the industry because they are dissatisfied with the quality of their training, uncertain of their skills and uncomfortable with what they are asked to do with limited support.

For both operating and on-board crafts as well as maintenance workers, training is largely left to peer-to-peer training. As the workforce retires, critical "institutional" knowledge is lost. Coupled with limited classroom training and virtually no on-the-job training requirements, workers are entering the field with very little experience and little oversight. This is hardly a

recipe for safe and stable operations. Not surprisingly, the Administration's bill did not address the need for a better trained and more prepared workforce. We urge you to do better and provide, at minimum, basic training standards for all class and crafts of employees.

Similarly, certification requirements for safety-sensitive work groups are needed. Certification provides important qualification standards for rail workers. To ensure accountability for the safe operation and maintenance of railroad equipment and facilities, carmen, conductors, mechanics, signalmen and other safety-sensitive personnel should be certified. Furthermore, any train that carries hazardous material should be staffed by workers certified in hazard identification, health effects and first response. Such training and certification should obviously also apply to emergency and first responders such as track and signal employees.

Track Safety

We anticipate that your rail safety agenda will include a myriad of changes to improve track safety and the safety of rail workers and communities. Of the many improvements related to track safety that are of concern to rail labor, let me mention just a few today.

Non-signaled, or "dark territory" refers to movement of trains over track without signals. Trains run through dark territory under the direction of a dispatcher but without the safety redundancies of switch monitors, block protection, or broken rail detection. Signal systems are affordable, relatively low-tech technologies that save lives. Unfortunately, the rail industry routinely fails to properly maintain signal systems and, in fact, often petitions the FRA to waive signal requirements for large areas of track.

The tragedy in Graniteville, South Carolina occurred in dark territory. A basic signal system would have noted that the hand-thrown switch was not properly lined and the train would have had a red signal to stop. Nine people died in Graniteville (including the train engineer who was not properly trained in hazmat evacuation procedures). Signal systems save lives when they are present and maintained properly. The NTSB has been clear in its recommendations in this area. Until the railroads commit to install adequate signal technology throughout the entire rail system, the NTSB recommendations are vital. Moreover, rail labor is adamant that petitions to remove signal systems and increase dark territory in our rail system be rejected.

Technological advances are important tools in creating a safer rail network. Rail labor has welcomed and adapted to technological changes over the years. The implementation of positive train control (PTC) systems is on the NTSB's most wanted list of transportation safety improvements. Rail labor has partnered with the FRA and others through the Railroad Safety Advisory Committee (RSAC) process to address PTC in order to prevent train collisions and over-speed accidents. We have been very supportive of developments in this area.

However, notwithstanding technological advancements, including PTC, we oppose single person operation of rail locomotives. The responsibilities of a railroad to operate safely over public crossings, to inspect the moving train, to open public crossings quickly when stopped, and to interact with emergency responders as situations warrant cannot be address by PTC, and were

not designed to do so. Railroads that are intent on operating trains with a single individual are ignoring their responsibility to their employees, local communities, local emergency responders and the general public.

Oversight

A qualified, well-trained and adequately staffed inspector workforce is critical to the safety of our nation's rails. To that end, rail labor notes that the current level of staffing at the FRA is woefully inadequate. Currently each FRA track inspector is responsible for over 500 miles of track. Current regulations call for a minimum of two track inspections a week. Understanding that track inspection is time-consuming, labor-intensive work it is impossible to expect the current inspector workforce to actually inspect all of the lines they are tasked to oversee. More inspectors not only will increase the safety of our railroads, but an increased presence on the railroads will have the added benefit of discouraging trespassers and those intent on creating havoc on the railroad.

As the General Accounting Office (GAO) has reported, there are myriad problems with safety oversight by the FRA. Because the number of FRA and state inspectors is small relative to the size of railroad operations, FRA inspections can only cover 0.2 percent of railroad operations.[2] When safety problems are found during that very small number of inspections (about 3 percent in 2005), the FRA does not measure the extent to which the identified safety problems have been corrected.[3] As I mentioned before, rail companies are making money hand over fist, and even the GAO states that it is not clear whether the number of civil penalties issued, or their amounts, are having the desired effect in improving compliance.[4]

Even the most robust safety rules are meaningless if not fully enforced by federal regulators charged by Congress with this task. Yet we know that the railroads have used their considerable political clout to limit enforcement activities and oversight and in reality face little consequence for safety infractions. Fines, when they are levied at all, are little more than nuisances to multi-billion dollar rail companies. Congress must step in to make rail carriers that violate safety regulations accountable for their actions. Fines should be increased exponentially and penalties should more adequately reflect the level or number of infractions by a carrier.

Cross-Border Safety and Security

Finally, we hope this Committee will recognize the need to address the issue of safe cross-border transportation in the rail sector. As U.S. industries continue their drive to outsource American jobs and cut costs, we must remember the safety implications of such actions. Train inspections currently performed by U.S. rail workers play an important role in ensuring the safe and secure movement of U.S. cross-border operations. We hope this Committee will consider making a strong statement in the reauthorization bill to prohibit rail carriers from waiving U.S. inspection

[2] Reauthorization of the Federal Rail Safety Program: Hearing Before the House Subcommittee on Railroads, Pipelines, and Hazardous Materials, 110th Cong. (2007) (statement of Katherine Siggerud, Director, Physical Infrastructure Issues, Government Accountability Office)
[3] *Id.*
[4] *Id.*

mandates (and outsourcing them to Mexico) or other safety requirements in cross-border operations.

We look forward to working with you and as the Committee prepares to move legislation that will make our railroad industry safer. I thank you for this opportunity to testify, and I will be happy to answer any questions.

SAFETY PROPOSALS BY THE RAILROAD OPERATING CREWS

There are a number of safety improvements which Congress needs to address. We discuss them below in no particular order of importance. However, the most significant issues facing railroad workers today are fatigue and harassment.

EMPLOYEE PROTECTIONS AGAINST HARASSMENT AND INTIMIDATION

Nothing in the railroad industry is more disruptive and demeaning to an employee than harassment and intimidation he/she continues to experience on many railroads.

For example, some carriers use discipline or the threat of it to suppress the reporting of an injury. The current FRA requirements are virtually inadequate prevent this harassment.

We must ensure that workers who report or identify a safety or security risk will not face retribution or retaliation from their employers. One should not have to choose between doing the right thing on safety or security and risk of losing his or her job. Despite the whistleblower protections included in the current law, rail workers and their unions continue to experience employer harassment and intimidation when reporting accidents, injuries and other safety concerns. Indeed, in an FRA report issued in July 2002 entitled *An Examination of Railroad Yard Workers Safety* (RR02-01), the FRA conducted focus group interviews with certain groups of rail workers. The FRA stated, "Perhaps of most significance, rail labor painted a generally adversarial picture of the safety climate in the rail industry. They felt that harassment and intimidation were commonplace, and were used to pressure employees to not report an injury, to cut corners and to work faster." It is disingenuous for rail carriers and government to ask workers to report problems while at the same time refuse to provide the basic protections needed to ensure that such reporting will not result in employer retribution.

Adequate provisions are necessary to protect safety of whistle-blowers and those subjected to intimidation. The various crafts have received countless complaints from employees of instances outright harassment and intimidation. Some of these examples include:

Not reporting an injury or occupational illness soon enough for the carrier;

Railroads imposing multiple disciplinary hearings and investigations arising out of a single incident or accident;

Requiring multiple statements to a railroad arising out of a single incident in an attempt to obtain conflicting facts;

Constantly providing medical records to a railroad, even though no litigation has ensued.

Being harassed for not authorizing the use of defective equipment;

Retaliation for reporting, or attempting to report, on-the-job injuries; and

Supervisors interfering with their medical treatment for on-the-job injuries or work related illnesses in order to avoid making the injury reportable to FRA.

There needs to be effective employee remedies for an expanded number of safety activities. Currently, there are limited protections available under 49 U.S.C. 20109, which is administered under the Railway Labor Act, if an employee is discriminated against or discharged for filing complaints of rail safety violations or testifying in a rail safety proceeding. This procedure has proven to be ineffective in curtailing the harassment and intimidation. The list of protected activities needs greater expansion, and there needs to be effective employee remedies. As for remedies, there are current provisions for compensatory damages and for punitive damages which need to be expanded to remove the cap on liability, and to provide an effective deterrent even when an employee is made whole for any wage loss as a result of retaliation. Additionally, the affected employee should have the option to bring an action for damages in court, rather than the cumbersome procedures under the Railway Labor Act. This certainly would greatly deter anti-safety harassment in the industry.

FATIGUE, TIME ON DUTY, DEADHEAD TRANSPORTATION, AND SLEEPING QUARTERS IN YARDS

One of the most critical railroad safety issues involves the hours of service of rail workers. This covers the maximum number of hours an employee should be permitted to work each day and each week, amount of undisturbed rest (i.e. calling time), regular scheduling, and being required to remain on trains after the maximum time on duty has been reached. As shown by numerous studies, there is an overwhelming body of evidence which demonstrates that fatigue is endemic in the railroad industry. Those who have studied this issue agree that the problem is pervasive, and the industry has not adequately addressed it. Railroad operating crews are typically plagued by chronic fatigue caused primarily by excessive hours of work coupled with inadequate rest time, and by unpredictable and irregular work schedules. The problems experienced by the workers are varied: typically, the employee takes the few free hours he/she has off duty to pay attention to personal and family matters; many experience circadian rhythm problems; employees are forced to work too many successive days without a day off; and others are called to duty sooner than expected. These problems have long been recognized in the industry. Not even the railroads can, with a straight face, dispute the evidence. Safety on the rails depend upon compliance with the safety statutes and regulations and the operating rules of the railroads. We know from the body of evidence that they are often compromised by employees' inability to obtain adequate rest.

The current law is deficient in various ways. It is not limited to the employees' weekly or monthly work hours, restrict the irregularity or unpredictability of on-call work schedules, or restrict commuting distances without compensatory time off. Extensive night work, irregular work schedules, extended work periods with few or no days off, and the policies and procedures that encompass such practices are permissible within the current law. (*See*, Coplen, M. and D. Sussman, *Fatigue and Alertness in the U.S. Railroad Industry Part II: Fatigue Research in the Office of Research and Development at the Federal Railroad Administration*(March 2000).

We believe the remedy is to give the FRA authority to regulate fatigue, and at the same time, keeping in effect the statutory protections obtained over the years. Also, we strongly recommend that Congress amend the law to require that waiting for deadhead transportation and deadhead transportation be counted as time on duty, require undisturbed rest(calling time), and mandate the removal of the few remaining sleeping quarters from rail yards.

There have been numerous studies and recommendations regarding hours of service. The time for congressional action is long overdue. Hopefully, your Committee will make the needed changes in the law. We will now summarize for the Committee the agencies that have investigated

this problem, and demonstrate to you that fatigue is unfortunately a reality working on the railroads.

It is to be noted that in 1994 Congress granted FRA a limited authority to approve pilot projects, including waivers of the statute, proposed jointly by rail labor and management. This has not proven to be very effective.

CERTIFICATION OF CONDUCTORS

In 1988 Congress created an anomaly by requiring FRA to disqualify employees who were not performing work safely. However, it failed to address what should be the minimum "qualification" standards for rail employees. The amendment extends to conductors and trainmen the requirement for certification. Conductors and trainmen perform significant safety sensitive functions, and should have formal competency requirements, as do engineers.

ADMINISTRATOR'S QUALIFICATIONS

There should be qualification standards for FRA administrators similar to provisions which are contained in the NTSB law and appointees to the Surface Transportation Board. That is, the Administrator should be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in transportation regulation and safety.

FINAL AGENCY ACTION

The FRA rarely meets statutory deadlines for issuing regulations, or in responding to petitions by rail labor. One of the clearest examples of this deficiency is pointed out in House Report 102-205 on H.R. 2607. There, the Committee on Energy and Commerce noted that 4 major rulemakings required to be completed within 2 years or less by the Rail Safety Improvement Act of 1988 were not completed by the statutory deadline.

"In the Committee's view, section 23 mandated that the Secretary issue grade crossing signal system regulations within one year and provided the Secretary with discretion only to determine the extent of such regulations."

H.Rep. No. 102-205 at p. 9.

In the 1988 safety law, Congress mandated that the bridge protection standards for maintenance of way employees be issued within one year. The Notice of Proposed Rulemaking was not issued until January 30, 1991, and a hearing was conducted on May 1, 1991.

Regarding petitions filed by rail labor with the FRA, aside from the fact that they are rarely, if ever, granted, FRA historically has not considered them within the one year deadline required by Congress in 1976. *See,*49 U.S.C.§ 20103(b). An example of this is neglect is that the Brotherhood of Maintenance of Way Employees on May 30, 1990 filed a petition with FRA to require revisions of the Federal Track Safety Standards (FRA Docket No. RST-90-1). FRA did not even conduct a hearing until after the one year deadline had passed.

We have reviewed each statutory limit placed upon the FRA since the one year requirement was enacted, and the FRA has rarely met the deadline.

STUDIES BY THE SECRETARY

There are a number of studies which should be conducted on railroad safety. These include:

1. A detailed analysis of the quality of each railroad's training program.
2. A long term study of fatigue in the railroad industry.
3. The safety consequences of railroads contracting out of work to independent contractors.
4. The safety impact of drivers of railroad crews to and from duty assignment.
5. An evaluation of conflicting and confusing railroad operating rules.
6. A follow-up study of the Switching Operations Fatalities Analysis(July 2001) and a follow-up study of Collision Analysis Working Group(July 2006)
7. Locomotive cab environment and its impact on human performance.

CONRAIL REGULATION

Section 711 of the Regional Rail Reorganization Act of 1973(45 U.S.C.§ 797j), among other things, prohibits any state from regulating any railroad in the region. This includes 18 states. That section was adopted in

1981 to deal primarily with the full crew laws where Conrail was operating, but the section, as adopted, was much broader to cover all regulation by the states. With Conrail mostly gone, the section has long ago fulfilled its purpose, and should be repealed.

INCORPORATION OF AAR STANDARDS

The Federal government, through the FRA, delegates the authority to approve tank car designs to the AAR. Before any tank car may be used on the railroad system, the AAR Tank Car Committee must approve of its use on the rails. The builder of a tank car must apply for approval of the design, materials and construction, to the AAR for consideration by its Committee on Tank Cars.

The power brake regulations(*See,e.g.*,49 C.F.R § 232.7), relating to periodic testing of brakes while cars are in the shop or repair track, requires the tests to be performed in accordance with the AAR Code of Rules.

The problem is the AAR has changed the rules without any official oversight by FRA.

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GRANTS OR LOANS TO RAILROADS

This arises out of the request by the DM & E railroad for a $2.3 billion loan from FRA. The FRA on 1/31/07 issued a Record of Decision in the matter, and only perfunctorily dealt with the safety issues. For example, it misled the public in Figure 3-1 regarding train accidents on DM & E. However, the FRA, in showing an improvement in 2006 over 2005, did not bother to point out that the monetary threshold for reporting accidents increased from $6,700 in 2005 to $7,700 in 2006, a 16% increase. Obviously, this is a large reason for the alleged safety improvement.

The railroad over the years has had the worst safety record, or among the worst, compared with any other in the U.S.(If you want stats., let me know). The FRA didn't think this was significant in considering the loan.

A FELONY TO VIOLATE GRADE CROSSING SIGNALS

It is obvious that something must be done, other than studying the crossing problem, if sufficient funds cannot be found to put protected crossings everywhere. The BEST solution is to place adequate sanctions upon those who don't obey crossing warning signs.

TRAINING OF CREWS TRANSPORTING HAZARDOUS MATERIALS

In this day of heightened terror threats, coupled with the necessity for crews to transport more and more spent nuclear fuel, etc., there needs to be a certification that the crews have been properly trained. The railroads are doing a poor job, as will be shown in the testimony of Edward Wytkind , President of the Transportation Trades Department, AFL-CIO.

MINIMUM TRAINING STANDARDS

The lack of training in the industry transcends all classes of the railroad workforce. There are some FRA regulations which require training, but the extent of the training is left to each carrier. The problem is that due to the revised railroad retirement law, many early retirements continue to occur. The industry is becoming younger and younger, and at the same time business is booming, which puts pressure on the railroads to place the employees into service without sufficient training.

The lack of appropriate training is the number one safety issue facing the rail industry today - and it should be of significant and urgent concern to the Congress. These training deficiencies are not confined just to operating employees, but also include train dispatchers, signal employees, maintenance of way employees, locomotive repair and servicing employees, and track inspectors.

There was a time when trainmen and yardmen in freight and passenger service were naturals for becoming engineers. They possessed an impressive working knowledge of the physical characteristics of the terrain, in-train forces and operating rules and procedures. These veteran operating employees had only to become proficient in applying this knowledge to their new craft while, at the same time, honing their train handling skills. Unfortunately, this is no longer a reality.

As our aging workforce retires, and our railroad business increases dramatically, the railroads have delayed hiring replacements. As a result, they rush new hires through shortened, one-size-fits-all training programs. It is not uncommon on any train, anywhere in America, to find an inexperienced trainman paired with a new engineer. It is very unlikely the trainman received

training over the territory he or she is working, or was taught the special problems that exist, and skills required, in regions with temperature extremes, heavy grades or complex operating environments. Most troubling is that it is unlikely either the new trainman or new engineer were provided classroom training where actual application of the operating rules were taught. They needed only to memorize rules - not know how to apply them - in order to graduate. What's more, most veteran employees believe that recurrent training in the railroad industry has become a farce.

Newly hired trainmen should not be required to work unsupervised or operate locomotives until they are truly experienced in the trainman craft. This ensures they have become proficient in their train service and have gained needed on-the-job experience before assuming additional demanding duties and responsibilities.

A one year minimum in train service prior to becoming a conductor would improve the quality and competency of railroad operating employees, which equates to safer and more efficient operations.

It also ensures that newly hired employees will have approximately two years of practical railroad experience before they can be expected to operate locomotives without direct supervision.

The attraction and retention of qualified candidates for employment and their training is a major safety issue for all unions in the rail industry. Unfortunately, the rail carriers have attempted to make training of new employees an issue reserved exclusively for collective bargaining, where the carrier's only concern is the cost of the training. The large turnover in new railroad operating department employees has a direct relationship to the lack of experience and proper training in our industry. Many new employees express their frustration at being overwhelmed with the level of responsibility that they have received with poor training and little experience on the job.

Another FRA initiative, the Switching Operations Fatality Analysis (SOFA) found that training and experience were critical safety issues.

The rail industry is absorbing a record number of new employees in every department while operating at maximum capacity because of the record levels of rail traffic. UTU has attempted to address the inadequate training issues in every forum, including the collective bargaining arena,

with very little progress. The railroads have been reluctant to recognize that the adequacy of training is a genuine problem and have not addressed this issue with the unions in a meaningful manner. They have refused to even allow FRA to offer their expertise in training techniques, and have declined labor's offers to establish of cooperative mentoring programs for the critical component of "On the Job Training". The rail industry will have more than 80,000 new employees in the next five years. Unless we can quickly eliminate training as the major safety issue, we can only expect this negative trend in safety analysis to accelerate.

VENUE

This really is not a lawyer issue; rather it is for the injured citizens in a state, and injured workers. First, when citizens are injured as in Minot, ND a few years ago, the railroad force the cases into federal court which, for many, was located a long distance away from the homes of the injured. Also, we need not tell you how burdened the federal courts calendars are these days. State courts should be available when alleging violations of federal safety regulations. State judges are just as competent as many federal judges to rule on preemption.

Regarding operating crews and maintenance of way employees, they travel sometimes hundreds of miles from home in their work. Injuries most often occur many miles from home. The railroads always attempt to have the case tried as far away from the employees' residence as possible, so that it will be inconvenient and expensive for the plaintiff. The employee is treated at his/her place of residence and should have the option of filing suit where he/she lives, rather than hundreds of miles away. Thousands of motions have been filed by the carriers to have the venue chosen by the plaintiff to be removed to another court.

LOCAL SAFETY HAZARD

Many of the state public utilities commissions are seeking to delete the local safety hazard provision contained in 49 U.S.C. §20106(1). The National Association of Regulatory Utility Commissions has issued a resolution recommending that Congress eliminate the local hazard section. We support this change. Virtually every time a state attempts to regulate an area, the railroads challenge the proposal. Most courts rule federal preemption even though the FRA has not covered the particular problem. By simply eliminating the "local safety hazard" provision, the states still could

not regulate if it conflicted with a FRA regulation or was an undue burden on interstate commerce.

STATE COMMON LAW

The courts in the cases arising out of the Minot, ND accident have ruled that the citizens injured have no rights to seek damages because the state's common law is preempted by the federal railroad safety laws. This is an outrageous decision, and even the President of the Association of American Railroads testifying in the House safety hearings stated that the industry disagreed with the decisions.

Congress is dealing with this matter in the pending transportation security legislation which is in conference. Hopefully, this will be corrected in that bill. If not, we urge you to place a provision in the safety legislation.

PROMPT MEDICAL ATTENTION

First, the existing regulation addressing this issue is completely ineffective in assuring the employee receives prompt medical attention. It provides that a railroad shall have in place an Internal Control Plan which shall include, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting an accident, incident, injury or illness will not be permitted or tolerated and will result in disciplinary action against such person committing the harassment or intimidation. I am unaware of FRA ever enforcing this provision.

This above provision does not cover matters such as allowing the employee to go to the hospital before being forced to give a formal statement to a supervisor or claim agent, or go to the scene of the accident first with the supervisor; it doesn't require the railroad to provide prompt transportation to the employee; there is no protection regarding harassment; and simply following the plan of a treating physician is not addressed. A recent federal court decision held that an Illinois statute mandating prompt medical attention was preempted. *See,* attached summary judgment in BN/SF, et. al v. Charles Box, et. al., No. 06-3052, C.D.D.C. Ill., 1/18/07. Other states have adopted similar legislation, which is being challenged. A federal amendment is needed to correct this problem.

ALCOHOL AND CONTROLLED SUBSTANCES TESTING

We strongly believe that railroads should be required to conduct all toxicological testing under the same protections as required under the federal alcohol and drug testing regulations. There are many abuses connected with the testing conducted under the railroads own testing program. For example, some carriers do not allow a split sample to be retested by the employee. Each railroad has its own internal policies for testing, and protections for the integrity of such testing is not present in many instances. Therefore, we request that in the event a railroad conducts toxicological testing of its employees under its own program, such testing be conducted under the same protocols and procedures of Title 49, C.F.R., Parts 219 and 40.

MEXICAN RAILROADS AND EMPLOYEES

The railroads whose tracks connect with Mexico continue to seek waivers from the FRA regulations to allow Mexican workers make the tests and inspections in Mexico, and/or to allow trains to enter the U.S. without proper inspections on the U.S. side of the border. This should not be allowed for various reasons. Significantly, the U.S. cannot oversee the quality of test inside Mexico. Also, Mexican engineers entering the U.S. do not have the same qualifications as U.S. certified engineers

CRITICAL INCIDENT STRESS PLAN

This amendment seeks to require a critical incident stress plan similar to that in place at the FAA. It is designed to proactively manage the disruptive factors that an employee usually experiences after and accident/incident. It is designed to minimize the impact upon the employee. Rapid access to a CIS program following an accident will minimize the duration and severity of the distress associated with such an event. As with the airline industry, the employee involved will be removed from service immediately, and those involved in witnessing the event, upon request, shall be relieved as soon as feasible.

The railroads are a mixed bag in dealing with this problem--some do a decent job, while others act as if no problem exists.

ADDITIONAL SAFETY INSPECTORS AND USER FEES

In 1977 the FRA issued a comprehensive 5-year plan for attacking the safety problems in the rail industry. In the proposal entitled "Safety System Plan, September 1977," the FRA stated that 800 safety personnel were necessary at the agency. As testified by FRA Administrator Boardman on 1/30/07 in the House the total inspection staff today is 400. The number of miles of track in operation are greater than in 1977(173,000 in 1977 and 219,000 today); over 1.6 million locomotives and cars in operation today vs. 1.7 million freight cars and 33,000 locomotives in 1977.

It should be kept in mind that, as noted by the GAO testimony on 1/30/07, FRA today is only able to inspect 0.2% of the railroads operations each year. Also, in a recent report by the GAO entitled RAIL SAFETY "The Federal Railroad Administration is Taking Steps to Better Target its Oversight, but Assessment of Results is Needed to Determine Impact"(Jan. 2007), it stated at p. 57:

"FRA inspectors cite many defects, but cite comparatively few of these defects as violations warranting enforcement action. Since 1996, FRA inspectors have cited an average of about 4 violations for every 100 defects cited annually. According to FHA officials, inspectors cite relatively few defects as violations warranting enforcement action because FRA's focused enforcement policy guides inspectors to cite violations only for problems that pose safety risks. In addition, inspectors have discretion in citing a defect or a violation for a given instance of noncompliance—FRA directs inspectors to first seek and obtain the railroad ds' voluntary compliance with the rail safety regulations."

WARNING IN NON SIGNALED TERRITORY

The NTSB recommendation in its report of the Graniteville, SC accident which occurred on Jan.6, 2005 seeks to rectify a nationwide problem in nonsignaled territory to protect against a misaligned switch. This is long overdue. There should be visual or electronic warning to crews to clearly convey the status of a switch, so that a train can safely stop if the switch is misaligned.

SENIORITY FOR WORKERS SEEKING FEDERAL EMPLOYMENT

Many very qualified employees have refused federal employment because of the current restrictions which require the person to give up his/her seniority in the railroad industry. This creates a penalty upon the employee without any benefit to the public or the government. An employee of the federal government, who previously was a railroad employee covered under a collective bargaining agreement, should have the right to return to the craft or class on the carrier with which he/she was employed. If he/she returns to the railroad industry, such employee should be placed in his/her former position and retain all prior seniority and accrue seniority with said carrier from the date the employee became an employee of the said federal agency. The employee should also continue to accrue all rights and benefits under the applicable collective bargaining agreement during the time he/she held a position with the federal government.

ATTACHMENT 2

February 13, 2007

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION and INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS

HEARING ON FATIGUE IN THE RAIL INDUSTRY

TESTIMONY OF W. DAN PICKETT
INTERNATIONAL PRESIDENT
BROTHERHOOD OF RAILROAD SIGNALMEN

Good Morning. I would like to thank Ms. Corrine Brown, Chairperson and members of the Committee. It is an honor for me to testify today on fatigue in the rail industry, a subject of great concern to this country and to all employees of the nation's railroads.

My name is Dan Pickett, and I am the International President of the Brotherhood of Railroad Signalmen. The Brotherhood of Railroad Signalmen ("BRS"), a labor organization with headquarters at 917 Shenandoah Shores Road, Front Royal, Virginia, 22630-6418, submits the following comments concerning fatigue in the rail industry.

BRS, founded in 1901, represents approximately 9,000 members working for railroads across the United States and Canada. Signalmen install, maintain and repair the signal systems that railroads utilize to direct train movements. Signalmen also install and maintain the grade crossing signal systems used at highway-railroad intersections, which

play a vital role in ensuring the safety of highway travelers. Throughout our entire existence, the BRS has dedicated itself to making the railroad workplace safer, not just for rail workers, but also for the public at large.

Before any discussion of fatigue in the rail industry can even begin, it should be noted that the rail industry is moving more freight with fewer employees than at any time in the history of railroading. This is a critical point that must be acknowledged. Through mergers and railroad managements' never ending quest to eliminate workers, railroad staffing levels are at an all time low and continue to drop. Those railroad employees that are left are working longer hours for many days at a stretch. A 12 to 16 hour day is not unusual for a railroad worker and in many cases it is the norm. Railroads are abusing the very asset that is their most important resource.

The BRS seeks to amend the Hours of Service Act for signalmen. Currently the Hours of Service Act (HOS) allows individuals performing signal duties to work 12 hours in a 24 period with an emergency clause provision that allows for an additional 4 hours of service in a 24-hour period. The BRS seeks to eliminate the four hour emergency provision due to the abuse by the railroad industry.

When the HOS Act was expanded to include signalmen in 1976, it was envisioned and intended to be a 12-hour law. It should be noted that is how the railroads originally applied the law. If signal personnel needed additional time to correct a signal problem they would inform their lower lever supervisor that they were approaching the 12-hour limit of the HOS Act and the supervisor would make a decision based on their experience if the individual could finish the work within 12 hours, or if another signal employee

would be called to finish the repair work. However, through gradual "creep" by the railroads the law has become a 16-hour law. Most, if not all, Class I railroads have issued instructions to signal personnel that "everything" is an "emergency" and it is not necessary to call anyone. When the law was new, it worked well, and for years the railroads limited signal workers to 12 hours of work in a 24-hour period. Now however, signal employees have seen the law mutate into a 16-hour law. Many railroads have official or unofficial policies that state that any signal problem is an "emergency" and workers need not contact their supervisors for an interpretation.

Signal employees are instructed to work up until the 16-hour limit before they call for any relief personnel. In some cases, the railroads authorize outright violation of the HOS Act and order signal employees to continue working until they are finished with the repair work. That is why it is necessary to remove the four-hour emergency provision in its entirety. This discretion combined with the railroads tendency to push the limits of the law have morphed the HOS Act and is contrary to the intentions of the 1976 Congress.

Of even greater concern is when a BRS member can work 20 hours in a 24-hour period without adequate rest. For example: On Day 1 a signalmen goes to sleep at 21:00 and awakens at 05:00 to arrive for his regular shift on Day 2 at 07:00 to 15:00. Under the current law at 15:00 p.m. his "rest" period starts. At 23:00 he is considered fully rested and a new 24-hour clock begins. In many cases it is highly likely that he may have just gone to sleep at 22:00. After less than two hours of sleep he then receives a call to work at 00:00 a.m. on Day 3. He works 4 additional hours and is finished with the trouble call at 04:00. He then travels home and then has to return to work for his regular shift of

07:00 to 15:00. The cumulative effect of the law on the individual is that he is allowed to work a total of 20 hours of service within a 32-hour period. While the employee has had 12 hours off, he has gotten virtually no sleep.

This situation is exasperated further when railroads then require signal personnel to work an additional four hours under the emergency provision. Additionally, if an "emergency" occurs at the end of his shift, the railroad could require him to work an additional four hours from 15:00 until 19:00. The cumulative effect of the law on the individual would now be that he is allowed to work a total of 24 hours of service within a 40-hour period with virtually no sleep. This type of work schedule is a recipe for disaster. This is especially true when you consider that after being off duty for a period of 10 hours, two hours which are spent traveling to and from work, the signal employee has to return to work for his regular shift at 07:00 and can then work another 16 hours before he is entitled to another rest period. It is possible that after waking at 05:00 on Day 2, a signal employee may get only eight hours of actual sleep in a 66-hour period. See Appendix A for further explanation of this scenario.

The BRS asks that the Hours of Service Act be amended to require that employees performing signal work receive at least 8 hours of actual rest during a 24 hour period. What drives our request is the fact that many, if not all, of the railroads willfully abuse the HOS Act. For example, when the railroad receives emergency calls (prior to the end of the 8 hours of required rest) they will delay calling signal personnel until 8 hours have passed since the end of their scheduled shift or their last additional duty so that they can start a new 24-hour clock. This is unacceptable. The railroads are aware that the

signal personnel have probably not received adequate rest. All the railroads care about is getting a new 24-hour clock started so that they can work the individual 12 to 16 additional hours.

Chairman Oberstar, you have gone on the record saying, "In previous Congresses, I have introduced legislation to strengthen hours of service. The railroads fought against it, stating that hours of service should be a dealt with at the collective bargaining table. I believe that the safety of railroad workers and the safety of the general public which all too often are the victims in these train accidents, should not be relegated to a negotiation agreement between management and labor. This Congress has a responsibility to prevent fatigue."

Chairmanlady Brown, I could not agree more. As explained in my earlier testimony, the railroads have manipulated a 12-hour Congressional Hours of Service Act into a 16-hour law. In fact the situation is even worse in the industry than what I have explained so far. The Brotherhood of Railroad Signalmen is currently engaged in National Negotiations with the railroads to reach a new agreement over wages, benefits and work rules. The railroads have targeted the employees I represent during these negotiations. The railroads want work rule provisions that allow them to subcontract our safety-sensitive signal work to the lowest bidder. While I will not go into the inherent degradation of safety by having untrained and unskilled contractors performing signal work I will explain one of the main reasons that the railroads want to subcontract this work. Contractors are not covered by the Hours of Service Act. I will repeat this. Contractors are <u>not</u> covered by the Hours of Service Act. If the railroads persevere in this

pursuit they will have found away to supercede the intent of Congress by employing individuals to perform safety-sensitive signal work who do not have to comply with the provisions of the Hours of Service Act.

They will be able to hire contractors who can work an unlimited number of continuous hours performing safety sensitive signal work. While the railroad owners say that they are trying to find ways to combat fatigue in the railroad industry, the reality is they are trying to find ways to supercede the safety provisions contained in the Hours of Service Act.

The inability to perform adequate testing and the failure to comply with minimum federal regulations have contributed, if not caused many recent railroad accidents. In their never ending zeal to focus on the financial bottom line, railroads have allowed staffing levels to fall below the minimum needed to perform basic safety functions. Additionally the railroads are not through with their desire to further reduce manpower levels. The railroads are currently pushing very hard to reduce train crew size to a single person, and the implementation of Remote-Control-Locomotives (RCL) is proliferating as I speak here today.

Training and Education:

Training and education is another key preventive measure that needs to be considered. Rail labor considers it equally important to provide Advanced Training to improve the skills of the professional men and women that install and maintain safety systems for the rail industry. This is an area that will increase productivity, improve safety

and reduce fatigue. A signal employee that receives advanced and recurrent training is a more productive employee who can solve the emergency problems that they encounter in less time than one who is lacking the necessary skills.

Often signal problems are caused by a signal appliance indicating that a rail is broken or a switch is not properly lines or a track is flooded. A signalman must know the action to take to provide safety for the public and the rail carrier before considering how to repair the problem.

By being more efficient, the trained signal employee spends less time in the field and therefore encounters less fatigue. Rail labor will continue to work to implement training provisions which were agreed to by the industry – but to date have not been implemented on many of our nations railroads.

Conclusion

There is little question that more must be done to eliminate fatigue in the rail industry in general and to signal employees specifically. Signalmen install, maintain and repair the signal systems that railroads utilize to direct train movements. Signalmen also install and maintain the grade crossing signal systems used at highway-railroad intersections. As such it is in the best interest of the traveling public and the employees that work for the railroad that Congress act to solve the problem of fatigue for signalmen in the rail industry.

An adequately staffed signal department of well-trained, well-rested signalmen is needed to make the critical safety-sensitive decisions that are a routine part of their daily

duties. Signal employees often work alone in the worst weather conditions in some of the most demanding terrain and it is imperative that these workers have the opportunity to perform their duties after receiving adequate rest.

There is much to accomplish to eliminate fatigue in the rail industry in order to make the nation's railroads safer for communities across the country and for the employees of the railroads. Experience teaches us that it is Congress that must provide the leadership to make safety a reality. I hope we can work together to see that improved safety practices become a reality.

On behalf of rail labor and the Brotherhood of Railroad Signalmen I appreciate this opportunity to testify before the Committee. At this time I would be more than pleased to answer any questions.

Respectfully submitted,

W. Dan Pickett
International President

APPENDIX A

Day 1		**Day 2**		**Day 3**		**Day 4**	
00:00		00:00	sleep	00:00	emergency call	00:00	sleep
01:00		01:00	sleep	01:00	emergency call	01:00	sleep
02:00		02:00	sleep	02:00	emergency call	02:00	sleep
03:00		03:00	sleep	03:00	emergency call	03:00	sleep
04:00		04:00	sleep	04:00	travel home	04:00	sleep
05:00		05:00	wake for work	05:00	off duty	05:00	wake for work
06:00		06:00	travel to work	06:00	travel to work	06:00	travel to work
07:00		07:00	regular work	07:00	regular work	07:00	regular work
08:00		08:00	regular work	08:00	regular work	08:00	regular work
09:00		09:00	regular work	09:00	regular work	09:00	regular work
10:00		10:00	regular work	10:00	regular work	10:00	regular work
11:00		11:00	regular work	11:00	regular work	11:00	regular work
12:00		12:00	regular work	12:00	regular work	12:00	regular work
13:00		13:00	regular work	13:00	regular work	13:00	regular work
14:00		14:00	regular work	14:00	regular work	14:00	regular work
15:00		15:00	regular work	15:00	regular work	15:00	regular work
16:00		16:00	off duty	16:00	emergency call	16:00	emergency call
17:00		17:00	off duty	17:00	emergency call	17:00	emergency call
18:00		18:00	off duty	18:00	emergency call	18:00	emergency call
19:00		19:00	off duty	19:00	emergency call	19:00	emergency call
20:00		20:00	off duty	20:00	off duty/travel	20:00	emergency call
21:00	sleep	21:00	off duty	21:00	sleep	21:00	emergency call
22:00	sleep	22:00	off duty	22:00	sleep	22:00	emergency call
23:00	sleep	23:00	off duty	23:00	sleep	23:00	emergency call

In the above scenario, after waking at 05:00 on day two, a signal employee can be awake for 40 continuous hours; traveling to, or working 30 of those 40 hours, then after “receiving” 10 hours of rest (of which the actual sleep may only be 8 hours), the signal employee could then work an additional 16 hours. It is possible that after waking at 05:00 on day two, a signal employee may receive only 8 hours of actual sleep in a 66-hour period. The above scenario would be in total compliance with the Hours of Service Act, as currently written, pertaining to employees who perform signal service.