



**WRITTEN STATEMENT OF
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**HOUSE SUBCOMMITTEE ON RAILROADS,
PIPELINES, AND HAZARDOUS MATERIALS
ON
REAUTHORIZATION OF THE FEDERAL RAIL SAFETY PROGRAM**

January 31, 2007

Chairwoman Brown, Ranking Member Shuster and members of the Subcommittee, let me first thank you for the opportunity to testify this afternoon 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 Madam Chair, Chairman Oberstar and other members of this Committee in pursuit of policies that will enhance the safety and security of this critical industry. Yet too often our pleas have been met with stiff resistance from those in industry whose lobbyists have spent a decade or more derailing every attempt to reauthorize federal rail safety programs. On that point, Madam Chair, let me say that we are particularly pleased to see rail safety as the Subcommittee's first hearing on your watch.

It is simply disgraceful that over a decade has passed since our nation's rail safety programs have been reauthorized. Since the last reauthorization bill in 1994, safety problems and issues identified by our members, Members of Congress, the media and local and state government officials have only intensified and the volume of freight, including hazardous materials, is pushing our rail system past capacity. Add to that the security concerns present since the September 11, 2001 attacks on our nation and you have a sector of transportation that is in desperate need of safety reform and oversight.

The association representing our nation's railroads has stated that "railroads and their employees are in the best position to know how to improve safety and reduce the costs of injuries and accidents." We couldn't agree more with the sentiment that employees are critical in this debate. They know first-hand not only what will make their jobs safer, but also more productive. By partnering with its workforce and taking a collaborative approach, the railroads could find ways to make this industry safer, more efficient and more seamless within the entire transportation network. But unfortunately, the same employers who speak of labor-management cooperation when it is convenient reject it in practice.

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Employees are still being intimidated and harassed when it comes to reporting accidents and potential safety and security problems. Strong whistleblower protections must be a staple of any rail safety reauthorization bill. Worker fatigue in this industry is a problem that grows by the hour and allowing railroads to pretend that a tired workforce is an inevitable by-product of moving large volumes of cargo must end. There are simply not enough rail workers in key positions; comprehensive training for new hires is sorely lacking; and recurrent training programs are deficient. We also must ensure that track safety is being advanced, specifically through the elimination of so-called "dark" territory. And when railroads do violate safety rules, enforcement must be swift and fines sufficient to discourage and punish bad behavior.

The railroads' answer to these and other safety needs is to replace safety rules with "performance standards." In effect, the industry wants to set its own goals for safety as well as its own plan for how to meet those goals. Under this scenario, the railroads would jettison established rules and regulations and instead set their own "targets" for safety goals (i.e. a certain injury rate or accidents per set amount of train miles). This approach is absolutely absurd: no Member of Congress should accept a self-imposed industry standard that tolerates a certain rate of injuries and accidents.

Rail workers are already familiar with industry goal-setting and targets. In short, self-policing won't work. Rail workers will be at risk, communities will be threatened and the safe and efficient movement of goods and people will be compromised. Performance standards have their place. They can be an effective motivating tool in industries where there is collaboration between employer and employees and where there are common goals. The rail industry today is no such place. By failing to implement any meaningful safety reforms in addition to refusing to bargain in good faith, management has created an environment with its workforce that is acrimonious and distrustful. It is clear that this is an industry where zeal for a robust bottom line clouds the judgment of those in a position to advance safety reforms.

Reporting

Safety in the railroad industry is measured by the Federal Railroad Administration (FRA) from data collected from accident and incident reports. A significant problem stems from the fact that workers are routinely and soundly discouraged from actually submitting these reports. The data itself is therefore flawed, and everything that relies on that data, such as rules and regulations, penalties and/or fines, are likewise skewed.

Rail workers and their unions continue to face employer harassment and intimidation when reporting accidents, injuries and other safety concerns. After conducting focus group interviews, the FRA itself stated in a report entitled *An Examination of Railroad Yard Workers Safety* (RR02-01), that "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 common practice today for railroads to implement a "team" approach for injury reporting. Under this policy, teams of workers are rewarded (or penalized) for no injury reports in a given time period. Therefore, not only does one face pressure directly from his or her employer, but also from a system designed to encourage fellow employees from ignoring injuries that need medical attention and from reporting safety concerns that should be addressed. Such tactics are precisely why "performance standards" cannot work.

A cornerstone of any rail safety legislation must be strong whistleblower protections. 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 and security and their job. Since 9/11, front-line workers have been asked to be more vigilant about security risks and to report possible breaches (without the benefit of appropriate training as I will address later). It is disingenuous for the railroads to ask workers to report problems and at the same time refuse to provide them basic protections needed to ensure that such reporting will not result in retribution. Congress has already passed strong whistleblower protection for the financial industry in the Sarbanes-Oxley Act. Surely, if we can protect those who report financial security problems, we can also protect those who report rail safety concerns.

I would note that several unions are participating in a pilot project with the FRA called Close Calls. This endeavor will hopefully generate new safety data which in turn will result in improved safety. Like anonymous reporting in the aviation industry, Close Calls will enable employees to self report events that do not result in a reportable accident, but could have major safety ramifications. The system is entirely confidential and the employee is exempt from discipline and retaliation by the company. This pilot project is just getting off the ground, but we are hopeful and have every expectation that it will make a significant contribution to improved safety.

We also continue to believe that a nationwide telephone notification system would enhance public safety and improve the integrity of our rail system. A 1-800-type system would enable members of the public to report grade crossing signal malfunctions, derailments or other events that affect safety and security on railroad properties.

Staffing and Training

Industry leaders will tell you all 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. This is an industry that is making record profits, yet is unwilling to hire and adequately train the necessary workforce to handle the traffic¹. The freight rail carriers transport more than 42 percent of our nation's domestic intercity freight on more than 200,000 miles of rail. Over the next five years, the railroad industry will need to hire 80,000 more workers just to maintain the current movement of freight.

¹ According to the industry's own financial reports, the nation's largest railroads report 2006 net income of \$1.89 billion for Burlington Northern Santa Fe Corp., \$1.61 billion for Union Pacific, \$1.5 billion for Norfolk Southern Corp., and \$1.31 billion for CSX Corp.

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.

As rail workers retire, we are losing critical "institutional" knowledge of the industry that in the past was passed along to new hires. In all of the crafts, a majority of the actual day to day training comes from more senior employees. The average age of railroad employees is well over 40. The end result of this exodus is that we have many workers with less than five years experience replacing workers with 30 plus years of experience which is hardly a recipe for safe and stable operations.

Training, both for new hires and recurrent training for existing employees, must be the foundation of any federal safety program. The FRA should have a rule on minimum training standards as well as methods to ensure that training programs are appropriate and effective.

It is clear that the bottom line drives the decisions of the rail industry even when safety is directly implicated. To that end, we are wary of the trend to contract out signal work, train and engine maintenance and similar work that has historically been done by railroad-specific crafts. At a minimum, we believe that Congress has a responsibility to examine the safety consequences of this practice.

Claims by the industry of security training cannot go unchallenged. Let me be clear, workers are not receiving meaningful security training. More than five years after 9/11 workers still do not know what constitutes a security risk, though they are told to be "vigilant." They do not know how to respond when they see someone or something suspicious and they certainly do not know what to do if something actually happens. Workers do not know what their responsibilities are or even what it means when the national threat level is elevated.

We have come to the conclusion that the only way workers are going to get the security training they need is for the federal government to come in and tell the carriers that they must offer this training because it is far too important to ignore. Producing a brief video on security does not constitute training.

A corollary issue to training is certification. To ensure accountability for the safe operation and maintenance of railroad equipment and facilities, a certification program needs to be put into place for personnel with safety-sensitive responsibilities, including carmen, conductors, mechanics, signalmen and track inspectors. 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.

Fatigue

Madam Chair, I know you are planning specific hearings to address the issue of fatigue in the rail industry. While we will offer a more detailed account of this problem at that time, let me make a few comments today about this growing problem. It is no secret that rail workers are being asked to do more and more with fewer resources and less sleep. More freight is being moved with fewer employees than at any time in the history of railroading. Add to the mix the continuing threats of terrorism in this post 9/11 world and we should all be concerned. Fatigue is a reality in this industry and is clearly a contributing factor in many accidents and incidents. It doesn't have to be this way. With cooperation, fatigue issues can be addressed. A more thoughtful and balanced approach to fatigue management will result in a more rested, better prepared and ultimately more efficient workforce.

Unfortunately, our nation's railroads are demanding that workers work more hours and to come to work tired or face reprisals. In the tragic train collision in Macdonia, Texas where a hazmat release resulted in three deaths, the employee involved had requested a day off for rest. The employee was permitted to be off one day, but was unexpectedly called for duty about midnight that day with two hours of sleep. He knew he could lose his job if he refused to report for work. That is just not right and this Committee has a chance to do something about this chronic problem.

The NTSB has identified fatigue as one of the most serious safety issues affecting the railroad industry and has noted that safety sensitive rail employees can be required to work in excess of 400 hours in a 30 day period. Despite record profits, railroads are operating at maximum capacity without sufficient manpower and are instead relying on an understaffed, overworked and chronically fatigued workforce.

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.

We would hope that this Subcommittee will immediately review the Hours of Service statute as it relates to railroad workers and address the issue of "limbo time." 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. An 18 hour day is not unusual. To add insult to injury, after completing an 18 or 20 hour day crews are entitled to be off duty only 10 hours before they can be required to report for another 18 hour shift. Limbo time must be eliminated.

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.

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. For example, the provision in the Hours of Service Act which allows railroads to locate sleeping quarters in the yards if they were built before 1976 should be eliminated. The quality of sleep is as important as the amount of sleep, and it should be obvious that an individual who is sleeping in a train yard will not be well rested. Furthermore, guaranteed time off and shortened work days will result in better rested, better prepared and more efficient employees.

Last year Administrator Boardman presented this Committee with a Collision Analysis Report which was the result of a working group between the FRA, rail labor and rail management. The collaborative effort produced a result that showed that fatigue is a contributing factor in many train collisions. Rail management participated in the analysis as an equal partner, but they ultimately withdrew their names from the final report. We are pleased that the FRA published this significant work and we pledge to continue working in cooperation with any parties that are committed to improving rail safety.

Track Safety

Madam Chair, 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. 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.

As new technologies emerge, we must remain vigilant that technology does not replace human 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.

Accountability and Enforcement

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 grievances by a carrier.

UP Waiver

Before I close, I want to comment on a recent effort by Union Pacific (UP) to obtain a waiver from safety rules to allow trains to travel from Mexico into the interior of the U.S. My understanding is that faced with stiff opposition from Members of Congress, transportation labor and other safety advocates, UP has decided to withdraw this request. While we are pleased with this latest development, the fact that UP even attempted to circumvent common-sense safety and security measures is astounding. I doubt that we have seen the last of this issue. As this Committee is aware, the FRA denied a similar UP waiver application in 2004 citing the fact that the Government of Mexico did not enforce "equivalent or comparable standards" to those required in the U.S. A number of members of this Committee formally opposed that effort and I want to thank you again for insisting that safety rules that are in place are not needlessly discarded.

The border inspections currently performed by U.S. rail workers play an important role in ensuring the safe and secure movement of cross-border operations and UP's request was a significant departure from established rules. We hope that this Subcommittee will assist with the oversight of these types of waivers and oppose efforts to weaken safety rules.

Conclusion

Madam Chair, let me thank you again for inviting us to testify this afternoon and for your commitment to advancing a robust rail safety agenda. The safety of rail workers and the public has been compromised for too long. We look forward to starting a new tradition under your stewardship – a tradition where workers matter, where safety and security are paramount, and where integrity, cooperation and corporate responsibility outweigh profits and payouts for stockholders. We are anxious to get to work to help move a strong rail safety agenda.