



# The Highball

Official Publication of

**Railroad Workers United**

## *FRA Proposed Rule on Train Crew Staffing Draws a Few Comments*

On June 15<sup>th</sup> – after the original 60 day comment period had been extended another 30 days – the comment period on the Federal Railroad Administration’s (FRA) Proposed Rule on Train Crew Staffing came to a close. Among the 1411 comments submitted on-line (they were also accepted by mail and FAX), a sizable number were RWU members and supporters, including our allies in the community.

When RWU submitted its own comment and put out the call for others to do the same, there were 320 comments to date over the six week period from March 16th to May 2nd. The numbers dramatically spiked at that time and by the date of the official close of the comment period two weeks later, that number had reached 1105! The comment period was extended by the FRA and over the following month another 306 comments were submitted, totaling 1411 by midnight 6/15/16.

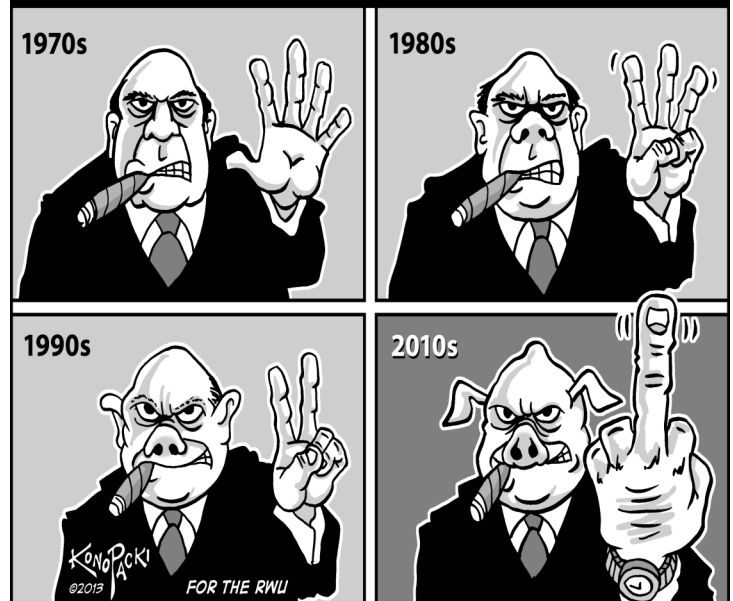
The input was overwhelmingly positive. As expected, a handful of industry representatives weighed in; however, the vast majority of the comments were overwhelmingly positive. Apart from the handful of industry representatives who protested any and all interference to the carriers’ plans to run trains with a lone employee, the vast majority of the comments (upwards of 97%) were supportive of a *minimum* 2-person crew on most - if not all - trains. Roughly 90% or more of the comments were from railroad workers and their families, but in addition, there was significant input from concerned citizens, including comments from a number of labor unions, workers organizations, citizens and environmental groups, all taking a supportive stand for a minimum crew size of two.

Among others, these organizations included: Jobs with Justice

Northern Illinois; NAACP, Sparks-Reno, NV; Western Oregon Resource Council; Washington State Fire Chiefs; Missouri AFL-CIO; Citizens Acting for Rail Safety; Beacon Presbyterian Fellowship; 350 Bay Area; National Association of Retired & Veteran Railway Employees; Fire Fighters of Georgia; Center for Biological Diversity; and Fox Valley Citizens for Peace & Justice.

*Continued on Page 2*

### **RAILROAD CARRIERS DEMAND CREW SIZE REDUCTIONS**



## *RWU Delegation Attends Whistleblower Meeting in Washington, DC*

In April, RWU sent a delegation to Washington, DC to speak with, and provide testimony to, the Whistleblower Protection Advisory Committee (WPAC) of the Occupational Safety & Health Administration (OSHA). This body was established to advise, consult with, and make recommendations to the Secretary of Labor and the Assistant Secretary of OSHA on ways to improve whistleblower protections, including enhancements in the investigative and enforcement process (enhancements that RWU believes are sorely needed).

WPAC is comprised of 12 voting members – including four members representing labor – appointed by the Secretary of

Labor. Longtime RWU friend and ally Nancy Lessin of the United Steelworkers union (USW) is currently serving her second term on the WPAC. The committee generally meets twice a year, in the spring and again in the fall. RWU first contacted WPAC in the winter and suggested that rank & file railroaders meet with the committee to describe first-hand the crisis in rail, to suggest some explanation as to why the industry is the biggest target of whistleblowers, and to offer some ideas that might help to rectify the situation.

Jeff Kurtz, former BLET Iowa State Legislative Board Chair, led the delegation in Washington.

*Read his report on Page 4*



# ***FRA Proposed Rule on Train Crew Staffing Draws a Few Comments***

*Continued from Page 1*

In addition, a number of municipalities and other government bodies joined the chorus of support, including: Cleveland City Council; Winnebago County, WI; Adams County, CO; Georgia Municipal Association; City of Bernalillo, NM; and the city of Albany, LA.

If you have not yet done so, you may enjoy taking a few minutes to browse over the comments, quite a collective testimony. Many are inspiring and educational, written from a wide variety of perspectives and experiences. See all 1411 comments by clicking on the link at the RWU website at [www.railroadworkersunited.org](http://www.railroadworkersunited.org). RWU's official comment (which was also mailed in to the FRA, together with supporting documents, attached in the online version) is #0341.

Railroad Workers United thanks all of our members, supporters and all railroad workers who took the time to comment. Notably, the unions of the operating crafts (BLET and SMART-TD) issued a joint statement on June 16th to be submitted to the upcoming public hearing, one that is far more forceful and condemnatory of single employee crew operations than had been either of their original statements in mid-March when the Proposed Rule was first announced.

This latest exercise represents one more arena in which we are winning the fight. But make no mistake – all of those hundreds of supportive comments are not enough to sway the FRA nor the rail carriers. In that regard, they probably count for very little. But this was a worthwhile exercise, showing our strength, our determination and our numbers which can and ultimately will win. The next round in this arena will be the public hearing in Washington, DC, scheduled for July 15th. The rail carriers no doubt plan to put on a fine show at that

time in the hope of dazzling the FRA with high-priced lawyers, experts and spokespersons. So this is just one arena in which the fight takes place. We are in fact winning victories at the legislative level, at the bargaining table and in the court of public opinion as well as here at the regulatory level.



*While the FRA's Proposed Rule on Train Crew Staffing takes some steps to regulate and limit single employee train crews, it does not outlaw them, it simply provides a roadmap that the rail carriers must follow in order to implement such operations. RWU is intent on stopping the carriers' desires to run trains with a lone employee. As a result, we urged comment critical of the Proposed Rule, calling on the FRA to strengthen the final rule to ban single employee train operations in most all situations.*

## **Railroad Workers United**

*Railroad Workers United was organized in April 2008 at a Founding Convention in Dearborn, MI. RWU grew out of decades of struggle within the craft unions for unity, solidarity, and democracy. We are carrying on a tradition of rank & file activity which dates back to the 1890s and the time of Eugene V. Debs.*

*RWU is a cross-craft inter-union caucus of rail labor activists across North America. All rail workers of all crafts from all carriers who support our Statement of Principles are welcome to join in our efforts. Please write, call, or email. See the contact information below.*

## **Statement of Principles**

- Unity of All Rail Crafts***
- An End to Inter-Union Conflict***
- Rank-and-File Democracy***
- Membership Participation & Action***
- Solidarity Among All Railroaders***
- No to Concessionary Bargaining***

## **International Steering Committee**

- Ross Grooters, BLET #778, UP, Des Moines, IA
- Ron Kaminkow, BLET #51, Amtrak, Reno, NV
- Paul Matchett, WSOR, Janesville, WI
- Hugh Sawyer, BLET #316, NS, Atlanta, GA
- Cameron Slick, UTU #911, CP, St Paul, MN
- Jim Thomason, UTU #1292, CN, Two Harbors, MN
- John Vitaska, NCFE #395, CP, Chicago, IL
- James Wallace, UTU #305, BNSF, Lincoln, NE
- Jen Wallis, BLET #238, BNSF, Seattle, WA
- Andrew Weir, TCRC-CTY #240, CN, Sarnia, ON
- John Wright, BLET #78, CSX, Louisville, KY

### Alternates

- Brian Clark, TCU/BRC #3060, CN, Champaign, IL
- Robert Hill, UTU #556, BNSF, Tacoma, WA
- Alan Thompson, UTU #316, UP, Clinton, IA

[www.railroadworkersunited.org](http://www.railroadworkersunited.org) ● [info@railroadworkersunited.org](mailto:info@railroadworkersunited.org) ● 202-798-3327 or 202-RWU-DEBS  
RWU P.O. Box 2131 Reno, NV 89505



## ***Lac Megantic Update: Two Fronts in the Fight for Rail Safety***

**Fritz Edler, RWU Member, BLET #482, Retired**

Three years ago, on July 6, 2013, a small town in Quebec became a symbol of the need for greater focus on rail safety throughout North America. A runaway train of Bakken crude oil exploded and burned in the downtown. Forty-seven people were killed immediately and another three have since taken their own lives in the last three years in the devastating aftermath which has left a legacy of destruction and environmental damage which may never be truly overcome.

The Lac-Mégantic tragedy is once again back in the news as we approach its three year anniversary. The Citizens Coalition in Lac-Mégantic has called for July 6<sup>th</sup> to be a day of remembrance for the victims of the crash and a day to recommit to greater rail safety. Railroad workers, environmental activists, and other community groups concerned about railroad safety will express their solidarity by answering that call and take time out on July 6<sup>th</sup> to say *No More Lac-Mégantics!* RWU will join with others in Chicago to be part of that response (see article below). Actions are underway in other cities as well.

This commemoration will come just two weeks after the latest events in a legal battle that should have ended long ago – the drive to scapegoat railroad workers and turn a blind eye to unsafe railroad policies and practices.

While all parties have wished to know who and what were responsible, the complex situation called for a complete and thorough investigation to determine the facts and the guilty parties. However, before this would happen, the Canadian government jumped the gun and theatrically charged the engineer, Tom Harding, and the dispatcher, Richard Labrie, with 47 counts of criminal negligence resulting in death.

Ultimately, investigation by the Canadian Transportation Safety Board and courageous investigative reporters turned up serious evidence that laid the responsibility for the crash at the feet of the railroad company, the Montreal, Maine & Atlantic Railway (MMA) and its policies and decisions. The company's recklessness had been ignored or even endorsed by the government regulators – Transport Canada (TC) – responsible for overseeing rail safety. The evidence is now very clear. If the MMA had not imposed unsafe procedures on its train crews - with TC looking the other way - there would not have been a runaway train and resultant fiery explosion in Lac-Mégantic.

The MMA was not the only party taking shortcuts. On June

20<sup>th</sup> of this year, the Canadian government's rush to judgment has forced Harding's lawyer to go to court to address Crown Prosecutors who have used loopholes to avoid holding a Preliminary Hearing, which would have given the defendants an opportunity to challenge the supposed evidence and preview the theory of the prosecution. A Preliminary Hearing would have been protocol in most proceedings of this kind. Harding's lawyer is now forced to present a motion for "Disclosure", as well as a motion to "Stay the Proceedings", based in part on the denial of Harding's right to a Preliminary Hearing. Even if the Court grants Harding's defense motions (the Crown has filed motions to "quash" them), it will not be the end of the need for us to use every means to get out the word about this wrongful prosecution going forward.



If attempting to railroad Tom Harding and Richard Labrie to prison wasn't bad enough, the Canadian government has blocked the efforts of the Citizens Coalition of Lac-Mégantic to move the railroad tracks from the center of town and to make real rail safety a top priority. The government wants to narrow the issue to oil trains and declare the danger over. But rail safety is not just about unsafe cargo. The people who live by the tracks and those who run the trains must be party to determining whether safe conditions are maintained.

The Canadian government must cease its prosecution of railroad workers for a tragedy they did not cause, and – together with the U.S. government – must speed up addressing unsafe railroad practices and conditions, not just in Lac-Mégantic but across the continent. Every railroad worker has a stake in the outcome of this. We all need to keep abreast of the court proceedings in the coming months and be prepared to stand up for rail safety on July 6<sup>th</sup>.

***Drop the Charges – No More Lac-Mégantics!***

### ***RWU to Host Event at the Electrical Workers Union Hall in Chicago***

#### ***"Citizens, Railroad Workers & the Fight for Rail Safety"***

On the 3rd anniversary of the horrific tragedy in Lac Megantic, Quebec – as part of the week-long series of actions across the continent – Railroad Workers United will sponsor a forum and discussion on the critical issues posed to both the community and to railroad workers.

What are the facts? How did this happen? What went wrong and, more importantly, Why? What could have and *should* have been done differently to have avoided the runaway train and resultant disaster?

Since that tragic day three years ago, there have been numerous

derailments and fiery explosions of oil trains throughout North America, including the most recent on June 3, 2016 in Mosier, Oregon in the scenic and environmentally sensitive Columbia River Gorge. The tragedy in Lac Megantic, as well as other train derailments involving hazardous materials, drive home the point that the general public – together with railroad workers – have a life and death stake in safe rail operations.

RWU former Co-Chair Mark Burrows (see commentary on Page 6) will present and lead the discussion.

# Whistleblower Delegation Makes Presentation in Washington, DC

Jeff Kurtz worked as a locomotive engineer for the Santa Fe and then BNSF for 38 years. He was longtime Chair of the Brotherhood of Locomotive Engineers & Trainmen (BLET) Iowa State Legislative Board until retiring from the rail industry in 2015. He remains active in union, political and community affairs.

On April 26, Kelly Rookaird, Mike Elliott, and I testified at a Whistleblower Protection Advisory Committee (WPAC) meeting at the Department of Labor. I testified on a case I handled just before retirement, showing how BNSF was able to use company policy to subvert the Whistleblower law, no matter how bad the policy is. Mike talked about his case and how BNSF misrepresented facts, stalled, and did everything possible to corrupt the process. Kelly spoke on behalf of her husband, Curtis, explaining how the BNSF, by drawing out the process, attempted to starve the family into submission. Mike and now Curtis (see article below) have both won their initial rounds in their respective cases but because of legal loopholes and the endless appeals process, it could be years before they are reinstated or see a dollar of their monetary awards.

In addition to our group presentation to WPAC on April 26th, I made a presentation on the 21st at the Department of Labor to 35 OSHA Assistant Regional Administrators from all parts of the country. I explained how the rules and policies of the railroads enable the carriers to blame employees for any accidents/injuries and thereby deflect responsibility the carriers may have for any mishaps, limiting their culpability under the law. After my presentation, I was joined via teleconference by Mike Elliott and RWU General Secretary Ron Kaminkow to discuss, among other things, how the carriers' "behavior based safety" initiatives are used, not so much for safety, but to lay blame on employees for accidents and injuries.

The Whistleblower law - section #20109 of the Rail Safety Improvement Act of 2008 - was ostensibly designed to empower employees to turn in safety issues and illegal activities without fear of reprisal, and in doing so, we would all benefit by having fewer injuries and safer workplaces. The problem arose when Corporate America soon learned how to make the law largely

ineffective. Sadly, we are faced now with a situation that in many ways is worse than what we had before the law was enacted. Now there is the *illusion* that the carriers have been reigned in. However, the reality of the situation is that the rail carriers have lobbied to inject so many conditions into interpreting and enforcing it that the law becomes ineffectual. This is where the Whistleblower Protection Advisory Committee (WPAC) comes in. WPAC is charged with making recommended changes to the law to make it effective. The Committee can also offer interpretations of how the law should be prosecuted and can recommend increased monetary penalties.

We were asked to attend the meeting to provide the perspective of working rails and their families, and — in the case of Mike and I — of front line union officers on the law's success in furthering safety in the industry. Kelly was there to talk about how her husband's use of the law has impacted her family's life. Kelly and Mike made several suggestions ranging from enhancements of monetary awards to reinstating employees to their jobs — successful in the initial phase of their whistleblower cases — during the carriers' endless appeals.

Every rank & file rail can assist future whistleblowers by refusing to engage in the carriers' behavior based safety programs and instead practice a *hazard identification* approach. It has been said that there is no hope for a species that can't recognize its own predators. When we are duped into engaging with the carrier in such programs that focus on *our behavior* rather than *hazard elimination*, we play right into the carriers' game, and allow ourselves to be targets of reprisal when there is an accident or injury. The carriers' BBS approach says, "Watch out for that hole in your walking path so you don't fall in and hurt yourself." Hazard identification says: "Fill in the hole!" When we follow *hazard identification practices*, we make our railroad safer, and we are better able to provide evidence of the carriers' negligence in creating that safe workplace which - by law - they must provide for. And when we do make use of the whistleblower law, we are able to show a carrier pattern of engaging in unsafe practices. Please keep your safety and the safety of your co-workers in mind when your union decides on what kind of safety programs to support and engage in.

## BNSF Conductor Awarded \$1.6 Million in Whistleblower Case

On May 26<sup>th</sup>, a federal jury in Seattle awarded more than \$1.6 million to former BNSF conductor Curtis Rookaird, fired six years ago after he performed a brake test over the objections of his supervisors. The award is one of the largest to date. The ruling comes on the heels of a series of verdicts against BNSF over dismissal of employees who had reported safety concerns or been injured on the job, including the case of engineer Mike Elliott, awarded \$1.25 million last June. That case is now under appeal by BNSF.

Back on Feb. 23, 2010, Rookaird carried out an air-brake test on a cut of 42 cars, many of which were placarded hazardous tank cars with residues of propane and butane. The company questioned whether the brake test was necessary, and then ultimately fired Curtis for failing to work efficiently and falsifying work records.

Rookaird then filed a whistleblower case with the Occupation-

al Safety & Health Administration (OSHA) who in 2013 found "the preponderance of evidence" showed the brake test contributed to his firing, and ordered him to be reinstated. The railroad appealed that decision, which preceded Rookaird's district court victory this May. (Note: every Class I rail carrier has appealed — as a matter of course — every single case that OSHA has awarded to a railroad worker whistleblower). Now that the BNSF has lost in federal court, it appears that the carrier will appeal this verdict as well, prolonging the case and denying justice to the victim once again.

Earlier this spring, RWU member and wife of Curtis, Kelly Rookaird, travelled to Washington, DC as part of a rank & file delegation sponsored by Railroad Workers United to present information to the Whistleblower Protection Advisory Committee (WPAC) of OSHA. The group also included Mike Elliott and Jeff Kurtz (see article above).