Coalition Building and the Ninth Circuit Opinion on Train Crew Size

Congratulations and commendations are in order for Washington state Rail Labor and their members. On Feb. 23, 2021, the U. S. Court of Appeals for the Ninth Circuit issued an important decision clarifying the rights of states to regulate certain railroad safety matters (See U.S. Court of Appeals for the Ninth Circuit, Case No. 1971787). While the crux of the decision hinged on procedural failings, the court addressed other issues that included federal preemption – a boilerplate industry assertion on literally all state-level attempts to regulate the railroads. Specific to this case was state mandated Minimum Train Crew Size, an issue Rail Labor has pursued nationally for years. The road to victory involved a diverse coalition, and it is worth exploring how the remarkable feat was accomplished. Being one of the small cogs in a complex coalition machine, I can offer my perspective.

Having hired out on the railroad in 1995 at age 36, I was further along the career path than many of my railroad worker contemporaries. But life experience and a recovering railroad industry were to my advantage. Within a few years of working yards and “the road” across Washington state, I wanted to get more involved in workplace safety. The very real dangers inherent in the industry, and being neglected by the railroads, were obvious and more needed to be done to protect railroad workers. While “marked up” in Pasco, WA, and in the Yakima Valley, I decided to run for the Legislative Representative (LR) position at the Brotherhood of Locomotive Engineers and Trainmen (BLET), Division 402 (Pasco). In turn, the LR position introduced me to the union/company safety processes and, more importantly, with the state-level BLET Washington State Legislative Board (WSLB). In the late 1990’s, the BLET-WSLB had a change in leadership with the new board Chair, Mark K. Ricci, PhD, taking office. Determined to act on larger safety issues, Brother Ricci elevated issues like fatigue and remote-control locomotive technology to the forefront of the board’s efforts. Brother Ricci was very adept at producing professional-grade white papers, attempting “grass roots” education of members and the public on safety issues, and exploring state-level regulatory safety action by way of outreach to the Washington State Utilities & Transportation Commission (UTC). These skillsets were instrumental in engaging our members, drawing media attention to railroad safety issues in the public realm, building support with other labor unions and state legislators, and ultimately, providing inspiration (myself included) to “think outside the box” on ways to progress the BLET-WSLB’s safety agenda. One of the first coalition building relationships outside the immediate rail labor world was with the International Longshore and Warehouse Union (ILWU), Local 24, Hoquiam, WA.

Remote-control locomotive technology was being introduced into the railroad working environment in WA state by Class I railroads and, in some cases, smaller rail operations. This rollout was designed to remove switch job locomotive engineers from the cabs, replace them with technology, and reduce crew size. In truth, it was about saving money and increasing profits. Coincidently, there had been a remote-control locomotive “runaway” accident in the Hoquiam area, and I was looking for someone from Labor who might be able to provide more details. So, I reached out to Mike Brown, President, and Billy D. Swor, Sec-Treas., at ILWU Local 24 in Hoquiam, WA. After explaining our safety concerns and issues we had with remote control locomotives, I asked if the ILWU would be willing to come to Olympia and participate in UTC safety hearings as Brother Ricci had convinced the commission to examine remote-control locomotive safety. Without hesitation Brothers Brown and Swor agreed to help.

We all met up in Olympia at the UTC building to provide testimony to the commissioners regarding the safety concerns workers in both the railroad industry and the Longshore industry had with remote control locomotive technology. To say the least, the railroads were not pleased. In fact, they had tried to stop the hearings altogether. At the start of the first hearing, a corporate lawyer for one of the Class I railroads stood up and proclaimed the UTC (and by inference, Labor) had no right to hold public hearings on railroad safety! While this arrogant, entitled pronouncement was outrageous and offensive, it is typical of the Class I railroad mentality – both past and present. The hearings were held, and they were important as they would be one of the first railroad industry assertions of preemption of state-level railroad safety processes in Washington state.

Equally important, the UTC remote-control locomotive hearings marked the beginning of modern era, state-level railroad regulatory efforts. Specifically, the hearings: 1) marked the beginning of stronger Labor-to-Labor relationships, i.e., coalitions and, 2) were one of the first attempts in Washington state after the enactment of the Federal Railway Improvement Act of 1970 to seek state-level regulation of the railroad industry. While an entire book could be written on the next several years after the remote-control locomotive hearings at the UTC in Olympia, WA, I want to keep the focus on coalition building and its importance to making meaningful change for workers, the public, the environment, and other issues important to blue-collar, working-class people.

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