



What's Inside

Volume 14 • Number 4

Page 2

• Removal of Social Security earnings cap will benefit some Railroad Retirement recipients.

Page 4

• The "cram down" breakdown — a news analysis regarding how UTU made cram down worse.

Page 5

• BLE member angry of current Railroad Retirement deal.
• Injunction upheld against Springfield Terminal.

Page 6

• Wisconsin two-person crew bill awaiting governor's OK.
• Statement by AFL-CIO President John J. Sweeney on UTU disaffiliation.
• Tornado hits BLE general committee office in Fort Worth.

Page 7

• Brief history of the Tex-Mex Railway representation elections.

Page 8

• Why we blow whistles: a locomotive engineer's perspective of grade crossing fatalities.

Page 9

• Three elementary school students killed in bus-train collision.
• Conway out in major CSX management shake-up.

Page 10

• Surface Transportation Board halts BNSF-CN combo, places 15-month moratorium on large rail mergers.

Page 12

• BLE scores second major victory for post-85 engineers.

AFL-CIO urges NMB to dismiss UTU motion

Reconsideration of UP case would impair NMB credibility

The AFL-CIO has once again acted in support of the Brotherhood of Locomotive Engineers, this time in strongly urging the National Mediation Board to dismiss the UTU's motion for reconsideration in the Union Pacific case.

Using its strongest language yet, the AFL-CIO said the NMB would "seriously impair (its) credibility and impartiality" if it granted UTU's motion.

The AFL-CIO took this position in a March 27 brief filed with NMB Chief of Staff Stephen E. Crable. In it, the AFL-CIO expressed concern about the "integrity of the Board's processes" and the apparent collaboration between UTU and the National Railway Labor Conference

in petitioning for reconsideration.

"The AFL-CIO's concern about the integrity of the Board's processes is heightened by the National Railway Labor Conference's (NRLC) sudden attempt to inject itself in this matter on March 16 by inviting the Board to 'schedule hearings' on a supposed inconsistency between the Panel determination and the Board's simultaneously issued decision in Texas Mexican Ry. Co., 27 NMB No. 46 (March 1, 2000)," the AFL-CIO wrote. "Although the NRLC letter does not support UTU's motion for reconsideration and seeks only some undefined later reconciliation of the holdings in the two now-concluded cases, its timing and apparent collabora-

tion with UTU at least implicitly solicits the Board to do what we submit is foreclosed, namely, reconsider the substance of its decision in Union Pacific."

In its motion for reconsideration, UTU argued that the NMB's Tex Mex ruling, which forced the creation of a combined Train and Engine Service Employee craft on that carrier (see page 7), is justifiable grounds for re-opening the Union Pacific case, in which a three-person panel of labor relations experts correctly ruled that locomotive engineers and conductors belong to two distinct, separate crafts.

See AFL-CIO, Page 11

Power of many

Eight rail unions unite to get results in UP harassment case

A coalition of eight railroad labor unions have joined forces in Pocatello, Idaho, to battle relentless harassment from management of the Union Pacific Railroad.

Through a united front of labor solidarity, the eight unions forced a meeting with Jeff Crandall, Superintendent of UP's Salt Lake Service Unit, and stated their case regarding an end to harassment and intimidation on the property.

Initially the carrier resisted meeting with the unions, but when confronted with the complete solidarity of eight unions, and a message delivered by BLE Local Chairman

Jim Lance, Superintendent Crandall changed his mind.

"We have a problem collectively, and if we do, you do," said Lance, Local Chairman of Division 228 in Pocatello.

The same day Lance delivered the message, Crandall made the drive from his office in Salt Lake City, Utah, to Pocatello. Later that evening, Crandall met with representatives of the BLE, Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen, International Association of Machinists, International Brotherhood of Electrical Workers, National Conference of Firemen & Oil-

ers — SEIU, the Transportation Communications International Union-Carmen's Division, and UTU.

Representatives of the eight unions gave specific examples of how their members were harassed by UP managers and took the firm position that the harassment must end.

IBEW Representative Tommy Brown reports that UP managers aren't training and coaching workers — they're harassing and intimidating them. In addition, some of the workers Brown represents are forced to perform jobs they aren't properly trained to perform.

See Power of Many, Page 11

Carriers turn down compromise Railroad Retirement proposal

A compromise proposal by Representative Jim Oberstar (D-MN) to resolve the impasse over changes to the railroad retirement system was rejected in late March by Ed Hamberger, President of the American Association of Railroads.

The impasse arose over opposition by the Brotherhood of Locomotive Engineers and the Brotherhood of Maintenance of Way Employees to a railroad retirement reform package that would give the nation's railroads a windfall of over \$400 million annually, beginning in 2003, as a result of proposed reductions in carrier

contributions to the industry's pension plan, known as Tier II. The two unions represent nearly 40% of railroad industry workers.

The basis for this proposal was data released by the Railroad Retirement Board in mid-March, which established that the industry's take from the deal would be as much as 20% higher than originally estimated. The figures also showed that the package could be restructured to permit a full annuity at age 58, and still generate approximately \$100 million annually in savings for the carriers.

See Compromise, Page 11



LEGISLATIVE UPDATE

Social Security changes to benefit railroad retirees

On April 7, President Clinton signed into law the elimination of the earnings cap for Social Security, and, in doing so, also eliminated the earnings cap for recipients of Railroad Retirement who are between the ages of 65-69.

By law, the Railroad Retirement Board applies the Social Security Act earnings restrictions to railroad retirement annuities, in addition to certain other work restrictions specified by the Railroad Retirement Act that are not changed by this legislation.

Under the two tier railroad retirement system, tier I railroad retirement benefits and vested dual benefits paid by the Board to employees, spouses and survivors, as well as the tier II benefits paid to survivors, are subject to earnings deductions just like social security benefits, if post-retirement earnings exceed certain exempt amounts.

Retroactive to January 1, 2000, the amendments eliminate deductions of \$1 in benefits for every \$3 in earnings over \$17,000 previously applied until age 70 to those of full social security retirement age. Full retirement age ranges from age 65 for those born before 1938 to age 67 for those born in 1960 or later. These deductions, however, will remain



in effect for the months before the month of full retirement age during the calendar year of attainment.

In the years before the year of full retirement age, the earnings deduction of \$1 in benefits for every \$2 over the exempt amount, \$10,080 in 2000, also remains in effect.

This legislation does not eliminate the railroad retirement work restrictions which are not included in the Social Security Act. A railroad retirement annuity is still not

payable for any month in which an annuitant works for a railroad or a railroad labor organization, regardless of age. Nor does the legislation affect the tier II railroad retirement earnings deductions that apply to employees and spouses who work for their last pre-retirement non-railroad employers. These additional deductions of \$1 for every \$2 in earnings up to a maximum reduction of 50 percent continue to apply to tier II benefits, and supplemental employee annuities, regardless of age or the amount of earnings. The special restrictions that apply to disability annuitants have also not changed.

Earnings consist for these purposes of all wages received for services rendered, plus any net earnings from self-employment. Interest, dividend,

Hazmat safety plan

George Meany Center offers free training course to railroaders

The Brotherhood of Locomotive Engineers, in conjunction with the George Meany Center for Labor Studies, will be conducting six four-day hazardous waste/chemical emergency response training programs at the Center's campus in Silver Spring, MD. The training is scheduled for the following dates:

- May 21-25, 2000
- June 4-8, 2000
- July 16-20, 2000
- August 6-10, 2000
- August 13-17, 2000
- August 20-24, 2000

This training addresses the required procedures and different levels of response and worker protection in case of a hazardous materi-

als release. Advanced classroom instruction as well as intensive hands-on drills, including a simulated hazmat response in full safety gear, are also part of the program.

Grant funds support transportation, lodging, and meals for all program participants. In addition, participants who are unable to receive pay through the railroad to attend training will be eligible for a stipend of \$107 per day.

Space is limited to 25 for each program and participants will be selected on a first-come, first-served basis.

If you are interested, please contact Betty Child of the BLE Washington Office at: (202) 347-7936, ext. 11; fax: (202) 347-5237; or e-mail: bledc@aol.com.

certain rental income or income from stocks, bonds, or other investments are not considered earnings for these purposes.

About 2,500 beneficiaries on the Board's rolls are affected by the new law. Retroactive payments, averaging about \$1,700, of benefits previously withheld for excess earnings, as well as the removal of any earnings deductions applied to those affected, should be completed by early July.

Removal of the earnings cap was a

benefit the Brotherhood of Locomotive Engineers fought for last year during negotiations to reform Railroad Retirement. The carriers, however, refused to negotiate with the BLE and BMWE after December of 1999.

The new law, passed unanimously by both houses of Congress, does not reduce income taxes for the elderly.

There are no plans to remove the earnings limit for early retirees in the 60 to 65 age group. •

DC Feedback: Protecting workers' rights

Have a question about federal laws, Federal Railroad Administration rules that impact your job, or about pending legislation governing our industry? Send it to:

D.C. Feedback
Brotherhood of Locomotive Engineers
 10 G. Street N.E., Suite 480
 Washington, DC 20002

Or you can fax your questions to (202) 347-5237; or via e-mail to: bledc@aol.com.

If the BLE's National Legislative Office does not have the answer on hand (such as a federal interpretation), they'll get back to you as soon as possible. Select questions and answers will be published regularly in the pages of the Locomotive Engineer Newsletter.

This month's installment of DC Feedback deals with current protections for whistle blowers.

Dear Sir and Brother,
 In your letter of January 10, 2000, you request answers

to the question: "Did President Clinton sign into law that whistle blowers, who report unsafe acts that are sanctioned by the railroad and its officials, can not be fired or disciplined?" The statute you refer to is found in U.S. Code Title 49 Section 20109, it states:

Section 20109. Employee protections

(a) Filing Complaints and Testifying—A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or a representative, has —

(1) filed a complaint or brought a proceeding related to the enforcement of this part or, as applicable to railroad safety, chapter 51 or 57 of this title; or

(2) testified or will testify in that proceeding.

(b) Refusing To Work Be-

cause of Hazardous Conditions —

(1) A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if —

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that —

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger through regular statutory means; and

(C) the employee, where possible, has notified the carrier of the hazardous condition and the intention not to per-

form further work unless the condition is corrected immediately.

(2) This subsection does not apply to security personnel employed by the carrier to protect individuals and property transported by the railroad.

(c) Dispute Resolution — A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim, the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved — An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

(e) Disclosure of Identity—

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety, chapter 51 or 57 of this title or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

(Pub.L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 867.)

Before taking any action against an employer it is important to document your safety concerns and be prepared to offer witnesses to your actions. •

RRB sets minimum customer service standards

The U.S. Railroad Retirement Board's Customer Service Plan promotes the principles and objectives of customer-driven quality service agency-wide. The Board's plan states specifically the level of service that customers can expect, and an important part of the plan is a pledge to keep beneficiaries informed of how well the Board is meeting the plan's standards. The plan is reviewed and updated periodically as the Board gains more experience with it, compares its service with the best in business and considers feedback received from its customers.

The following questions and answers provide information about the Railroad Retirement Board's performance in the key areas of railroad retirement, disability and survivor benefit payments, plus railroad unemployment and sickness benefit payments, and the handling of correspondence during Fiscal Year 1999 (October 1998 – September 1999).

1. What standards were used by the Board in Fiscal Year 1999 for processing applications for railroad retirement employee or spouse annuities?

The Board's Customer Service Plan provides that if you filed for a railroad retirement employee or spouse annuity in advance, you will receive your first payment, or a decision, within 35 days of the beginning date of your annuity. If you have not filed in advance, you will receive your first payment, or a decision, within 65 days of the date you filed your application.

Of the cases processed during Fiscal Year 1999, 93.2 percent of employee and 95.5 percent of spouse applicants who filed in advance received a payment, or a decision, within 35 days of their annuity beginning date. Average processing times for employee and spouse applications were 10.4 and 7.7 days, respectively.

Also, of the cases processed, 96.2 percent of employee and 89.5 percent of spouse applicants who had not filed in advance received a payment, or a decision, within 65 days of their filing dates. In these cases, the average processing times for employee and spouse applications were 25 and 28 days, respectively.

2. What standards were used by the Board in Fiscal Year 1999 for processing applications for disability annuities under the Railroad Retirement Act?

The Board's Customer Service Plan provides that if you filed for a railroad retirement disability annuity, you will receive a decision within 105 days of the date you filed your application.

If it is determined that you are entitled to disability benefits, you will receive your first payment within 25 days of the date of the Board's decision, or the earliest possible payment date, whichever is later.

Of the cases processed during Fiscal Year 1999, 50.6 percent of those filing for a railroad retirement disability annuity received a decision within 105 days of the date they filed an applica-

Railroad Retirement informational conferences for 2000

The U.S. Railroad Retirement Board will conduct free informational conferences this year.

On-site registration begins at 8 a.m. for each conference. All sessions begin promptly at 8:30 a.m. and end at 12:15 p.m. Dates and locations are as follows:

May 11 • Kansas City, Kan.
Reardon Civic Center, 500 Minnesota Ave.

May 12 • Denver, Colo.
Radisson Hotel, Denver Stapleton Plaza, 3333 Quebec St.

May 12 • Little Rock, Ark.
Embassy Suites, 11301 Financial Centre Parkway

May 12 • Strongsville, Ohio
Holiday Inn, SouthPark Center, 15471 Royalton Road (Rt. 82)

May 19 • Birmingham, Ala.
Medical Forum, 950 22nd St. North

June 2 • Woburn, Mass.
Ramada Inn, 15 Middlesex Canal Park Rd. (Exit 35 off Rt. 95/Rt. 128)

June 9 • Billings, Mont.
Sheraton Hotel, Tempest Room, Third Floor, 27 North 27th St.

June 15 • Eagan, Minn.
Yankee Square Inn, 3450 Washington Drive, I-35 E & Yankee Doodle Rd.

September 15 • Spokane, Wash.
Airport Ramada Inn, Spokane International Airport

October 13 • Fort Worth, Texas
Holiday Inn South, 100 Alta Mesa East Blvd.

October 13 • Houston, Texas
University Hilton Hotel, 4800 Calhoun Road, Room 275

October 27 • Metairie, La.
Holiday Inn, I-10 & Veterans Blvd.

November 2 • Louisville, Ky.
Executive Inn, 978 Phillips Lane

Nov. 3 • Barboursville, W.Va.
Best Western-Gateway Conference Center, 6007 U.S. Route 60 E

November 17 • Charlotte, N.C.
Sheraton Airport Plaza Hotel, I-85 & Billy Graham Parkway

Nov. 17 • Albuquerque, N.M.
AmeriSuites, 6901 Arvada N.E.

December 8 • Jacksonville, Fla.
Holiday Inn-Baymeadows, 9150 Baymeadows Road

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tion. The average processing time was 116 days. Of those entitled to disability benefits, 90 percent received their first payment within the Customer Service Plan's timeframe. Average processing time was 8.9 days.

3. How did the Board's performance in the area of survivor benefits measure up to its standards in Fiscal Year 1999?

Under the Board's Customer Service Plan, if you filed for a railroad retirement survivor annuity or a lump-sum benefit, you will receive your first payment, or a decision, within 65 days of the date you filed your application, or became entitled to benefits, if later. If you are already receiving a spouse annuity, you will receive your first payment, or a decision, within 35 days of the date the Board receives notice of the employee's death.

Of the cases processed during Fiscal Year 1999, 77.3 percent of the applicants for a survivor annuity received a payment or a decision within 65 days. In addition, 93.8 percent of the applicants for a lump-sum benefit received a payment or a decision within 65 days. In cases where the survivor was already receiving a spouse annuity, 90.7 percent of the applicants received a payment or a decision within 35 days of the Board being notified of the employee's death. Average processing times for all recurring and lump-sum applications were 26 and 21 days, respectively.

4. What were the standards for the handling of applications and claims for railroad unemployment and sickness benefits and how well did the Board meet these standards?

Under the Board's Customer Service Plan, if you filed an application for unemployment or sickness insurance benefits, you will receive a claim form, or a decision, within 15 days of the date you filed your application. If you filed a claim for subsequent biweekly unemployment or sickness insurance ben-

efits, you will receive a payment, or a decision, within 15 days of the date the Board receives your claim form.

During Fiscal Year 1999, 99 percent of unemployment benefit applications and 99 percent of sickness applications processed met the Board's standard. Average processing times for unemployment and sickness insurance applications were 1.6 and 2.8 days, respectively.

In addition, 99.5 percent of subsequent claims processed for unemployment and sickness benefits met the Board's standard for Fiscal Year 1999. Payments are issued within two business days of processing. The average processing time for claims was 3.9 days.

5. How well did the Board meet its standard for replying to correspondence in Fiscal Year 1999?

The Board's standard provides that when you inquire by letter, you will receive a reply within 15 days of the date the Board receives your inquiry. If for any reason the Board cannot reply within that timeframe, it will acknowledge the letter and tell you how long it will be before your questions can be answered fully.

In Fiscal Year 1999, 99 percent of all correspondence the Board received was responded to, either with an acknowledgement or with a final reply, within the standard.

6. How did the Board's performance in meeting its standards in Fiscal Year 1999 compare to its performance in Fiscal Year 1998?

Fiscal Year 1999 performance versus the customer service standards remained at the same high level when compared to Fiscal Year 1998 performance.

The most marked improvement was shown in the processing of applications for disability annuities. For cases processed during Fiscal Year 1999, 50.6 percent received a decision within 105 days of their filing dates as

compared to 28.1 percent in Fiscal Year 1998; and the average processing time in these cases improved to 116 days, as compared to 143.9 days last year. Of those entitled to benefits, 90 percent received their first payment within the Customer Service Plan's standard, with an average processing time of 8.9 days, as compared to 84.2 percent and 12.3 days, respectively, in Fiscal Year 1998.

The processing of disability applications requires medical evidence and related documentation to establish entitlement; and obtaining this material can be a lengthy process. The Board continuously seeks improvements in collecting the required documentation to provide accurate and more timely handling of applications.

Only in the handling of sickness insurance applications was there a slight decline in performance versus the standards, when compared to Fiscal Year 1998. Performance declined marginally to 99 percent during Fiscal Year 1999 compared to 99.2 percent for Fiscal Year 1998. However, this performance still exceeded the target of 98.8 percent set for the Board in its Annual Performance Plan.

7. Can beneficiaries provide feedback to the Board about the service they receive?

A Customer Assessment Survey form is available in every field office allowing beneficiaries to evaluate the service they received and suggest how the Board can improve its service. Persons not satisfied with the service they received may contact the manager of the office with which they have been dealing or the regional director who is responsible for that office. Their names and addresses are available in each office.

The addresses and phone numbers of all RRB field offices are available on the Board's web site at www.rrb.gov or by calling the toll-free RRB Help Line at (800) 808-0772. The Help Line is an automated service available 24 hours a day, 7 days a week. •

BLE News Analysis

The 'cram down' breakdown

How the UTU 'agreement' to end cram down made things worse

Talks between the AFL-CIO affiliated rail unions and the National Railway Labor Conference (NRLC) to end the practice known as "cram down" collapsed during the last week of March. To understand why the negotiations failed, as well as what the future holds, it is important to know how "cram down" came to be, and how an agreement recently reached by the United Transportation Union (UTU) actually made "cram down" worse.

Early History

The Transportation Act of 1920 introduced the concept of preemption, or overriding, of conflicting laws into Interstate Commerce Commission (ICC) oversight of railroad mergers. Because a variety of state laws and federal anti-trust statutes often were used to derail mergers, and since the federal government adopted a national rail transportation policy of consolidation of America's railroads after World War I, preemption made perfect sense. However, nothing in the legislative history of the Act — or in ICC or court decisions — suggested that preemption was applicable to railroad labor relations, or to the collective bargaining agreements (CBAs) between any rail union and the carriers involved in mergers or other financial transactions.

Labor and management reached a national agreement in 1936, known as the Washington Job Protection Agreement (WJPA). The WJPA set forth protective standards to be applied when railroad workers were adversely affected by mergers or consolidations. WJPA required that changes in CBAs had to be negotiated and, although it did permit ultimate arbitration of disputes, there were no time limits for reaching merger implementing agreements.

In 1940, the Interstate Commerce Act (ICA) was amended again. The national policy embodied in the 1920 Act was abandoned, in favor of ICC promotion of voluntary mergers and consolidations. The preemption provisions were continued and language was added, mandating that ICC impose employee protective conditions as a prerequisite for merger approval; however, nothing was said by Congress about forcing changes in existing CBAs. Neither did the carriers attempt to do so in arbitration, nor did any arbitrator find that the CBAs were abrogated or changed as the result of a merger.

During the latter half of the 1950s, the railroad industry tried — for the first time — to "cram down" changes to a CBA by relying on the preemption provisions of the ICA. The ICC rejected this approach in *Chicago, St. Paul, Minneapolis & Omaha Ry. - Lease*, 295 I.C.C. 701, 702 (1958), holding that "Congress has not conferred upon us the power to determine the disputes which are subject to the Railway Labor Act or questions regarding the jurisdiction of

the National Mediation Board, which, in effect, is what North Western requests us to do."

The ICC again expressly rejected the carrier's contention that the preemption provisions of the ICA relieved them of the obligations under their CBA. The ICC held as follows:

"By its terms, [the "cram down" provision] applies only to antitrust and other restraints of law Neither the Washington [Job Protection] Agreement nor the specific collective bargaining agreements between these roads and their employees is such a restraint....

* * *

"The designated 'exclusive and plenary power' of the [ICC] ... cannot be so broadly construed as to brush aside ... voluntary contractual agreements made binding by the force of law."

Southern Ry. - Control - Central of Georgia Ry., 331 I.C.C. at 170 (1967). In a 1979 ruling that has become known simply as *New York Dock*, the ICC imposed employee protective conditions that continue today to be the standard in mergers involving Class I railroads. However, *New York Dock* did not expand preemption to the collective bargaining arena. In fact, as recently as early 1983, in *Brotherhood of Locomotive Engineers v. Chicago & North Western Transp. Co.*, 360 I.C.C. 857, 861, the ICC once again acknowledged its lack of "expertise to place ourselves into the field of collective bargaining or labor management relations."

"Cram down" since 1983

However, just months later, in *Denver & Rio Grande Western Ry. - Trackage Rights - Missouri Pacific R.R.*, Finance Docket No. 30000 (Sub-No. 18), the ICC held, for the first time, that CBA provisions could be preempted, and substitute provisions "crammed down." Subsequently, two *New York Dock* arbitrators relied upon this decision to "cram down" CBA changes in creating merger implementing agreements.

What followed was a series of legal challenges that persisted for years. The ICC affirmed the arbitration decisions. The Unions appealed, and the U.S. Court of Appeals for the D.C. Circuit reversed the ICC. The railroad appealed that decision to the United States Supreme Court, which ruled in 1991 that the application of "cram down" to CBAs was legal. *Norfolk & Western Ry. v. American Train Dispatchers Ass'n.*, 499 U.S. 117.

Although the power to preempt — or "cram down" — has been at the discretion of the ICC (and, since 1995, of the Surface Transportation Board (STB), which is the ICC's successor agency), the lack of a clearly-defined standard has permitted "cram down" to be used in an outrageous manner, including in the following circumstances:

"(T)he AFL-CIO rail unions unanimously rejected the UTU agreement (and) returned to the table with the carriers to see whether the gaping holes in the UTU agreement could be closed."

- to wipe out a CBA on CSX, more than 30 years after the transaction giving rise to the consolidation;

- to override a provision in a CSX agreement requiring the negotiation of any changes to a preexisting implementing agreement; and

- to enable the STB to overrule a finding by a New York Dock arbitrator that a carrier's attempt to merge UP seniority districts 11 years after a merger was not a New York Dock transaction.

In fact, there is no reported case where the ICC or STB overruled an arbitrator's decision to "cram down" agreement changes. As a result, rail unions have been forced to accept inferior implementing agreements, for fear that a New York Dock arbitrator or the STB will "cram down" even worse conditions.

The battle over Linda Morgan

Linda Morgan, a Democrat, was appointed Chair of the ICC by President Clinton in early 1994. She became Chair of the STB when that agency succeeded the ICC. Morgan became the poster child for "cram down" as agreement after agreement was abrogated during her tenure.

Her first term ended on December 31, 1998, but — under the law — she was permitted to continue in office for one more year. If she was not reconfirmed by the Senate by December 31, 1999, she was out.

On May 5, 1999, the AFL-CIO's Executive Council took an extraordinary step and unanimously passed a resolution opposing Morgan's renomination, because of her role as an agent of destruction of CBAs. The entire rail labor movement fought Morgan's renomination, with one exception (UTU).

That fight was in vain, however, because President Clinton renominated Morgan during the early summer. Initially, the renomination was stalled in the Senate, while leaders of the House and Senate committees having jurisdiction over the railroad industry urged labor and management to try to negotiate an end to "cram down."

On September 15th — while the negotiations were moving as slowly as Morgan's renomination — Senator Mike Crapo (R-ID) introduced a bill that was designated as S. 1590. The Crapo Bill provides that the "[Surface Transportation] Board shall not, under any circumstances, have the authority ... [to] break, modify, alter, override, or abrogate, in whole or in part, any provision of any collective bargaining

agreement or implementing agreement made between the rail carrier and an authorized representative of the employees of the rail carrier under the Railway Labor Act ... or ... provide th[is] authority ... to any other person, carrier or corporation." In other words, "cram down" would be illegal.

Negotiations between the unions and the NRLC to end "cram down" collapsed without agreement in October, and rail labor geared up for a fight to push the Crapo Bill. Rail labor also convinced Senator Bob Torricelli (D-NJ) to put a "hold" on the Morgan nomination, which stalled it altogether.

What happened next could have been scripted by Machiavelli. Ed Hamberger, President of the Association of American Railroads (AAR) — the same Ed Hamberger who also recently refused a compromise proposed by Congressman Jim Oberstar to resolve the dispute over railroad retirement — contacted AFL-CIO Secretary-Treasurer Rich Trumka and offered a moratorium on New York Dock notices, and "cram down," while labor and management negotiated new terms.

Trumka countered by insisting on a moratorium that would last until either legislative enactment of the agreed-upon changes or the end of the 107th Congress, essentially the end of 2002. Hamberger accepted this offer at a Capitol Hill meeting on November 9th, and confirmed his acceptance of the deal in phone calls to the White House, the DOT's General Counsel and Senator Hollings, who had sponsored Morgan's nomination.

Senator Torricelli, who had been under unrelenting pressure to release his "hold," did so, after confirming that the deal had been made. You can guess what happened next. Brother Trumka faxed Hamberger the written agreement outlining the understanding. Hamberger ducked and stalled until after Morgan was reconfirmed, and then reneged on the deal.

Bargaining without leverage

By the second week of December, the UTU — who had opposed the rest of rail labor and had pushed for Morgan's reconfirmation — began clamoring that we should rush back to the table. In January, Brother Trumka convened a meeting with rail labor representatives and offered to remove himself from the talks, if that was what they wanted. The consensus reached was to stay the course, and unite behind our

Injunction against Springfield Terminal upheld by First Circuit

The First Circuit Court of Appeals upheld a lower court's determination that Springfield Terminal Railway Company (ST) violated the Railway Labor Act by transferring switching work to Aroostook and Bangor Resources, Inc. (ABR), with whom ST shared common ownership.

In a ruling issued on April 5, Circuit Judge Carmit Lipez, writing for the 2-to-1 majority, affirmed that the dispute was a "major dispute" under the Railway Labor Act, and that the plaintiffs in the case — the Brotherhood of Locomotive Engineers and the United Transportation Union — were entitled to injunctive relief in order to preserve the status quo.

"It's a substantial victory for us, but we know the battle isn't over," said Springfield Terminal General Chairman Mike Twombly, who delivered key testimony during the hearings. "It's a real kick in the pants for Springfield Terminal. Had the ruling gone in their favor, it would have given them the green light to circumvent our collective bargaining agreements."

The dispute began in 1996, when ST demanded that BLE and UTU members who worked on switching crews accept a 26 percent pay cut and give back work rules. In 1998, after this demand was rejected by the unions' memberships, ST signed a joint use agree-

ment with ABR — a non-union manufacturer of clothes pins and other wood products — that permitted ABR to perform its own intra-plant switching. ST personnel trained two non-union ABR employees in the use of a track mobile to handle the switching.

Shortly thereafter, a ST vice president who was involved in the failed labor negotiations suggested to ABR that it transport the track mobile from place to place on the line and perform switching work for other ST consignees, including Lincoln Pulp & Paper and Passadumkeag Stud Mill. Prior to ABR taking over this switching work in May of 1988, BLE and UTU members working for ST had performed this service.

During this period, ST's President was David Andrew Fink, and ABR's President was his son, David Armstrong Fink. The Finks sat on the Boards of Directors of both companies, as did Richard Kelso and Timothy Mellon. In addition, the Finks and Mellon had ownership interests in both companies.

The Appeals Court found that ST had improperly used ABR as its "alter ego" in order to avoid the status quo requirement of the Railway Labor Act. Under the status quo requirement, parties to a major dispute are prohibited from engaging in any kind of self-help

"It's a substantial victory for us.... It's a real kick in the pants for Springfield Terminal."

— BLE General Chairman Mike Twombly

BLE member angry over Railroad Retirement deal

Dear Editor:

I would like more information about what is going on with the Railroad Retirement system.

As almost everyone knows, this is our money that has been part of our compensation packages over the last two decades. To me, it sounds unethical that this money was always mentioned as our compensation. It has been used as leverage against us for getting substandard pay increases.

Now, it seems as though it is being leveraged against us again. They have been taking this money away from us for two decades up front and now, want to take it away from us on the back end.

To retire at 60 is really no deal at all. Many of us can go at 60 now. The way the carrier has managed to manipulate the government, they are just "steamrolling" over us from every angle.

We are literally being worked into the ground with policies like the "Availability Policy," which is now called "Attendance Guidelines." The only thing different is the name.

I knew there were evil men in this world but I did not realize how blatant they could be in respect that, they're accomplishing all this with the blessings of those in our judicial system. I have almost lost all hope that things will ever get better. How does one compete when there is not a level playing field?

The carriers have become artists at manipulating the truth and the judicial system is influenced by big money. It is hard to find an honest man amongst all that power and money.

Thank you for your time.

Sincerely,
Bill Gray
BLE Division 104
Spokane, Wash.

(Editor's Note: Please see related article on Page 1, titled "Carriers turn down compromise Railroad Retirement proposal.")

until all of the Act's procedures have been exhausted.

Under the terms of the ruling, ST is enjoined from transferring any non-ABR switching work to ABR, and ABR is enjoined from performing any non-ABR switching work that has been performed by ST. A dissent was filed by Circuit Judge Norman Stahl.

BLE General Counsel Harold A. Ross, who quarterbacked the successful legal effort, put the win in perspec-

tive. "For more than a decade, it has been difficult, if not impossible, for rail unions to convince a judge that a dispute is 'major' and to obtain injunctions against carriers' unilateral action against us. This decision represents a terrific victory for all operating craft employees."

The 54-page court ruling is available for download on the BLE website at the following address:
http://www.ble.org/BLE_Springfield.pdf

Bargaining without leverage, UTU makes 'cram down' worse

Cram Down

Continued from Page 4

double-crossed leader.

UTU President Little then launched a personal attack on Brother Trumka, and tried to drive a wedge between Rich and the rail unions. When that failed, he went to the table by himself and cut a deal with the carriers that UTU claims "ended cram down." But, instead of ending "cram down" what Little actually agreed to would have:

- made "cram down" the law of the land, because the current discretionary STB power to override CBAs would have been converted into a legal right;
- permitted the use of the new "cram down" to establish a single, system-wide CBA;
- allowed an unlimited expansion of the size of seniority districts;
- failed to prohibit a carrier from arguing a position in an arbitration in

the event the union was unable to choose an agreement;

- allowed for the union's choice to be overridden if a single provision in the selected agreement was inconsistent with an agreement chosen by another union;
- permitted the carrier virtually absolute power in the selection of a seniority integration plan;
- permitted the carrier to "cram down" uniform payroll procedures on a system-wide basis, with no duty to bargain; and
- permitted the carrier to "cram down" what was vaguely termed as "uniform crew calling practices" on a system-wide basis, again with no duty to bargain.

The latter two provisions are significant, because they represent a grant of rights and powers to the carriers that they do not now have, even under the present, draconian "cram down" practice.

Although the AFL-CIO rail unions unanimously rejected the UTU agreement, faced with the reality of what UTU had done, they returned to the table with the carriers, to see whether the gaping holes in the UTU agreement could be closed.

After a series of intensive negotiations, things fell apart on March 28, with irreconcilable differences over unrestricted seniority district sizes, the ability to use the new rules to transfer agreement workers into non-agreement facilities to remove them from under their CBAs, and the ridiculously broad powers to "cram down" uniform system-wide "administrative procedures."

Where things go from here

Despite deep divisions over railroad retirement reform, the AFL-CIO rail unions have stood shoulder-to-shoulder on "cram down" remarkably well, in no small measure because the

UTU is not at the table to prod anyone to engage in a race to the bottom. We must continue to hang tough and remain united on this issue, because the only ultimate success will be the passage of an abolition of "cram down," such as contained in the Crapo Bill, or similar language contained in two other bills pending in the House, which were sponsored by Congressman Oberstar (D-MN) and Congressman Jerry Nadler (D-NY).

At the March 14th meeting of the Rail Labor Division of AFL-CIO's Transportation Trades Department (TTD), a resolution calling for a TTD legislative mobilization to push S. 1590 — Senator Crapo's bill — was unanimously adopted.

That mobilization is in its earliest stages as you read this, and you will be called upon to carry your share of the burden in the coming weeks and months.

Stay tuned. •

Tornado hits BLE office in Fort Worth

The month of March went out like a lion for members of the Brotherhood of Locomotive Engineers in Fort Worth, Texas.

BLE Vice-General Chairman Dennis Pierce reported that the BNSF/Montana Rail Link General Chairman's office was hit by a tornado on March 28.

The BLE office is located on the 18th floor of a 35-story "glass tower" in downtown Fort Worth. More than 80 percent of the building's windows were knocked out during the storm.

"Our building was right in (the tornado's) path, so we took a direct hit," Pierce said.

The tornado, classified as an F2, had winds of up to 157 mph. It hit Fort Worth at approximately 6:30 p.m. No one from the general chairman's office was injured.

"We've been able to get into our offices on a limited basis and our suite did receive substantial damage," Pierce reported. "Several of our windows were blown out when the storm hit and there was a considerable amount of water, both from the storm as well as from the floors above, that entered the offices."

Fortunately, damage to important computer equipment was not as bad as originally feared. "Our computer system did suffer some water damage but it is back up and running with no loss of data," Pierce said. "It appears we were lucky compared to some of the other offices in the building."

"Although some claims conferences that were scheduled the week of the storm had to be postponed, we are back on schedule and most of the meetings, Public Law Boards and conferences previously scheduled are slated to go on as planned."

Officers are now working out of a temporary headquarters until approximately the end of May.

In the meantime, temporary phone numbers have been established for the following: General Chairman Merle Geiger, (817) 352-4371 or (817) 946-3125; Dennis Pierce, (817) 352-4375 or (817) 946-2792; Steve Bratka, (817) 352-4374 or (817) 371-3863; Matt Wilson, (817) 352-4377 or (817) 313-5730; and Patty Peterson, (817) 352-4372.

Mail should be sent to the office's regular address, and the office fax number, (817) 338-9088, is still in use as it is forwarding to the temporary headquarters.

Any e-mail messages sent from March 28 to April 10 were not received and should be resent. However, the office e-mail is running on an intermittent basis.

"We appreciate everyone's patience as we try to get back up and running," Pierce said.

Wisconsin two-person crew bill awaiting governor's OK

Remote controls will be kept out of Wisconsin

A two-person crew bill was approved by the Wisconsin State Assembly and Senate on March 19, and is now awaiting the signature of Governor Tommy Thompson.

Language of the bill, crafted primarily by the Brotherhood of Locomotive Engineers, will keep remote control technology out of Wisconsin and will keep two persons on the lead control locomotive.

"This important public and rail safety legislation could not have been achieved without the support of the BLE Divisions in Wisconsin," said BLE State Legislative Board Chairman Keith Luebke. "To those Brothers that testified, and others who called the legislative hotline, thank you. At no time have I been more proud of this Broth-

erhood, and the membership, for recognizing the inherent safety value of two people in the control cab."

The new legislation became necessary when management of Wisconsin Central found a loophole in the old two-person crew law. WC has a specific run in which two locomotives are used — one at the head end and one at the rear end of the train. While WC used a two-man crew for this run, it placed one engineer in each locomotive. This violated the intent of the law but not the letter of the law. The new legislation will close that loophole.

The pertinent portion of the bill, AB827, reads as follows:

"192.25 (2) No person operating or controlling any railroad, as defined in s. 85.01 (5), may allow the operation of

any railroad train or locomotive in this state unless the railroad train or locomotive has a crew of at least 2 members. One of the individuals shall be a certified railroad locomotive engineer. The other individual shall be either a certified railroad locomotive engineer or a qualified trainman. A certified railroad locomotive engineer shall be present in the cab and shall operate the lead control locomotive at all times that the railroad train or locomotive is in motion. The other crew member shall be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion, but may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job." •

Secretary-Treasurers get hands-on training in Cleveland



Seven BLE members participated in a hands-on workshop for Secretary-Treasurers in Cleveland earlier this month.

They are, from left: John Underwood, Div. 143 (Manassas, Va.); K.P. Collins, Div. 462 (Arkansas City, Kan.); M.J. Newchurch, Div. 532 (Richmond, Va.); Gary Woo, Div. 152 (Fort Madison, Iowa); Lynn Hobson, Div. 165 (Louisville, Ky.); Lucy Ring, wife of H.E. Ring; and H.E. Ring, BLE Div. 597 (Indianapolis, Ind.).

During the two and a half day session, members learned proper record keeping techniques, computer applications, minute-taking procedures, methods for filing various Department of Labor and Railroad Retirement reports as well as Federal tax returns.

Two-person crew bill gets vetoed by Wyoming governor

A bill requiring two railroad crew members to be present in the cab of the locomotive at all times has been vetoed by Wyoming Governor Jim Geringer.

BLE Wyoming State Legislative Board Chairman Kevin J. McCarthy reports that the bill passed the State Senate 25-5 and the State House of Representatives 36-24.

McCarthy delivered testimony in favor of the bill to State Senate and House Committees.

The BLE encourages all members in the State of Wyoming to contact Governor Geringer, a Republican, to voice their displeasure with his veto of this much-needed safety legislation. He can be contacted at the following:

Wyoming State Capitol
Cheyenne, WY 82002
Phone: (307) 777-7434

Internet: http://www.state.wy.us/governor/governor_home.htm
E-mail: governor@misc.state.wy.us

Statement by John J. Sweeney on UTU disaffiliation from AFL-CIO

WASHINGTON, March 17 — We are extremely disappointed with the decision of the leadership of the United Transportation Union to disaffiliate from the national AFL-CIO. Their decision will prevent the 60,000 UTU members from having the support and solidarity of their 13 million union brothers and sisters.

The leadership of this union has attempted to destroy another AFL-CIO union's bargaining rights at Union Pacific and take away members from that union — a direct violation of the AFL-CIO constitution. They have had every opportunity to abide by the decisions of the AFL-CIO arbitrators who, according to our constitution, resolve differences on membership issues among unions. The UTU's leadership petition was also dismissed by the National Mediation Board (NMB).

The leadership of UTU has forced its members to leave the AFL-CIO on another instance — they disaffiliated in 1986 and reaffiliated in 1989.

The unions affiliated with the AFL-CIO are committed to abiding by our constitution — a constitution which grows out of a democratic process. The AFL-CIO adamantly defends the integrity of each affiliate against such "raiding" by other AFL-CIO unions.

We urge the leadership of the UTU to reconsider this decision. Working men and women nationwide clearly have a stronger voice when they are united.

In the meanwhile, all UTU locals will be prohibited from participating in any state federation or local labor council.

The Tex Mex saga

Why the UTU fought to eliminate crafts lines on Laredo shortline

While the Brotherhood of Locomotive Engineers was victorious in preserving distinct operating craft lines on the Union Pacific Railroad, the UTU destroyed them on the Texas Mexican Railway.

It is a sad story of craft elimination, and is typical of the slash and burn mentality of UTU leaders over the past 31 years. To prevent the BLE from holding a representation election for locomotive engineers that it almost certainly would have won, the UTU persuaded the National Mediation Board to combine the locomotive engineer and conductor crafts into a single "Train and Engine Service Employee" class on the Tex Mex.

UTU members come to BLE

More than one year ago, UTU members on the Tex Mex, a shortline on the U.S.-Mexico border headquartered in Laredo, Texas, approached the BLE and expressed interest in joining our organization. The 102 Tex Mex operating employees had been represented by the UTU for more than 25 years, but had become so dissatisfied with UTU leadership that a majority of locomotive engineers signed "A" cards, authorizing a representation election on the property.

In September of 1999, the BLE petitioned the National Mediation Board to hold a representation election for only the locomotive engineer craft. The UTU International, surprised to learn of the possible vote, petitioned the NMB to hold off on the election. They argued that, "The proper craft or class on Tex Mex is Train and Engine Service Employees."

NMB halts election

Even though BLE sought the representation election in September of 1999, the NMB held its decision on the case until March 1, 2000, the day after the specially appointed three-member panel of labor relations experts issued its decision in the Union Pacific case. In Union Pacific, the panel ruled correctly that locomotive engineers and conductors represent two distinct crafts.

In Tex Mex, unfortunately, the NMB ruled — based on almost identical testimony from the UTU and the carrier — that the correct craft or class should be "Train and Engine Service Employees." Based on this ruling, NMB then dismissed BLE's application for a representation election for locomotive engineers.

Outraged by this decision, Tex Mex workers reacted quickly. In a matter of days, they signed enough A-cards to have an election for both conductors and engineers under the newly combined "Train and Engine Service Employee" craft.

NMB received the A-cards from BLE on March 7, and sanctioned another representation election.

NMB halts election, again

Then mysteriously — after filing all the paperwork, assigning an investigator, and obtaining a list of eligible voters from Tex Mex — the NMB quashed BLE's application for a representation election. Because of the creation of the single operating craft, the NMB ruled, a two-year ban on representation elections was placed on Tex Mex to promote "labor stability."

Throughout the process, a vast majority of Tex Mex workers pledged allegiance to the BLE, so much so that it became obvious that BLE would have won both representation elections had they been allowed to take place.

Tex Mex workers condemn UTU President

On January 6, 59 Tex Mex workers signed a letter condemning UTU President Charles Little for his attempt to force a combined craft of "Train and Engine Service Employees" down the throats of locomotive engineers and conductors. With only 102 operating employees on Tex Mex, the 59 signatures made it clear the BLE had a strong numerical advantage in any upcoming elections.

"We, on the Tex Mex, view your attempt to combine the crafts as a carrier initiated ploy that, if successful, will drastically weaken the representation of Tex Mex employees," the 59 workers wrote. "Your position that the lines of distinction between the craft of locomotive engineer and conductor have become blurred to the point of extinction is totally without merit on the Tex Mex."

In spite of this position taken by its own members, UTU proceeded to deliver damning testimony which allowed NMB to rule that the crafts were, indeed, combined.

UTU becomes desperate

The BLE obtained a copy of the January 6 letter signed by the 59 Tex Mex workers and posted it, along with the signatures, to its Internet website on March 21. Faced with such overwhelming numbers against it, UTU leaders resorted to outright fabrication and distortion of the facts in a desperate attempt to turn the tide.

On March 24, UTU posted a letter to its website written by UTU member David Snow, alleging that the certified letter and signatures posted to the BLE website were forged.

"A fake certified letter and plain pages with the signatures of 59 Tex-Mex employees accompanied the phony story," a UTU "news" release stated.

Even though Snow signed the January 6 letter that was posted to the BLE website, he alleged that he signed a blank piece of paper and never read the letter. Snow also falsely accused BLE officers of circulating the letter and gathering signatures.

March 26, 2000

Mr. Charles Little, President
United Transportation Union
14800 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Little:

The issue on the Tex Mex Railway is all about dues money and keeping your salary. Isn't it, Charlie? In 26 years, we never got this much one-on-one attention from the UTU until the BLE showed up and now, here are UTU's Web site, VPs, special reps, hired hands, pillow talk, and a Jutas to make it look like it's about representation.

Brother David Snow is a conductor who believes he's never going to become an engineer. Conductors who signed his March 22 letter also deny they will ever be forced into engine service. Charlie, have you and the cadre showed them or told them to read the 1985 National Agreement?

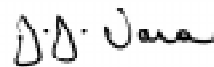
Brother Snow and his fellow conductors who disapprove of entering engine service will have a rude awakening. In your 1985 National Agreement, it clearly states that they will be forced into engine service or forfeit their seniority. In plain English, doesn't this mean they will be terminated?

In the 26 years that UTU has "represented" Tex Mex brothers/sisters, these jobs have been lost forever: rear brakeman, swingman, head brakeman, third man in yard. In just the past two years, Tex Mex has eliminated all yard jobs and the overtime associated with them thanks to your wonderful road switcher agreements. UTU vice presidents and general chairman misled the men into believing they were the greatest things on this property. They know the truth now. The craft of engineer, the craft of conductor, and the craft of brakeman all have been abolished, thanks to you and an official of the Tex Mex. In your carrier-backed submission to the National Mediation Board, these three historical crafts were sidetracked and some 100 brothers turned into "Train and Engine Service Employees" overnight.

Instead of protecting our jobs, UTU has given them away. UTU has gutted the crafts on the Tex Mex. UTU has brought in no new jobs. When the UTU was caught and sanctioned by the AFL-CIO, you disaffiliated. UTU lost the representation election on the Union Pacific. UTU is a rogue union. Yet here you come bellowing that you are the savior of all rail labor and that there is no distinction between engineers and conductors. On Feb. 29, the National Mediation Board ruled that there IS a difference on the UP...but on March 1, and thanks to you, the NMB ruled that on the Tex Mex Railway, everyone is a "Train and Engine Service Employee."

I am grieved to read March 24th on the UTU Web site that my certified letter of January 6, 2000, to you has been termed a fake by Brother Snow. I alone wrote and took the letter to his house where he sat and read the original, we talked, and he signed an approval page that brothers before and after him signed. My January letter to you was approved by 59 members in expressing our opposition to becoming "Train and Engine Service Employees" and our concern about one labor union attempting to destroy another labor union. Now it is March 26 and brothers are turned against brothers. Since it's all about dues money, don't you remember me? I've paid 39 years of BRT and UTU dues. Are you now buying elections with the war chest money?

Sincerely,



J. J. Vara
Train and Engine Service Employee
(ex-engineer, thanks to you)
314 James Court
Laredo, Texas 78045

Setting the record straight

In reality, the letter was written and circulated by J.J. Vara, a Tex Mex locomotive engineer and member of the UTU. Vara states that he — not BLE officers — visited Snow's house, reviewed the letter with him, and watched as Snow voluntarily added his signature to the list of names.

In a March 26 letter to UTU President Little, Vara expressed dismay that his letter had been dubbed a "fake" by Snow.

"I am grieved to read March 24th on the UTU Web site that my certified letter of January 6, 2000, to you has been termed a fake by Brother Snow. I alone wrote and took the letter to his house where he sat and read the original, we talked, and he signed an approval page that brothers before and after him signed," Vara wrote. "My January letter to you was approved by 59 members in expressing our opposition to becoming 'Train and Engine Service Employees' and our concern about one labor union attempting to destroy another labor union."

Conclusion

The BLE must wait two long years before coming to the rescue of Tex Mex workers. But sadly, nothing can be done

to repair the damage done by UTU leadership. In their continued lust for dues money and political power, UTU leaders have ravaged the craft lines on Tex Mex and destroyed the historical crafts of locomotive engineer and conductor.

"Instead of protecting our jobs, UTU has given them away," Vara wrote. "UTU has gutted the crafts on the Tex Mex. UTU has brought in no new jobs. When the UTU was caught and sanctioned by the AFL-CIO, you disaffiliated. UTU lost the representation election on the Union Pacific. UTU is a rogue union. Yet here you come bellowing that you are the savior of all rail labor and that there is no distinction between engineers and conductors."

The bottom line, as usual with UTU leaders, comes down to money.

"The issue on the Tex Mex Railway is all about dues money and keeping your salary, isn't it, Charlie?" wrote Vara in his March 26 letter to the UTU President. "In 26 years, we never got this much one-on-one attention from the UTU until the BLE showed up."

"Since it's all about dues money, don't you remember me? I've paid 39 years of BRT and UTU dues. Are you now buying elections with the war chest money?" •

BLE COMMENTARY

Why we blow whistles

By Joseph D. "Tuch" Santucci
BLE Division 10, Chicago, Ill.

I was blowing the whistle almost constantly due to the close proximity of the crossings. As we started up the grade towards Route 173, we could see the "snitch lights" illuminating on the sides of the roundels, indicating the signals there were activated and working properly I had just come over Ida Avenue and no sooner finished whistling it when I began my sequence of two longs, a short and a long for Route 173. By this point my speed was starting to increase and I hit 42 mph.

As we closed in on Route 173, an auto rapidly approached and Brian, my conductor, yelled "that son of a b--- is going!" He was across and gone in an instant.

The moment he came directly into my path, I was about 400 feet from the crossing and closing in at a little over 56 feet per second. I got enough of a look at the car to determine that it was a full sized GM product before it was gone.

Just then, I caught a flash of headlights in my peripheral vision to my left. It was just a brief flash of light. With the control stand to my left, the radio mounted above the automatic brake valve and the telemetry receiver mounted directly above the brake pipe gauges, my range of vision to the left is greatly diminished.

We continued towards the crossing with the whistle and bell sounding. Then Brian screamed out "Oh my God!"

At 2155 hours on the evening of Oct. 18, 1989, my life changed forever

Before I could even react, there was a tremendous impact and horrible crashing sound and the screech of grinding metal. The impact was so great that the engine leaned far over to my right, pushing me into the window. Brian was thrown out of his seat and onto the floor I immediately reached over and put the train into emergency. Simultaneously I jumped up and ran around to get behind the control stand. I remember thinking that we were about to go over onto our side and knew that I wanted more between me and mother earth than just a window. As I was moving to the backside of the control stand, I hit the Dispatcher call in button on the radio. This all happened within the course of maybe three seconds tops. It all seemed like it was in slow motion and took forever to occur. I honestly don't know how I managed to do so much in such a short time. I don't recall thinking about my actions at that moment, just doing them. It all happened far faster than it is taking you to read this.

A tremendous amount of activity was now taking place in an instant. As the engine came back down after leaning to the right, it bottomed out and began to bounce vertically. We bottomed out several times. And then the slack began to crash into us.

The emergency rate of brake pipe application was advancing through the train at a rate of 900 feet per second. This means that the entire train would not be into the emergency application for about seven seconds from the time I first dumped the air. An emergency application of the brakes starts a sequence of events that cannot be controlled. Two of them are slack action as the train is slowing down rapidly at different rates and a tremendous change in the dynamics of the train make-up occurring simultaneously. The tail end of the train is still moving at the speed it was when I first put it into emergency. The head end is trying to stop at the same time. The run in of slack was incredible. As it started to reach us, it slammed hard into the engines throwing both of us forward into the front bulkhead of the cab. It hit us again several more times. Now we were slowing down rapidly.

By this point the Dispatcher has come onto the radio answering my call-in signal. I ran back over to it and yelled out that we just collided with a vehicle in Antioch. There are probably three things that a Train Dispatcher hopes to never ever hear. This is one of them. The

Dispatcher was my friend and a well-seasoned veteran, John Busa. He immediately knew what to ask and what to do.

"Which crossing? Do we need an ambulance?"

(What crossing is this? Oh s---! What is the name of this crossing?)

"Uh, it's the second crossing west of the hotbox detector!"

By now, the train has come to a stop. The Engineer on 43 hears this and tells John it is Rt 173. He again asks with the phone in his ear already ringing up the Antioch Police if we need an ambulance. I remember telling him, "It was a tremendous impact; ya, you better get one going!"

I'm helping Brian up off the floor and making sure he is OK when John calls back and says emergency people are enroute. He then asks if we are OK and if we need any medical attention. Ironically he is the only person from the railroad to ever ask that question that entire night until we talked to the claim agent much later.

As Brian is getting his coat on, we now start to wonder about the train and hazmat. With the incredible slack action that had just taken place, we realize that we could very likely be derailed. We had a block of 22 empty 89 foot pipe flats in the middle of the train with heavy loads of roofing granules and rolled paper behind them. A quick look at the paperwork shows no hazmat back there. Relief, if only for a moment.

Brian heads out the front door to discover the steps are all smashed in on the left front and heads out the back door instead to proceed back to the scene. By now, the ghouls are all coming out in force to take a look at what happened. I have people approaching the engines to see the carnage. I actually had to threaten one guy with two little kids with arrest. He was telling me it was "his right" to see this. I told him the police would take him to jail if he came any closer.

I proceeded to make a quick inspection of the motive power to check for any kind of fire or fuel leaks. I took a quick look at the damage and almost lost it. There was flesh and hair on the left front side of the Number 1 trucks and on the remains of the steps. I quickly climbed back into the cab to see if Brian had made it back there yet. Just as I entered the cab again, John called to see if we had any more information about injuries. That was just about the time Brian came upon a body of a now deceased, 16-year-old girl. The emergency response people had arrived just moments before Brian found her, but hadn't reached him or her yet. How he stayed in one piece is beyond me. He must have found that hidden strength we all have. I reported this information to the Dispatcher. This news totally devastated me. I can only imagine what this sight did to Brian.

During this period of time, I performed two tasks that I never once even thought about doing. I just did them. First, I sat down and pulled out a sheet of paper and wrote out every possible detail I could remember that occurred just prior to and then after the point of impact. Then I went outside and did a thorough inspection of my motive power and made a full report of all damages. Upon inspecting the right rear of the 6522, I discovered the ballast in the rear of the locomotive has been pushed through the carbody just above the access door to right rear sander relays. This most likely happened either when the train started to slam into us or when we bottomed out all those times. Both of these documents were later subpoenaed as evidence.

Now the Paramedics are working feverishly to remove another person, another young girl from the car. I was told they used the "jaws of life" to assist in extracting her from the car. Brian informs me that another fatality is discovered; another 16-year-old girl. The girl trapped in the car is still alive though. By this point, two officers from the Antioch Police Department arrive and board the locomotive. Both of them realize the hell I am

going through and do their best to calm me down. I quit smoking in 1982, but the first thing I asked the two officers for is a cigarette. They interviewed me and informed me that the coroner had been called and he, too would have to interview me before we would be released. They stayed up there with me for quite some time to make sure I was going to be OK. They also kept asking me if I needed any medical attention.

What seemed like an eternity passed and Brian told me that the third girl, the driver of the car had also passed away. I relayed this information to John and informed him that both Brian and myself wished to be relieved. He relayed that information to the Chief. A little while later, he came back on to inform us that the Trainmaster at Schiller Park refused our request as he was planning to run a work train in the morning and didn't want to "waste this crew for us." How considerate and compassionate. There was no love lost between the Trainmaster and I prior to this, and this gave me all the reason to despise him yet even more. He never even left the office to head up to the scene. He told us later that he figured there was no reason for him to be there and also there was nothing he could do anyway.

After the Paramedics were finished, Brian was brought up to the head end by another one of Antioch's finest. We were told that the Coroner was out for the evening and was enroute to interview us and pronounce death, but it would be awhile. A WC track supervisor and a signal maintainer had arrived at the scene and had talked to Brian. The track supervisor was kind enough to inspect the train for us, and to our shock, inform us that everything was on the rail and nothing shifted or off center.

Finally, the Coroner arrived and interviewed us. He too was very compassionate and did his best to make us feel at ease. With all of that finally taken care of, we were released at 2329 hours, one hour and 34 minutes after the collision occurred.

Neither Brian nor I felt we were in any condition to proceed, but our old pal, the Trainmaster at Schiller Park, thought otherwise. We then proceeded to take the train east to Schiller Park, never once exceeding 20 mph the rest of the trip. When we finally arrived at Schiller at 0120, the Trainmaster started to give us all kinds of instructions about our setout and pickup and taking the train through to the IC at Markham. We informed him we were all finished for the rest of the evening and to call a cab. I told him if he so worried about the train he could take it himself.

Upon our arrival in the office there, the Trainmaster told us we need to call the Antioch Police as they had a couple of more questions they needed answered and to call the claim agent. We did both. While talking to the claim agent, he asked if we were alright and if we needed medical attention. After getting all this taken care of, we finally got our cab to the hotel. I didn't sleep a wink the entire night (or morning as was the case). I kept going over time and time again, what had transpired. I was trying to think of what I should have done differently. Maybe I should have laid-off sick.

Something, anything. Ten years later, I still wonder I did nothing wrong. I violated no rules and broke no laws. Yet I got all the guilt. I don't suppose it helped when the word "babykiller" was mentioned by someone close to one of the deceased in the media. Nah, right, like I chased these three girls down the street, up their driveway and into the garage, then hit them when they weren't looking. Interestingly enough, the driver of the car didn't go to school that day as she was "too sick." Apparently she made a complete recovery in time to go out that evening and play cat and mouse with the car in front of them that made it across the tracks without getting hit.

This was all learned during the period of discovery.



Brother "Tuch" Santucci

The following legal proceedings only helped to make this situation worse. I spent over seven hours in deposition and have the transcripts to prove it. Lawyers! The families made sure I was served with a subpoena on Thanksgiving Day. Fortunately for me, I wasn't home to receive it. I guess this was their way of getting even. Screwed up their plans.

I never saw the car. It never made past the front of the engine. The front drawbar hit solidly right behind the right front wheel-well. The car was spun a little more than sideways and wound up completely off the road and onto the right of way just east of the crossing. The engine block was ripped completely out of the car. The dashboard was also torn out. The speedometer was stuck at 50 mph. The two passengers never had a chance. At least one of them was physically struck by the locomotive. I did see pictures of the car some time later. Once was a Chevy Caprice. It was completely destroyed. The salvage yard where it was taken eventually scrapped it as they said absolutely nothing was salvageable on it.

In the legal proceedings that followed, first I was accused of speeding. They had a witness who claimed I was going at least 70 mph. That was proven to be false. The final results were something like 42.1 mph. Then, I was accused of not whistling — again, disproven. Finally they tried to say the crossing signals were not functioning. The kid who made it across in front of us, after first denying even being there or knowing these girls, claimed he was on the crossing and we were right there and the signals were not working. They also brought in a police dispatcher who claimed she too was almost hit by a train at that very crossing the day prior to the wreck. Unfortunately for her, the Dispatcher's sheet and hotbox detector tapes showed no train within 25 miles of that crossing at the time she swore it happened. A witness stopped at the crossing heading the other way stated they were working just fine as he saw them and was stopped awaiting our passage.

The legal proceedings were all settled in 1992 outside of court and fortunately for Brian and myself, we didn't have to testify. From what my lawyer told me, the families actually lost money by filing suit. Too bad, so sad.

Am I bitter about the legal proceedings? Damn right I am. My world was turned upside down by somebody else's negligence and I had to defend myself and my actions. Some lawyers approached these families telling them they could make millions over this. Don't accept responsibility just sue somebody else. I feel terrible enough that these young girls died, but don't make me the scapegoat for something I didn't do. Maybe the mother of the girl who cut school that day for allegedly being sick should shoulder the responsibility. Did it ever occur to her that just maybe her daughter was too sick to drive? As a result, they all wound up dead.

I have been involved in several crossing collisions since then and a suicide. Ironically the suicide occurred just nine days after the Antioch episode and just five miles from that scene. Maybe life truly is stranger than fiction.

Editor's Note: With the Federal Railroad Administration holding public hearings on whistle ban legislation (see page 9), we felt it was important to publicize the locomotive engineer's perspective in fatal grade crossing collisions.

A locomotive engineer for Illinois Central, Brother Santucci joined the BLE on July 1, 1979.

Crew watches in 'helpless horror'

Three students killed in school bus-train collision; NTSB investigates bus driver

Two crew members on a freight train say they watched in helpless horror as a school bus sped toward a crossing in the seconds before it was struck by the train's locomotive.

The accident happened the morning of March 28 in Tennga, Ga., just north of the Tennessee-Georgia state line. Three children were killed and five others injured, including the bus driver. Two children remained in critical condition on April 1, according to a wire service report.

The engineer and conductor on the CSX train said they watched helplessly as the bus sped toward the railroad

crossing, said Ken Suydam, investigator in charge for the National Transportation Safety Board.

"Both saw the bus approaching at a rapid rate of speed and expressed concern to each other as to whether the bus would stop," he said at a news conference.

Investigators said the school bus did not stop at the rail crossing, but that drivers cannot adequately see an approaching train at that crossing.

"We've come to the preliminary conclusion that the bus did not stop at the crossing prior to entering it," Suydam said.

Investigators also said that the horn on CSX train sounded for at least eight continuous seconds before the collision. They said a radio was on inside the bus and there were several conversations taking place.

According to the Tennessee Highway Patrol report, school bus driver Rhonda Cloer failed to obey traffic signs posted at the railroad crossing and did not observe other warnings, such as the train's whistle blowing.

The manufacturer examined the bus' anti-lock braking system and reported it was working properly.

Cloer, released from a hospital on March 29, still refuses to be interviewed by authorities. Her 5-year-old daughter was on the bus and was one of the two children in critical condition.

The train was traveling about 50 mph and first blew its whistle about 1,000 feet from the crossing and again continuously at 620 feet away, said NTSB investigator David Rayburn. The emergency brake was applied at 160 feet away.

The impact ripped the body of the bus from its chassis and dragged it 100 yards. Three children and the driver were ejected, and four other children remained inside the bus.

School buses are required by law to stop between 15 and 50 feet from railroad crossings.

Authorities won't decide whether to file charges until they finish the investigation, which could take two more weeks, said Highway Patrol Lt. Mike Walker. •



FRA gathers data on locomotive horn regulations

Federal Railroad Administrator Jolene M. Molitoris announced on April 3 a series of public hearings were held on proposed rulemaking and draft environmental impact statement (DEIS) concerning the use of locomotive train horns at highway-rail grade crossings.

This hearing gave the public an opportunity to provide oral presentations on the Federal Railroad Administration's (FRA) notice of proposed rulemaking (NPRM) and DEIS.

There were four scheduled public hearings in Illinois and Ohio: April 25 at Lyons Township High School; April 26 at the Field Museum of Natural History in Chicago; April 27 at the Federal Aviation Administration Building in Des Plaines, Ill.; and May 1 at Baldwin-Wallace College in Berea, Ohio.

The agency also held public hearings in California, the District of Columbia, Florida, Massachusetts, Wisconsin, Indiana, and Oregon.

The rule, proposed in January by the U.S. De-

partment of Transportation's FRA, was written in response to a law enacted by Congress in 1994 requiring train horns be sounded when a train approaches and enters a public highway-rail grade crossing unless certain exceptions are met.

Congress gave FRA the authority to exempt categories of rail operations or categories of highway rail grade crossing if there is not a significant risk of death or personal injury, the use of the horn is impractical, or supplementary measures fully compensate for the absence of the warning provided by the horn.

The proposed rule describes the safety measures that a community may employ to fully compensate for the absence of the warning provided by the horn and establish a quiet zone. These measures include the use of four quadrant gates, channelization devices or crossing closures at highway-rail crossings



or photo enforcement to deter violators. The rule also proposes an upper volume limit for train horns.

Since the late 1800s, the sounding of horns or whistles in advance of grade crossings has been used as a universal safety precaution by railroads. Whistles were initially used to alert livestock on the track and to warn horse-drawn carriages and then automobiles at crossings.

The manner in which horns have been sounded at crossings (two longs, one short and one long) was standardized in 1938 and the operating practices associated with the sounding of whistles or horns were codified into railroad rule books. Today, audible warning devices are used primarily to warn motorists and for emergency situations. Most states have statutes or regulations requiring that trains provide an audible warning on approach to public highway-rail grade crossings. •

Management shake-up at CSX; Conway out, Snow in

Bedeveled by rising customer frustration and falling stock prices, Ronald J. Conway was ousted on April 11 after only nine months as president of CSX, the Philadelphia Inquirer reported.

CSX and rival Norfolk Southern Corp. remain in the grip of service and safety problems — as well as plummeting stock prices — arising from their June 1 breakup of Conrail.

Conway, formerly of Conrail, was removed by John W. Snow, chairman and chief executive officer of CSX Corp., who said yesterday that he had taken personal control of his \$10.8 billion company's rail unit.

"It is time to accelerate the pace of change toward solving our problems," said Snow, who testified at federal regulatory hearings in Washington last month that he was "deeply concerned about the present state of the rail industry. It is plagued with instability."

In January, at a forum in Philadelphia, 300 shippers protested angrily

that breakup problems persisted. A CSX vice president responded, pledging that CSX-Conrail breakup problems would be over by March 31.

"Three months from now, you are going to see a fundamentally different railroad. You're going to see increased velocity and the number of cars on line go down. You're going to see a bias in favor of action on our problems. We're going to get back to the fundamentals, back to Railroad 101," said Snow.

Conway's two closest associates — John P. Sammon and Gary Speigel — left with him. "They were so closely identified with Ron they decided to leave," Snow said. Two former Conrail executives were promoted in the reshuffling, but the top players promoted in the April 11 shake-up are all CSX veterans.

The announcement came one week after *The Washington Post* reported that a draft Federal Railroad Administration report found poor maintenance

on CSX tracks and that many of the railroad's lines were deteriorating.

Sources, however, said the report had nothing to do with the Conway departure. Conway's colleagues at CSX pointed out that he had recognized the problem months ago, had fired several managers in the engineering department, and had increased the budget to repair track. A colleague noted that track does not deteriorate within a short time, and Conway had been president for only nine months.

The FRA found deteriorating track conditions on many areas of the CSX Transportation rail system, including lines used by passenger trains.

The FRA began the two-week system-wide track audit on Feb. 22 because of a 60 percent increase over five years in track-caused accidents on the 22,700-mile system.

Among other defects, the agency's track inspection car found two areas where the gauge wide enough to risk

CSX

TRANSPORTATION

derailments on the line used by Amtrak, Virginia Railway Express and all north-south CSX freight trains between the VRE L'Enfant Plaza station and the Potomac River bridge. The defects were repaired immediately after they were found.

The width between rails is supposed to be 56 1/2 inches. The inspection found numerous spots around the CSX system where the gauge was spread one inch to 1 1/2 inches too wide.

That included two spots on the CSX main line between L'Enfant Plaza and the Potomac, where the FRA test equipment found the gauge to be 58 inches — 1 1/2 inches too wide. •

STB puts the brakes on BNSF-CN merger

Tellier, Krebs file lawsuits to overturn 15-month moratorium on large rail mergers

Following four days of hearings, the Surface Transportation Board announced on March 17 that it was placing a 15-month moratorium on all rail mergers, effectively halting the proposed Burlington Northern Santa Fe-Canadian National combination for more than a year.

Just hours after the Board issued the ruling, BNSF and CN filed petitions with the STB requesting it overturn the moratorium, and also announced they would go to court to force the STB to overturn its decision. On March 31, BNSF filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit to stay the STB order, and on April 12, CN did the same.

The Brotherhood of Locomotive Engineers endorsed the proposed merger after securing landmark job protections and other benefits for its members.

In placing the 15 month freeze on all rail mergers, the Board stated part of its intent was to prevent another round of large rail mergers that could have occurred in response to the \$6 billion BNSF-CN combination, causing instability throughout the industry.

"The Board noted that the railroad industry has consolidated aggressively in recent years, with only six large railroads remaining in the United States and Canada," the Board stated in its March 17 ruling.

"But merger implementation has not typically gone smoothly, and indeed the railroad industry and

the shipping public have not yet fully recovered from the service disruptions associated with the previous round of mergers.

"Additionally, the testimony at the hearing confirmed the Board's perception that a BNSF/CN combination would more than likely instigate, in the very near future, responsive mergers involving each of the other four large railroads."

Senators welcomed the moratorium at a hearing of the Senate Commerce subcommittee on surface transportation.

"As the railroads have become larger, the mergers have become more complex and difficult," said Senate Majority Leader Trent Lott (R-MS) in a wire service report. "In the short term, it appears to me that it has drained financial resources from the railroads and... eroded service gains and efficiencies at various points."

CN's President Paul Tellier reacted angrily to the ruling, calling it unlawful and unfair.

"The STB's decision is not only unauthorized by Congress, it is also a de facto amendment... of the STB's regulations, applied retroactively to prevent the filing of the CN/BNSF application and a subsequent decision on the merits by the STB," Tellier said. "The decision's illegality is compounded by its blatant unfairness."

Robert D. Krebs, BNSF chairman and chief executive said: "If Chairwoman Morgan's radical deci-

sion stands, the effect would be something unheard of in any industry.

"For a period of 15 months, industry participants will be denied the opportunity to realize service and efficiency improvements that a carefully conceived and well-executed combination can provide shippers, shareholders, employees and the public," Krebs concluded.

The March 17 decision by the board was cheered by other railroads and by many shippers.

"In our view, (the) decision was made in the best interest of the railroad industry," Union Pacific Railroad said in a statement issued shortly after the decision was issued. "The STB decision takes a big step towards stabilizing the industry. UP plans to actively participate in the rule-making proceeding."

Ed Emmett, president of the National Industrial Transportation League, which represents major shippers, said his reaction was one more of disappointment and puzzlement. "This decision appears to have been made more out of confusion, not of purpose."

A former Interstate Commerce Commission member, Emmett said the rule-making could have been carried out simultaneously with consideration of the merger. "The STB is always accused of not taking the side of shippers, and I think the agency and some observers may wrap this in the mantle of a shipper friendly decision, when in fact it was done more because of the other Class 1 railroads," he said. •

Teamster strike going strong in 26th week

Contract negotiations between the International Brotherhood of Teamsters and Overnite Transportation resumed on April 4, 5 and 6, making it a very busy month for the Teamsters. The unfair labor practices strike is entering its 26th week and is still going strong.

The strike against Overnite, a subsidiary of Union Pacific began on Oct. 24, 1999. It started in Memphis, Tenn., and quickly spread to 140 terminals in 39 states.

Overnite's labor law violations are now legendary. More than 1,000 charges against the company have been filed with the National Labor Relations Board, resulting in millions of dollars in restitution for Overnite workers whose rights were violated.

Teamsters began a comprehensive advertising campaign to inform the general public about its struggle with Overnite.

Television and radio commercials

started running, newspaper ads started running, a subpoena was delivered to Overnite CEO Suggs for a hearing in Memphis on Overnite unlawful conduct, and the terminal managers were challenged to sign a pledge to obey the law.

Teamster President James P. Hoffa said, "Overnite has forced us to escalate to a new level in our campaign of support for the courageous workers on strike against its unfair labor practices. The Teamsters will spare no resource in our campaign to civilize Overnite."

The advertising campaign will have three prongs — radio, television, and print ads in major markets around the country — all designed to bring Overnite (and its parent company, Union Pacific) to its senses.

Also this month, dozens of Teamsters members, led by John Murphy, International Teamster Vice President and National Director of Organizing, delivered a subpoena to Leo H. Suggs, Overnite's CEO, at Overnite Transpor-

tation Company's headquarters in Richmond, Virginia.

Suggs is being subpoenaed for a hearing on a complaint issued by the National Labor Relations Board (NLRB). The hearing is scheduled for May 8, 2000, in Memphis, Tenn. The hearing is a consolidation of 25 individual charges and will focus on the unlawful firing of Overnite workers and union members Terry Holcomb, Sam Powell, Kenny Hill, Fred Clark, Kyle Medley, William Palmer, Charles Watkins, Autra Wilkerson, K. W. Wilbanks, Tony Brown, Wilford Hugh McCalla and Walter Jones.

In its efforts to make Overnite stop its labor law violations, the Teamsters are now trying a bottom to top approach. Overnite workers and local Teamster leaders delivered an "Overnite Pledge to Obey the Law" to managers at Overnite terminals nationwide.

"This is a simple request," declared

John Murphy, International Teamster Vice President and National Director of Organizing. "If we can't get the bosses at Overnite's headquarters to obey the law, hopefully, we can get the lower-level Overnite managers across the country to agree to honor federal laws designed to protect America's working families."

The form that Overnite terminal managers were asked to sign states: "Overnite Pledge to Obey the Law: I, the undersigned Terminal Manager for Overnite Transportation Company, do hereby solemnly swear that I will faithfully obey and uphold all laws pertaining to the rights of Overnite workers." To date, not one single terminal manager has agreed to sign the statement.

Finally, the Teamsters are planning an action at Bed, Bath & Beyond locations across the country on April 29. BB&B is a major freight customer of Overnite. •

BNSF fined \$10 million for falsifying evidence; ruling overturned

A judge who fined Burlington Northern Santa Fe Corp. \$10 million for presenting what he called "false, concocted" evidence in a wrongful death trial threw out the penalty and removed himself from the case on March 26, the *Fort Worth Star-Telegram* reported.

Texas State District Judge Bob McGrath said his sanctions were premature because they were announced without a hearing.

McGrath imposed the fine on March 14 after concluding that BNSF misrepresented a distant signal that was shown to the jury.

The family of BNSF engineer Randy Mann sued the railroad after he died in the February 1993 collision of two trains in Enid, Okla. Mann's family contends that he operated past a broken signal on a foggy night, leading to the fatal collision.

The railroad says the broken signal was too far away to have caused the wreck.

In addition to the \$10 million fine, McGrath ordered BNSF to pay \$210,000 for the plaintiffs' court costs and attorney fees and fined railroad attorney Doug Poole \$10,000 for saying that the

company did nothing wrong.

The March 26 order, however, canceled the disciplinary action against attorneys.

The attorney for Mann's family said they won't give up. "We're not going to let the railroad off the hook."

The case was not immediately reassigned. It was unclear when a new trial will begin.

The disputed evidence is a dark wooden post with a metal signal box attached near the top.

Judge McGrath said that the exhibit the railroad presented in court was not

typical of the original signal, that the company put it together from separate pieces without telling the court and that a company official wiped a shiny surface clean before the jury saw the evidence.

The railroad maintains that it neither fabricated nor tampered with evidence.

Intentionally tampering with or fabricating physical evidence is a crime.

The \$10 million was to have been split evenly between Mann's family and the Texas Center for Legal Ethics. •

Compromise

Continued from Page 1

In the hopes of producing consensus among all parties, which historically has been required in order for Congress to enact changes to the Railroad Retirement system, Congressman Oberstar proposed the changes to the draft railroad retirement legislation that is being lobbied on Capitol Hill.

Congressman Oberstar proposed to amend the draft legislation to provide for:

1) an actuarially reduced pension for those who wish to retire at ages 58 and 59, similar to the actuarially reduced pension for those who currently retire at ages 60 and 61;

2) GA 46000 insurance coverage for those who take a reduced pension at 58 and 59; and

3) spousal eligibility at the earlier age.

BLE President Edward Dubroski strongly condemned the AAR's rejection of the compromise proposal. "We deeply appreciate Congressman Oberstar's efforts to improve our pension benefits, which still would have treated the industry very generously," Dubroski said. "I'm outraged that the carriers' greed in looting our pension fund will cost BLE members the opportunity to retire two years earlier."

The BLE expects the railroad retirement legislation to be introduced before the end of April or in early May.

NEWS BRIEFS

ST. PAUL, Minn. — A St. Paul federal judge has ruled that Burlington Northern Santa Fe Railway Co. has first rights to use the letters "BNSF" as its identifying trademark and has denied BLE Member William Purdy's claim to the mark for his website, the *St. Paul Pioneer Planet* reported.

U.S. Judge Donovan Frank stated that while Purdy, a retired BNSF engineer and member of BLE Division 27 (St. Cloud, Minn.), has made some use of the call letters "BNSF" since 1993, the railroad has maintained continuous use of them since its merger in 1994. He also noted that a Texas federal judge ordered the U.S. Patent and Trademark Office to cancel Purdy's federal registration of BNSF.

The railroad alleges Purdy, a railroad safety activist and Burlington Northern critic, accidentally received an e-mail message because of ongoing confusion about the web addresses. The railroad argues that letting Purdy publish the e-mail message on his website would irreparably harm the railroad and its employees, disclosing highly private information.

Purdy was not shut out in the ruling by U.S. District Judge Donovan Frank, however. In an unusual clash of privacy rights and freedom of speech, Purdy is free to publish the salary information with job descriptions he received, but not names of jobholders.

CARBONDALE, Kan. — An Amtrak train heading for Los Angeles derailed before dawn on March 15 alongside a cornfield, injuring 29 passengers — one

critically, a wire service reported.

Sixteen cars of the Chicago-to-Los Angeles train carrying 140 passengers and 15 crew members went off the track shortly after 2 a.m. near Carbondale, about 15 miles south of Topeka in eastern Kansas. One passenger remained hospitalized in critical condition. The others were treated and released.

The cause of the derailment was not immediately known, and personnel from the NTSB were at the scene within five hours.

WASHINGTON — A poll commissioned by the AFL-CIO finds nearly half of working women — 46 percent — work a different shift than their significant other, sometimes by choice. The labor federation released on March 9 the Jan. 6-11 telephone survey of 765 working women over age 18.

The poll is part of the AFL-CIO's effort to keep tabs on the priorities of working Americans and mobilize them to vote in this fall's elections.

The poll found that working women share some concerns men have raised in other surveys, including improved health care and retirement security. But women also highly ranked better equal pay laws, improved child care, and expanded family and medical leave laws that guarantee paid time off.

Karen Nussbaum, director of the AFL-CIO's working women's department, said those concerns seem to be "directly related to the strains of balancing their work and family." The AFL-CIO survey was conducted by pollsters Lake Snell Perry and Associates

Inc. and has a margin of error rate of plus or minus 3.5 percentage points.

WASHINGTON — As new executive compensation figures are revealed this month, the updated AFL-CIO Executive PayWatch website (www.paywatch.org) gives visitors the tools they need to get the real scoop on CEO pay, including 10 shocking examples of CEO pay at major global corporations that are driving down living standards for workers around the globe.

The expanded website will also allow visitors to compare their pay to updated CEO pay figures at 1,500 companies as proxies are filed.

CEO pay is growing faster than all major economic indicators — up 23%, according to the *New York Times*. The average CEO of a major US corporation made \$11.9 million in 1999, 476 times what the average blue-collar American worker made. That's up from 42 times more in 1980, and 85 times more in 1990.

U.S. CEO pay dwarfs foreign CEO pay. German CEOs make 13 times more than the average German manufacturing employee. In Japan, the CEO-to-worker pay ratio is just 11-to-1.

"What looks excessive in the context of U.S. workers is truly outrageous when viewed globally," said AFL-CIO Secretary Treasurer Richard Trumka. "The global economy is not working for working families when boards of directors hand U.S. CEOs tens of millions of dollars while paying the people who actually do the work less than ten dollars a day." •

Reconsideration of UP case would wreck NMB credibility

AFL-CIO

Continued from Page 1

The AFL-CIO warned that using the Tex Mex case as a basis for reconsideration of the Union Pacific case would severely damage the Board's credibility and impartiality.

"It is inconceivable that the Board would risk issuance of doctrinally incompatible decisions on the very same day. For the Board to declare now that this occurred — which it did not — would expose the Board to a deserved loss of confidence by the regulated community, and would even call its competence

into question," the AFL-CIO wrote.

Finally, the AFL-CIO expressed concern about the Board's credibility and impartiality if it grants UTU's motion for reconsideration in the Union Pacific case.

"We conclude with the following observation, again concerning the Board's credibility and impartiality. The Board issued its Texas Mexican determination and dismissal on the precise date that the Board itself prescribed last December for the Panel to issue its Union Pacific determination. If the Board believed that its consideration of Texas Mexican had bearing on the Panel's consideration of Union Pacific — a case with a notably high public profile and involving great stakes for both union parties and the

carrier — surely the Board would have either issued Texas Mexican earlier or alerted the Panel to that case so that its decision could conform with most current Board law... And, even if, as UTU contends, the Board's adoption of the Panel's determination and dismissal of UTU's application were decisions legally distinct from the Panel's action, it is just as inconceivable that the Board itself would render simultaneous contradictory decisions within 24 hours of each other, and it would be just as injurious to its integrity and standing for the Board now to declare that it did."

A complete copy of the AFL-CIO's March 27 brief to the NMB is available on the BLE website in PDF format at: <http://www.ble.org/aflicio0327.pdf>.

Eight rail unions unite to battle UP harassment in Pocatello

Power of Many

Continued from Page 1

"Safety isn't going to change in Pocatello until the morale changes," Brown said.

Dean Simpson, representative of the TCU-Carmen's division, said that after a recent accident the workers he represents were intimidated and "asked" to sign "letters of compliance," pledging they would personally take responsibility for avoiding injury. He said his members fear retribution if they sign such a letter and later get injured.

He also said that recent cutbacks in the car department have resulted in a shortage of carmen in Pocatello. UP has cut too many workers and those who remain are forced to work overtime in spite of high levels of fatigue.

"They can't keep their minds on what they are trained to do," Simpson said. "What's more, the carrier seems to want us to be responsible but they don't want to be responsible for providing a safe work place for us."

The last straw came when a locomotive engineer, who was recently cut back from engine service, was injured while working as a helper on a yard job.

He was given no refresher tour or subsequent training after working in engine service for several years. He lost all toes on his left foot in an accident. Under the UP Upgrade discipline policy, he was assessed with Level 5 discipline, or permanent dismissal. He received his notice of dismissal while recovering in the hospital.

Also given Level 5 discipline was another locomotive engineer and a switch foreman on the crew. The switch foreman and engineer have exemplary work records and have amassed a total of 50 combined years of service.

BLE Local Chairman Jim Lance

credits BLE District Mobilizer Scott Jordan for spearheading the idea of a rail labor union coalition.

"By working together, this group forced a meeting with the top superintendent of our service unit," Lance said. "Solidarity is a powerful tool for unions. We can accomplish so much more for our members by working collectively and standing united."

Crandall said he would answer all concerns and questions raised during the meeting. The unions said they expected results soon or would intensify the struggle to ensure safe working conditions for all union members. •

BLE NEWS

BLE scores second big post-85 victory

Tentative GTW deal is second major win for post-85ers in just 30 days

A tentative contract agreement between the Brotherhood of Locomotive Engineers and Grand Trunk Western will give locomotive engineers a fully retroactive 12 percent pay hike and eliminate substandard deadhead pay for post-85 workers.

In the past 30 days, the BLE reached agreements with two Class 1 carriers, each providing significant gains for post-85 workers. It is evidence that the BLE produces concrete results for its members in the form of better wages and improved working conditions.

The BLE plans to use these agreements as a basis for ending substandard pay for all post-85 engineers in the current round of national wage negotiations.

The agreement was initialed by International Vice-President Paul T. Sorrow, General Chairman John Karakian, Vice-General Chairman M.J. Tyler. Brother Karakian issued the following statement following a special informational/victory meeting on April 7:

"Vice President Sorrow summed it up best when he so aptly stated that after a very long fight waged by the Negotiating Team and BLE Members, we have been able to take care of securing justice for all engineers and for the very first time in 15 years, all engineers will be paid for what they do and not for how long they've been on the job."

If approved by a majority of BLE members, the GTW agreement will provide a 12 percent wage hike over the life of the contract (through January 2001). The wage package includes retroactive payments dating to January 1, 1998. The extra board guarantee was increased by more than 25 percent.

The \$15 daily certification pay for engineers, along with \$.15 per overmile,

will be rolled over into the basic day payment. The \$4.00 "no fireman" rate of pay will be increased to \$6.00 on the DTSL, and rolls the "no fireman" rate of pay into the basic day on the effective date of the agreement.

Of interest to post-85 workers is the elimination of substandard deadhead pay. All employees, regardless of hiring date, will be compensated for deadheading in accordance with the "pre-85" provisions contained in Article VI, 2(a) of Arbitration Award 458. In addition, the entry rate progression has been eliminated for all BLE-represented engineers and apprentice engineers.

Short-term disability insurance and life insurance plans will also be established if the contract is approved. Employees would receive \$546 a week as part of the sickness benefit plan. They would also receive additional life insurance of \$40,000 and a \$42,000 additional accidental death insurance.

On March 8, BLE members overwhelmingly approved a contract with Norfolk Southern that eliminated substandard deadhead pay for post-85 workers and gave all engineers a 14.4% wage increase. The deal reduced the five-year wage progression, which began at 75 percent, to a three-year progression, which begins at 85 percent.

Under the two-tier arrangement, new engineers start at 75% of full pay and take five years with the company to earn 100%.

The substandard deadhead pay and five-year wage progression were all provisions of the 1985 UTU national agreement. The agreement signed by UTU became the "pattern" that was imposed on the BLE by arbitration. •

"In the past 30 days, the BLE reached agreements with two Class 1 carriers, each providing significant gains for post-'85 workers."

APRIL 2000 CALENDAR & EVENTS

JUNE 5-8, 2000... International Western Convention in Jackson Hole, Wyo.

Jim Lance is chairman of the 2000 IWC, which will be held at the Snow King Resort. Billed as the "Millennium Convention — IWC 2000," members can participate in the annual IWC golf tournament or visit the Snow King's scenic mountain views. For hotel registration, write the Snow King Resort at P.O. Box S-K-1, 400 East Snow King Ave., Jackson Hole, WY 83001; or call (800) 522-KING or (307) 733-5200. Be sure to ask for the special BLE group rate of \$135 per night. Contact Brother Lance at P.O. Box 476, Inkom, ID 83245-0476 or call (208) 775-3377.

JUNE 18-23... 73rd Annual Southeastern Meeting Association in Louisville

Convention Chairman J.G. "Jim" Goodman encourages members to register early as the 2000 SMA promises to be a convention to remember. The Galt House East hotel will host the convention, and a room rate of \$85 per night has been secured (rates will increase May 19, 2000). For reservations call (502) 589-5200. To contact Brother Goodman, write: 229 Stout St., Mt. Washington, KY 40047; or call (502) 538-4358. His e-mail address is: <goodble@aol.com>.

JUNE 27-July 1... Eastern Union Meeting Association in Niagara Falls, Canada.

Members are encouraged to plan early for this year's EUMA, hosted by Jack and Pat Murphy (and Division 421) in Niagara Falls, Canada. It will be held at the Sheraton Fallsview Hotel. Room rates start at \$154 Canadian per night (approximately \$103 U.S.). Make reservations by calling (800) 267-8439, and ask for the BLE group rate. For more info, contact Murphy at (716) 627-5354 or e-mail <blemurph@aol.com>.

JULY 22-26... Annual NASLBC meeting in Niagara Falls, Ontario, Canada

At the Sheraton Fallsview Hotel and Conference Center, (800) 267-8439. A block of rooms will be held until June 20 at the contract rate of \$192 per night (Canadian). NASLBC Secretary-Treasurer I. Perry Renfro reports that the conversion rate may change, but it currently translates to \$132 per night (U.S.). If hotel reservations are not made by June 20, then room rates will increase to \$300 per night (Canadian), which is the hotel's regular seasonal rate (rates are higher than normal because July is peak travel season for the hotel). Hotel check-in time is 3 p.m. and check-out is 11 a.m. There is a baggage holding area for early and late checking. For further details regarding the meeting, contact Brother Renfro at: P.O. Box 157, Poteau, OK 74953, phone: (918) 649-0603, fax: (918) 649-0703.

SEPTEMBER 17-22... 65th Annual Southwestern Convention Meeting in St. Louis

Convention Co-Chairmen James Jackson and Roger King will ring in the 21st Century in St. Louis. September 17 is for early registrants and September 18 is the golf tournament. In between are opening ceremonies, a formal banquet, and several training workshops. The convention will take place at the Marriott Pavilion Hotel, One Broadway, St. Louis, MO 63102. Make reservations by calling (800) 228-9290 or (314) 421-1776. Be sure to ask for the special BLE discount rate.

Advisory Board March Activity

By action of the delegates at the Fifth Quinquennial Convention, summaries of BLE Advisory Board members' activities are published monthly:

International President Edward Dubroski—International Office: General supervision of BLE activities; National negotiations; Publications committee; TTD-Rail Labor Div. mtg., D.C.; Short-line legislative mtg.; Pennsylvania AFL-CIO COPE; Mtg. w/ Robert Hayden, Divisional President of the Rail, Tram and Bus Union, New South Wales Branch, Australia; National Legislative Board Mtg.
First Vice-President & Alternate President James L. McCoy—International Office: Assisted president supervising BLE activities; FVP duties, contacted GCS, SLBCs, telephone calls, correspondence, etc.; Section 6 negotiations; Springfield, Missouri & Northern Arkansas agreement negotiations; W.Va. State Legislative Board mtg.; National Legislative Board mtg.
General Secretary-Treasurer Russ Bennett—International Office: Supervision of BLE financial depts.; Records Dept.; BLE Job Bank; Publications Cmte.; National Legislative Board mtg.
Vice-President Paul T. Sorrow—National wage/rules committee; Mtg. w/ CSX-Northern lines full GCofA; Mtg. w/ CSX-N Lines and Conrail GCofA; Assisted CSX-East GCofA; Handle seniority disputes, CSX; Norfolk Southern work/rest committee; Reached proposed wage/rule settlement w/ Grand Trunk Western; Mtg. w/ International President Dubroski; General office duties.
Vice-President Joseph A. Cassidy Jr.—General office duties; Study & paperwork; Elgin, Joliet & Eastern mtg.; Mtg. w/ General Chairman Ormes, discipline disputes; Duluth, Missabe & Iron Range, mtg. w/ Division 163, management mtg. on grievances, Section 6 mtg.; Recertification as Locomotive Engineer; Long Island Rail Road company; FRA mtg., Harriman Award Cmte.; National Mediation Board mtg.
Vice-President & U.S. Nat'l Legislative Representative Leroy D. Jones—Washington D.C. Office; Federation mtgs.; TTD Rail Div. & Legis. mtgs.; AFL-CIO state legis. cmte.; Publications Cmte. conference call; National Legislative Board mtg.; Labor reception for "Blue Dog Coalition;" Cong. Fattah (D-PA), Napolitano (D-CA), Dingell (D-MI), Grijnderson (D-CT); Receptions Cong. Pascrell (D-WV), Udall (D-CO), Bonior (D-MI), Stabenow (D-MI), Capuano (D-MA), W.Va. State Legislative Board mtg.; Mtg. w/ DOT Secretary Slater, FRA Administrator, reps. of BNSF/CN; Boilermakers' Legislative Congressional reception; DSCC Breakfast Roundtable w/ Senator Robb (D-VA); ASLRRRA.
Vice-President William C. Walpert—ID Office; BLE Education & Training Dept.; Internal Organizing, Mobilizing & Strategic Planning Dept.; BLE Safety Task Force; BLE Special Reps.; Mobilization mtgs. in Little Rock, Ark., Dexter, Mo., Baton Rouge, La., New Orleans, San Antonio, and North Platte; Div. 182 regular mtg. (North Little Rock, Ark.); Div. 858 regular mtg. (Pine Bluff, Ark.); Kansas City Southern contract negotiations.
Vice-President Edward W. Rodziewicz—General office duties; NS-Eastern Region Town Hall meetings, various locations; Conference call; South Buffalo RR claims mtg.
Vice-President Don M. Hahn—BNSF system including MRL, UP South & West, SP East & South, SSW, DLGW, Tacoma Belt, Pac Harbor Belt; UP work/rest committee; BNSF zoning negotiations; SSW seniority issues; UP St. Louis & KC hub equity issues; San Antonio hub issues; PLB 4450; Portland hub zone 2 & 3; SSW special board, Washington DC.
Vice-President Richard K. Radek—International Office; BLE Decertification Helpline services; Director of Arbitration Dept; National Railroad Adjustment Board (NRAB); Metra/IHB general assistance, claim/grievance conf., negotiation assistance; BRC general assistance, pre-arbitration screening conf.; Metra negotiations, engineer trainer; Various NRAB arbitration, incl. DMIR; IHB disciplinary hearing, investigation; WC general assistance; FRA Part 240 dockets, EQAL 96-5, 97-63, 97-65, 97-05.
Vice-President Dale McPherson—I&M Rail Link; CP Rail/SOO, UP East Lines; TRRA-St. Louis; Indiana Railroad Co.; M&NA; LP&N Longview; Telephone, general office duties; Contract negotiations, CSX/IRR, Chrmn. C.L. Roy; Contract negotiations, MNA Chrmn T.R. Murphy; Mtg. w/ IMRL division at Kansas City; Div. 200 mtgs., IMRL contract; Div. 119 mtg.; MNA contract proposal meetings; PLB 6040 and PLB 5997 awards.
Vice-President & Canadian Director Gilles Hallé—Ottawa Office; Annual vacation; Mtgs. w/ CN Rail and Labour Board; Mtg. w/ VIA Rail; Mtg. w/ R. Dixon, CN rail; CN Pension Board cmte. mtg.; VIA Rail arbitration; CP-RCTC negotiations; Ottawa office and mtg., re: CN Benefit Plan.
Vice-President & National Legislative Representative-Canada T. George Hucker—Ottawa Office; Canadian National Legislative Board; Transport Canada Health & Safety Mtg.; CP/Montreal Computer Rail Service mtg.; Mtg., re: CPR long term disability; VIA Rail General Committee mtg.; BMWV mtgs.; CLC labour standards mtg.; National Legislative Board; Retirement reception for M. Merriman, Div. 469; CLC Nat. Political Action Cmte.; Mtgs., re: Montreal Commuter Rail Service.

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VOLUME 14 • NUMBER 4 • APRIL 2000

THE LOCOMOTIVE ENGINEER NEWSLETTER (ISSN No. 0898-8625) is published monthly by the Brotherhood of Locomotive Engineers, 1370 Ontario Street, Cleveland, OH 44113-1702. Periodicals postage paid at Cleveland, OH and additional mailing offices.

POSTMASTER: Send address changes to
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
Records Department
1370 Ontario Street, Mezzanine
Cleveland, OH 44113-1702.

SECOND CLASS POSTAGE PAID AT CLEVELAND, OH and additional mailing offices