

RAILROAD STAKEHOLDER MEETING
 October 29, 2024
 Minutes

The Railroad Stakeholder Meeting was called to order by Rob Swick at 1:01 PM ET on Tuesday, October 29, 2024. The meeting was held via Zoom.

First Name	Last Name	Job Title	Company
Christopher	Alwes	Conductor/Legislative Safety Rep 1544	BNSF/SMART
Ash	Anderson	Director of Education	BMWED-IBT
James	Balsley III	Conductor	Union Pacific Railroad
Dan	Banks	Government Affairs	SMART Transportation Division
Richard	Barnett	Chairman	LASLB
Alex	Beckmann	Legislative Director	Teamsters Rail Conference
Robert	Boardman	Contract Coordinator Safety – United Steelworkers	Cleveland-Cliffs
David	Bosworth	Business Development Director	GKD
Scott	Brent	Conductor	Union Pacific Railroad
Scott	Bunten	General Chairman	BLET
Rob	Carden		
Chris	Carter	Safety Director	Sevan Multi-Site Solutions
Jared	Cassity	Deputy National Safety & Legislative Director	SMART Transportation Division
Anthony	Cerimele	Vice General Chairman	BLET
Joe	Chidgey	Digital Assets	ARLA
Gabriel	Christenson	Conductor	Union Pacific Railroad
Chris	Christianson	Safety and Legislative Director	SMART-TD

Joseph	Ciemny	Illinois Assistant Safety and Legislative Director	SMART Transportation Division
David	Clark		
Erin	Clem	Director of Compliance	Bulkmatic, LLC
Michael	Cook	AVP, Safety	BNSF Railway
Louie	Costa	Safety and Legislative Director	SMART-TD
Wayne	Denson	AR-SLB Chairman	BLET
Brandon	Denucci	Vice President	American Train Dispatchers Association
Ty	Dragoo	Director	SMART Kansas
George	Dula		
Michael	Efaw	National Legislative Director	Brotherhood of Railroad Signalmen
Maya	Efrati	Deputy Director of Legislation	Government Accountability Project
Hervey	Ely	Senior Director of Administration	FWWR
Jonathan	Esposito	Passenger Conductor	Amtrak
Barry	Eveland	Project Manager	IAMAW CREST
Carl	Fields	Staff Peer Trainer	Rail Workers Hazardous Materials Training Program/IBT
Carl	Fields		Railworkers Hazmat Program / IBT
Allison	Fultz	Chief Counsel	FRA
Esther	Fung	Reporter	WSJ
Gregg	Garland	Tennessee State Chairman for BLET	BLET
JJ	Giuliano	International Representative	IBEW
Sue	Gombis	Director of Compliance	Bison
Stephen	Gordon	Associate for General Counsel for Safety	Association of American Railroads
Fernando	Gutierrez	Safety Manager	Clark Construction
Christopher	Hand	Director of Research	Brotherhood of Railroad Signalmen
Helen	Hart	Senior Deputy General Counsel	Norfolk Southern

Jason	Hayden	Safety and Legislative Director	SMART Transportation Division
Kirk	Higbie	Program Director Railroad Safety	Cleveland-Cliffs Inc
Mary	Hughes	HR Director	DD DANNAR, INC
Greg	Hynes		SMART-TD
Ric	Johnson	Passenger Engineer	Amtrak
Cynthia Craig	Johnson	Assistant General Counsel	CSX
William	Jungbauer	President	YAEGER & JUNGBAUER, BARRISTERS
Nick	Katich	Legislative Director	SMART-TD
Charlie	Kazemzadeh	Assistant General Counsel	AAR
Sarah	Kessler	Attorney	Wimberly, Lawson, Steckel, Schneider & Stine
DeAndre	Kimble	Local Safety and Legislative Representative	SMART-TD LOCAL 1846
Rosemary	Lavoie	Intern	Whistleblowers of America
Rich	Leschina	LR/Locomotive Engineer	BLET-IBT
Nancy	Lessin	Senior Staff (retired)	United Steelworkers – TMC (retired)
Joe	Letizia		
Wesley	Lofton	Safety and Training Programs Specialist	Travero/Crandic
Carlos	Lopez	Program Leader Safety Policy	SkyWest Airlines
Bruce	Lundegren	Assistant Chief Counsel	SBA Office of Advocacy
Lawrence	Mann	Attorney	Alper & Mann
Troy	Martin	General Chairman	BLET
Cory	Martin	Chairman	Illinois State Legislative Board-BLET

Dwayne	Massengale	Legislative Chairman	Brotherhood of Locomotive Engineers and Trainmen
Kevin	McCann	Chief Operating Office - Deputy Executive Director	Metra Railroad
Jenny	Miller	Chief of Staff	SMART Transportation Division
James	Mills	Tech - Safety Team/ Occupational Health and Safety	Amtrak / IBT Health and Safety
Michael	Mills	Attorney	Union Pacific Railroad
Staci	Moody-Gilbert	Vice President - NW Region	BMWED
Roy	Morrison	Director Of Safety	BMWED-IBT
Sarah	Morton	Executive Administrative Assistant	ATSFF/BMWED
Matthew	Navarrete	Assistant Deputy General Counsel	Norfolk Southern
Michael	Oathout	Director of Safety & Health	IAM
Nick	Oldham	Assistant General Chairman	ATSFF
Alexander	Parrott	Attorney	Fletcher & Sippel LLC
Robert	Peck	Yardman	Union Pacific Railroad

Jared	Pelz	TE&Y Employee/ Legislative Rep	Union Pacific
Kurt	Poole		
Steven	Preston	OSHA Trainer	Steven L. Preston
John	Prokop	Vice General Chairman	BLET
Ralph	Richardson	Master Sergeant	Retire USAF
Donald	Roach	Safety and Legislative Director	SMART-TD
Michael	Rush	Senior Vice President, Safety and Operations	Association of American Railroads
Yasser	Saleh	Inspector - MBTA	MBTA
Shawn	Sausville		BLET
Melissa	Schop	Asst General Attorney	Union
Patrick	Scott	Railroad Safety Specialist	FRA
Kevin	Sexton	General Chairman	Brotherhood of Locomotive Engineers and Trainmen
Joseph	Sirbak	Attorney	Cozen
Josh	Sitz	Industrial Hygiene Consultant	Providence Industrial Hygiene
Christy	Smith	Director of Regulatory Affairs	BLET
Ryan	Snow	California State Chairman	Brotherhood of Locomotive Engineers & Trainmen
James	Stem	Director	Transportation Safety Culture, LLC
Eric	Stroik	Secretary/Treasurer	Brotherhood of Locomotive Engineers and Trainmen WISLB
Brendan	Sullivan	Policial Affairs	Brotherhood of Locomotive Engineers
Tamara	Temkin Baucom	Civil Engineer III	RGE Engineering LLC

Andres	Trujillo	Florida State Director SMART-TD	SMART- Transportation Department
David	Ursini	Exec. Asst. to the President	ATDA
Daniel	Utpadel	Sr. EHS Manager	Trinity Industries
Michael	Walker	IA-SLB CHAIRMAN	BLET
Lena	Waterkotte	Sr. Manager Legal Support Services	Union Pacific Railroad
David	Weisblatt	Attorney	CSX Transportation
Carolyn	Wesolek	EHS Consultant	BSI Group
Theresa	Westover	Deputy Assistant General Counsel	NLRB
Jose	Willasenor		
Katheryn	Wilson	Policy Analyst	Transportation Trades Department, AFL-CIO
Andrea	Wohleber	Senior Advisor to the Administrator	FRA
Ben	Wright	State chairman	BLET
Harry	Zanville	Consultant	N/A

First Name	Last Name	Title	Agency and Division
Nathaniel	Berman	Investigation Specialist	OSHA, Directorate of Whistleblower Protection Programs (DWPP)
Jason	Brush	Regional Supervisory Investigator (RSI)	OSHA, Whistleblower Protection Program (WPP), Birmingham Region
Vanessa	Burkhead	Whistleblower Investigator	OSHA, Atlanta Region
Dale	Caldwell	Program Analyst	OSHA, DWPP
Christopher	Carlin	Assistant Regional Administrator (ARA)	OSHA, WPP, New York Region
Andrea	Carlson	Investigation Specialist	OSHA, DWPP
Alice	Catlin	Attorney	Department of Labor
Martha	Collins	Investigation Specialist	OSHA, DWPP

Lily	Colon	ARA	OSHA, WPP, Atlanta Region
Kevin	Crain	ARA	OSHA, WPP, Kansas City Region
Jillian	Dupuis	Investigation Specialist	OSHA, DWPP
Megan	Eldridge	RSI	OSHA, WPP, San Francisco Region
Nichelle	Engard	Investigation Specialist	OSHA, DWPP
Angela	Fisher	RSI	OSHA, WPP, Birmingham Region
James	Frederick	Deputy Assistant Secretary of Labor for Occupational Safety and Health	OSHA, Office of the Assistant Secretary
Shawn	Harrigan	RSI	OSHA, WPP, Chicago Region
Marisa	Johnson	Program Analyst	OSHA, DWPP
Anne	King	Attorney	Department of Labor
Michael	Mabee	ARA	OSHA, WPP, Dallas Region
Lee	Martin	Director	OSHA, DWPP
John	Murphy	RSI	OSHA, WPP, New York Region
Bernard	Noel	Whistleblower Investigator	OSHA, WPP, Dallas Region
Timothy	O'Donnell	Whistleblower Investigator	OSHA, WPP, New York Region
John	Ritch	Whistleblower Investigator	OSHA, WPP, New York Region
Jennifer	Rous	Regional Administrator (RA)	OSHA, Denver Region
Kristen	Rubino	ARA	OSHA, WPP, Boston Region
Meghan	Smith	Program Analyst	OSHA, DWPP
Roger	Sparks	Whistleblower Investigator	OSHA, WPP, Kansas City Region
Natalie	Starks	RSI	OSHA, WPP, Philadelphia Region
Christine	Stewart	Division Chief, Policy, Planning, & Program Development	OSHA, DWPP

Rob	Swick	Division Chief, Field Operations	OSHA, DWPP
Nate	Terwilliger	ARA	OSHA, WPP, Chicago Region
Blair	Thompson	Mechanical Engineer	OSHA
Shawn	Vollrath	RSI	OSHA, WPP, Denver Region
Cory	Wilson	ARA	OSHA, WPP, Denver Region

Rob Swick opened the meeting.

Jim Frederick, Deputy Assistant Secretary for Occupational Safety and Health, OSHA

Thank you all for joining this important meeting on railroad worker protections. Thank you to the representatives from the Federal Railroad Administration (FRA) for joining us today for this conversation. At OSHA we take our role in whistleblower protections very seriously and it is a vital part of our overall work.

We have historically had a significant amount of interaction with workers and employers in this industry addressing concerns raised by whistleblowers and we hope that this work is helping to foster an environment in which workers are safe from retaliation for asserting their rights and empowering them to have a real voice concerning their working conditions.

OSHA’s Whistleblower Protection Program enforces the whistleblower provisions of 25 whistleblower statutes that protect workers from retaliation for reporting violations, including the Federal Railroad Safety Act (FRSA).

Remember that there are multiple ways to file a whistleblower complaint with OSHA including:

- Online - Use the [Online Whistleblower Complaint Form](#) to submit a complaint to OSHA.
- You can also fax, mail, or email a letter describing your complaint, or a printed copy of your completed Online Whistleblower Complaint Form to your local [OSHA Regional or Area Office](#).
- Another way to make a complaint is to call your local [OSHA Regional or Area Office](#). OSHA staff can discuss your complaint with you and respond to any questions you may have.
- You can also visit your local OSHA office in-person. OSHA staff can accept your verbal or written complaint and provide information as needed.
- We accept complaints in any language. If you or someone you know needs assistance, such as a language interpreter, contact your [local OSHA office](#).

We welcome the opportunity to continue to work with the FRA on protecting America's railroad workers. OSHA and the FRA signed a [memorandum of agreement](#) on July 16, 2012 to help the agencies better work together to make a positive impact on the nation's railroad industry. We hope that our collaboration with FRA continues to improve as we move forward.

Allow me to close with a recent example of how OSHA protects railroad workers. Earlier this month, OSHA's Denver Region found that a railroad violated a worker's rights when it retaliated against a worker who reported an injury, discussed safety concerns with their supervisor, and filed a complaint with the U.S. Department of Labor.

OSHA ordered the railroad to reinstate the employee, pay more than \$45,000 in back wages, and \$155,000 in other damages.

The railroad operator must also remove negative reports from the worker's personnel record. As this example shows, we take worker concerns seriously and are working to create safer working environments free from retaliation for all workers.

Thank you again for the opportunity to participate with you all today and I look forward to the discussions to help us improve our system and to improve protections to ALL workers to raise concerns and report conditions with a sense of safety and confidence that they will be heard and not retaliated against.

Allison Fultz, Chief Counsel, Federal Railroad Administration (FRA)

I'm very pleased to be with everybody here today. We thank OSHA for all of its work in collaboration and for inviting FRA to take part in the stakeholder meeting today. This is a significant meeting because both FRA and OSHA play important roles to protect the health and safety of railroad employees.

OSHA has the primary responsibility for generally regulating conditions and hazards affecting the health and safety of employees in the workplace, including the investigation of whistleblower complaints. FRA is responsible for regulating and enforcing matters related to railroad operations and has the jurisdiction to investigate all matters relating to railroad safety.

There are two separate areas of jurisdiction, but there is overlap that allows us to work together, to work on questions related to the railroad industry. In conjunction with the memorandum of agreement that you heard Jim just talk about that was signed by both agencies in 2012, OSHA and FRA have been working hand in hand to fulfill those duties in the way that is most efficient and most thoroughly protects the health and safety of all railroad employees. Under the memorandum of agreement in part, OSHA sends FRA copies of the whistleblower complaints that OSHA receives. FRA agrees to review such complaints for potential violations of FRA safety regulations. So a single complaint, may have a good result in action by both OSHA and FRA. FRA and OSHA have been in close coordination to constantly improve this process whereby OSHA now identifies high priority complaints that it believes FRA should review to

determine whether FRA enforcement is appropriate. This helps to better streamline FRA's efforts by aiming its focus on matters that fall under its jurisdiction and enforcement powers.

In addition, OSHA and FRA meet to discuss individual whistleblower complaints to ensure that the agencies conduct their respective investigations in concert with one another and to maintain open avenues of communication throughout each investigation, including a discussion of the results.

To continue fostering this interagency relationship, OSHA and FRA conduct trainings for representatives of each agency. This included FRA giving trainings on our enforcement proceedings and OSHA giving trainings on how they conduct theirs. With regard to FRA itself, we have taken steps to improve how FRA internally processes and investigates whistleblower complaints that we receive from OSHA. This included the appointment of a dedicated liaison to read each complaint and conducting investigations into those that affect railroad safety.

FRA has also established a procedure for how enforcement is handled when the results of such an investigation lead to a recommendation for further action. With that, I really look forward to today's discussion.

Lee Martin, Director, Directorate of Whistleblower Protection Programs, OSHA

Good afternoon, everyone. I want to talk a little bit today about whistleblower complaints under the Federal Railroad Safety Act or FRSA. OSHA's whistleblower program has been investigating whistleblower retaliation complaints for 50 years, although we've only had authority to investigate whistleblower complaints under FRSA since 2007.

FRSA protects employees of railroad carriers and their contractors, subcontractors, officers, and employees from retaliation for engaging in protected activity, such as reporting a workplace injury or illness, a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety. In addition, the statute protects employees from retaliation for refusing to work when confronted by a hazardous safety or security condition. The Act also prevents interference with medical treatment or discipline for an employee requesting medical treatment.

FRSA has consistently been one of OSHA's most docketed and investigated statutes since we gained authority to investigate.

OSHA investigates the alleged retaliation of an employee, and the FRA has the authority to investigate underlying safety violations. Once OSHA docketed a FRSA complaint, we forward the information to the FRA. The FRA reviews and can investigate the complaint for an underlying safety violation. The FRA has the ability to issue enforcement across a railroad or issue individual liabilities against specific managers. OSHA and the FRA work closely to ensure safety and a culture free from retaliation in the rail industry.

For more information on the retaliation provision of FRSA, please go to www.whistleblowers.gov

Again, thank you for your investment in workers through whistleblower protections. It is important. And thank you for your time and involvement in this meeting. We will be listening to all of your comments. If you would like to provide written comments for this meeting, visit [regulations.gov](https://www.regulations.gov) and type OSHA-2024-0007 into the search bar. The comment period will close on November 12, 2024.

Patrick Scott, Railroad Safety Specialist, FRA

I work as an FRA railroad safety specialist specializing in part 225 accident and engine reporting, as well as OSHA complaints. I collaborate closely with subject matter experts from across FRA's Office of Safety, FRA's Office of Chief Counsel and OSHA, including both headquarters, staff, and inspectors.

Together we have strengthened the partnership between OSHA and FRA, implementing a more streamlined and dedicated process for managing whistleblower complaints as they come in.

As the subject matter expert for issues involving part 225, I review whistleblower complaints from OSHA. I verify whether the referral involves safety related issues that fall under FRA's jurisdiction. If the issues fall within FRA safety regulations, I will investigate. This may involve consulting field staff of the railroad and the FRA for input on compliance history and familiarity with the specific area of concern. Based on the findings, I will take appropriate actions, such as enforcement against railroads or individuals involved, or possibly taking no action at all. After recommendations are made, if enforcement is pursued, I work closely with the FRA's Office of Chief Counsel throughout the enforcement process until the matter is resolved.

In addition to working internally, I also collaborate with fellow OSHA inspectors on certain whistleblower cases, including keeping them up-to-date on findings and vice versa. This has been a great byproduct of the strengthened partnership between FRA and OSHA.

I want to thank you all for joining, and I look forward to your comments. Thank you.

Rob Swick provided the ground rules for the meeting.

William Jungbauer, Attorney, Yaeger & Jungbauer, Barristers

I've been practicing railroad law for 46 years. I've been practicing FRSA law since the very day it started. In fact, I was one of the people that testified before the full House Committee on October 25, 2007 that resulted in the amendments to the FRSA.

I'd like to make some suggestions to this group. One thing I've been told at the investigative level is that OSHA has no subpoena power. If you don't have subpoena power, you're not going to get the facts, and your investigations, unfortunately, will be flawed. I hope the subpoena power could somehow be given to OSHA investigators.

Secondly, during your investigations, when you call in railroad witnesses, they are almost always accompanied by railroad lawyers, and I don't think that's fair because of the pressures that are put on those witnesses, other than the claimant themselves.

Thirdly, OSHA, in my experience, does not demand or obtain similarly situated comparators of other employees charged with the same rule violations in assessing the affirmative defense obligation or proof standards for rail carriers. And as you know, under the either the prima facie or substantive case, you've got the exact same burden for rail carriers, which is proof that they would have taken the same actions in the absence of the protected activity. And that must be proven with clear and convincing evidence.

The problem with all of that is that rail carriers use a totally different proof standard in their disciplinary hearings. They use what's called the substantial burden of proof, which is defined as evidence which a reasonable person might accept as adequate to support a conclusion. That is lower than the preponderance of evidence burden of proof under the FRSA that claimants must use to prove their case, and it's far below the clear and convincing evidence standard that carriers must meet in proving that they would have taken the same adverse action in the absence of protected activity. That's really important, folks.

Secondly, I found that investigators, even when I give them blueprints and questions to follow, have failed to check into bias of management, people that are participating and making the ultimate decisions. Many of these management officials have a conflict of interest because their personal bonuses and job ratings are tied to reportable injuries. But if the carrier can fire an employee, then that reportable injury with the lost workdays disappears. Then, you've got inaccurate information being provided to both FRA and OSHA.

Another point to look at is the disparate treatment. That is not investigated in my opinion. Recently, there was a case north of Seattle where an engine flipped over. The employee who filed the personal injury report got investigated. The other employee in the engine did not pursue a personal injury claim and was not investigated, and neither were any of the people on the ground because they didn't turn in accident reports.

Many times, the workers will not report injuries because they're so afraid that they're going to have to go through an investigation; and they're told by the carrier, if you don't admit responsibility and then accept a waiver, we're going to have an investigation. You're probably going to be fired. And yeah, you may get some settlement a year or two years down the road, but you're going to starve in the meantime.

Folks, that's not the way this should work.

Another issue is vague railroad rules. The FRA has an obligation to look over and approve railroad rules. GCOR rules have been around forever. Take a look at the One Series of GCOR folks. Those are what we call the Boy Scout rules. They've got a lot of nice things in them. For instance, look at GCOR 1.6. You'll find that 1.6.C says employees can be disciplined if they are

immoral. Why would FRA approve that? And then, they have one that says “dishonest”. Dishonest is not defined. These are the situations where management officials can use their discretion. And with that very low substantial burden of proof, they can fire workers that are affecting their bonus.

Another thing, FRA has training rules. The railroads don't train the way they're supposed to. What they do in investigations, they'll say the employee is responsible for knowing and understanding all rules. They don't train them on these rules. Check it out. There's ops testing that they do. They don't train them. They especially don't train them on the 1.6 rules, which are the rules that they fire everybody for.

I would recommend to FRA that, for enforcement, having fines that the railroads can negotiate down is not an effective deterrent. If you're going to have fines (I know you guys are overburdened and overworked), consider having outside attorneys collect those fines for you, and then you might do a better job. You might collect more of them, instead of just bundling them together and people going out to lunch, having a few cocktails, and settling for pennies on the dollar.

Thank you for your time. Thank you for listening.

Roy Morrison, Director of Safety, BMWED-IBT

Good afternoon. Thank you for the opportunity to speak today. My name is Roy Morrison. I serve as the director of safety for the Brotherhood of Maintenance of Way Employees Division-International Brotherhood of Teamsters (BMWED-IBT). I been involved in recent communication with FRA and OSHA.

The railroad industry remains rife with management practices that prioritize cost cutting and efficiency over employee safety and compliance with federal regulations. The recent shift towards precision scheduled railroading has intensified these issues. Metrics, like system velocity and equipment turnaround time, significantly affect the compensation of managers. In response to the mandates from the executives and, ultimately, finance interest to reduce costs to attain the desired metrics, managers cut corners, skirt regulations, encourage or compel employees to ignore or lessen compliance with regulations, and retaliate against employees who resist. These punitive procedures satisfy the demands of the executives and the investors to reduce operating ratios and meet performance metrics, regardless of the impacts of the employee's personal safety and the safety of railroad operations. This business model has not only placed direct pressure on managers to cut corners, but also led to dangerously low staffing levels, forcing workers to take on more responsibility with less support. Such conditions are a recipe for safety lapses and increase the likelihood of serious accidents across the rail network.

We repeatedly highlighted cases where managers were found to have retaliated against employees under [49 U.S.C. § 20109](#). Yet, despite significant evidence, including administrative rulings and punitive damages, the FRA has consistently failed to enforce disqualification

provisions under [49 CFR part 209 Subpart D](#). In 2016, BMWED identified a number of managers who were found by administrative review boards or courts to have willfully retaliated against employees. And, in 2021, the transportation trade's department of the AFL-CIO identified several more such managers. As far as we know, no actions were taken by FRA to disqualify the individuals.

Furthermore, there's no public record or database published by FRA that would allow industry stakeholders, rail workers, or other managers to see the results of such FRA cases. The Federal Aviation Administration publishes the results of all of the certificate suspensions and revocations cases in a public-facing database. We are unaware of any reason why FRA can't maintain a similar public database.

In short, such inaction not only allows regulatory managers to remain in their positions, but also allow others to act similarly, knowing that there will likely be no consequences. Our railroads urgently need transparency, a transparent, accountable system similar to FAA's database for certificate revocations, where just qualification cases are documented and available for public review. A database would serve as a powerful deterrent, signaling to railroad managers that retaliation will not be tolerated. Actual enforcement of the requirement disqualification and public publication of the disqualification will mitigate the pressure and cost-cutting the business model places on managers, as they would have to consider the long-term impacts of disqualification and would have to balance the immediate financial gain and satisfying the demands of executives against the potential loss of a career in the industry.

However, deterrence alone is not enough. A proactive and punitive framework is essential. This is where a fully implemented confidential reporting system becomes critical.

[C³RS](#) exists in limited scope. A complete and unified C³RS program that incorporates all crafts is absolutely essential to creating a safer rail system. This program would allow employees across all crafts to report close calls and other safety concerns without fear of reprisals. C³RS has already proven effective at enhancing safety and its limited applications by addressing near miss incidents before they become major accidents. Yet without full adoption across all crafts, we're left with a fragmented safety network that cannot adequately address the scope of safety issues across the entire industry. For whistleblower protections to function effectively, they must be complemented by its C³RS Framework that empowers employees to report safety concerns in real time and creates a culture that prioritizes prevention over punishment. Again, the FAA has for many years fostered a confidential reporting system similar to C³RS that has dramatically improved aviation safety, but the rail industry as a whole has resisted full adoption of the similar program.

This session is focused in large part on issues associated with whistleblower protection guarantees by the FRSA enhancements in 2007. It would be a mistake to avert our attention away from the promises of risk reduction program that were the cornerstones that FRSA enacted in 2008. Properly conceived and executed risk reduction programs should help reform

corporate culture that breeds the criminal behavior of some railroad managers that is a clear and present a danger to workers and the public.

Unfortunately, there is no objective evidence that the railroads are participating in good faith and there's no obvious examples of FRA holding them accountable for their bad faith behavior.

In closing, I urge OSHA and FRA to consider the urgency of these matters in light of recent high-profile derailments and increased incidents across the nation. The Department of Transportation has publicly prioritized rail safety. Yet, there has been a concerning delay in addressing these well-documented safety and retaliation issues. The creation of a publicly accessible database to track disqualified managers engaged in retaliatory or dangerous practices is paramount to keeping these toxic individuals out of the American railroad system. Equally, the comprehensive adoption of a C³RS program is essential to establishing a safety-first culture that values open reporting and continuous improvement.

Together, along with renewed efforts to enforce the risk reduction program requirements, these measures would transform rail safety by balancing transparency, accountability, and proactive prevention. Thank you for the time and consideration of these critical safety concerns.

Jared Cassity, Deputy National Legislative Director and Chief Safety Officer, SMART, Transportation Division

The International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) is the largest railroad union in the country. It's currently a dangerous occupation. In fact, just being on the property or in the presence of railroad equipment is, in and of itself, dangerous. That being said, ask any railroader what their employer's take is on safety, and they'll all tell you the same. It's merely a talking point or a check in the box to show that they've met their regulatory obligations. It is not a meaningful approach to providing a safe work environment nor is it a priority to ascertain that an employee has the education, training, or skill set necessary to perform their job function safely.

Training in the industry is abysmal. Currently, the timeline it takes to be introduced to the job and be promoted as a conductor is a fraction of the amount of time it took not more than 10 years ago. Today, the emphasis of training is not on exposure, repetition, or comprehension but rather a forced memorization of material focused on only passing the next test, not the building blocks necessary to work in the field or establish a safe worksite.

So why discuss training in this context? It's because there's an absolute abandonment of initial and continuing education, and this is where the harassment and intimidation of America's railroads begin to truly take shape. Today's conductors are not prepared for the road ahead.

The question then becomes what do the railroads do about it? They abused the FRA's requirements to perform observational testing. They park a car in the weeds so they can watch you with binoculars. They fly a drone over your head so you're distracted and fearful for every move you make.

They pressure you to ride equipment you're not comfortable with because walking takes too much time. And the list goes on and on and on.

But instead of offering you supplemental classes or additional training, the railroads do everything they can to discipline you into compliance.

They keep disciplining them until they're broke mentality which applies universally across the industry. Sure, workers may technically be able to submit unsafe condition reports or take sick leave when needed, but they do not possess the freedom to do so without the ever-present cloak of harassment and intimidation.

More often than not, if an employee submits a complaint or an unsafe condition, or takes a sick day, that creates a hardship for the railroad or reflects poorly on a manager. You can rest assured that the employee will be met with a flurry of observational testing. The stress and fear that results are like none other. But it will continue until it is understood that speaking up is not tolerated or until your career has been terminated by the employing railroad. Retaliation is so present and so understood in the industry that workers purposefully withhold information for the sake of their jobs and the welfare of their families. Workers do not disclose injuries because they know it will result in termination. They would rather suffer the physical consequences than face the wrath of their employer.

I, myself had my life threatened by a train master because I reported him for willfully and repetitively instructing crews to violate the carriers' operating rules in federal regulations. As we speak, I am actively defending a local union safety officer from his employer who is seeking to discipline him for using union business to perform the functions of his role simply because of the sheer volume of unsafe conditions he has reported. Unlike most, he is willing to put his job on the line, but he knows full well that the odds are heavily stacked against him and that he will eventually pay the price. Unfortunately, for most workers, the time and processes required to enact whistleblower protections are a loss of time and money they cannot afford, and the threat of being adversely affected has a chilling effect on their willingness to report. They would rather remain in the shadows out of the employer's view than draw attention to themselves by trying to make a safer workplace or care for their own bodies.

I commend OSHA for its whistleblower protections program. Before it can be successful for the railroad industry, both fundamental and drastic changes are needed to regulations enabling excessive and abusive observational testing into railroad processes and instructor structures that cultivate environments which are rife with harassment and intimidation. I assure you, there are many other examples of retaliatory behavior, but to be respectful for everybody's time and to meet the five-minute requirement, this seemed like the most fundamental starting point to be shared. I do thank you for your time and the opportunity for holding this very important meeting.

I look forward to the future and OSHA and FRA working together, but this has long been a conversation to discuss the issues that need to be talked about and to fix the environment that is created by the regulations.

Barry Eveland, Project Manager, IAMAW CREST

Thank you for, allowing me the opportunity to speak. I am with the International Association of Machinists and Aerospace Workers (IAMAW). CREST, Corporation for Re-Employment and Safety Training, is a non-profit organization sponsored by the IAMAW which is designed to provide job re-entry and safety training services. I found it really interesting that the previous individuals who spoke before me today make me feel like I had worked with them and am familiar with a lot of their complaints.

Today I am with the machinists, in our safety and health department, but I'm more or less speaking as a 15-year railroader working for a class one rail outfit.

I have experienced direct actions against myself, and I've seen it with coworkers. I can confirm everything that has been said is very accurate. Retaliation continues to come up. It came up when we were first introduced to the meeting. As you know, there are a lot of stop gaps in place to prevent retaliation. But, in practicality, it's not reaching the workers. We're scared to lose our jobs. We're scared to be demoted, reprimanded, and harassed.

If you're fortunate enough to have a labor organization behind you, they're going to have to act on that and a lot of things are going to be exposed. I think it was the attorney at the beginning, Mr. William Jungbauer, who indicated you're going to sit, you're going to sit behind the big pocketbooks for, you know, two to three years until you get back wages, make whole money. Even when you win, you lose. So, it's difficult. The harassment that we experience is even worse.

Many attorneys are unwilling to take those cases because it's hard to assess the damages when you're harassed or you apply to hundreds of jobs and can't get a promotion and you're sort of stuck in place. So I'd like to look at, you know, emphasizing the need for robust whistleblower protections, to encourage reporting without fear.

I think what's in place now is good. I think there's a lot of things there that make sense, but the practicality kind of misses the mark.

I think there's a little bit of a lack of anonymous reporting options. So, those individuals who do have things that need to be reported need to be a bit more made aware of how they can report anonymously. I understand the regulating bodies are going to need to pick up on those reports and there's going to have to be names somewhere to validate these issues. I think the data is important enough that if somebody feels there is something that needs to be said, there needs to be sort of an avenue for anonymity.

My third bullet point here is inadequate training on reporting procedures. I think that was brought up by the brothers from the BMWED, where I think we have a lot of computer-based trainings on the railroad. That's what I've experienced and we just checked the box. Typically, we're expected to perform our work while we check those boxes, and you just let a video play in the background, and you just hit the buttons or you just guess at the answers until you get them.

It meets the regulatory compliance, and then the employers can say, "Hey, we put them through the trainings." They did it; here's his name, here's when he took it. But, unfortunately, we didn't actually learn anything because we weren't actually provided the time. We were sort of more focused on the work that needs to get done. And you do it faster with less people.

The training, it's not just the training of our specific operating procedures, but the training on understanding how we can interface with the FRA, how we can interface with OSHA.

Funny enough, what I'm in now is with the machinists, we have a safety and health program. We have a small grant with the Department of Transportation (DOT). I have directly reached out to, I'd say, five of the Class I freight carriers and Amtrak. Only one has responded and is going to participate in a free training, which goes over many of the OSHA concerns. We go over whistleblower protection; we go over hazardous materials. It's kind of disappointing that the carriers don't really seem to have a priority in doing their own trainings or even allowing an outside group to do those training for them for free covered through the DOT. So, that's a really big concern of ours that we can't seem to get participants.

There are cultural barriers. That just goes back into the fears in the existing workplaces of a culture that may discourage reporting. There's a sort of a focus on production over safety. Individuals find that the only way that they're going to continue to be gainfully employed is just to stay in their lane and follow a procedure of the company, either maybe to pursue a management career or just to keep their jobs.

We need initiatives to foster a safety 1st culture where reporting is valued and encouraged. I think we all do that in namesake, but I don't think there's really any substance behind it. I think all the carriers say, safety is our number one priority. It's said all the time. We know that, but it doesn't happen.

I think what's going to be important is engagement with labor organizations. I see a few brothers and sisters here today, but I think it's particularly important to have that buffer where we can encourage collaboration with the labor unions to create a unified front on safety reporting items. When employees have to stand out on safety reporting items in the front of the battlefield essentially alone and take that first shot, speaking from my own direct experience, it hurts. It hurts pretty bad sitting on the street for three years without receiving a paycheck. The whistleblower protections and the laws that are in place, unfortunately, don't actually encourage the carriers to speed that process up. And when it's all over, they have deep pockets. They cut a small check. And sort of everything's right.

Ty Drago, Director, SMART Kansas

I am with the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) out of Kansas. I had a prepared statement, but listening to some of the speakers before me and I'm anticipating the speakers that will follow, I want to take a piece out of it. I want to talk about the carriers' tactics and nefarious efforts to prevent a whistleblower from even getting to the point of turning something in. And that has both good and negative aspects. When it comes to those tactics, and what I mean by the good, is actually dealing with the situation.

Currently, there's an employee who had a serious injury happen to them. There were circumstances leading up to the injury that the carrier was aware of, and the carrier reached out to his family and flew him to their headquarters and gave them a four-day paid vacation and a \$500 shopping card. Part of the agreement was that he had to sign an NDA.

It's terrible what they're doing when it comes to those types of things, but also I've been in a situation which happened in a new hire class that I was in years ago. I was working alongside someone in my class, and he actually tripped and fell on a hump yard after pulling the pin on a box car at the top of the hill. As he fell, his hands went out and it cut off the pinky, middle finger, and index finger. The carrier reached out to his wife immediately and made all types of promises and commitments, including giving her a job at the railroad as a secretary. Once all the chips had fallen and everything was taken care of and the NDA was signed, she was terminated and he was left holding the bag.

What I want to emphasize on this call is everything that my colleagues have said before. But I really want to stress to OSHA, after I look at what the carriers are doing to prevent employees and members from even turning in a whistleblower complaint, is that we are starting to see an uptick in "safety programs" and "safety awards". "Hey, you'll get that Carhartt jacket or that Yeti cooler six months from now if no one turns in an injury." That is a serious, serious problem and it is preventing members and employees from getting to the point where they feel safe and are willing to turn in that OSHA complaint, that whistleblower complaint, not only due to the repercussions of management but also because they've now created an environment where employees can be hostile towards that member because they're not going to get their Yeti cooler. That's something that I want to stress. I hope the agencies are aware of this.

I want to second the point that was made about negotiated fines. I think negotiated fines have been the biggest disservice to our nation's safety when it comes to railroad regulations. It really needs to be something that is overhauled because right now you are trading blood for pennies on the dollar.

Harry Zanville, Consultant

I have a couple of comments concerning the MOA that both Alison and Jim mentioned. The streamlined process is very encouraging. Has it paid any dividends yet? It should result in some disqualification prosecutions, but I haven't seen any public information about that.

And perhaps operations should consider updates in public like OSHA does. And maybe there will be an annual report of the joint progress made for the prior MOA. I think transparency is very important.

My second point is I think there should be a legislative agenda item for OSHA and the FRA to fix the gap created by the circuit courts of appeal that constrained the readings of (c)(2). This is really important. And I think the agencies really owe it to the public to try to get a legislative fix. Or I'd like to see that FRSA enforcement will work hand-in-hand with the [Risk Reduction Program](#) (RRP). I haven't seen public evidence yet that the RRP programs are being effectuated. I think the operation made public the progress it's making on issues like corporate culture and bad faith bargaining between the carriers and the labor organizations.

Finally, my last comment is this - I'd like to know what the FRA strategy is going to be concerning the potential impact of the new decisions in [Loper Bright](#) and [Jarkesy](#) on issuance and enforcement, fines and penalties, and disqualification proceedings. This is another area where transparency is very important. A couple of people have commented on concerns about the fines and penalties programs. I think everybody knows there's really no public information about fine collection policies and outcomes.

But I'm really concerned about the effect of [Loper Bright](#) and [Jarkesy](#) because the railroads may well take the position of the 7th amendment right to a jury trial. I think we all should know the FRA's policy.

Ryan Snow, California State Chairman, BLET

I am with the Brotherhood of Locomotive Engineers and Trainmen (BLET). An issue that just recently came up was a member reported a pin on a coupler between cars and this pin was just barely being held out. I don't know how long the pin was, but it probably had an inch left and it was sticking up. The crew saw it, they reported it, they took a picture of it, and the manager's response when challenged with it was, "Well, I'm going to pull cameras and see if I can see the person actually taking the picture with his phone and then we will address that." There was no regard for safety or correction of the hazard after the crew identified a safety issue. That's the kind of intimidation that our guys are getting out there.

OSHA and FRA, I think you guys are doing a great job.

Michael Oathout, Director of Safety & Health, IAM

I'm with the International Association of Machinists and Aerospace Workers (IAM) and am a 19-year railroad worker in the passenger rail industry. I've been personally retaliated against for

reporting safety concerns. I've watched a number of my union brothers and sisters be retaliated against. There's a term, "constructive discharge", where managers attack and really retaliate against workers in any which way they can to make their lives miserable. That's something I've witnessed, and it continues every day.

Just hearing all the other speakers and addressing the concerns, it's just repetitive and it doesn't matter. We work with a lot of the carriers in my role with the union, and it's the same story across the board. There really has to be stronger federal oversight.

I like the ideas of national reporting - close call reporting and then also having a database where they track some of these railroad managers.

I feel that there should be criminal charges against some of them in extreme cases where employees and the public are placed in jeopardy because of their decisions and their mandates. We really have to make a change. There's such a fear across the board. And you know you're not allowed to report an injury. You're not allowed to report a safety concern.

I've reported safety concerns, even trying to be involved as a safety committee member reporting concerns. "Hey, this is something that you should take a look at." The response was, "That doesn't pertain to you." And why not?

There were issues, hazardous materials or bloodborne pathogens, that affected everybody that was on the property. It's just problematic across the board.

We talk about the training. They just want to check off the box with their computer-based training. Nobody can ask questions. There's no instructor. It's a real problem and you know, the reality is when they talk about safety, it's a paper tiger on the wall. They just want to preach we have safety as a big part of our culture or one of our cornerstones of our operation. In reality, if it's going to cost money or it's going to slow down progress or anything to that degree, they're not interested, and they will retaliate against workers. Workers have seen this. They made an example out of it, so it's a beat with a stick mentality and everybody's afraid to speak up. They keep their head down. They can't afford to be out of work, as brother Barry had mentioned, for two years or more without a paycheck, because guess what happens? They're going to lose their home. They're going to lose their family. And we've watched that happen to workers across the rail industry. It's sad that that's the example for other workers. A lot of the managers say that OSHA has no jurisdiction, the FRA does. Managers repeatedly claim that OSHA has no jurisdiction on the property (as in the shops). We do a lot of training. We try to educate members in the shops. It's a general industry standard, especially when we're teaching OSHA 10 or OSHA 30 classes, we try to educate members that the railroads have to follow these standards. Under general industry in CFR Title 29. I think there has to be a big push on training, live training where workers can ask questions. And, I think, the collaboration between OSHA and FRA is excellent.

I know we've had meetings before, and we've discussed a lot of concerns. I'm happy to see this continue down the road. Hopefully we can really make a difference and make this a safer industry for all the workers.

Andres Trujillo, Florida State Director, SMART – Transportation Department

I am with the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART). I want to piggyback on everything that has just been said and leave with the message that retaliation today pays. And as long as retaliation pays for the railroads; of course, it will continue on as will all that results which the speakers here before me have spoken about. We'll continue, and as you well know, the rail industry will prevail although many of our members do get involved.

By and large, a lot of the reporting that the regulatory agencies get comes from union officials. We're your eyes, your ears, your generals on the ground, your captains. And until the regulatory agencies view this group as a group which can respond to whistleblower complaints within the limits of the law that makes retaliation not pay as well for the railroads, we're going to continue on that path.

The other thing I've come across is, although it's excellent to be able to count on an attorney, but OSHA should be doing a better job at responding and resolving, positively or negatively for the claimant, but it absolutely should be doing a better job of responding and resolving complaints whichever way it goes. I shouldn't need to have an attorney involved if I choose not to. Again, I'm glad when they're there. But I would encourage a better resolution rate and better response rate.

Rob Swick ended the meeting at 2:06 PM EDT.

Thank you all.