

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY

HEARING ON
THE RAIL AND PUBLIC TRANSPORTATION
SECURITY ACT OF 2007

MARCH 6, 2007

TESTIMONY OF
EDWARD W. RODZWICZ, PRESIDENT
TEAMSTERS RAIL CONFERENCE



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Thank you and good morning Chairman Brown, Ranking Member King, and members of the Committee. My name is Edward Rodzicz, and I am President of the Teamsters Rail Conference. I appear today on behalf of more than 70,000 Rail Conference members who belong to our constituent Brotherhood of Locomotive Engineers and Trainmen and Brotherhood of Maintenance of Way Employees Division, and who will be impacted by the proposed Rail and Public Transportation Security Act of 2007.

I want to begin by thanking the Chairman and the Ranking Member for the work they have done in putting together the bill. Rail Labor has taken every opportunity since 9/11 to advocate for strong security legislation for the railroad industry, and we are pleased to see that you have listened to what we have said. The bill addresses many of the issues we have raised over the past 5½ years.

In my brief time today, I want to comment upon a number of provisions contained in the bill, so that you have the benefit of the view of the Rail Conference. For the sake of clarity, I will address those provisions in the order they are contained in the bill. Therefore, the order in which our points are made should not be interpreted as a prioritization of issues.

Section 5 covers rail and public transportation assessments and plans. Subsection (d)(1)(G) would require that Section 11 training include “recurrent training and periodic unannounced exercises for employees.” The need for recurrent training for front-line railroad workers has long been a major theme for us, and we fully support conducting periodic unannounced exercises so that the sufficiency of security plans can be tested and in order for our members to better understand the goals and elements of their employers’ security plans.

Subsection (g)(3) would require that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, approve vulnerability assessments and security plans. We support a requirement that assessments and plans be reviewed and approved. It has been our experience that a mandatory approval process produces a much better product than a process whereby approval is deemed if the submission is not rejected within a certain time frame. It is our expectation that the industry will request an alternative to mandatory approval, and we strongly urge the Committee to retain the proposed language in the final bill. For the same reasons, we support the procedures, protocols and standards set forth in Subsection (k).

Concerning Subsection (l), which pertains to the periodic review of vulnerability assessments and security plans, we note that paragraph (1) mandates a periodic review within three years of the initial filing and at least once every five years thereafter. This schedule reflects the timeline proposed in parallel Notices of Proposed Rulemaking pertaining to rail transportation of certain hazardous materials, which were published by the Transportation

Security Administration (“TSA”) and the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) last December. In comments on these proposed rules, the BLET voiced a concern that the schedule for subsequent reviews was too long, and suggested that reviews be conducted triennially. *See* DOT DMS Docket No. TSA-2006-26514-59 at p. 4.

With respect to the rail security assistance grant program outlined in Section 7, we fully support the inclusion, in Subsection (b)(15) of security awareness, preparedness, and response training for front-line railroad employees, including Section 11 training, which also is reflected in Section 8(b)(14). Further, we applaud the Committee for the standards included in Subsection (h). Regarding eligibility standards set forth in Subsection (f), we are most grateful for the amendment offered by Congresswoman Clarke, providing that National Labor College, which is located at the George Meany Center in Silver Spring, Maryland, may be considered as a “private entity” in the application of paragraph (1).

Under labor sponsorship, the hazardous materials training programs at the National Labor College have been a resounding success. The program has, over its fifteen years, continually evolved and expanded to meet the training and competency needs of rail workers that are not met by the railroads. Initially offering only one course, the program now offers five. Training has moved beyond the conventional classroom to include simulation and on-line activities. A core of professionally trained instructors has been replaced with a corps of peer instructors. Because of this program’s 16+ years of success, tens of thousands of rail workers are working more safely and in safer environments.

Since the onset of training in April 1991, the union-run program has trained more than 20,000 rail workers. Evolving from an 8-hour program of awareness training only, the National Institute for Environmental Health Sciences (NIEHS)-funded and George Meany Center-sponsored program now offers five courses: a 5-day Chemical/Emergency Response training in the classroom; an on-line Emergency Responder Awareness Level 101 course; the OSHA 10-hour General Industry Safety and Health Outreach Program; disaster site training; and the newest addition, a Radioactive Material Transportation Safety Program, which is funded by a separate grant from the U.S. Department of Energy.

The newest program began last summer at the National Labor College, and includes a Modular Emergency Response Radiological Transportation Training (MERRTT) “train the trainer” course. By contrast, we are unaware of any railroad currently conducting training focusing on transportation of spent nuclear fuel and high-level radioactive waste, even though the Department of Energy is expected to begin a 38-year project to transport such waste from DOE sites to storage and disposal facilities as early as next year. The labor hazmat program has trained workers in 49 states and the District of Columbia. We also have fostered the creation of community partnerships that include joint rail worker, fire fighter, EMT, and public safety personnel training in communities throughout the U.S.

The program has a new emphasis on railroad security and disaster response and teaches the five-day students about their role in serving as skilled support personnel in an incident command emergency setting. Much of the program material is available in Spanish and a comprehensive web site serves both the English and the Spanish-speaking work forces. The

five-day program addresses the training requirements of the Department of Transportation's Hazardous Materials Regulations at 49 CFR Part 172, as well as the requirements of OSHA First Responder and Operations Level training under 29 CFR Part 1910.120. Railroads generally do not provide wages or support for workers attending the program. In fact, — and this is most unfortunate — members sometimes are not allowed time off from work to attend the program, even though the railroad is not paying wages.

The program currently serves eight rail unions,¹ and at least ten crafts,² from major railroads as well as from commuter and short-line railroads. This cross-company, cross-union, cross-craft training has proved invaluable, as one group learns from another. Each union has its own craft-specific tasks and challenges, and prior to this hazmat training program there was little, if any, cross-union training. Hazards and challenges faced by those in the yards may be different than those faced by road train crews, and different still from those who work along the track or in the shops.

Understanding the work of other crafts, the safety and health challenges that each face, and the coordination of each craft's efforts in an emergency, enhances railroad hazardous materials safety and security. A well-trained and knowledgeable workforce is the first line of defense and can prevent a minor incident from becoming a major hazardous materials accident. The eight rail unions have worked together to enhance rail safety by providing comprehensive training to its members and by providing substantial administrative and personnel support to the union-run Railway Workers Hazardous Materials Training Program.

Labor has been able to offer these programs through a combination of federal funds and subsidies from the North American Railway Foundation, which is a private non-profit organization. However, subsidies and contributions are hard to come by. Nonetheless, we take great pride in having trained over 20,000 railroad workers since the program's inception. At the end of the day, though, this represents but a small fraction of the front-line railroad workers who require thorough, in-depth training, and recurrent training.

We are pleased the Subcommittee concurred that the National Labor College qualifies as a "training partner," as that term is used in Section 648(a)(2) of the Department of Homeland Security Appropriations Act of 2007. *See* 120 Stat. 1427. Considering the NLC to be a "private entity" for purposes of Section 7(f)(1) of the bill will provide access to Section 7 grants, thereby facilitating Labor's ongoing efforts to provide world-class safety and security training to railroad workers.

¹ Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB); SEIU's National Conference of Firemen & Oilers (NCFO); Transport Workers Union (TWU); Transportation-Communication International Union (TCU); Brotherhood of Railway Carmen; and United Transportation Union (UTU).

² Brakemen, Laborers, Workers from the Building & Bridge Department, Signalmen, Carmen, Switchmen, Conductors, Track Department Workers, Locomotive Engineers, Yardmasters, and Hostlers.

We also wish to bring to the Committee's attention a difference in language between the rail and the public transportation assistance programs, and propose a resolution of that difference. Section (8)(d)(2)(A), addressing public transportation, requires that — in establishing security improvement priorities for recipients of assistance — the Homeland Security Secretary, in consultation with the Secretary of Transportation, also shall consult with the management and employee representatives of the designated recipients. However, Section (7)(c), which deals with the same subject for rail, provides only for a determination by the Homeland Security Secretary, in consultation with the Secretary of Transportation. We believe that rail security programs could benefit from the same broad stakeholder participation afforded in public transportation, and respectfully request that language similar to Section (8)(d)(2)(A) be incorporated into Section 7(c).

With respect to the fire and life safety improvements contained in Section 10, we are pleased that the issue of the tunnels on the Northeast Corridor finally will be addressed, after years of neglect because Amtrak has not been reauthorized since the late 1990s. Indeed, we appreciate that the Committee proposes authorizations over the next four years to deal with this issue. We point out, however, that the Senate's authorization bill for Amtrak — S. 294 — currently provides significantly higher authorizations over this period. Therefore, we urge the Committee to support the greater amounts when this matter is taken up in conference.

We are most pleased with the strong requirements contained in Section 11, governing security training programs for front-line railroad workers. The timeline appears appropriate to us, and we appreciate and look forward to consulting with the Secretaries in developing the program. We wish to voice particularly strong support for the requirement in Subsection (c)(8) that the program include training on understanding security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers.

There is no question in our minds that this element will be strongly opposed by at least some management groups. In this regard, we point to the recent decision by staff of the Securities and Exchange Commission to allow Norfolk Southern to exclude a Teamster shareholder proposal calling on the company to disclose its efforts to safeguard the security of its operations and minimize material financial risk arising from terrorist attack and/or other homeland security incidents.

We strongly believe the Commission's staff failed in its interpretation of "Ordinary Business" when it concurred with the Company's position that homeland security issues are strictly in the purview of management. It is absurd to equate issues such as the ramifications of a hijacking of a freight train carrying toxic or explosive materials with everyday management decisions such as setting shipping charges. It is our strong belief that the safety and security of our nation's rail network is a matter of national policy concern.

As you know, there have been more than 250 terrorist attacks on railroads worldwide in the past 12 years. The FBI has warned that our rail system is a likely target for terrorists and still the carriers are allowed to keep their security plans in the dark not only to their workers but also their investors and the communities in which they operate. The fact is that corporations can and

do safely disclose information about actions taken to protect their infrastructure and personnel as well as associated costs. We have to look no further than Canada where the Canadian Pacific Railway discloses such information. We should settle for no less.

The Teamsters are appealing the staff's decision. We hope that the Congress and the Administration would encourage the Commissioners of the SEC to review and reverse the staff's decision. And we implore the Committee to hang tough when elements of Section 11 come under attack from railroads and other providers of covered transportation. Further, and for the reasons I stated before with respect to vulnerability assessments and security plans, we strongly support affirmative approval of security training programs, as required by Subsection (d)(2). We also believe that the one-year timeline for completing initial training contained in Subsection (d)(3) is adequate.

We wish to voice our concern regarding Section 13, which addresses security research and development. Among the projects eligible for federally supported R&D are "automatic inspection of railroad cars" and "communication-based train controls," which are included as Subsections (b)(3)(B) and (b)(3)(C). Both of these subjects have been implicated in a most contentious round of collective bargaining that has not yet been completed for all of Rail Labor.

With respect to automatic inspection of railroad cars, we do not oppose research into technologies that could safeguard humans while assisting in conducting a security inspection of a railroad car. Indeed, we have voiced concern over unnecessarily exposing railroad workers to risk of injury or death while securely transferring certain hazardous materials cars under proposed regulations. However, we adamantly oppose the use of federal funds to support research and development of technologies that would perform safety inspections of railroad cars.

As to communication-based train controls — and as you know — a major controversy arose last year when the industry attempted to "game" the legal and political processes in order to eliminate a crewmember on road freight trains via implementation of positive train control systems. Federal support for R&D efforts to enhance security via communication-based train control systems, in order to, for example, utilize positive train control as a means of instantly locating a car carrying toxic-by-inhalation material is an effort we would endorse. However, we oppose, and caution the Committee not to permit DHS to become ensnared in, federally-funded R&D efforts that facilitate the efforts of those who advocate crew size reduction.

Lastly we want to voice our strongest support for the whistleblower protections contained in Section 14 of the bill. These protections are absolutely necessary in order for our members to feel comfortable in the security environment this bill will create throughout the industry. The proposed language strikes an appropriate balance between legitimate security needs and worker protection. The provisions for potentially stiff damages and recourse to the judicial system to ensure that rail employees who "blow the whistle" on unsafe practices are afforded a fair forum for enforcement of their federal rights should their employer retaliate against them for protecting their fellow workers and the public at large. Finally, we urge the Committee to stand fast on requiring a single process for all modes in providing these protections.

Moreover, we are pleased and thankful for the Subcommittee's adoption of Mr. Perlmutter's amendment, which forcefully establishes that railroad workers who are subject to background checks are entitled to due process. These background checks already have cost at least a half dozen workers their jobs, and the Association of American Railroads was forced to concede last week that they did not have a process in place that would permit these workers to defend themselves. As is the case with whistleblower protections, the Rail Conference believes there should be a single process applicable in all modes, and that the Perlmutter Amendment provides the process this Committee should adopt.

Once again, I thank the Committee for hearing us today on this important matter, and will be happy to attempt to answer any questions you may have.