



## What is the Rule of 2?



**Simply put:** Like a pilot and a co-pilot on an airplane, the certified conductor and certified engineer on a freight train are **essential** for safe rail operations in the real world and to contend with the unique hazards of the job, even with a number of advanced technologies applied to assist in their duties.

## Senate bill improves operator safety, funds Amtrak

WASHINGTON, D.C. — The U.S. Senate on Aug. 10 passed the Infrastructure Investment and Jobs Act, its \$1.2 trillion bipartisan legislation, by a 69-30 vote, sending the bill to the U.S. House of Representatives for consideration and taking a step to end a substantial period of largely flat federal investment in the nation's roads, rails and bridges.

The bill contains \$786 billion

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## What are the three paths for the Rule of 2?

### Legislative

Making the Rule of 2 into law in either a state legislature or in the U.S. Congress by passing a bill. For two consecutive years, the Rule of 2 has passed the U.S. House of Representatives as part of the larger INVEST in America Act. Two-person crews have been signed into law in nine states and an attempt to federally preempt these laws was denied in federal court.



### Regulatory

The administration of President Joe Biden announced that the Department of Transportation (DOT) and the Federal Railroad Administration (FRA) was to prioritize revisiting the role of freight crew size in safe rail operations. While effective nationally, a regulation can be vulnerable to changes in the political realm, such as a new presidential administration.



### Collective Bargaining

A contract results from discussion between two parties. The general chairpersons of the union are authorized to take action to negotiate and present agreements for ratification that result in what they feel would be the best outcome for the people on their properties, therefore protecting present jobs while securing the jobs of the future. Alternatively, if a proposed agreement cannot be made with

a carrier or if proposed agreements fail ratification, a Presidential Emergency Board will likely decide the issue. No one knows what is ahead, but past reductions of crafts such as firemen and brakemen have been through a multi-decades attrition and negotiated economic and job protections.



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## Senate bill protects bus members, boosts passenger rail

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to address a backlog of national infrastructure needs, \$66 billion for Amtrak and \$39 billion for public bus, transit and subway systems.

“This legislation marks the end of a long period of stagnation in the upper chamber of Congress when it comes to putting additional money into the nation’s infrastructure,” SMART Transportation Division National Legislative Director **Greg Hynes** said. “There was a lot of talk of Infrastructure Week and the like in prior years, but nothing ever was accomplished with the bills dying in the Senate. Now we see a strong effort to protect bus and transit workers to shield them from assaults and a major influx of money that will allow Amtrak to provide expanded service and help its national passenger service to flourish. These are very encouraging signs and the bill’s passage is a major win for our Amtrak, bus and transit

members.”

Absent from the Senate bill was a two-person freight crew provision that was passed in July through the U.S. House of Representatives’ infrastructure bill known as the INVEST in America Act (H.R. 3684). Yardmaster hours of service, also in the INVEST Act, suffered the same fate.

The 10 bipartisan senators who authored the Infrastructure Investment and Jobs Act did not include those items when writing the more than 2,700 pages of the legislation, and no amendment adding a 2PC provision was introduced by senators as the bill was considered for passage.

Only bipartisan amendments were considered during the amendment process, and no Republican senators offered to co-sponsor the two-person-crew or yardmaster hours of service items as an amendment in this bill.

This does not close the door on national two-person crew bill efforts with

House leaders, including Transportation and Infrastructure Committee Chairperson Peter DeFazio, Railroad Subcommittee Chair Donald Payne and other supporters of rail safety, working to find a vehicle to get a legislative solution passed. Regulatory efforts via the federal Department of Transportation and the Federal Railroad Administration also will intensify.

“We ask that members continue to be loud and clear about rail safety and the importance of a certified conductor and certified engineer being in the cab to elected officials via phone call, letter and email and also by raising public awareness on social media,” Hynes said. “We have come further than we ever have in getting national two-person crew legislation accomplished this cycle. The battle is not over, and there is much more to be done.”

## Arbitrator rules that Section 6 bargaining can begin regarding freight crew consist

On July 28, 2021, a neutral party appointed by the National Mediation Board issued his ruling finding that on certain railroad properties, the current moratoria in those crew consist agreements do not prohibit the railroads from serving a Section 6 notice regarding crew size.

The properties affected or having no current moratoriums include certain properties at BNSF, Union Pacific, Norfolk Southern and Canadian National railroads.

Other properties not currently affected or involved may also be included in the future as moratoriums naturally expire. Please contact your local chairperson or general chairperson for specific details regarding your terminal or district.

The ruling comes after a nearly two-year battle between SMART-TD and the National Railway Labor Conference (NRLC) over the moratoria provisions and their effect. The arbitration was one of the largest conducted by SMART-TD and its predecessor union, UTU, in decades and involved 13 general committees on June 15 and 16 before neutral party John LaRocca in Sacramento,

**The ruling does not eliminate any current crew consist provision or requirement. The only thing it does is to open the door for bargaining to occur.**

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The ruling does not eliminate any current crew consist provision or requirement. The only thing it does is to open the door for bargaining to occur.

The moratoria that previously prevented any mandatory bargaining on crew consist were predicated on the last remaining employees having hired on the railroad previous to the 1980s. Today, fewer than 100 of these employees remain nationwide, and most are at or near retirement age.

Once a Section 6 is served, the Railway Labor Act requires both parties to engage in mandatory bargaining. The Act, however, does not mandate any particular outcome in such negotiations, it merely provides a process. In the event parties reach an impasse, the Act contains methods to avoid disruption to commerce through

mandatory mediation and possibly intervention from the President of the United States and the U.S. Congress.

The arbitration hearing was a result of a long court battle in which it was determined that the question of whether the moratorium language in the various agreements barred serving a notice was a “minor dispute” within the meaning of the Railway Labor Act and would have to be arbitrated.

Class I railroads BNSF, UP, NS and KCS initiated a claim in October 2019, just prior to the opening of the current round of national contract handling, that asserted the moratorium provisions of various local agreements no longer barred the service of a Section 6 notice regarding the topic of crew consist.

SMART-TD remains committed to protecting the jobs of today, as well as securing the jobs of the future. While only some general committees will be involved in bargaining, the full support and effort of the International in assisting those committees will continue.



## Where are we now with the Rule of 2?

**Legislative path:** The INVEST in America Act (H.R. 3684) passed the U.S. House of Representatives 221-201 on July 1 with two-person crew, yardmaster hours of service and other provisions important to bus, rail and transit members intact and then moved on to the U.S. Senate.

However, a bipartisan group of senators consisting of 11 Republicans, nine Democrats and an independent who caucuses with Democrats wrote their own infrastructure bill called the Infrastructure Investment and Jobs Act (IIJA) that had some of the elements of the INVEST Act, such as bus and transit operator protections and increased funding for Amtrak, but not the two-person crew or yardmaster hours of service.

During the amendment process of the IIJA controlled by a final group of 10 senators reduced from the original 21, only “bipartisan” amendments to the bill were considered. According to National Legislative Director **Greg Hynes**, no Republican senator would step forward to cosponsor the inclusion of two-person crews or yardmaster hours of service as amendments to the Senate bill before it came to a vote before the Senate. As reported on Page 1, this bill passed 69-30 in the Senate and moved to the U.S. House for consideration.

**Regulatory path:** The Biden administration has expressed its intent to revisit a minimum freight rail crew size for safe operations sometime in the autumn. Once this process is initiated by the Department of Transportation and the Federal Railroad Administration, the agency would likely issue a Notice of Proposed Rulemaking (NPRM) and solicit comment from interested stakeholders, including the public.

**Collective bargaining path:** No different than the National Bargaining process, Section 6 of the Railway Labor Act governs the bargaining process of crew consist at the general committee level. This includes the possibility of federally mandated mediation and a Presidential Emergency Board and Congressional intervention. This is why having a labor-friendly White House & Congress is important. The general committees, assisted by the International, are well-equipped for this process. In the event that the Rule of 2 is not mandated by federal legislation, the general committees can and will find equal job protections through traditional methods as well as by securing the jobs of the future.

## How can I get involved with the Rule of 2?

- 1. Keep yourself updated and engaged** in news about how the Rule of 2’s journey down the two paths — regulatory and legislative — is progressing through union publications and the SMART-TD website.
- 2. Be ready to speak out** if your state legislative director is working to have your state’s Legislature consider a state bill requiring two-person freight crews. Often, real-world testimony can build a solid foundation of understanding before lawmakers unfamiliar with how railroads work.
- 3. Unite with others** through social media such as the Fight for Two Person Crews Facebook group. Visit the SMART-TD Legislative Action Center or ruleof2.us to send messages to your national legislators or, when available, state legislators.
- 4. Tell the public** how carriers are trying to cut to one-person crews in the name of profitability (they call it “redeployment” for the sake of “innovation”) and why that is a bad idea.
- 5. Stay proactively informed** with your local chairperson and local officers as well as your general committee and International. It’s the best way to avoid the conjecture and unreliable information on social media. As always, supporting labor-friendly politicians who support the Rule of 2 and reaching out to those people is helpful.

# Around the SMART-TD

## DIPP offers new daily benefit starting in Sept.

SMART Transportation Division and the trustees of the Discipline Income Protection Program (DIPP) are pleased to announce a new maximum daily benefit level for program participants beginning Sept. 1, 2021.

Participants will now have the option to elect a \$250 daily benefit at a cost of \$202.50 per month.

As always, participants in DIPP have the choice to choose the level

of protection they want, currently from \$6 to \$200 per day. The duration of the coverage period (days), ranges from 200 to 365 days and depends on how long a participant has been enrolled in the program. The new maximum daily benefit will provide yet another level of financial protection and peace of mind when a member's income is at risk. DIPP has a long tradition of shielding SMART-TD members if they are

suspended, dismissed or removed from service by the carrier for alleged violation of rules or operating procedures and pays out millions of dollars to participants annually.

If interested in joining DIPP or increasing your existing daily benefit level, TD members should contact their UTUIA Regional Insurance Manager / Field Supervisor, email [DIPP\\_TD@smart-union.org](mailto:DIPP_TD@smart-union.org) or write to Discipline Income Protection Pro-

gram, 24950 Country Club Blvd., Ste. 340, North Olmsted, OH 44070-5333.

For more information on DIPP, visit [www.smart-union.org/td/dipp](http://www.smart-union.org/td/dipp) or follow the QR code accompanying this article with your smart device.



Scan me



Attendees of the GCA-953 educational session in Waukesha, Wis., have their photo taken on July 27.

## Educating about SMART matters

Over a six-week period, GCA-953 (Union Pacific) held a series of six educational events for local officers throughout the GCA in Omaha, Neb.; Cheyenne, Wyo.; Salt Lake City; Portland, Ore.; and Waukesha, Wis.

General Chairperson **Luke Edington**, Associate GC **Ian Reynolds** and Senior Vice GC **Zach Nagy** hosted and taught classes that covered topics such as *How to be an Officer*, *Duties of Officers*, website training, filing a proper time claim, writing a discipline appeal and a mock arbitration session.

Local officers from four states attended the initial session in Topeka, Kan., on June 22 and 23.



SMART-TD President Jeremy R. Ferguson, right, attended the July 27 session and honored the retiring Jerry Kalbfell, at left.



The Topeka, Kan., educational session, shown above and below, the first of six scheduled sessions organized by GCA-953, took place June 22 and 23.



## Four TD-affiliated students receive \$1,000 Union Plus scholarships

Union Plus awarded \$250,000 in scholarships to 199 students representing 37 unions, including four winners representing SMART Transportation Division. The four TD winners of \$1,000 scholarships from Union Plus are:

- Evan Bock of Rantoul, Ill., whose father, **Christopher Bock**, is a member of Local 1358 (Danville, Ill.), has been awarded a \$1,000 scholarship. Evan is a 2021 graduate of Rantoul Township High School who will begin college this fall and plans to major in engineering.
- Grace Brodarick of Southold, N.Y., whose father, **Christopher Brodarick**, is a retired member of Local 645 (Babylon, N.Y.), has been awarded a \$1,000 scholarship. Grace will begin college this fall and plans to major in nursing, following in her mother's footsteps. She hopes to eventually be a nurse practitioner. "SMART's hard work and negotiations allow members to thoroughly enjoy the fruits of their labor," Grace said. "I am forever grateful for all that SMART has provided my father and my family."
- Kaysa Kurtz-Merwin of Rocky Ford, Colo., whose father **Anthony Merwin** is a member of SMART Local 945 (La Junta, Colo.), has been awarded a \$1,000 scholarship. A 2021 graduate from Rocky Ford Jr./Sr. High School in Rocky Ford, Colo., Kaysa attends Otero Junior College, seeking out a double major in psychology and business management and intends to attend Colorado State University.
- **Billi Vavra** of Prescott, Iowa, associate chairperson of GCA-001 and a member of Local 199 (Creston, Iowa), has been awarded a \$1,000 scholarship.

"During a time of continued disruption and hardship for many families, Union Plus is glad that we are once more able to share a higher than usual scholarship award amount to help union families offset the cost of college education," Union Plus President Mitch Stevens said. "We are proud to support this year's exceptional group of 199 winners as they pursue higher education in a new environment after a year of largely virtual schooling."

The Union Plus Scholarship Program, in its 30th year, is offered through the Union Plus Education Foundation. Visit [unionplus.org/scholarship](http://unionplus.org/scholarship) for applications and benefit eligibility.



Kaysa Kurtz-Merwin and her father, Anthony. (Courtesy Anthony Merwin)

Around SMART-TD continued...

Local 1470 S&T helps set up vaccine clinic in NFL stadium

Local 1470 (Edmonston, Md.) Secretary & Treasurer and Maryland Air National Guard Lt. Col. **Charles “Chuck” Wetzelberger** has been doing his part to get the public vaccinated against COVID-19.

A 35-year member of the National Guard, Wetzelberger was on the Reserves list when he heard about his unit possibly being part of vaccination efforts. With 33 years of seniority as a conductor at Amtrak, he took a military leave of absence to be part of the front-line vaccination effort.

“I started to get wind of, back in October, of a response [to COVID-19] that was going to be required from my unit. And I volunteered immediately to be part of it, no matter what it was, not knowing what it was going to be. So, my name was put on a list and after the holidays, I got the phone call that they needed me to come in on duty,” Wetzelberger explained.

Before shots got put into anyone’s arms, they needed a plan, and Wetzelberger was instrumental in that too. His first task after being called to duty was to work with the Maryland Department of Health and to get in contact with local health



Maryland Air National Guard Lt. Col. Charles “Chuck” Wetzelberger, S&T for Local 1470, shown here at field level, was instrumental in the effort to transform M&T Bank Stadium, home of the Baltimore Ravens, into a mass COVID-19 vaccination site. (Photo courtesy of Charles Wetzelberger.)

department administrators and secretaries so that he could schedule mobile vaccination teams from his unit to go out to drive-up and brick-and-mortar sites to help get the public vaccinated.

When Maryland decided to start doing mass vaccination sites, Wetzelberger volunteered to be the on-site commander at the Baltimore Ravens’ M&T Bank Stadium and got the site up and running with the help of the University of Maryland Medical Symptoms within 18 days. He brought 71 airmen with him to help operate the site.

“It [the Ravens stadium] went from a barren, first-class, club-level football sta-

dium to a fully operational clinic within 18 days. And our highest output in one day was 6,152 vaccinations. We did that in one day at the end of April,” Wetzelberger said. “It’s been an amazing experience for me. It’s given me an opportunity to take the things I’ve learned from my railroad career and my military career and re-create a handbook. Because there was no handbook on how to operate a mass vaccination site.”

In an effort to get everyone vaccinated, Wetzelberger took things further on his own and offered a full day off to any of his airmen who wanted to get vaccinated.

“Anybody who wants a

shot, gets it,” he said. I’ve got some airmen who had not gotten the vaccine, and I offered them a day off to get the shot. So, they come in in the morning and we go through our morning briefs and make sure everyone has their assignments. If they want it, they get it and they get a day off. I gave them that benefit. The majority of the clinical staff have been vaccinated.”

As far as his brothers and sisters at Amtrak go, Lt. Col. Wetzelberger has been instrumental in helping to get the word out to them.

“I have seen a number of my co-workers from Amtrak come through the facility. It’s

a pleasure to actually see them cause they get to see me in a different uniform. And I make sure on social media they know it’s available. I’ve talked about it at union meetings, and I make sure that the union officers also inform our members that if they want to get the vaccine it’s readily available and to come right up to club level at M&T Bank Stadium, and we’ll take care of them there.”

Lt. Col. Wetzelberger urges everyone who can to get vaccinated. He’s seen the effects of this virus and knows that this isn’t going away anytime soon if people are unwilling to get vaccinated.

“Health is so important. Don’t take a chance with it,” he said. “I’ve known many people who’ve gotten this thing and it’s everything from losing their sense of taste and smell all the way up to dying. So, there’s no reason to take a chance.”

SMART-TD wishes to thank Brother Wetzelberger for his dedication to getting people vaccinated and congratulates him on a job well done. Anyone who is unvaccinated and interested in protecting themselves and others, can go to **www.vaccines.gov** to find out where their nearest vaccination site is.

L-1545, MONROE, LA.

An online fundraiser has been established for **Eddie Dotson**, a member of SMART-TD



Eddie Dotson

Local 1545 (Monroe, La.), who was severely injured June 23, 2021, while on duty in Tioga, La.

Brother Dotson, 52, a trustee for his local and a member of our union for 17 years, lost limbs in the accident. He faces multiple surgeries and mounting medical bills.

“Any donations for Brother Dotson and his family would be greatly appreciated,” said Louisiana State Legislative Director **Chris Christian-son**, who established the GoFundMe campaign.

An update on Dotson’s health posted in July by his daughter said that he was to be transferred to an in-patient rehabilitation program with on-site wound care, psychiatry, counseling and a physical/therapy prosthetic program.

“I’ve been passing along the messages I’m receiving

and letting him know who all is helping us and reaching out,” Dotson’s daughter wrote. “He doesn’t have the energy or very much time to reach out to everyone and thank them personally, but he does send his regards to everyone.”




L-1857, GREEN RIVER, WYO.




Local 1857 member **Charles Gasperetti**, a veteran of the U.S. Marines from January 2004 to January 2015, current National Guardsman and a conductor

with Union Pacific, was recognized with his photos featured on the Helmets to Hardhats Facebook page as the Aug. 11 Worksite Wednesday feature.

Congratulations, Brother Gasperetti and thank you for your past and continued service to our country!



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Around SMART-TD continued...

L-1202, FORT WAYNE, IND.



From left (bottom row), Vice General Chairperson Arin Johnson (GCA-687), former Local Chairperson Gary Robison, GCA Secretary Nick Greficz (GCA-687), Local 1202 Vice President Doug Edwards, Local 1202 President Joe Holloway, SMART-TD President Jeremy Ferguson, Legislative Representative and LCA-687B Local Chairperson Andy McKeeman, General Chairperson Jim Ball (GCA-687), Local Chairperson Kim McCaig (LCA-687A) and Local 1202 Secretary & Treasurer Kent Stuckey. Top row, from left: Olivia Huth, Vice Local Chairperson Brandon Huth (LCA-687A), former Local 1202 President Frank Doster, Local Chairperson Mike Healey (LCA-687E) and member Brian Underwood.

The local hosted a family day event at the Ft. Wayne Tin Caps baseball game July 8. About 73 members and their families attended, along with **President Jeremy Ferguson, Indiana State Legislative Director K.O. Edwards, General Chairperson Jim Ball, GC Secretary/Treasurer Nick Greficz and Vice General Chairperson Arin Johnson.**

L-1245, ATLANTA, GA.



Legislative Representative Kelvin Hill met with U.S. Rep. David Scott during an event devoted to promoting labor and expanding registered apprenticeships June 9 in Douglas County, Ga.

L-854, PORTSMOUTH, VA.



Members of the local as well as Auxiliary members and Virginia State Legislative Director Ronnie Hobbs gathered in July for a summer celebration.

WHEN CAN A LOCAL PRESIDENT VOTE?

The following addresses questions posed to the SMART Transportation Division regarding the language in the SMART Constitution, Article 21B, Section 59, which states, in pertinent part:

*The President may speak on any subject before the Local but they may not vote except, in case of a tie vote, on a matter upon which they are otherwise eligible to vote shall cast the deciding ballot.*

The local president, tasked with conducting the meetings of the local, does not typically vote on motions presented at those meetings, except in the case of a tie. However, under the Labor-Management Reporting and Disclosure Act (LMRDA), every member, including the local president, is afforded certain voting rights. SMART Constitution, Article 21B, Section 48, also provides certain rights. In those situations, a secret ballot vote is required.

**Is the local president permitted to vote in local elections?** Yes (if not in E49 status).

**Is the local president permitted to vote in local committee of adjustment (LCA) elections?**

Yes, if not in E49 status and working under the jurisdiction of that LCA.

**Is the local president permitted**

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**to vote when a secret ballot is presented for change in local dues?** Yes.

**Is the local president permitted to vote when a secret ballot is presented for a change in LCA dues?** Yes, if working under the jurisdiction of that LCA.

**Is the local president permitted to vote when a secret ballot is presented for a change in a local officer's salary or rate of pay?** Yes.

**Is the local president permitted to vote when a secret ballot is presented for a change in a LCA committeeperson's salary or rate of pay?** Yes, if working under the jurisdiction of that LCA.

**Is the local president permitted to vote when a secret ballot is presented to approve social and charitable spending?** Yes.

**Is the local president permitted to vote when a secret ballot is presented to adopt or amend local bylaws?** Yes.

**If the local president chose to abstain from initially voting in any of the above circumstances, could they cast a deciding vote in the event of a tie?** No.

Doing so would compromise the secrecy of the ballot.

Frequently, the above also raises the following questions that would also apply to someone presiding at a meeting in the local president's absence:

**In a situation where the local president is initially permitted to vote, and that vote results in a tie, is the local president then permitted to cast the deciding vote?** No.

**Is the local president permitted to, in the event of a tie, cast a deciding vote on a local issue while in E49 status?** Yes, they are bound by their Constitutional duties to do so.

**Is the local president permitted to, in the event of a tie, cast a deciding vote on a LCA issue while in E49 status?** No.

**Is the local president permitted to vote on disbursements (bills of allowance) made from local funds?** Only in the event of a tie

vote.

**Is the local president permitted to vote on disbursements (bills of allowance) made from local funds when in E49 status?** Only in the event of a tie vote.

**Is the local president permitted to vote on disbursements (bills of allowance) made from LCA funds?** Only in the event of a tie vote in the LCA under whose jurisdiction they are working. The local president would not vote in the event of a tie in an LCA other than their own.

**Is the local president permitted to vote on disbursements (bills of allowance) made from LCA funds when in E49 status?** No.

**Would a local president cast a deciding vote on any issue handled by mail referendum vote?** No. In a referendum ballot, all members eligible to vote on the issue (including the local president if eligible) receive a ballot. The issue is decided by a majority vote of the valid ballots returned.

In summary, generally speaking, a local president would not cast a deciding vote in a secret ballot vote, a mail referendum vote, or in LCA matters (unless working under the jurisdiction of that LCA).

SMART GENERAL PRESIDENT'S COLUMN

‘I Got Your Back’ gives a chance to honor mentors

Every one of us, regardless of the work we do, has had at least one person in our careers who has stood up for us, provided formal or informal mentorship, or has been there in times of crisis or need.

SMART has launched the “***I Got Your Back***” campaign as a way to recognize those who have stepped up and stood up for what’s right and to reinforce a culture of solidarity and paying it forward.

In a transportation industry that relies heavily on teamwork and unity, it is important to have each other’s backs.

Helping out when you notice someone struggling, or speaking up when you notice unfair treatment, can not only make the difference



By Joseph Sellers Jr.

in someone’s career, but can also go a long way in boosting worksite morale. Especially when someone is new, hazing or isolation at work can be distracting and dangerous, leading to injury and a hostile work environment.

Working in a setting where



every single one of us feels valued and respected will allow people to ask for help from their union brothers and sisters when they need it.

At the end of the day having each other’s backs is the core of a strong union. That is how and why we formed over a century ago in the first place.

The “***I Got Your Back***” campaign will bring more solidarity to our union. By sticking together, we build a stronger foundation that will help us foster something better for ourselves and for future generations such as enhanced safety,

“Working in a setting where every single one of us feels valued and respected will allow people to ask for help from their union brothers and sisters when they need it.”

stronger collective bargaining agreements, and all the tools needed to provide each member with great benefits and retirement security.

Let’s remember why we’re here and part of a union. Let’s make the difference and be the difference in someone else’s life.

Take a picture with your mentor and post to social media with the hashtag **#SMARTIGOTYOURBACK** and/or email to **mentors@smart-union.org**.

Stories will be showcased in the SMART Journal and

on SMART official social media.

The International is distributing stickers to locals to give members who look to recognize those who have stood up for them.

By acknowledging those who have stood up for us, we build a culture where all of us will be having each other’s back now and into the future.

*Joseph Sellers Jr.*

**Joseph Sellers Jr.**  
General President, SMART

Bus Department News

A message from your Bus Department leadership

Dear Brothers and Sisters:

As we are coming close to seeing the pandemic in the rearview mirrors, we must remain vigilant that the buses are starting to become crowded again, which means that our exposure becomes greater.

While the majority of members have been vaccinated, there are others who have not, and we cannot afford to let down our guard. So continue to follow the Centers for Disease Control and Prevention (CDC) guidelines and make sure your carriers are also working to keep you and your families safe.

While it appears that a number of locations have rounded the curve on



By Calvin Studivant

the coronavirus pandemic, there remains a different pandemic concerning operator assault and the impact they have on our members.

Carriers must join with us in stopping any and all assaults, they must ensure safe working conditions and spare no expense in order to achieve this outcome.

So remember to always stay

aware of your surroundings and continue to speak to your local representatives, who should contact international representatives to address any safety concerns facing our members.

On the political front, H.R. 3684, the INVEST in America Act, was passed by the House and considered by the Senate. The House passed the five-year, \$715 billion act, of which there is \$109 billion in transit investments and \$95 billion in passenger and freight rail investments.

The INVEST Act, intended to replace the FAST Act, also had \$11 billion for bus and bus facilities,

including \$4 billion for zero emission buses. The INVEST Act’s passage in early July was applauded by ourselves and APTA. However, at the time of publication of this column, the Infrastructure Investment and Jobs Act had been passed by the U.S. Senate containing language from the Transit Worker and Pedestrian Protection Act as well as \$39 billion for transit.

We will keep our members informed as these pieces of legislation move forward.

As always, I remain, fraternally,

**Calvin Studivant**  
VP Bus Department, SMART-TD  
216-630-0963

SMART Transportation Division 2021 budget

Pursuant to Article 21B, Section 16, of the SMART Constitution, below is the 2021 budget for the SMART Transportation Division

| Fund                      | Jan. 1, 2021 | Receipts and Other Additions | Disbursements and Other Deductions | Negative Funds Adjustment | Dec. 31, 2021 (Projected) |
|---------------------------|--------------|------------------------------|------------------------------------|---------------------------|---------------------------|
| General                   | \$12,139,209 | \$20,757,745                 | \$(20,325,175)                     | \$(395,183)               | \$12,176,596              |
| Education and Training    | \$643,134    | \$757,500                    | \$(804,871)                        | -                         | \$595,763                 |
| Maintenance of Membership | \$22,699     | \$546,000                    | \$(939,117)                        | \$370,418                 | -                         |
| Public Relations          | -            | \$273,000                    | \$(297,765)                        | \$24,765                  | -                         |
| Strike                    | \$7,800,297  | \$136,500                    | -                                  |                           | \$7,936,797               |
| Convention                | \$2,882,475  | \$1,092,000                  | -                                  |                           | \$3,974,475               |
| Total funds               | \$23,487,814 | \$23,562,745                 | \$(22,366,928)                     | -                         | \$24,683,631              |

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TRANSPORTATION DIVISION PRESIDENT’S COLUMN

Despite ups, downs, ahead is where we should and will focus

Brothers and sisters:

Much like a proverbial roller coaster, there have been some ups and downs for our organization over the summer, especially our freight rail members. The ones I mainly want to mention appeared in the front couple of pages of this newspaper edition.

In early July, we achieved a second victory when, like in 2020, the full U.S. House passed a bill called the INVEST in America Act that had a number of provisions endorsed by our union. Bus and transit operator protections, increased federal funding for Amtrak and public transit, yardmaster hours-of-service and two-person freight crews — the Rule of 2 that we mention on the front page — were all in the INVEST Act.

The INVEST Act made its way to the U.S. Senate where we fiercely lobbied for its passage. Unfortunately, instead of U.S. Sen. Mitch McConnell standing in the way as a roadblock as he had in 2020, a group of 11 senators had other ideas and crafted their own bill. That bill — the Senate’s Infrastructure Investment and Jobs Act (IIJA) — passed in early August and included positives for bus and transit members. However, it was without the yardmaster or two-person crew language because, as National Legislative Director **Greg Hynes** stated, “it wasn’t bipartisan enough and there wasn’t a single Republican in the Senate who felt it important enough to co-sponsor those additions in the bill, which could have made a difference.”

If the IIJA eventually passes the House in the form it was in at the time of publication and is signed by President Biden, it will still be considered a win. Granted, it may not be the grand slam we were all hoping it would be, but a win none the less. Moreover, it is another sign that our efforts and choices made in 2020 are bringing positive results to our membership. We just need to roll up our sleeves and continue working on our agenda.

In late July, we received the decision in the crew-consist moratorium cases. This issue emerged just days after my administration formally took office in October 2019 and was among the first of many major legal cases we’ve been involved in, with several linked to the ongoing national



By **Jeremy Ferguson**

contract negotiation process.

People from all segments of SMART-TD pulled together in a valiant and unified effort that included our national officers, legal department and general chairpersons. We stated our case that bargaining on crew size could not begin until after all protected employees covered by those agreements had attrited from service.

In spite of these efforts, neutral arbitrator John LaRocca ruled in the carriers’ favor and said crew-consist talks can begin now on some specific properties.

What did the carriers’ lengthy legal actions actually achieve? SMART-TD General Counsel **Kevin Brodar** could not have said it any better in his dissent:

“They [carriers] have spent almost two years litigating and wasting time and treasure for almost no gain. This whole process has only produced the negligible effect of now opening the topic of crew consist, an issue which was soon to open anyway. Their overly aggressive actions have unfortunately placed the parties in an untenable adversarial position. They show little concern for the safety of their employees and continue to operate as though it is 1870 with regard to the availability policies that force fatigued workers to continue to work. They now wonder why it is difficult to retain and attract employees. Once again, they have proven that their best quality is the ability to cut off their nose to spite their face.”

I am proud of the effort we put forth in this case, and the matter is far from over. To be clear, the decision does not allow for the properties governed by the ruling to start

operating with one-person crews in the cab. It simply allows for carriers to move forward with their previously filed Section 6 notice, which is available for members to review on the National Railroad Contract page of our website, and that we sit down with them at the table to start the negotiating process as defined and authorized by the Railway Labor Act.

Now it is up to the general committees representing each property and the Coordinated Bargaining Coalition to work together to negotiate agreements that protect and benefit our membership and rail labor, now and well into the future. As those of you who have been through a contract negotiation or two know, coming to an actual agreement with the carriers can be a very long and drawn-out process. That is also just one portion of the process. In the end, any contract negotiated would require your ratification. Bottom line, in our efforts to achieve the very best agreement for our members, due diligence must be taken as the ramifications of not doing so can be long-lasting.

Moving ahead, an alternative path to getting the Rule of 2 in the U.S. may come into play — the regulatory avenue of the Department of Transportation and the Federal Railroad Administration — as mentioned on the front page. There, a potential two-person crew rule can be considered, like the process started under the Obama administration in 2016 that former President Trump’s FRA tried to end in May 2019.

If approved, such a regulation would keep two aboard a freight train subject to the conditions or exceptions the FRA settles upon with labor’s input. The one drawback is that every time there is a change in the White House and administration, the regulation would be subject to review and possible removal under the guise of “deregula-

tion to unshackle businesses from the onerous rules that unfairly hamper them from achieving economic growth and their efforts at innovation.”

That last sentence might sound familiar as it condenses several of the rail industry’s talking points against two-person crew bills at state and national levels.

It also explains why national two-person crew legislation has hit a red signal in the Senate and in a number of state legislatures as well. Political parties aside, if a legislator hears and then embraces the “deregulatory” perspective described above and trusts the carriers to do the right thing, it’s a fair bet that he or she will not support safety regulations such as two-person freight crews, no matter how many real-life examples are presented.

Elections have consequences — we have stated that over and over — and unfortunately, this is but another example of why that statement rings so consistently true. Please keep this in mind when you make future decisions at the ballot box and when making the decision to donate to TD PAC.

One last thing that has been on my mind and in the headlines are large mainline derailments. We have been blowing the whistle and discussing the pitfalls regarding Precision Scheduled Railroading (PSR) from the start and received some traction from media outlets such as Vice Magazine and The Associated Press. Some people in D.C. have been listening and taking notice, which has led to several positive conversations. In fact, the Chair of the House Committee on Transportation and Infrastructure Peter DeFazio (D-Ore.) and Chair of the Subcommittee on Railroads, Pipelines, and Hazardous Materials Donald M. Payne, Jr. (D-N.J.) are requesting the U.S. Government Accountability Office (GAO) examine

the impact that the implementation of PSR by Class I railroads is having on workers, safety, freight shippers, passenger railroads and the long-term management of the nation’s railroads.

While this is a great start, derailments of two or three dozen cars coming off the tracks continue on a regular basis. Please — stay safe, stay vigilant and help us help all of you by using the confidential safety reporting tools provided on the main page of the TD website to advise us of any unsafe conditions that you have reported to your carrier. This will allow us to engage your state legislative director and local legislative officers to help get the situation addressed as quickly as possible. With your assistance and these reports, we can make positive change! Do not think others have reported it or that your single report will not make a difference ... remember, you miss 100% of the shots you do not take ... it only takes one report to make a difference.

The ups and downs we’ve experienced this summer are part of the journey. They do not dampen but add fuel to the fire of my administration’s desire to represent all of you to the best of our abilities. Never forget that we are all in this together and that it is not what happens to you, but how you react to it.

I know that if we stay united, engaged and trust one another, we will emerge a stronger and safer union. You can count on me to do my part, and I remain honored beyond measure to represent all of you.

In solidarity,

**Jeremy R. Ferguson**  
President,  
Transportation Division

State Watch News from SMART-TD State Legislative Boards

Minnesota & Wisconsin

Minn. Director **Nick Katich** is pleased that the state approved \$10 million in funding in late June to double daily Amtrak service between Minneapolis/St. Paul and Chicago from one to two daily roundtrips on a 411-mile corridor through Minn., Wis. and Ill., effective in 2024.

“The \$10 million from Minnesota has

been a priority for us. We’ve been working with All Aboard Minnesota, Amtrak and Northern Lights Express to get this done,” Katich said. “This is the next step toward restoring service to Duluth that was cut in the early ’80s. After a career of watching things be cut, it’s really nice to be working toward

restoration of service.”

Wisconsin has also approved funding for the service increase, putting in \$6.5 million on the project, Wis. Legislative Director **Andy Hauck** said.

The bulk of the funding of the new service comes from a federal grant.

Continued on Page 8

State Watch continued...

Kansas



Local 1409 Legislative Representative Dan Bonawitz, State Legislative Director Ty Dragoo, Local 94 Legislative Representative Mike Scheerer and SMART-TD Vice President Brent Leonard showed solidarity with striking members of BCTGM Local 218 in Topeka, Kan., in July. Brent Hall, president of the striking local, sent the following to Dragoo: "Thanks, the support was overwhelming! You recharged the membership and kept their interest. You all are the best!"

Ohio



SLD Clyde Whitaker, left, and Local 378 Legislative Representative Joseph Prusinski, right, meet with Shontel Brown candidate for a U.S. House seat in Cleveland.

New Jersey



In conjunction with the New Jersey AFL-CIO Veterans Council, New Jersey State Legislative Director Ronnie Sabol and a number of labor representatives visited the Veterans Retirement Home and Cemetery in Vineland and paid tribute to those who sacrificed to keep our country safe.

Colorado



Colorado members attended the signing of Senate Bill 238 by Gov. Jared Polis, authorizing the creation of the Front Range Passenger Rail Authority on July 16 in Pueblo, Colo.

From left are Assistant State Legislative Director Charlie Skidmore (Local 204), VP Jake Hamlin (Local 204); S&T Adam Cole (Local 204); Gov. Polis; and SLD Carl Smith (Local 202).

D.C. SLD Willie Bates: He did what he did for 40 years

After 40 years of service, **William H. “Willie” Bates** is hanging up his Amtrak conductor’s cap for the last time. Bates was so much more than just a conductor, he was a trailblazer in the union for blacks, an advocate for safety — both in the union and nationally, a mentor and friend.

Brother Bates began his railroading career in 1981 when he hired out as a conductor at the Richmond, Fredericksburg & Potomac Railroad (now a part of CSX). In 1986, he made the decision to transfer to Amtrak as a conductor, working the rest of his career on the Richmond, Va., to Washington, D.C., route.

A member of Local 1933 out of Richmond, Va., he served his local as delegate, legislative representative, vice president, president and local chairperson. In March 1992, he became the inaugural local president of his local. In March 2008, Bates made UTU history when he was elected as the first black state legislative director in the history of our union and predecessor unions.

From 2005 to 2007, Bates served Amtrak as their safety engineer. In July 2011, he joined the

SMART-TD National Safety Team (NST) and was appointed as a co-director of the team in 2013, where he was put in charge of passenger/transit accident investigations.

Bates made safety a cornerstone of his career and received many acclamations for his work. In 2009, Bates was the recipient of Amtrak’s highest safety award — the 2009 **Charles Luna Memorial Safety Award**, named after the UTU’s first president, and was established in 1990 to recognize Amtrak employees who “demonstrates the highest degree of safety awareness.” At the time, Bates had worked injury-free for 25 years and had never had a safety-rules violation. Impressively, that held true for his entire 40-year career.

In 2011, Bates was awarded the Governor’s Transportation Safety Award for rail transportation by the governor of Virginia. Under the Obama administration, Bates served as a member of the 20-person Transit Rail Advisory Committee for Safety (TRACS). He was named to the committee by former Transportation Secretary Ray LaHood and reappointed to the position in 2014 by



Retirees gathered to greet Bates and welcome him to retirement at the Amtrak station in Richmond, Va. From left: Retired Human Rights Committee Director Miles “Ray” Cunningham, Bates, Louis “Wayne” Dixon and Si Cottrell.

DOT Secretary Anthony Foxx. In 2013, Bates was invited by then-FRA Administrator **Joe Szabo** to serve on the Stakeholder Review Panel for the agency’s new Clear Signal for Action safety pilot program.

“My career has been the most fulfilling experience of my life. I’m proud that I have advocated measures that cultivated proactive solutions,” Bates said.

During the monthly state legislative directors’ call in August, Bates said, “I thank each and every one of you for the opportunity to work alongside you to serve the membership. Going into my 41st year, I believe it’s time. It’s been a pleasure.”

Bates did say that

although he is retiring, he plans to continue to advocate for the betterment of workers and to provide guidance when necessary.

“My plans during retirement will continue to be an advocate for safety and operation activities pertaining to all modes of the transportation industry. I am an active member serving as vice president of the Conference of Minority Transportation Officials (COMTO) Richmond Chapter under the direction of Local President Lamar Bates,” Bates said. “A special project that I would like to start is more training for new hires. We must resist putting our members out there too early, setting

them up for failure.”

Bates’ successor, **Jarad Jackson**, the assistant state legislative director since June 2021 — also of Local 1933 — told his peers on the call that he appreciated greatly the preparation Bates had given him.

“Jarad Jackson is the consummate safety professional with 12 years of service. I am very confident that Jarad will step in and uphold the highest standards of this office,” Bates said of his replacement.

“I’m looking forward to stepping up and to have a bigger role,” Jackson said.

Jackson has been a member since November 2009. Starting in 2016, he took on various leadership roles in the union including local legislative representative, alternate state director, legislative vice chairperson, legislative chairperson, assistant state legislative director and now state legislative director.

A quote Bates often used also was formally passed along to Jackson for his use during that final SLD call — “We do what we do.”

Bates did what he did — and SMART Transportation Division thanks him for it and wishes him a long, healthy and happy retirement.

# What YOUR UNION is doing for YOU

Here is a list of recent arbitration victories reported to SMART Transportation Division’s leadership. General chairpersons who wish to report a recent success should email Vice President **Alvy Hughes** (ahughes@smart-union.org) for Bus Department victories and Vice President **David B. Wier Jr.** (dwierjr@smart-union.org) for rail victories.

SMART-TD Vice Presidents **David B. Wier Jr.** and **Jamie C. Modesitt** report that the organization has received numerous favorable decisions from cases arbitrated at the First Division of the National Railroad Adjustment Board. Of the many cases that the organization received sustaining decisions on from the First Division, the cases referenced below are of significant interest:

■ **In NRAB First Division Award No. 30618** (Deinhardt, 2021), Union Pacific terminated a brakeman for alleged dishonesty. In this case, the claimant fell and twisted his ankle during his tour of duty on June 14, 2019. Thereafter, the claimant began experiencing discomfort in his ankle, and both his locomotive engineer and conductor noticed him limping. Not realizing that an injury had manifested in his ankle, the claimant assumed his ankle discomfort was caused from a pair of new work boots he was wearing. Subsequent to completing his tour of duty, the claimant reported to a hospital to have his ankle examined. The results of the examination disclosed that the claimant had a fractured fibula bone. Upon learning of his fractured fibula, the claimant promptly reported the injury to carrier management. In examining the instant case, the Board noted that the claimant’s version of the facts that he likely injured himself at work and did not immediately recognize that he was injured was plausible. Observing that the claimant’s version of the sequence of events was credible, the Board determined that the carrier failed to prove its allegation that the claimant engaged in dishonesty. Based on that finding, the Board sustained the organization’s claim on behalf of the claimant in full. GO 953 General Chairperson **Luke Edington**, GO 953 Associate General Chairperson **Ian Reynolds** and GO 953 Senior Vice General Chairperson **Zach Nagy** progressed this case to the NRAB First Division.

■ **In NRAB First Division Award No. 30629** (Deinhardt, 2021), Union Pacific dismissed a yardman for allegedly failing to report for duty on time. In assessing the claimant dismissal from service, the carrier alleged that he violated General Code of Operating Rules (GCOR) Nos. 1.6 – Insubordination, 1.13 – Reporting and Complying with Instructions, and 1.15 – Duty – Reporting or Absence. While the

Board maintained that the carrier met its burden of proving that the claimant violated GCOR 1.13 – Reporting and Complying with Instructions and 1.15 – Duty – Reporting or Absence, it found that the carrier failed to introduce sufficient evidence into the record of the formal investigation to support the assertion that the claimant violated GCOR 1.6 – Insubordination. Because it found that the carrier failed to satisfy its burden of proving whether the claimant violated GCOR 1.6 – Insubordination, the Board determined that the carrier’s decision to terminate the claimant’s employment was unwarranted. Concluding that dismissal from service was excessive, the Board reduced the quantum of discipline imposed on the claimant from termination to a MAPS Training 1. Based on that finding and conclusion, the Board reinstated the claimant to service with full back pay for the period of his discharge from service, minus pay for the day of the formal investigation. GO 953 General Chairperson **Luke Edington**, GO 953 Associate General Chairperson **Ian Reynolds** and GO 953 Senior Vice General Chairperson **Zach Nagy** progressed this case to the NRAB First Division.

■ **In NRAB First Division Award No. 30637** (Deinhardt, 2021), Union Pacific terminated the employment of a yardman for allegedly failing to properly line a switch and running through a switch, resulting in a derailment. On the date of the incident, the claimant was working as a pilot with a hostler in North Platte, Nebraska. During the subject tour of duty, the claimant was located on the east end of her locomotive consist, and while the hostler traversed the locomotive consist in a westward direction, the locomotives ran through an improperly lined switch. At that point, the hostler reversed the direction of movement of the locomotives, resulting in one set of trucks from the locomotive consist derailing. Although the claimant was neither located on the west end of the locomotive consist (direction of travel) when the hostler ran through the misaligned switch nor instructed the hostler to initiate the movement into the improperly positioned switch, the carrier found her guilty of transgressing GCOR 8.2 – Position of Switches and terminated her employment. After subjecting the evidentiary record of the instant

case to detailed scrutiny, the Board discerned that the carrier failed to satisfy its necessary burden of proof. As a result, the Board reinstated the claimant to service, removed the discipline from her record, and directed the carrier to pay her for her lost wages during her period of discharge. GO 953 General Chairperson **Luke Edington**, GO 953 Associate General Chairperson **Ian Reynolds** and GO 953 Senior Vice General Chairperson **Zach Nagy** progressed this case to the NRAB First Division.


### Public law boards

■ **In Public Law Board 7955, Award No. 2** (Hanft, 2021), Gary Railway Company, a subsidiary of Transtar LLC, terminated a trainman for allegedly failing a simulated stop signal test. On the date of incident, the claimant was operating a remote control locomotive. A carrier officer placed an orange cone with reflective tape in between the rails of the track ahead of the claimant’s movement. Once the claimant noticed the simulated stop signal test in between the rails of the track, he placed his train in emergency; however, his train did not stop short of the orange cone. In accordance with the Carrier’s Operating Rules in Section 9, Rule 63, Item 4, for an orange cone to be considered a stop signal indicator, it must be accompanied with a red flag. The orange cone used as a stop test indicator in the matter at issue was not complemented with a red flag. Because the carrier failed to conduct the subject stop test in accordance with its own rules and requirements, the Board maintained that the test was illegitimate. Accordingly, the Board fully sustained the organization’s claim on behalf of the claimant in full. GO 329 General Chairperson **Brian Fattore** and International Vice President **David B. Wier Jr.**, handled this case before Public Law Board 7955.

■ **In Public Law Board 7955, Award No. 12**, Gary Railway Company, a subsidiary of Transtar LLC, terminated a trainman for purportedly entering in between equipment not sufficiently separated to adjust a drawbar. Nevertheless, the carrier failed to convene the formal investigation within the contractually prescribed timeframe set forth in the agreement. Because the formal investigation was not held within the contractually prescribed timeframe,



the Board concluded that it could not reach the merits of the case and the resulting discipline would be voided. Based on the procedural irregularity committed by the carrier, the Board fully sustained the organization’s claim on behalf of the claimant. GO 329 General Chairperson **Brian Fattore** and International Vice President **David B. Wier Jr.**, handled this case before Public Law Board 7955.

■ **In Public Law Board 7955, Award No. 13**, Gary Railway Company, a subsidiary of Transtar LLC, terminated a trainman for allegedly failing to comply with a simulated switch misalignment test. A carrier officer placed a switch flag banner approximately three (3) feet beyond the switch points of a switch positioned ahead of the claimant’s train. Although the switch in question was properly positioned for the claimant’s intended movement, the switch flag banner was meant to simulate a misaligned switch. Because of the diminutive size of the switch flag banner, the claimant did not notice it until after passing the clearance point for the adjacent track. Once the claimant noticed the switch flag banner, he placed his train in emergency and stopped short of the testing device; however, as noted, the movement of his train stopped in the foul of the adjacent track. According to the carrier’s own policy regarding switch point banner tests, the testing device must be placed as close to the switch points as possible. Deviating from that requirement, the switch flag banner in question was placed approximately three (3) feet past the switch points of the subject switch, and at the formal investigation, the charging manager conceded that the switch flag “could have been moved a little closer” to the switch points. Based on an analysis and review of the record of the instant case, the Board observed that the testing manager failed to comply with the carrier’s rules and requirements when he conducted the subject test and therefore the test was improper. In light of those findings and conclusions, the Board vacated the claimant’s termination in its entirety and fully sustained the organization’s claim on behalf of the claimant. GO 329 General Chairperson **Brian Fattore** and International Vice President **David B. Wier Jr.**, handled this case before Public Law Board 7955.



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## Former N.J. SLD Robert Belle and his wife, Helen, pass away

The brothers and sisters of the SMART Transportation Division, former United Transportation Union, in New Jersey wish to inform our members of the passing of former Conrail South General Chairperson (1984-96) and N.J. State Director (1997-2001), **Robert M. “Bob” Belle** (of Local 800, Jersey City, N.J.). In addition we also sadly note the passing of his wife, **Helen Belle**, a former member of the Auxiliary of the UTU, now the SMART-TD Auxiliary.

Bob hired out with the former Erie Railroad as a fireman in 1955 in Jersey City. After two years on the rail-

road he was elected vice chairperson of Local 543 of the former Brotherhood of Locomotive Firemen and Enginemen (BLF&E), one of our predecessor unions. He served as president, legislative representative and vice general chairperson of the Erie Lackawanna GC of A.

He also held the positions of legislative representative, assistant N.J. state director and vice general chairperson while a member of Local 800.

He was a delegate to the 1968 BLF&E Convention and every subsequent union convention until his retirement.

While working for the Erie Railroad, he was involved with the merger of the Erie and the Delaware Lackawanna & Western Railroad (DL&W) creating the Erie Lackawanna (EL). This was one of the early Class I mergers. Following the acquisition of the EL by a subsidiary of the Norfolk and Western, labor protection was provided to the affected employees. This experience would become critical when the Baltimore & Ohio (B&O) tried to acquire the EL. When that attempt by the B&O failed in 1975, EL became a part of Conrail. Through these experiences

he became familiar with merger procedures, wage protection and equity issues which Bob offered to the delegates when he became a candidate for alternate vice president-East at the 1987 UTU Convention.

Brother Belle was a mentor and friend to generations of our union’s officers and he and his wife, Helen, were often seen at regional meetings.

Bob and Helen were predeceased by their daughter, Barbara, and are survived by their daughter, Marie, and many grandchildren, including Dan “JR” Schneider, a conductor at New Jer-



Robert and Helen Belle

sey Transit (NJT), and several great grandchildren.

A memorial service held in the spring was attended by family, friends, co-workers and Bob’s union brothers.

## Open payment service shows relations between docs, companies

More than seven years ago, Palmetto announced the Open Payments Initiative to increase public awareness of the financial relationships between drug and medical device companies, and physicians and teaching hospitals.

Open Payments is described by the Centers for Medicare & Medicaid Services (CMS) as “a national disclosure program that promotes a more transparent and accountable health care system. Open Payments hous-

es a publicly accessible database of payments that reporting entities, including drug and medical device companies, make to covered recipients like physicians.”

The data does not state what kind of relationship exists between these entities, nor does it find of fraud or abuse. It is only an accounting of dollars that were spent.



Open Payments data is available for the years of 2013-20.

To look up your doctor or teaching hospital, visit <https://openpaymentsdata.cms.gov>.

If you have any questions about your Railroad Medicare coverage, call Palmetto’s Beneficiary Contact Center at 800-833-4455, Monday through Friday, from 8:30 a.m. to 7

p.m. ET. You can also visit [www.PalmettoGBA.com/RR/Me](http://www.PalmettoGBA.com/RR/Me) to sign up for email updates.

Palmetto also hosts a free, beneficiary website portal called MyRRMed at [www.PalmettoGBA.com/MyRRMed](http://www.PalmettoGBA.com/MyRRMed). that provides access to claims information, along with historical Medicare Summary Notices, and a listing of individuals who have been authorized to have access to your protected health information (PHI).

### THE FINAL CALL

Following are the names of deceased members who were active TD members or maintained annual membership in the SMART-TD Alumni Association, according to reports received at the TD office. These brothers and sisters will be missed by their many friends and by fellow Alumni Association members.

| Local | Name                   | City/State          | Local | Name                  | City/State        | Local | Name                   | City/State         |
|-------|------------------------|---------------------|-------|-----------------------|-------------------|-------|------------------------|--------------------|
| 48    | Moore, Bobby G.        | Chesapeake, Va.     | 656   | Anderson, William A.  | Romance, Ark.     | 1316  | Coleman, Chad D.       | Regina, Ky.        |
| 48    | Whitehead, Emmit L.    | Chesapeake, Va.     | 662   | Highlander, Joseph T. | Hampton, Va.      | 1316  | Eversole, Curtis       | Hazard, Ky.        |
| 60    | Rossi, D.J.            | Las Vegas, Nev.     | 744   | Hankins, Donald E.    | Cave City, Ky.    | 1316  | Fox, Michael Ray       | Irvine, Ky.        |
| 72    | Lapeer, Norman W.      | Afton, Mich.        | 744   | Snodgrass, Guy H.     | Frankfort, Ind.   | 1316  | Warren, Dallas Ray     | Jackson, Ky.       |
| 113   | Argetsinger, Harold L. | Flagstaff, Ariz.    | 807   | Hillman, Melvin D.    | Tucson, Ariz.     | 1316  | Williams III, Clarence | Irvine, Ky.        |
| 202   | Smith, Donald L.       | Thornton, Colo.     | 807   | Lendroth, Frederick   | Tucson, Ariz.     | 1345  | Solsbee, Dennis W.     | Englewood, Tenn.   |
| 204   | Mincic, Lee            | Trinidad, Colo.     | 811   | O’Neil, Eugene        | Wayne, N.J.       | 1365  | Schiffhauer, John J.   | Columbiana, Ohio   |
| 204   | Porter Jr., Bill       | Pueblo, Colo.       | 830   | Stevenson, John H.    | Smithsburg, Md.   | 1375  | Stock, Charles P.      | West Chester, Pa.  |
| 206   | Warder, Terry P.       | Peru, Ind.          | 886   | Buckland, Robert J.   | Gladstone, Mich.  | 1378  | Cross, Thomas          | Claymore, Del.     |
| 228   | Rowray, Richard E.     | Cedar Rapids, Iowa  | 924   | Lewis, William E.     | Glenn Allen, Va.  | 1378  | Moore, Clifton E.      | Keller, Va.        |
| 234   | Bookout, James M.      | Bloomington, Ill.   | 941   | Walls, James R.       | Phenix City, Ala. | 1383  | Mlechick III, John P.  | Gary, Ind.         |
| 243   | Manire, Michael E.     | Ft. Worth, Texas    | 976   | Abernathy, William E. | Marshall, Texas   | 1440  | Navarino, Vincent A.   | Staten Isl., N.Y.  |
| 313   | Replogle, Jack L.      | Michigan City, Ind. | 1016  | Wood, Richard L.      | Enid, Okla.       | 1458  | Bejeaux, Donald D.     | Lafayette, La.     |
| 363   | Sink, Joseph L.        | Midlothian, Va.     | 1042  | Weilburg, Douglas K.  | Sparks, Nev.      | 1458  | Wells, Wesley L.       | DeQuincy, La.      |
| 363   | Waldecker, Robert J.   | Roanoke, Va.        | 1059  | Wunderlich, Eugene A. | Minot, N.D.       | 1525  | Seibert, Ralph L.      | Benton, Ill.       |
| 375   | Levasseur, Roger A.    | Wichita, Kan.       | 1075  | Graham, Kenneth E.    | Palmetto, Fla.    | 1780  | Bray, Bill             | Independence, Mo.  |
| 386   | Lyons, Richard J.      | Voorhees, N.J.      | 1083  | Sheets, Adrian C.     | Villa Grove, Ill. | 1814  | Lee, Harold D.         | Pacolet, S.C.      |
| 426   | Perry, Jess F.         | Spokane, Wash.      | 1117  | Atherton, Arthur L.   | Las Vegas, Nev.   | 1816  | Nicely, Larry L.       | Clifton Forge, Va. |
| 486   | Barth, Jerome          | Bozeman, Mont.      | 1175  | Skoglund, Calvin R.   | Duluth, Minn.     | 1836  | Blanchard, Oliver J.   | Gretna, La.        |
| 493   | Cisco, Leslie A.       | Clinton, Ill.       | 1190  | Granger, Dana E.      | Florence, Ky.     | 1836  | Cordes, Gordon B.      | New Orleans, La.   |
| 590   | Stephenson, Gary C.    | Brooklyn, Wis.      | 1245  | Beard Jr., Joe B.     | Rome, Ga.         | 1978  | Presseau Jr., Ernest   | Brookfield, Conn.  |
| 623   | Norvell, John E.       | Eagle Rock, Va.     | 1245  | Starr, Leonard V.     | Atlanta, Ga.      |       |                        |                    |

IN MEMORIAM

Joshua Morstad, LCA-169A chairperson, passes in auto accident

Local 1261 in Atlanta is mourning the loss of a long-time local chairperson. **Joshua Allen Morstad**, 39, passed away July 11, 2021, three days after he was injured in an automobile accident while traveling home from work.

Brother Morstad was a loyal member of our union for 20 years, local chairperson of LCA-169A (Central of Georgia) since May 2015 and an engineer for Norfolk Southern.

“Josh was loved, respected, a friend to all, and will be



Morstad

wrote. “Brother Morstad had a fierce love for his family and always made sure they were cared for.”

Brother Morstad enjoyed being outdoors, hunting, fishing, golfing and playing sports with his children.

He is survived by his wife,

missed by his family, friends and co-workers,” General Chairperson **James E. Stewart Jr.** of GCA-169

four sons and an unborn son due Sept. 7, 2021.

Other survivors include his parents, brother and in-laws as well as many cousins, nieces and nephews, aunts and uncles, and extended family and friends.

In his last selfless act, Brother Morstad was an organ donor and gave of himself so that others may live.

SMART Transportation Division extends its deepest condolences to Brother Morstad’s family, friends and to Local 1261 in this time of painful loss.

Local 807’s Karl Middlemas killed in collision involving crew van

Brother **Karl Middlemas**, 62, of Local 807 (Tucson, Ariz.) – a member of our union for more than 13 years – died when the crew van he was being transported in collided with a tractor-trailer late on July 6.

Brother Middlemas hired on in 2007 and most recently served as a conductor for Union



Middlemas

Pacific. He had completed his shift July 6 and was en route back to Tucson from Nogales when the van was struck at 11:24 p.m. local time on Interstate 19, south of Tucson. He was killed instantly in the crash.

He enjoyed working on and restoring cars, especially classic Mopars.

Danny K. Patterson, LCA 001E chairperson

Local Chairperson **Danny K. Patterson** (LCA-001E), 49, of Nebraska City passed away July 26, 2021, at Nebraska Medical Center in Omaha.

Brother Patterson was a mem-

ber of our union for 18 years as a locomotive engineer for BNSF.

Brother Patterson is survived by his wife, Betsy, of Nebraska City, two sons and other family members.



Patterson

Local 807 member Frederick Lendroth

Brother **Frederick Lendroth**, 62, of Tucson passed away July 8, 2021, after a long, courageous battle with cancer.

Brother Lendroth was a

member of our union for 16 years and worked as conductor/engineer for Union Pacific Railroad.

Fred will be remembered for his sharp wit and one liners.

Transportation Division policy concerning fees objectors

1. Any person covered by a UTU, now SMART, union shop or an agency shop agreement in the United States who elects to be a non-member has the legal right to object to political and ideological expenditures not related to collective bargaining, contract administration, or other activities germane to collective bargaining. Each non-member who objects shall pay reduced fees. In the public sector, non-members can elect to pay their fair share of the costs of collective bargaining by paying the agency fees, or they have the right to pay no fees.

To the extent permitted by law, a non-member cannot participate in union elections as a voter or as a candidate; attend union meetings; serve as delegate to the convention or participate in the selection of such delegates; or participate in the process by which collective bargaining agreements are ratified.

2. Notification of objection procedures:

a. To be a non-member fee objector and pay reduced fees, the objecting non-members shall provide notice of objection by notifying the President, Transportation Division of the objection by first-class mail postmarked during the month of September preceding the calendar year to which s/he objects, or within thirty (30) days after he/she first begins paying fees and receives notice of these procedures. The objection shall contain the objector’s current home address. Once a non-member objects, the objection shall stand until revoked. Objections may only be made by individual employees. No petition objections will be honored.

b. A non-member who is a public employee: To be a non-member fee objector and pay no fees, the objecting non-member shall provide notice of objection by notifying the President, Transportation Division of the objection by first-class mail during the period agreed to in his/her Authorization for Fee Deduction form, if applicable. The objection shall contain the objector’s current home address. Once a non-member objects, the objection shall stand until revoked. Objections may only be made by individual employees. No petition objections will be honored. Any new hire of a public employer who wishes to be a non-member should not fill out an Authorization for Fee Deduction form. Anyone who believes they are having dues improperly deducted must notify the President, Transportation Division in writing.

3. The following categories of expenditures are chargeable:

a. All expenses concerning the negotiation of agreements, practices and working conditions;

b. All expenses concerning the administration of agreements, practices and working conditions, including grievance handling, all activities related to arbitration, and discussion with employees in the craft or class (or bargaining unit) or employer representatives regarding working conditions, benefits and contract rights;

c. Convention expenses and other union internal governance and management expenses;

d. Social activities and union business meeting expenses;

e. Publication expenses to the extent coverage is related to chargeable activities;

f. Litigation expenses related to contract administration, collective bargaining rights, and internal governance;

g. Expenses for legislative and administrative agency activities to effectuate collective bargaining agreements;

h. All expenses for the education and training of officers and staff intended to prepare the participants to better perform chargeable activities;

i. All strike fund expenditures and other costs of economic action, e.g., demonstrations, general strike activity, informational picketing, etc., that benefit members of the bargaining unit or craft formerly represented by UTU, now SMART.

4. SMART shall retain a certified public accountant to perform an independent audit of the records of the Transportation Division and subordinate units maintained by the President, Transportation Division. The Transportation Division shall designate an analyst for

| Percentage of chargeable fees determined by analyst for calendar year 2020   |              |
|--|--------------|
| Transportation Division*   | 59.1 percent |
| State Legislative Boards   |              |
| LO 005 California <sup>1</sup>   | 8 percent    |
| LO 028 Missouri <sup>2</sup>   | 6.7 percent  |
| LO 035 New York <sup>3</sup>   | 13.1 percent |
| LO 048 Texas <sup>4</sup>  | 8.3 percent  |
| LO 054 Washington <sup>5</sup>   | 31.9 percent |
| Unreviewed Boards <sup>6</sup>   | 0.0 percent  |
| General Committees of Adjustment, including locals under jurisdiction  |              |
| GO 001 BNSF <sup>7</sup>   | 100 percent  |
| GO 049 CSX Transportation <sup>8</sup>   | 100 percent  |
| GO 577 Union Pacific <sup>9</sup>  | 99.6 percent |
| GO 927 Union Pacific <sup>10</sup>   | 100 percent  |
| GO 953 Union Pacific <sup>11</sup>   | 100 percent  |
| Unreviewed Committees <sup>12</sup>  | 99.6 percent |
| * Estimate; final ratio forthcoming.   |              |
| <sup>1</sup> Estimate based on Fourth Quarter report.  |              |
| <sup>2</sup> Estimate based on Third Quarter report.   |              |
| <sup>3</sup> Estimate based on Fourth Quarter report.  |              |
| <sup>4</sup> Estimate based on Fourth Quarter report.  |              |
| <sup>5</sup> Estimate based on Second Quarter report.  |              |
| <sup>6</sup> Unreviewed state legislative boards will have a 0 percent chargeable percentage applied to new objectors.   |              |
| <sup>7</sup> Estimate based on Third and Fourth Quarter reports.   |              |
| <sup>8</sup> Estimate based on First, Second, Third, and Fourth Quarter reports.   |              |
| <sup>9</sup> Estimate based on First, Second, Third, and Fourth Quarter reports.   |              |
| <sup>10</sup> Estimate based on Second and Fourth Quarter reports.   |              |
| <sup>11</sup> Estimate based on First, Second, Third, and Fourth Quarter reports.  |              |
| <sup>12</sup> Unreviewed general committees will have the historical average of chargeable percentages of audited general committees, which is 99.6 percent, applied to any new objectors. |              |

the purpose of determining the percentage of expenditures that fall within the categories specified in Section 3. The amount of the expenditures that fall within Section 3 shall be the basis for calculating the reduced fees that must be paid by the objector. The analyst shall also give an opinion concerning the adequacy of the escrow amounts maintained pursuant to Section 17, and later will verify the existence and the amounts of money in any escrow accounts.

5. The analyst shall complete the report no later than August 31. This report shall include an analysis of the major categories of union expenses that are chargeable and non-chargeable.

6. Each person entitled to receive the analyst’s report may challenge the validity of the calculations made by the analyst by filing an appeal with the President, Transportation Division. Such appeal must be made by sending a letter to the President, Transportation Division postmarked no later than thirty (30) days after issuance of the analyst’s report.

7. After the close of the appeals period, the President, Transportation Division shall provide a list of appellants to the American Arbitration Association (AAA). All appeals shall be consolidated. The AAA shall appoint an arbitrator from a special panel maintained by the AAA for the purpose of these arbitrations. The AAA shall inform the President, Transportation Division and the appellant(s) of the arbitrator selected.

8. The arbitration shall commence by October 1 or as soon

thereafter as the AAA can schedule the arbitration. The arbitrator shall have control over all procedural matters affecting the arbitration in order to fulfill the need for an informed and expeditious arbitration.

9. Each party to the arbitration shall bear their own costs. The appellants shall have the option of paying a pro-rata portion of the arbitrator’s fees and expenses. The balance of such fees and expenses shall be paid by the Transportation Division.

10. A court reporter shall make a transcript of all proceedings before the arbitrator. This transcript shall be the official record of the proceedings and may be purchased by the appellants. If appellants do not purchase a copy of the transcript, a copy shall be available for inspection at the Transportation Division during normal business hours.

11. Appellants may, at their expense, be represented by counsel or other representative of choice. Appellants need not appear at the hearing and shall be permitted to file written statements with the arbitrator instead of appearing. Such statement shall be filed no later than fifteen (15) days after the transcript becomes available, but in no case more than thirty (30) days after the hearing closes.

12. Fourteen (14) days prior to the start of the first hearing, appellants shall be provided with a list of all exhibits intended to be introduced at the hearing and a list of all witnesses intended to be called, except for exhibits and witnesses that may be introduced for rebuttal. On written request from an appellant, copies of exhibits (or in the case of voluminous exhibits, summaries thereof) shall be provided to them. Additionally, copies of exhibits shall be available for inspection and copying at the hearing.

13. The Transportation Division shall have the burden of establishing that the reduced fees set forth in the analyst’s report are lawful.

14. If the arbitrator shall determine that more than one day of hearings is necessary, hearings shall be scheduled to continue from day to day until completed. The parties to the appeal shall have the right to file a brief within fifteen (15) days after the transcript of the hearing is available, but in no case more than thirty (30) days after the hearing closes. The arbitrator shall issue a decision within forty-five (45) days after the submission of post-hearing briefs or within such other reasonable period as is consistent with the rules established by the AAA.

15. The arbitrator shall give full consideration to the legal requirements limiting the amounts that objectors may be charged, and shall set forth in the decision the legal and arithmetic basis for such decision.

16. If an objector receiving an advance reduction wishes to continue the objection, he/she shall continue to pay the reduced fees that he/she is currently paying until the analyst issues the report. As soon as possible after the issuance of the analyst’s report, he/she shall pay the amount of the reduced fees calculated by the analyst. Persons objecting for the first time shall be sent a copy of the report prepared by the analyst for the previous year and shall pay the reduced fees as soon as possible.

17. Each month thereafter for all objectors, an amount shall be put in an interest-bearing escrow account equal to 25 percent of the reduced monthly fees, or such other greater amount as the analyst may recommend. All objectors from the previous year shall be paid the amount of non-chargeable money that is in the escrow account as determined by the analyst’s report as soon as practicable after its issuance. The appropriate unit of the Transportation Division shall not, however, take its portion of the monies in the escrow account until fifteen (15) days after the conclusion of the period within which an objector may appeal the report of the analyst, or upon the issuance of the decision of the arbitrator, whichever is later.

18. When the decision of the arbitrator is announced the monies remaining in the escrow account shall be distributed in accordance with the decision.

Featured photo showcase



Andrea Kimble, wife of **James Kimble** who is a member out of Local 942 (Florence, S.C.) and a conductor for CSX, took this picture of CSX locomotive No. 565 in Lake City, S.C.

How to have your photograph featured

SMART-TD seeks images of work-related scenes, such as railroad, bus or mass transit operations, equipment photos, scenic shots, activities of your local or photos of your brothers and sisters keeping America rolling.

Printed photographs should be mailed to SMART-TD, 24950 Country Club Blvd., Suite 340, North Olmsted, OH 44070-5333.

High-resolution digital photographs should be in JPEG format and emailed to [news\\_td@smart-union.org](mailto:news_td@smart-union.org). We prefer horizontal photos. Be sure that your camera is set to

the large resolution setting when taking the photo or it might not reproduce well.

With each photograph, please include your name, SMART local number, the names of the persons in the photo (left to right), where the photo was taken and other pertinent info.

All photographs submitted become property of SMART and can be used in future projects.

Remember to review your employer's policies regarding use of cameras on the property or during work hours.

Class I rail carriers file their second-quarter earnings reports

**Net Earnings:** Increased 34% to \$1.52 billion from \$1.13 billion  
**Earnings Per Share:** N/A – not publicly traded  
**Revenue:** Increased 26% to \$5.81 billion from \$4.60 billion  
**Operating Income:** Increased 28% to \$2.22 billion from \$1.73 billion  
**Operating Expenses:** Increased 25% to \$3.6 billion from \$2.9 billion  
**Operating Ratio:** Improved 0.7% to 60.4% from 61.1%



**Net Earnings:** Increased 90% to C\$1.034 million from C\$545 million  
**Diluted Earnings Per Share:** Increased 90% to C1.46 from C\$0.77  
**Revenue:** Increased 12% to C\$3.598 million from C\$3.209 million  
**Operating Income:** Increased 76% to C\$1.382 million from C\$785 million  
**Operating Expenses:** Decreased 9% to C\$2.216 million from C\$2.424 million  
**Operating Ratio:** Improved 13.9 points to 61.6% from 75.5%



**Net Earnings:** Increased 96% to C\$1.25 billion from C\$635 million  
**Diluted Earnings Per Share:** Increased 100% to a record \$1.86 per share from \$0.93 per share  
**Revenue:** Increased 15% to a record C\$2.05 billion from C\$1.79 billion



**Operating Income:** Increased 6% to C\$820 million from C\$770 million  
**Operating Expenses:** Increased 21% to C\$1.23 billion from C\$1.02 billion  
**Operating Ratio:** Improved 170 basis points to a record 55.3% from 57%



**Net Earnings:** Increased 135% to \$1.17 billion from \$499 million  
**Earnings Per Share:** Increased 136% to \$0.52 per share from \$0.22 per share  
**Revenue:** Increased 33% to \$2.99 billion from \$2.26 billion  
**Operating Income:** Increased 104% to \$1.7 billion from \$828 million  
**Operating Expenses:** Decreased 9% to \$1.3 billion from \$1.43 billion  
**Operating Ratio:** Improved to 43.4% from 63.3%



**Net Earnings:** Reported a loss of (\$378.0 million) from \$110.3 million\*  
**Diluted Earnings Per Share:** Increased 79% to \$2.06 per share from \$1.16 per share  
**Revenue:** Increased 37% to \$749.5 million from \$547.9 million  
**Operating Income:** Reported a loss of (\$431.7 million) from \$180.4 million\*  
**Operating Expenses:** Increased to \$460.4 million from \$357.0 million  
**Operating Ratio:** Improved 3.8 basis points to 61.4% from 65.2%

**Net Earnings:** Increased 109% to a second-quarter record of \$819 million from \$392 million  
**Diluted Earnings Per Share:** Increased 114% to a second-quarter record of \$3.28 per share from \$1.53 per share  
**Revenue:** Increased 34% to \$2.8 billion from \$2.1 billion  
**Operating Income:** Increased 91% to an all-time quarterly record of \$1.2 billion from \$610 million  
**Operating Expenses:** Increased 11% to \$1.6 billion from \$1.5 billion  
**Operating Ratio:** Improved 18% to an all-time quarterly record of 58.3% from 70.7%



**Net Earnings:** Increased 59% to \$1.8 billion from \$1.1 billion  
**Earnings Per Share:** Increased to \$2.72 per share from \$1.67 per share  
**Revenue:** Increased 30% to \$5.5 billion from \$4.2 billion  
**Operating Income:** Increased 50% to \$2.5 billion from \$1.7 billion  
**Operating Expenses:** Increased 17% to \$3.0 billion from \$2.6 billion  
**Operating Ratio:** Improved 590 basis points to 55.1% from 61.0%



**Notes:** Operating ratio is a railroad's operating expenses expressed as a percentage of operating revenue, and is considered by economists to be the basic measure of carrier profitability. The lower the operating ratio, the more efficient the railroad.  
All comparisons are made to 2020's second-quarter results for each railroad.  
All figures for CN & CP are in Canadian currency, except for earnings per share for CP.

\*losses due to CP-KCS & CN-KCS merger deals