

# SYSTEM COUNCIL NO. 16

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

7306 SW 34th Ave, Ste 1 - 371 • Amarillo, TX 79121 • Phone (651) 438-2927 • ibewsc16@outlook.com

Jeff Allred

**Brad Carothers** 

Jeff Burk

Darrell Patterson Mike Tschacher General Chairman Vice Chairman Sec Treasurer Asst Gen Chairman Asst Gen Chairman

Amanda Jacobs Admin Asst

April 9, 2021

## First Quarter 2021 Report to the Members of System Council 16

Dear Members,

I would like to start out by welcoming a new addition to the System Council 16 staff. Effective April 1, 2021, Mike Tschacher started in his position as Assistant General Chairman. Mike, originally from Alliance, NE, began his railroad career with BNSF at Tulsa, OK as a Laborer in 2006 and accepted an electrical apprenticeship in 2008. In 2015 he became President/Local Chairman of IBEW Local 778. Prior to beginning a railroad career, Mike graduated from Chadron State College with a BA in Legal Studies. Mike will be an asset to the Council with his knowledge of the industry and his impressive writing skills.

National Negotiations remain stagnant as the Carriers have yet to make any offers to settle the contract.

CP and Evansville and Western negotiations are ongoing while the other properties are waiting to see what happens at the National level.

Section 6 Notices were filed this month on the MRL and negotiations should commence in the coming months.

It seems that the COVID-19 Pandemic has become the new "normal" for most. However, now that the vaccine has become available, we are starting to get questions as to whether employers can require our members to get vaccinated. The CN also issued instructions that their employees are required to notify them if they receive the vaccine. Both issues, being of legal nature, were sent to Lucas Aubrey who is the attorney for our Railroad Coordinating Council and his opinion is attached hereto. I feel that if the railroads think they can get away with requiring the vaccine, they will do just that, along with employers in other industries. I am sure there will be many lawsuits filed on this subject.

The PSR greed is continuing to cause job loss amongst our membership. This guarter, there has been shop closures along with associated furloughs on the CN at Proctor, MN and Kirk Yard in Chicago, IL as well as on the BNSF in Houston, TX.

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

The first Quarter has seen a dramatic increase in discipline on several properties. Many cases are attributed to absenteeism and could have been avoided if the member would have utilized Sick Leave or FMLA.

IBEW designated FELA Attorney, Anthony Petru of Hildebrand McLeod & Nelson Law Firm. He has graciously donated his time to put together a brochure for multiple organizations highlighting the potential financial risks associated with operating or riding in "off-track" company vehicles. The brochure is attached and is self-explanatory.

I would like to end on somewhat of a positive note. The total combined rail traffic increased 5.6% in the first 13 weeks of 2021 compared to the same period last year, according to the AAR. Hopefully, if this continues our furloughed members will be recalled.

I hope everyone has a safe and enjoyable spring and summer.

Sincerely,

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Jeff Allred General Chairman System Council 16 – IBEW

Attachments: Aubrey Opinion IBEW Employee OTVB Below is the response from Labor Attorney, Lucas Aubrey, submitted via email, when asked if employers can require proof of COVID vaccination and require employees to take the vaccine.

#### Jeff Allred

#### Good morning,

In short, an employer may demand proof of vaccination, but it must maintain the confidentiality of the information it receives from employees. Whether an employer may mandate the Covid-19 vaccine is a bit more complicated. The current answer is probably yes, but this is a quickly developing area.

#### Proof of Vaccination

The Americans with Disabilities Act ("ADA") limits the instances in which employers can make medical inquiries, and it requires employers to maintain the confidentiality of any medical information the employer obtains through a medical inquiry or examination. Despite the ADA's general limitation on medical inquiries in the workplace, the Equal Employment Opportunity Commission ("EEOC"), which has authority to issue guidance under the ADA, takes the position that employers are permitted to require employees to provide proof that they have received the Covid-19 vaccine. The EEOC's position is that asking employees about their vaccination status is not a generally prohibited "disability-related inquiry" because it is not likely to elicit information from the employee about a disability. An employer may, however, violate the ADA if in response to an employee's failure to provide proof, the employer asks an employee why he/she did not receive a Covid-19 vaccine. This is a potential violation of the ADA because that question could elicit information regarding an employee's protected disability.

#### **Required Vaccination**

The EEOC has issued guidance stating that an employer may require that its employees receive a Covid-19 vaccine. Employers must, however, recognize various exceptions. First, the employer may not require a vaccine until the vaccine is generally available to its employees. Thus, so long as certain rail employees are not eligible for a vaccine, a Carrier cannot require that its employees be vaccinated. Once the vaccines are available to all employees, the Carrier may require that employees take the vaccine if the Carrier determines that the vaccine is necessary to protect employees from a "direct threat" in the workplace. In the current circumstances, the EEOC and courts are likely to determine that Covid-19 is a "direct threat" to employee safety.

If a Carrier does require a vaccine, it must make exceptions for employees who cannot be vaccinated because of a disability or those employees who have a religious objection to being vaccinated. If any employee cannot be vaccinated for one of these reasons, the Carrier must provide a reasonable accommodation. What constitutes a reasonable accommodation will depend on the employee's duties.

Finally, there is some question as to whether employers can require the Covid-19 vaccine now because, at present, the Food and Drug Administration has given Covid-19 vaccines "emergency use authorization" ("EUA"), rather than full licensure. The applicable statute places certain conditions on the use of these vaccines, which raise questions about workplace mandates.

The statute instructs the Secretary of Health and Human Services to require "a person who carries out any activity for which the [EUA] is issued" to ensure that "individuals to whom the [vaccine] is administered" are informed of the vaccine's known and potential risks and benefits, as well as "the option to accept or refuse administration of the [vaccine], of the consequences, if any, of refusing administration of the [vaccine], and of the alternatives to the [vaccine] that are available and of their benefits and risks." There is no caselaw or guidance applying this provision to the workplace setting. It is therefore unclear whether these conditions mean that *no* person – including employers – can require anyone to take a vaccine that has only received EUA. There will likely be litigation on this issue as employers begin to mandate vaccines.

Please let me know if you have questions. It may be worth sharing this information with the other General Chairman because both of these issues are likely to come up increasingly often in the next few months.

Thanks,

Lucas R. Aubrey Sherman Dunn, P.C.

# HILDEBRAND McLEOD & NELSON LLP.

Representing Injured Railroad Employees Since 1926



## IBEW EMPLOYEES HAVE A PROBLEM

ATTORNEYS & OFFICES

Anthony S. Petru Paula A. Rasmussen Charles S. Bracewell Gavin S. Barney Scott H. Levy

350 Frank H. Ogawa Plaza, 4th Fl Oakland, CA 94612 1 (800) 447-7500

Victor A. Russo

600 S. Spring Street, Suite 1808 Los Angeles, CA 90014 1 (800) 447-7500

THE REALITY:

Many railroad employees are required to drive, or are driven, in company vehicles as a regular part of their work.

#### THE REAL RISK:

In the US, the National Highway Traffic Administration calculates that car accidents happen every 60 seconds. The Insurance Institute for Highway Safety reports that in 2019 the US saw 33,244 fatal motor vehicle accidents resulting in 36,096 deaths.

#### THE PROBLEMS:

As railroaders there are three ways that an employee (or their family) can receive compensation for the resulting injuries or death. All three have <u>serious problems</u>.

#### 1. When the railroad is at fault.

Here the FELA (Federal Employers Liability Act) controls. Under the FELA, the carrier can be found to be at fault only if it can be proven that the railroad was negligent (either due to a defect in the vehicle or when the driver of the vehicle – not the injured employee – was at fault in controlling the vehicle). The FELA does not provide compensation when the accident was caused by a third party.

- If another driver or public entity (think defective road) is at fault. In this situation the injured employee or their family can bring a claim against the other driver or that driver's employer or public entity if the roadway is unsafe. The vast majority of drivers only carry 30/60 coverage meaning that the most an individual can recover is \$30,000.
- When the injured employee was the driver of the company vehicle and they are solely at fault. In this situation the employee would be very lucky if they planned ahead and had sufficient insurance to provide for themselves or family. This would require a robust disability policy and/or life insurance coverage.

#### WHAT ABOUT THE CARRIERS OFF TRACK VEHICLE BENEFITS?

The IBEW Arbitrated Agreement effective November 4, 2004 amended the 1978 RED National Agreement to increase coverage to \$300,000 for Loss of Life or bodily Dismemberment, reduced to \$150,000 if the employee 'only' loses a single hand, foot, or one eye. The coverage for lost work without death or dismemberment is limited to 80% of the employee's basic full-time weekly compensation up to \$1,000 per week for time lost during a period of 156 continuous weeks, reduced by RRB sickness benefits.



## IBEW EMPLOYEES HAVE A PROBLEM

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600 S. Spring Street, Suite 1808 Los Angeles, CA 90014 1 (800) 447-7500

#### THE REAL WORLD:

In the experience of Hildebrand, McLeod & Nelson, the 'value' of a significant percentage of railroad injury cases far exceeds the monies available in cases where the railroad is not directly at fault under the FELA. Since so many employees are injured when driving or riding in vehicles the employee must understand that they and their family **will not** receive sufficient money to cover their wage loss, medical bills, let alone any compensation for their pain and suffering unless they take action.

#### THE ACTION PLAN:

First, the responsible employee must have a conversation with their loved ones sharing the points raised on this sheet. Then the employee must talk to their own auto insurance agent and add sufficient Uninsured/Underinsured Motorist coverage (UMI) and/or an umbrella policy to ensure that there is at least \$1,000,000 of protection. The agent must also agree, in writing, that the effective policies will provide coverage when the employee is at work driving, or being driven, in a company vehicle. You may encounter an agent whose knee-jerk reaction is "we don't do that – the policy says what it says". Of course they can, and will. Do not give up. Push back and shop around if necessary. Increasing UMI coverage and purchasing Umbrella polices are surprisingly affordable.

#### YOU ARE NOT ALONE:

There are hundreds of railroad employees who are injured each year in Off Track Vehicle accidents. Most do not have sufficient protection resulting in being undercompensated for their losses. Only those who admit that yes, it can happen to them get the necessary protection.

We at Hildebrand, McLeod & Nelson have had a front row seat to observe these sad situations for 95 years now. Our mission is to get employees the appropriate compensation for their harms and losses following injury. In many cases there are responsible parties who can be held accountable so that the employee gets that compensation. However, in off track vehicle accidents, frequently the employee is never adequately covered. We hate that and want to partner with you to protect against it. Call us if you have any questions or need our services.

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 1st QUARTER 2021

SAVINGS CERTIFICATE STATEMENT:		BALANCE
Mid Country		\$100,423.47
Old Missouri Bank		\$217,803.95
Freedom Bank of MO		\$224,453.90
Unity One Credit Union CD 1		\$106,422.15
Unity One Credit Union CD 2		\$101,430.74
Guaranty Bank CD 1		\$107,981.27
Guaranty Bank CD 2		\$13,546.74
SFC Bank		<u>\$204,550.65</u>
TOTAL SAVINGS CERTIFICATES		\$1,076,612.87
GENERAL FUND (SAVINGS ACCOUNTS)		
Freedom Bank of MO		\$127.95
Unity One Credit Union		\$5.00
CONVENTION FUND (CHECKING ACCOUNT)		
Bank of America		\$151,457.21
MISC. INCOME		
CKECKBOOK ENDING BALANCE - MIDCOUNTR	Y BANK	\$468,235.30
	TOTAL - ALL ACCOUNTS	\$1,696,438.33

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 1st QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	January	<u>February</u>	<u>March</u>
152	\$0.00	\$0.00	\$7,880.00
366	\$2,610.25	\$0.00	\$0.00
418	\$4,235.50	\$3,841.50	\$4,235.50
452	\$2,610.25	\$2,561.00	\$2,561.00
506	\$0.00	\$0.00	\$8,143.40
533	\$0.00	\$0.00	\$10,280.75
547	\$14,528.75	\$0.00	\$14,775.00
708	\$344.75	\$1,625.25	\$492.50
757	\$6,944.25	\$0.00	\$7,092.00
778	\$27,696.55	\$0.00	\$8,053.35
783	\$0.00	\$2,068.50	\$3,841.50
866	\$12,657.25	\$0.00	\$25,068.25
881	\$4,284.75	\$4,284.75	\$0.00
886	\$1,822.25	\$1,773.00	\$1,773.00
906	\$191.50	\$197.00	\$197.00
946	\$0.00	\$4,580.25	\$2,364.00
959	\$14,972.00	\$7,486.00	\$7,535.25
1022	\$24,772.75	\$0.00	\$0.00
1023	\$15,366.00	\$7,633.75	\$7,781.50
1146	\$1,526.75	\$1,576.00	\$1,526.75
1155	\$0.00	\$0.00	\$0.00

### SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 1st QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	January	<u>February</u>	<u>March</u>
1199	\$1,822.25	\$0.00	\$3,496.75
1517	\$5,220.50	\$5,122.00	\$5,171.25
1559	\$1,833.50	\$0.00	\$2,026.50
1769	\$3,102.75	\$3,053.50	\$3,053.50
1856	\$7,190.50	\$7,042.75	\$6,451.75
2355	\$2,856.50	\$2,758.00	\$2,807.25
TOTAL	\$156,589.55	\$55,603.25	\$136,607.75

NOTE: \$46.25 Per Capita Tax + \$2.00 deposited to S.C. Convention Fund + \$1.00 to Railroad Legal Fund (RRCC) = \$49.25

#### Jeff Allred's Travel First Quarter 2021:

- February 1—6, 2021 Fort Worth, TX/Temple, TX BNSF Labor Relations Meeting, Staff Meeting and BNSF Barrier Meeting
- February 21—25, 2021 Fort Worth, TX New Hire Tower Rescue Class
- March 15—17, 2021 Sand Springs, OK Meeting with Mike Tschacher
- March 28, 2021 April 2, 2021 Amarillo, TX Local 1146 Visit, Belen, NM Local 1199 Visit

#### Darrell Patterson's Travel First Quarter 2021:

- January 7, 2021 Roeland Park, KS Local 866 Meeting
- February 8, 2021 Kansas City, KS CRF Meeting
- March 9, 2021 Des Moines, IA CP Investigation (Postponed)
- March 11, 2021 Roeland Park, KS Local 866 Meeting

#### Jeff Burk's Travel First Quarter 2021:

- February 1—5, 2021 Fort Worth, TX Meet with BNSF LR Temple, TX BNSF Barrier Meeting and Staff Meeting
- February 22—25, 2021 Fort Worth, TX BNSF Telecom Fall Pro Class
- March 15—16, 2021 Sand Springs, OK Setup Office for AGC Tschacher
- March 17—18, 2021 Springfield, MO Local 778 Visit
- March 30—April 1, 2021 Belen, NM Local 1199 Visit

#### Brad Carothers' Travel First Quarter 2021:

February 1—5, 2021 – Temple, TX – Staff Meeting and BNSF Barrier Meeting



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Jeff Allred Brad Carothers Jeff Burk General Chairman Vice Chairman Sec Treasurer

Jeff Burk Darrell Patterson ec Treasurer Asst Gen Chairman

n Mike Tschacher an Asst Gen Chairman Amanda Jacobs Admin Asst

July 21, 2021

## Second Quarter 2021 Report to the Members of System Council 16

Dear Members,

I will open the Second Quarter Report with terrible news. On Wednesday, July 14, 2021, Springfield, MO, Telecommunications Department, Electronic Technician, David Gold, succumbed to complications from COVID-19. David had over 30 years of service and will be missed by all who knew him.

Previously, we tragically lost Local 452, President, Joshua Baumgardner to a vehicle accident. Josh was an Electrician at BNSF's Mechanical Facility in Galesburg, IL. Josh will also be greatly missed, and we thank him for his service to the Local and the IBEW.

National Negotiations remain stagnant with the Carriers still dragging their feet on a counterproposal to the Organizations Section 6 requests. The next session scheduled in August will be held in-person. Hopefully, this will speed up the process.

Negotiations on the Evansville and Western Railroad has come to an impasse. We were successful in filing for Mediation and will have a session in September.

MRL negotiations are ongoing and there is hope that there will be a new contract by the end of the year.

All other Properties with expired contracts are waiting to see what happens at the National Level.

Any BNSF Members working on former ATSF Territory should report to this office any PTC work being done by the Signal Department. As of this writing, the Council has recovered nearly \$14,000 in claims in Oklahoma and Colorado.

The National Mediation Board has released funding for arbitration, and we have hearings scheduled with BNSF and CN.

BNSF's Interbay Mechanical Facility has furloughed 7 Electricians. This is due to a disturbing new initiative that the Carrier is implementing called Mobile Maintenance Strategy. BNSF is moving 6 of the positions to Spokane, WA and Pasco, WA where they will conduct locomotive inspections remotely. This is all possible thanks to a waiver given to BNSF by the FRA allowing them to forego traction motor inspections on

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

92-day maintenances. We are supplying information to Railroad Department Director, AI Russo, who is working with the IBEW'S Political Affairs Department to petition the FRA to rescind the Waiver.

CN is recalling many furloughed Mechanical Electricians and is planning to hire several more in some locations.

In closing, the railroad business is returning to near pre-Covid levels, and I hope that all of our furloughed members are recalled soon.

Sincerely,

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Jeff Allred General Chairman System Council 16 – IBEW

Attachments: Financial and Travel Reports

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 2nd QUARTER 2021

SAVINGS CERTIFICATE STATEMENT:	BALANCE
Mid Country	\$101,174.48
Old Missouri Bank	\$217,803.95
Freedom Bank of MO	\$225,189.37
Unity One Credit Union CD 1	\$106,902.30
Unity One Credit Union CD 2	\$101,913.34
Guaranty Bank CD 1	\$107,981.27
Guaranty Bank CD 2	\$13,715.21
SFC Bank	<u>\$205,672.87</u>
TOTAL SAVINGS CERTIFICATES	\$1,080,352.79
GENERAL FUND (SAVINGS ACCOUNTS)	
Freedom Bank of MO	\$127.95
Unity One Credit Union	\$5.00
CONVENTION FUND (CHECKING ACCOUNT)	
Bank of America	\$166,139.21
MISC. INCOME	
CKECKBOOK ENDING BALANCE - MIDCOUNTRY BANK	\$468,387.27

TOTAL - ALL ACCOUNTS

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 2nd QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>April</u>	May	June
152	\$0.00	\$0.00	\$0.00
366	\$2,708.75	\$2,708.75	\$0.00
418	\$3,890.75	\$3,644.50	\$3,693.75
452	\$2,511.75	\$0.00	\$5,072.75
506	\$0.00	\$8,044.05	\$12,067.85
533	\$10,588.75	\$11,136.75	\$4,826.50
547	\$14,528.75	\$0.00	\$0.00
708	\$443.25	\$443.25	\$0.00
757	\$14,184.00	\$6,993.50	\$0.00
778	\$0.00	\$0.00	\$8,404.95
783	\$2,019.25	\$2,019.25	\$1,970.00
866	\$12,411.00	\$12,263.25	\$0.00
881	\$8,569.50	\$0.00	\$4,383.25
886	\$1,629.00	\$2,015.50	\$1,871.50
906	\$0.00	\$197.00	\$0.00
946	\$2,364.00	\$2,364.00	\$2,216.25
959	\$7,535.25	\$7,535.25	\$0.00
1022	\$0.00	\$0.00	\$0.00
1023	\$7,633.75	\$7,633.75	\$7,683.00
1146	\$1,477.50	\$1,477.50	\$1,477.50
1155	\$18,370.25	\$0.00	\$4,646.45

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 2nd QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>April</u>	May	June
1199	\$1,822.25	\$1,674.50	\$1,822.25
1517	\$4,777.25	\$4,925.00	\$5,565.25
1559	\$0.00	\$2,023.50	\$0.00
1769	\$0.00	\$6,501.00	\$3,004.25
1856	\$13,002.00	\$6,402.50	\$5,122.00
2355	\$2,758.00	\$2,856.50	\$2,856.50
TOTAL	\$133,225.00	\$92,859.30	\$76,684.00

NOTE: \$46.25 Per Capita Tax + \$2.00 deposited to S.C. Convention Fund + \$1.00 to Railroad Legal Fund (RRCC) = \$49.25

#### Jeff Allred's Travel Second Quarter 2021:

- April 12—15, 2021 Kansas City Local 866 Meeting, CRF Visit
- April 28—29, 2021 Tulsa, OK Training
- May 3—6, 2021 Fort Worth, TX Meetings with Mechanical CMO's, Labor Relations
- June 14—18, 2021 Fort Worth, TX System Council 2 Convention
- June 28—July 1, 2021 Evansville, IN Evansville & Western Mediation

#### Darrell Patterson's Travel Second Quarter 2021:

- April 1, 2021 North Kansas City, MO Local 547 Investigation
- April 6—9, 2021 St. Paul, MN Local 866 Investigation
- April 13, 2021 North Kansas City, MO Staff Meetings and Local 866 Officers' Meeting
- April 14, 2021 Topeka, KS Local 959 Meeting
- May 12—13, 2021 St. Paul, MN Local 886 Investigations
- June 6—9, 2021 Pigeon Forge, TN System Council 6 Convention
- June 10—11, 2021 Paducah, KY Local 881 P&L Members' Meeting

#### Jeff Burk's Travel Second Quarter 2021:

- April 12—15, 2021 Kansas City Staff Meeting
- April 26—27, 2021 Moore, OK Observer for BNSF Telecom Qualifications Tower Climb
- April 28—29, 2021 Sand Springs, OK Training/Computer Setup for AGC Mike Tschacher
- May 3—6, 2021 Ft. Worth, TX BNSF Telecom and Mechanical CMO Meetings
- June 1—3, 2021 Spokane, WA MRL Negotiations
- June 14—18, 2021 Grapevine, TX IBEW System Council 2 Convention
- June 29—July 1, 2021 Spokane, WA MRL Negotiations

#### Brad Carothers' Travel Second Quarter 2021:

April 12-15, 2021 - Kansas City, KS - CRF Meeting and Staff Meeting

June 14—18, 2021 – Grapevine, TX – System Council 2 Convention

June 28—July 1, 2021 – Evansville, IN – EV&W Negotiations

#### Mike Tschacher's Travel Second Quarter 2021:

April 12—15, 2021 – Kansas City, KS – Staff Meeting

May 20, 2021 – Local 778 Meeting

June 17, 2021 – Local 778 Meeting



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## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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Jeff Allred General Chairman Vice Chairman Sec Treasurer

Brad Carothers

Jeff Burk

Darrell Patterson Asst Gen Chairman

Mike Tschacher Asst Gen Chairman Amanda Jacobs Admin Asst

November 16, 2021

## Third Quarter Report to the Members of System Council 16

Dear Members,

I will open the Third Quarter Report by addressing an unsubstantiated rumor that has came to this Office on more than one occasion. Regardless of your stance on the COVID vaccine and associated mandates, the Railway Labor Act strictly prohibits unlawful and unsanctioned strikes/walkouts/sickouts. If any of our members choose to participate in any of these activities, they are acting as an individual. System Council 16 has not received authority to participate in any of the above or condone any such activities.

As a word of caution, any local officer who is found to have made any correspondence concerning the orchestrating of such activities, may very well find themselves and their respective locals in criminal and civil peril, as well as unemployed.

BNSF has become the first large employer, with employees represented by System Council 16, to issue a Federal Contractor Vaccine Mandate. There has been many questions pertaining to the legality of the mandates, and I have attached the information and opinion of our Railroad Coordinating Council Attorney, Lucas Aubrey.

As for National Contract Negotiations, nothing has changed. The CBC continues to meet with the Carriers but still haven't received a counterproposal to the Section 6 notices.

Evansville and Western Negotiations are stalled in mediation.

Montana Rail Link is the only Carrier that is actively bargaining, and a tentative agreement may come soon.

All other negotiations are postponed until the outcome of National Negotiations.

Ending on a positive note, we are hearing rumors that there could be furlough recalls on the BNSF after the first of the year.

I wish everyone a safe, healthy, and happy holiday season.

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Sincerely,

fiff alled

Jeff Allred General Chairman System Council 16 – IBEW

Attachments: Vaccine Memo Financial Report Travel Report ROBERT D. KURNICK VICTORIA L. BOR SUE D. GUNTER JONATHAN D. NEWMAN LUCAS R. AUBREY ESMERALDA AGUILAR JAMES G. O'DUDEN\* AMANDA K. TOMACK\*\*

\*VIRGINIA BAR ONLY \* \* MARYLAND BAR ONLY LAW OFFICES

SHERMAN DUNN, P.C. 900 SEVENTH STREET, N.W. SUITE 1000 WASHINGTON, D.C. 20001 (202) 785-9300 FAX (202) 775-1950 WWW.SHERMANDUNN.COM

LOUIS SHERMAN (1912-1996) THOMAS X. DUNN (1911-1991)

October 26, 2021

#### **MEMORANDUM**

To: IBEW General Chairmen

From: Lucas R. Aubrey  $\mathcal{J}^{\mathcal{A}}$ 

Re: Carrier Vaccine Mandates

Many of you have asked whether it is lawful for a carrier to implement a policy that (1) requires all employees to receive a COVID-19 vaccination, or (2) requires employees to either provide proof they have received a COVID-19 vaccination or submit to weekly COVID-19 testing. As explained below, both types of policies are lawful under federal law.

#### Equal Employment Opportunity Laws

Last May, the Equal Employment Opportunity Commission ("EEOC") issued guidance concerning employer COVID-19 vaccination policies. In that guidance, the EEOC explained that federal equal employment opportunity laws "do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19." The guidance goes on to provide that any employer implementing such a requirement must include a process for employees to request an accommodation based on religious or disability-related objections to the vaccine. Based on this guidance, it is very unlikely that a court would conclude that it violates Title VII of the Civil Rights Act or the Americans with Disabilities Act for an employer to implement a vaccine requirement for its employees, provided that the employer allows reasonable accommodations for religious or disability-related objections. *See <u>https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws*.</u>

In addition, since the onset of the pandemic, the EEOC has consistently stated that it is permissible for employers to "take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others." Such screening includes the administration of COVID-19 testing. Thus, it would not violate Title VII or the ADA for an employer to implement a policy that requires employees to either be vaccinated or submit to periodic testing for COVID-19.

IBEW General Chairmen October 26, 2021 Page 2

#### Occupational Safety and Health Act

Under the Occupational Safety and Health Act, employers are responsible for providing a safe and healthy workplace for their employees. The Occupational Safety and Health Administration ("OSHA") is responsible for administering this law and for issuing guidance.

In response to the rise in COVID-19 cases, OSHA recently updated its COVID-19 guidance for workplaces. In this guidance, OSHA recommended that "employers consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing – in addition to mask wearing and physical distancing – if they remain unvaccinated." OSHA made this recommendation because "[v]accination is the key element in a multi-layered approach to protect workers." *See* <u>https://www.osha.gov/coronavirus/safework</u>. Thus, OSHA views workplace vaccine requirements as both lawful and beneficial to employee safety.

In addition, OSHA is in the process of developing a new emergency temporary standard, which we expect will require employers with 100 or more employees to require that all employees be vaccinated or undergo weekly testing. OSHA is likely to finalize the emergency temporary standard soon.

#### **Emergency Use Authorization**

Until August, the three available COVID-19 vaccines were made available to the public under Food and Drug Administration ("FDA") "emergency use authorization," which is provided for in the Food, Drug, and Cosmetic Act. In July, the United States Department of Justice issued a memo in which it concluded that nothing in the Food, Drug, and Cosmetic Act prohibits public or private employers from requiring employees to receive a vaccine that is made available only through the emergency use authorization.

In *Bridges v. Houston Methodist Hospital*, a federal court reached the same conclusion. In that case, an employee of Houston Methodist Hospital filed a lawsuit in which she asked the court to issue an injunction to prevent the hospital from implementing a policy requiring all employees to be vaccinated against COVID-19. In part, Bridges argued that the vaccine mandate was unlawful because all COVID-19 vaccines were only available under the emergency use authorization and were "experimental and dangerous." The court dismissed these concerns as "false." The court went on to explain that the law governing emergency use authorization "does not apply at all to private employers like the hospital in this case. It does not confer a private opportunity to sue the government, employer, or worker." Finally, the court rejected the argument that the employer's vaccine requirement violated "the Nuremberg Code." The court first found that the Nuremberg Code did not apply to the hospital, and the court went on to say, "Equating the injection requirement to medical experimentation in concentration camps is reprehensible." *Bridges v. Houston Methodist Hospital*, 2021 U.S. Dist. LEXIS 110382 (S.D. Tex. June 12, 2021).

On August 23, 2021, the FDA granted full approval for the Pfizer-BioNTech COVID-19 Vaccine for individuals 16 and over. This approval eliminates any question regarding the impact of emergency use authorization on vaccine requirements because now at least one available vaccine is fully approved.

IBEW General Chairmen October 26, 2021 Page 3

#### Executive Order for Federal Contractors

Under Executive Order 14042, employees of a covered federal contractor must be fully vaccinated no later than December 8, 2021, though contractors may require full vaccination by an earlier date. There is no testing option for covered employees. Covered federal contractors are required to verify a covered employee's vaccination status by obtaining proof of vaccination. The federal government will enforce this mandate by including the vaccine requirement in its contracts with federal contractors.

Our understanding is that many rail carriers, including commuter and freight carriers, may be federal contractors and may be covered by the vaccine requirement. The full scope of that coverage is not entirely clear, but to date Amtrak, Union Pacific, and Norfolk Southern have determined that because they have federal contracts, they must require every employee to be fully vaccinated, unless the employee has a medial or religious exemption from the vaccine requirement. Several air carriers, including American Airlines, Alaska Airlines, JetBlue, and Southwest, have also concluded that they must require all employees to be vaccinated under the Executive Order.

More information on the federal contractor vaccine requirement is available at https://www.saferfederalworkforce.gov/contractors/. Note that this website also has information on the federal employee vaccine requirements. That information is not applicable to employees of rail carriers, so you should rely only on the information related to federal contractors.

#### Conclusion

For these reasons and others, it is lawful for an employer to implement a policy that (1) requires all employees to receive a COVID-19 vaccination, or (2) requires employees to either provide proof they have received a COVID-19 vaccination or submit to weekly COVID-19 testing.

This memorandum does not address whether specific carriers have an obligation to bargain over the decision to require employees to be vaccinated. The carriers generally contend that they are not obligated to bargain over Covid-19 vaccine requirements for two primary reasons. First, they argue that they have been permitted to implement similar rules unilaterally for many years, including fitness for duty rules, medical qualification rules, and others. Second, they argue that they are not required to bargain over the decision to require vaccines because the carriers are obligated by law to impose the requirement. The extent of a carrier's obligation to bargain over the decision to require vaccination may vary by carrier. Even where a carrier is not required to bargain over the decision to implement the vaccine requirement, it may be obligated to bargain over the effects of that decision.

There are several lawsuits pending over this issue, including lawsuits by SMART-TD, BLET, and BMWE against Union Pacific, a lawsuit by Union Pacific against those same organizations, and a lawsuit by Norfolk Southern against the same organizations. We are actively monitoring the progress of these lawsuits.

Please contact me with any questions.

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 3rd QUARTER 2021

SAVINGS CERTIFICATE STATEMENT:	BALANCE
Mid Country	\$101,931.11
Old Missouri Bank	\$221,148.94
Freedom Bank of MO	\$225,927.25
Unity One Credit Union CD 1	\$106,902.30
Unity One Credit Union CD 2	\$101,913.34
Guaranty Bank CD 1	\$107,981.27
Guaranty Bank CD 2	\$13,715.21
SFC Bank	<u>\$206,839.29</u>
TOTAL SAVINGS CERTIFICATES	\$1,086,358.71
GENERAL FUND (SAVINGS ACCOUNTS)	
Freedom Bank of MO	\$127.95
Unity One Credit Union	\$5.00
CONVENTION FUND (CHECKING ACCOUNT)	
Bank of America	\$178,749.21
MISC. INCOME	
CKECKBOOK ENDING BALANCE - MIDCOUNTRY BANK	\$470,960.83

**TOTAL - ALL ACCOUNTS** 

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 3rd QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	July	August	<u>September</u>
152	\$0.00	\$0.00	\$0.00
366	\$2,610.25	\$5,220.50	\$0.00
418	\$3,940.00	\$3,792.25	\$3,644.50
452	\$2,561.00	\$2,511.75	\$2,511.75
506	\$0.00	\$0.00	\$8,175.70
533	\$4,826.50	\$14,824.25	\$4,826.50
547	\$22,359.50	\$0.00	\$0.00
708	\$886.50	\$492.50	\$492.50
757	\$13,445.25	\$0.00	\$13,100.50
778	\$0.00	\$0.00	\$0.00
783	\$2,019.25	\$2,019.25	\$2,019.25
866	\$22,967.35	\$12,263.25	\$12,115.50
881	\$4,432.50	\$8,766.50	\$4,432.50
886	\$1,822.25	\$1,822.25	\$1,773.00
906	\$591.00	\$197.00	\$0.00
946	\$2,364.00	\$2,413.25	\$2,314.75
959	\$14,972.00	\$7,387.50	\$7,387.50
1022	\$23,738.50	\$0.00	\$0.00
1023	\$8,323.25	\$7,535.25	\$7,141.25
1146	\$1,477.50	\$1,526.75	\$0.00
1155	\$0.00	\$17,288.00	\$0.00

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 3rd QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	July	August	<u>September</u>
1199	\$1,871.50	\$1,773.00	\$0.00
1517	\$4,728.00	\$9,751.50	\$0.00
1559	\$3,299.75	\$0.00	\$0.00
1769	\$3,053.50	\$0.00	\$0.00
1856	\$5,171.25	\$0.00	\$9,850.00
2355	\$2,807.25	\$2,708.75	\$2,708.75
TOTAL	\$154,267.85	\$102,293.50	\$82,493.95

NOTE: \$46.25 Per Capita Tax + \$2.00 deposited to S.C. Convention Fund + \$1.00 to Railroad Legal Fund (RRCC) = \$49.25

#### Jeff Allred's Travel Third Quarter 2021:

- July 14—16, 2021 Fort Worth, TX Executive Board Audit
- August 9—12, 2021 Norfolk, VA PLB 6987 Hearings
- August 25—26, 2021 Branson, MO 2023 Convention Planning
- August 29—September 9, 2021 Denver, Havre, Spokane, Seattle and Vancouver -Location Visits
- September 26—October 1, 2021 Fort Worth, TX Arbitration and Various BNSF Meetings

#### Darrell Patterson's Travel Second Quarter 2021:

- July 6—9, 2021 Duluth & Two Harbors MN, Superior, WI, Brainard, MN Local 366 Investigation, Met with Local Officers at 366, 783 and 1559, BSNF Brainard Site Visit
- July 14, 2021 Kansas City, KS BNSF Argentine Shop Extension Meeting
- July 19—22, 2021 Chicago, IL Local 533 Investigation, BNSF 14<sup>th</sup> Street Site Visit Belt Railway of Chicago Meeting and Site Visit
- July 26—31, 2021 Lincoln & Alliance, NE BNSF Lincoln Diesel Shop, Telecom & System Shop, Havelock Car & Wheel Shop Site Visits – Alliance Diesel Shop Site Visit & LAT Meeting
- August 10—12, 2021 Norfolk, VA PLB 6987 Hearings
- August 25, 2021 North Kansas City, MO Guest at NCFO Meeting
- September 9, 2021 Roeland Park, KS Local 866 Meeting
- September 15, 2021 Topeka, KS Local 959 Meeting
- September 28—October 1, 2021 Fort Worth, TX BNSF GCA Meeting BNSF Claims Conference – BNSF LAT Meeting for General Chairmen

#### Jeff Burk's Travel Second Quarter 2021:

July 13—16, 2021 – Fort Worth, TX – Audit Committee Meeting

August 2—5, 2021 – Denver, CO – MRL Negotiations

- August 9-12, 2021 Norfolk, VA BNSF Arbitration
- August 25—27, 2021 Branson, MO Scout for 2023 Convention Location
- August 30—September 9, 2021 Colorado, Montana and Washington Local Membership Meetings
- September 20—23, 2021 St. Paul/Minneapolis, MN Local 506 Membership Meeting/Labor Arbitration Class

#### **Brad Carothers' Travel Second Quarter 2021:**

- July 14—16, 2021 Fort Worth, TX Audit Committee Meeting
- July 26—30, 2021 Commerce & Barstow, CA Site Visits

#### Mike Tschacher's Travel Second Quarter 2021:

- July 14—16, 2021 Fort Worth, TX Audit Committee Meeting
- July 19—22, 2021 Chicago, IL Investigation Belt Railway General Chairman Meeting Locals 757 and 533 Membership Visits at Belt Railway Shop and BNSF 14<sup>th</sup> Street Shop
- July 26—29, 2021 Commerce & Barstow, CA Membership Visits and Meeting with Rapid Responders at Locals 946 and 1023
- August 10—12, 2021 Norfolk, VA Arbitration Hearings, PLB 6987
- September 13—16, 2021 Memphis, TN Investigation, Local 778 Membership Visit and LAT Meeting with BNSF
- September 20—23, 2021 Minneapolis, MN Arbitration Training Seminar and Local 506, Northtown Membership Visit
- September 26—October 1, 2021 Fort Worth, TX Arbitration Hearings, PLB 7328 Claims Conferences with BNSF Labor Relations – Meeting with BNSF Labor Relations – System LAT Meeting



# SYSTEM COUNCIL NO. 16

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

7306 SW 34th Ave, Ste 1 - 371 • Amarillo, TX 79121 • Phone (651) 438-2927 • ibewsc16@outlook.com

Jeff Allred

Brad Carothers

Jeff Burk

Darrell Patterson General Chairman Vice Chairman Sec Treasurer Asst Gen Chairman

Mike Tschacher Asst Gen Chairman Amanda Jacobs Admin Asst

January 27, 2022

## Fourth Quarter Report to the Members of System Council 16

Dear Members,

It is hard to believe another year has come and gone so fast. I hope you all had an enjoyable holiday season and got to spend some quality time with your loved ones. There is much more to report this guarter than in the last 2 guarters so I will get to it.

National Negotiations were held in San Diego, CA during the week of January 17, 2022. After no progress was made, the Coordinated Bargaining Council (CBC), which the IBEW is a member of, determined that the Carriers were not bargaining in good faith and have filed for mediation. The National Mediation Board will now appoint a Mediator to oversee future negotiations in hopes of coming to a voluntary agreement. Unfortunately, we will be stuck in this process until the Mediator determines that there are no hopes of a voluntary agreement. The Mediator will determine the timing and locations of the meetings, so hopefully the process will speed up.

As for other negotiations not in National Negotiations, they continue to be on hold awaiting the outcome of National. Once National is settled, I look for the others to follow quickly.

A Tentative Agreement was reached on the Montana Rail Link (MRL). It consisted of a 5-year deal with a 15.5% GWI and a freeze at the current level of employee health and welfare contributions. The Agreement has been sent to the MRL membership for voting on ratification.

MRL and BNSF have announced that MRL will be terminating its lease with BNSF 26 years early. This was a shock to everyone involved and we are still sorting through the details. We will be meeting in February to begin negotiations on an Implementing Agreement to bring former MRL Property and Employees under BNSF Management.

Recently we received many inquiries into the possible strike by BLET and SMART over BNSF's new attendance policy for Operating Crafts. This week a Federal Court granted BNSF a Temporary Restraining Order against the Organizations involved. A hearing over a permanent injunction will be held in the near future.

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

The Federal Government has rescinded the OSHA Covid Vaccine Mandate that the Supreme Court struck down and the Injunction against the Federal Contractor Mandate remains in place.

BNSF is in the process of recalling many of its furloughed electricians. They are also hiring Mechanical and System Electricians as well as Telecom at many locations across the system. The postings can be seen on BNSF's Webpage.

CN has replaced its CEO and placed some new people on its Board of Directors. Presently, we don't know how or if this will affect our CN Members.

We have recently heard that some of our members are having issues getting information pertaining to issues that are important to our industry. I would like to let everyone know that System Council 16 has a website that is kept up to date with the latest news on important issues. There is also a wealth of other information including links to various insurances, RRB, Etc., as well as Collective Bargaining Agreements.

We also have an informational Facebook page you are welcome to join, it is called "IBEW System Council No. 16". Be sure to answer the questions as we only allow members to join. The Page is for informational purposes only, we do not monitor it, which is why commenting is turned off.

The IBEW Railroad Department also has an informational website. It can be found at ibew.org/Railroad. This is where you will find the most up to date information on National Negotiations. Director, Al Russo is in charge of the negotiations, and we simply repost what information he sends out.

On October 27 & 28, we held our first in-person Executive Board Meeting in Branson, MO. I want to thank the Executive Board Members for taking the time out of their busy schedules to attend, making the meeting a big success.

Please don't hesitate to contact our office if you have any questions.

Sincerely,

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Jeff Allred General Chairman System Council 16

Attachments: Financial Report Travel Report

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 4th QUARTER 2021

SAVINGS CERTIFICATE STATEMENT:	BALANCE
Mid Country	\$102,685.11
Freedom Bank of MO	\$664,431.49
Unity One Credit Union CD 1	\$108,339.92
Unity One Credit Union CD 2	\$103,361.41
Guaranty Bank CD 1	\$107,981.27
SFC Bank	<u>\$208,012.32</u>
TOTAL SAVINGS CERTIFICATES	\$1,294,811.52
GENERAL FUND (SAVINGS ACCOUNTS)	
Freedom Bank of MO	\$153.52
Unity One Credit Union	\$5.00
CONVENTION FUND (CHECKING ACCOUNT)	
Bank of America	\$190,379.82
MISC. INCOME	
CKECKBOOK ENDING BALANCE - MIDCOUNTRY BANK	\$262,078.52

**TOTAL - ALL ACCOUNTS** 

## SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 4th QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	October	November	December
152	\$0.00	\$0.00	\$0.00
366	\$4,974.25	\$0.00	\$2,413.25
418	\$3,546.00	\$3,447.50	\$3,299.75
452	\$2,462.50	\$2,364.00	\$2,462.50
506	\$0.00	\$8,175.50	\$0.00
533	\$4,678.75	\$4,580.25	\$0.00
547	\$22,408.75	\$0.00	\$15,169.00
708	\$0.00	\$591.00	\$394.00
757	\$6,599.50	\$0.00	\$13,051.25
778	\$16,686.95	\$0.00	\$0.00
783	\$2,019.25	\$1,970.00	\$1,970.00
784	\$5,704.00	\$985.00	\$695.00
866	\$12,164.75	\$12,066.25	\$0.00
881	\$4,383.25	\$8,815.75	\$4,284.75
886	\$2,265.50	\$2,117.75	\$1,773.00
906	\$394.00	\$197.00	\$0.00
946	\$2,314.75	\$2,216.25	\$2,314.75
959	\$0.00	\$14,578.00	\$0.00
1022	\$32,603.50	\$0.00	\$0.00
1023	\$7,289.00	\$7,190.50	\$7,387.50
1146	\$3,053.50	\$1,526.75	\$1,477.50

### SYSTEM COUNCIL 16, IBEW FINANCIAL REPORT - 4th QUARTER 2021

#### PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>October</u>	November	December
1155	\$0.00	\$0.00	\$17,730.00
1199	\$3,250.00	\$1,773.50	\$1,970.00
1517	\$0.00	\$9,899.25	\$0.00
1559	\$3,250.50	\$0.00	\$0.00
1769	\$0.00	\$8,520.25	\$0.00
1856	\$0.00	\$4,678.75	\$4,677.75
2355	\$2,708.75	\$2,659.50	\$2,659.50
TOTAL	\$142,757.45	\$98,352.75	\$83,729.50

NOTE: \$46.25 Per Capita Tax + \$2.00 deposited to S.C. Convention Fund + \$1.00 to Railroad Legal Fund (RRCC) = \$49.25

#### Jeff Allred's Travel Fourth Quarter 2021:

August 29, 2021—September 9, 2021 – MT, WA Membership Meetings

- September 27, 2021—October 1, 2021 Fort Worth, TX LAT and Labor Relations Meetings
- October 25—29, 2021 Branson, MO Staff and Executive Board Meetings
- November 1—4, 2021 Galesburg, IL Local 452 and 547 Meetings

#### Darrell Patterson's Travel Fourth Quarter 2021:

- October 1, 2021 Fort Worth, TX travel home from BNSF LAT, Claims Conference and General Chairmen's Meeting
- October 18—19, 2021 Galesburg, IL BNSF Telecom Tower Climb
- October 20—21, 2021 Kansas City, MO BNSF LAT Meetings
- October 25-29, 2021 Branson, MO SC16 Staff and Executive Board Meetings
- November 2—3, 2021 Lincoln, NE Local 1022 Investigation
- November 17, 2021 Topeka, KS Local 959 Meeting
- November 18, 2021 Roeland Park, KS Local 866 Meeting
- December 1—3, 2021 Chicago, IL Local 757 Investigation
- December 7, 2021 Topeka, KS BNSF Air Conditioner Meeting
- December 9, 2021 Roeland Park, KS Local 866 Meeting

#### Jeff Burk's Travel Fourth Quarter 2021:

- October 5—7, 2021 Spokane, WA MRL Negotiations
- October 25—29, 2021 Branson, MO Staff/Executive Board Meetings
- November 1—3, 2021 Galesburg, IL Local 452 and Local 547 Membership Visits
- December 13—15, 2021 Temple, TX Local 418 Union Meeting

#### Brad Carothers' Travel Fourth Quarter 2021:

October 25-29, 2021 - Branson, MO - Executive Board Meeting/Staff Meeting

November 2-4, 2021 - Denver, CO - Investigation

December 14, 2021 - Temple, TX - Local 418 Meeting

#### Mike Tschacher's Travel Fourth Quarter 2021:

October 25-29, 2021 - Branson, MO - Executive Board Meeting/Staff Meeting