



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
General Chairman

Brad Carothers
Vice Chairman

Jeff Burk
Sec Treasurer

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 come 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.

OUR BUSINESS – REPRESENTATION & SERVICE

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Sincerely,

A handwritten signature in black ink that reads "Jeff Allred". The signature is written in a cursive style with a large, sweeping initial "J".

Jeff Allred
General Chairman
System Council 16 – IBEW

Attachments: Vaccine Memo
Financial Report
Travel Report

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)

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

October 26, 2021

MEMORANDUM

To: IBEW General Chairmen
From: Lucas R. Aubrey 
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 <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

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
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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 <https://www.osha.gov/coronavirus/safework>. 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.

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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 medical 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 BMWG 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	
CHECKBOOK 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>	<u>July</u>	<u>August</u>	<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>	<u>July</u>	<u>August</u>	<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 14th 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 14th 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