



SYSTEM COUNCIL NO. 16

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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March 8, 2023

Fourth Quarter 2022 and First Quarter 2023

Report to the Members of System Council 16

Dear Members,

I know that this report is late, but I was waiting for some important information that I wanted to be able to share with you.

I am happy to announce that after the National Agreement was ratified, we now have contracts in place for all of our properties not in National handling. Most contracts settled after National, mirrored or were very similar to National. For properties that settled prior, we are hopeful that we can achieve a true up in the next round of negotiations.

Currently, sick days are a big topic. We have successfully negotiated 4 sick days for all members working for CN and Gary Railway, with no concessions in return.

We are actively negotiating with BNSF and are attempting to get all other properties to negotiate as well. BNSF is asking concessions from most organizations for sick days. Some are minor and simply address non-clear language in agreements, and some are more intrusive and unacceptable. The latter is what we are attempting to negotiate to something more acceptable. When we have negotiated as far as possible, I will provide the BNSF Locals with this information which we will discuss before a decision is made to accept or reject. I am aware that some organizations have settled for less concessions than we are being asked, but we are the only union that hasn't combined the BN and ATSF Agreements in the Mechanical Department.

Next, I would like to address BNSF's decision to subcontract routine, scheduled locomotive maintenance and inspections. Both Mechanical Agreements allow for subcontracting work if certain criteria are met. We don't believe that routine scheduled maintenance, the most basic, guaranteed work that our Mechanical Members perform, meets the required criteria. Generally in the past, most subcontracting has been limited to specific projects, emergency work (an emergency of BNSF own making excluded), and major repairs. This is certainly a major concern.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

On January 24, 2023, a letter came from Myself to all BNSF Mechanical Locals requesting them to conduct a strike vote over the subcontracting. The vote was nearly unanimous in favor of striking with 716 voting to strike and 24 voting no.

Knowing that there was almost no chance of actually striking, the vote was very important for other reasons. By the late evening of January 24th, BNSF had obtained a copy of the strike vote letter which prompted a call from BNSF threatening to sue us in Federal Court for an injunction. Our attorney advised that they would most likely be successful; therefore, we backed off the strike talk. It is important to mention that we did get BNSF's attention and the subject was picked up by various publications.

The results of the strike vote were then shared with the Railroad Department in Washington, DC. I believe that the solidarity illustrated in the results of the vote were instrumental in what happened next. We requested and our members provided a vast amount of valuable information to support our cause. On February 24, 2023, the IBEW, IAMAW, and SMART MD filed a lawsuit (attached) in the U.S. Federal Court, Western District of Missouri against BNSF asking for injunctive relief from the outsourcing. This is very similar to what BNSF intended to do to us when they learned of the strike vote.

On March 8, 2023, IBEW attorneys filed a formal complaint (attached) with the Administrator of the FRA, requesting an investigation into our allegations that the FRA broke certain federal laws by issuing BNSF "Enforcement Discretions". The Complaint was also sent to the STB, Office of the Inspector General, BNSF Chief Legal Counsel, and others.

Also on March 8, 2023, International President, Kenneth Cooper sent a letter (attached) to the STB and FRA Administrators highlighting the dangers of our work being performed by third party contractors with unknown training and skillsets. He also mentioned the shoddy work these contractors perform that our members have to repair, as well as other issues.

Finally, we are in the process of finishing a grievance that will be filed with BNSF for every inspection that they contract out.

Also attached is the IBEW's formal Press Release concerning the lawsuit.

I would like to sincerely thank everyone listed below for helping to get all of this accomplished. Whether it is successful or not, there was a great deal of time and effort spent on this.

International President, Kenneth Cooper

Railroad Director, Al Russo

International Representative, JJ Giuliano

Lucas Aubrey, Sherman Dunn, P.C.

Erich Lange, Sherman Dunn, P.C.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

IBEW Political Affairs Department

All of our Members who took time to share information and participate in the vote.

Please feel free to share any of the attached documentation with anyone you wish. Keep in mind that while it is fine to share with the media, you should not make any official comments as they should come from President Cooper.

I will keep all Locals informed of any developments that arise prior to my next report.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Allred". The signature is fluid and cursive, with the first name "Jeff" and last name "Allred" clearly distinguishable.

Jeff Allred
General Chairman
System Council 16 – IBEW

Attachments: Formal Press Release
Complaint w/ Attachments
March 8, 2023 Letter to Bose
March 8, 2023 Letter to STB-FRA w/ Attachments
SC16 Financial Report
SC16 Travel

For Immediate Release: March 7, 2023

Contact: Matt Spence 202-728-6014

IBEW, IAM, SMART-MD UNIONS FILE OUTSOURCING SUIT AGAINST BNSF RAILWAY

The International Brotherhood of Electrical Workers (IBEW), International Association of Machinists and Aerospace Workers (IAM) District 19, and International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical and Engineering Department (SMART-MD) issued the following statement:

On February 24, the IBEW, IAM District 19, and SMART-MD filed a lawsuit against BNSF Railway in the United States District Court for the Western District of Missouri in response to BNSF's outsourcing of routine locomotive inspection, maintenance, and repair work.

Over the past few years, BNSF has permanently closed mechanical shops across its network, furloughed hundreds of mechanical employees, and deferred basic maintenance and upkeep of its locomotive fleet, all while making record profits in 2021.

In early January, BNSF notified IBEW, IAM District 19, and SMART-MD that BNSF lacked the shop capacity and necessary manpower to address its high out-of-service locomotive count, and that it would be outsourcing the routine inspection, maintenance, and repair of hundreds of locomotives – work that the members of the three unions have performed for decades.

Under federal labor laws, BNSF has the duty to act in good faith with its employees and the unions that represent them, and to exert every reasonable effort to honor its agreements with those unions. The lawsuit asserts that BNSF has failed to uphold that duty.

“With railroad safety top of mind following the recent tragedy in East Palestine, Ohio, it is incumbent on North America's rail carriers to take their responsibilities to their customers, workers and the communities they operate in seriously,” **said IBEW International President Kenneth W. Cooper.** “BNSF has been shuttering maintenance shops and delaying basic locomotive inspection and maintenance at the same time it has earned record profits. As we continue to learn of the prolonged and severe impacts coming out of Ohio, it's important now, more than ever, that inspection and repair of locomotives is performed by the experienced and trained members of the IBEW and other unions.”

BNSF is one of the nation's largest freight railroads. BNSF mechanical employees responsible for inspecting, maintaining, and repairing locomotives are represented by the IBEW, IAM District 19, and SMART-MD.

“After the tragic incident that occurred in Ohio, the last thing BNSF needs to be considering is the outsourcing of maintenance and inspections for its locomotives,” **said IAM International President Robert Martinez Jr.** “Our members dedicate their lives to ensure locomotives are properly maintained and safe to carry goods throughout our nation. We join with IBEW and

SMART-MD in demanding BNSF adhere to the contracts that we have been operating under for decades, rather than putting profits ahead of the safety of the communities in which they move through on a daily basis.”

“By cutting their mechanical work force to boost profits, BNSF creates a situation where it becomes unable to perform the most basic federally mandated locomotive safety inspections on time,” said SMART General President Joseph Sellers, Jr. “BNSF allowed the problem to build so that the company can now claim an emergency need to contract-out core mechanical work to contractors whose qualifications and work standards are unknown. Cutting corners on safety leads to predictably unfortunate results.”

The case is *International Brotherhood of Electrical Workers et al v. BNSF Railway Company*, Case No. 3:23-cv-05012. A full copy of the complaint can be accessed here:
<http://www.ibew.org/Portals/48/Articles/pdf/ComplaintwithAttachments.pdf>.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS,)	
)	
<i>and</i>)	
)	
INTERNATIONAL ASSOCIATION OF)	
SHEET METAL, AIR, RAIL &)	
TRANSPORTATION WORKERS –)	
MECHANICAL AND ENGINEERING)	
DEPARTMENT,)	
)	
<i>and</i>)	
)	Case No. 3:23-cv-5012
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE)	
WORKERS, DISTRICT 19,)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
BNSF RAILWAY CO.,)	
)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs International Brotherhood of Electrical Workers (“IBEW”), International Association of Sheet Metal, Air, Rail & Transportation Workers – Mechanical and Engineering Department (“SMART-MD”), and International Association of Machinists and Aerospace Workers, District 19 (“IAM #19”) (collectively “the Unions”) bring this action against Defendant BNSF Railway Co. (“BNSF” or “Defendant”) for violations of the Railway Labor Act, 45 U.S.C. § 151 et seq., and state as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief under the Railway Labor Act (“RLA”), 45 U.S.C. § 151 et seq., presenting a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

2. Defendant conducts substantial business operations in this judicial district, a substantial part of the events giving rise to this Complaint relate to operations within this judicial district, and the IBEW General Chairman responsible for labor relations with BNSF resides in this judicial district. This Court therefore has jurisdiction over Defendant, and venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

PARTIES

3. Plaintiff IBEW is an unincorporated labor organization and is the exclusive bargaining representative – as defined by Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth – of the Mechanical Electricians employed by Defendant BNSF.

4. Plaintiff SMART-MD is an unincorporated labor organization and is the exclusive bargaining representative – as defined by Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth – of the Railroad Sheet Metal Workers employed by Defendant BNSF.

5. Plaintiff IAM #19 is a division of the International Association of Machinists and Aerospace Workers which is an unincorporated labor organization and is the exclusive bargaining representative – as defined by Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth – of the Machinists employed by Defendant BNSF. IAM #19 is authorized to provide IAM, representation to BNSF Machinists.

6. Together, the Plaintiff Unions represent approximately 4,800 employees performing mechanical inspection, maintenance, and repair of locomotives in numerous shops across BNSF's rail system.

7. Defendant BNSF is a carrier engaged in commerce within the meaning of the Railway Labor Act, 45 U.S.C. §§ 151, First and Fourth. BNSF has approximately 35,000 employees, with roughly 7,500 locomotives operating on a rail network of 32,500 miles spanning 28 states and three Canadian provinces.

8. Defendant BNSF is the principal operating subsidiary of Burlington Northern Santa Fe, LLC, a holding company and wholly owned subsidiary of Berkshire Hathaway, Inc.

FACTS

9. The Unions and their predecessors have continuously represented crafts and classes of mechanical shop employees of BNSF and its predecessors for decades.

10. The Unions and BNSF are parties to multiple collective bargaining agreements ("the Agreements"). Under the Agreements, employees represented by the Unions perform a variety of locomotive inspection, maintenance, and repair work.

11. IBEW represented Mechanical Electricians are responsible for the overhaul, maintenance, inspection, testing, modification, software upgrades, and repair of all the various electronic facets of a locomotive.

12. SMART-MD represented Railroad Sheet Metal Workers inspect, maintain, and repair locomotives. They perform tasks from repairing fuel leaks to completing a major overhaul of a locomotive. They maintain and repair locomotive cab equipment, including cab windshield wipers, locomotive horns, and sanders, and also ensure all requirements are met regarding the cab sanitation compartment.

13. IAM represented Machinists inspect, test, maintain, repair, and overhaul the mechanical and pneumatic systems on locomotives, as well as rebuild airbrake parts and the trucks that hold up locomotives. Machinists also use wheel truers to restore locomotive and car wheels back to Federal Railroad Administration (“FRA”) specifications and machine various parts. Machinists also maintain and repair in-plant machines used to repair locomotives and other equipment.

14. In accordance with the Agreements’ classification of work and scope of work rules, regularly scheduled inspection, maintenance, and repair of locomotives has historically been performed by, and has generally been recognized as work belonging to, employees represented by the Unions.

15. Locomotives are a basic necessity for BNSF’s business and its performance of its obligations as a common carrier because locomotives provide the power to transport the freight of BNSF’s customers. Having a sufficient fleet of functional, well inspected and maintained locomotives is integral to BNSF’s provision of rail service and performance of its common carrier obligation.

16. Federal regulations require “periodic inspection” and maintenance of locomotives every 92 days. *See* 49 C.F.R. § 229.23(a). Certain locomotives, including the BNSF locomotives relevant to this suit, are equipped with advanced on-board electronic monitoring systems and only require a periodic inspection every 184 days. *See* 49 C.F.R. § 229.23(b).

17. Every periodic inspection requires a locomotive to pass certain tests, listed in 49 C.F.R. § 229.25. If a locomotive fails any given test of the periodic inspection, it must be repaired before returning to service. *See* 49 C.F.R. § 229.23(a). Locomotives are not available for use in

rail transportation and must be taken out of service if they have not been timely inspected or have not been repaired after a failed inspection.

18. Federal regulations also require locomotives to undergo an “annual test” every 368 days. *See* 49 C.F.R. § 229.27. If a locomotive fails any portion of the annual test, the error(s) must be corrected. *Id.* The annual test is traditionally performed simultaneously alongside the periodic inspection.

19. Accordingly, because of federal regulations, every BNSF locomotive should be inspected and, if necessary, repaired every 184 days by employees represented by the Unions.

20. Federal regulations also provide a process for carriers to petition for an “Emergency Waiver of Safety Rules” in the case of certain “emergency events.” 49 C.F.R. § 211.45. If the Administrator of the FRA declares that an emergency event exists, a railroad may submit a petition for an emergency waiver through the process outlined in § 211.45.

21. In addition to the required periodic inspections and annual tests – commonly referred to as “federal items” – locomotives also routinely require other “full maintenance” to ensure peak efficiency and performance. In other words, locomotives that have passed “Federal Items Only” (FIO), *i.e.*, the periodic inspection and annual test, are legally permitted to operate but still require other regularly scheduled maintenance not covered by federal law.

22. Historically, when a BNSF locomotive is “shopped,” it is inspected for federal items as well as BNSF’s own general maintenance items. Once each item is inspected and repaired, if necessary, the employee(s) performing the work mark the item as completed using a computer tracking system. If all inspection items have not been “signed off,” *i.e.*, marked as completed, the computer system auto-generates a “defect,” which can only be cured by returning the locomotive to a maintenance shop so all maintenance items can be completed.

23. Historically, BNSF limited inspections to Federal Items Only inspections only when necessary for the locomotive to operate legally while it traveled to a designated mechanical shop destination, where it would undergo its full regularly scheduled inspection, maintenance, and repair routine.

24. When performed by employees represented by the Unions, the regularly scheduled inspection, maintenance, and necessary repair of both federal and general maintenance items for a BNSF locomotive is normally completed in well under a week, and often in as little as a 24-hour period.

25. Employees represented by the Unions have historically performed the regularly scheduled inspection, maintenance, and necessary repairs of both federal and general maintenance items on BNSF locomotives.

26. The Agreements between the Unions and BNSF include the September 25, 1964 National Agreement (the “1964 Agreement”). Article II of the 1964 Agreement, as amended, mandates that work within the Unions’ classification or scope of work under the Agreements, or other work “historically performed and generally recognized as work of the crafts...*will not be contracted unless* certain criteria are met.”

27. Specifically, Article II, Section 1, as amended, provides:

Subcontracting of work, including unit exchange, will be done only when *genuinely unavoidable* because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost,

provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting.

28. Upon information and belief, BNSF has never subcontracted regularly scheduled maintenance, even to address high numbers of out-of-service locomotives in need of their regularly scheduled full maintenance.

29. The number of out-of-service BNSF locomotives in need of regularly scheduled maintenance has been high multiple times in the past, and employees represented by the Unions have worked overtime and even switched to mandatory six-day work weeks to reduce the number of out-of-service locomotives.

30. At present, and at all times material hereto, Defendant BNSF employs and has employed Mechanical Electricians, Machinists, and Railroad Sheet Metal Workers, all of whom are represented by the Unions, at approximately 25 different maintenance shops across its rail network where regularly scheduled inspection, maintenance, and necessary repair of locomotives is performed.

31. Other shops along BNSF's network – such as the Topeka, Kansas facility – are “back shops” primarily used for major overhauls and rebuilds of locomotives. These shops, however, do still occasionally perform routine inspection, maintenance, and repair work and have, in the past, temporarily halted overhauls and rebuilds to assist in addressing high locomotive inspection and maintenance backlogs.

32. In recent years, BNSF has removed a number of locomotives from service and placed them in storage. Returning a stored or “laid up” locomotive to service often requires more

rigorous inspections and repairs than are performed on an in-service locomotive due to a variety of reasons, such as prolonged periods without operating or vandals dismantling and stealing expensive materials and components, which render “laid up” locomotives unusable. Accordingly, “laid up” locomotives normally cannot be quickly reintroduced into the active fleet. As of early February 2023, the number of BNSF locomotives that were “laid up” in storage was approximately 1,750.

33. Since 2020, BNSF altogether closed or decreased its workforce at numerous maintenance shops across its network, including shops in Birmingham, Alabama; Barstow, California; Commerce, California; Richmond, California; Chicago, Illinois; Sioux City, Iowa; Kansas City, Kansas; Topeka, Kansas; Glendive, Montana; Alliance, Nebraska; Tulsa, Oklahoma; Memphis, Tennessee; Dayton, Texas; Fort Worth, Texas; Houston, Texas; Galveston, Texas; Silsbee, Texas; Spokane, Washington; Superior, Wisconsin; Donkey Creek, Wyoming; and Guernsey, Wyoming.

34. Although BNSF freight volumes suffered during the first part of 2020 due to the COVID-19 pandemic, according to BNSF’s own financial reports, volumes had recovered to pre-pandemic levels by the end of 2020.

35. Since 2020, BNSF has furloughed over 400 maintenance employees represented by the Unions performing work across BNSF’s network. Many furloughed maintenance employees were not recalled to service for many months even as demand for rail service returned starting in the summer of 2020. When BNSF finally started recalling furloughed employees in late 2021 and early 2022, many declined to return. As mechanical employees declined recall, BNSF did not immediately begin hiring to fill the positions those employees would have held.

36. Since 2020, 277 Mechanical Electricians represented by the IBEW were furloughed at some point in time. The IBEW has seen a net loss of 341 employees it represents. In 2022 alone, the IBEW saw a net loss of 111 Mechanical Electricians.

37. Since 2020, 32 Railroad Sheet Metal Workers represented by SMART-MD were furloughed at some point in time. SMART-MD has seen a net loss of 50 employees it represents since 2020.

38. Since 2020, 96 Machinists represented by IAM were furloughed at some point in time. IAM has seen a net loss of approximately 580 employees since 2020.

39. Beginning around September 2021, BNSF also began deferring regularly scheduled maintenance of its locomotives, limiting inspections and repairs to federal items only. In other words, locomotives that were in the shop were only inspected and repaired to meet the minimum standards required by federal law so they could continue to legally operate. All other necessary regularly scheduled maintenance was otherwise deferred.

40. On September 2, 2021, James Brackett of BNSF instructed BNSF's maintenance shop field leaders to complete federal items only inspections on locomotives entering the shop for their regularly scheduled inspection and maintenance. Brackett also included detailed instructions on how employees should mark general inspection and maintenance items as completed in the computer system – even though those items were not performed – to avoid a “defect” from being generated in BNSF's computer system indicating that the locomotive needed to be “shopped” for additional inspection and maintenance. A copy of that correspondence is attached to the Complaint as **Attachment 1**.

41. On September 21, 2021, BNSF General Foreman Paul McLeod forwarded a substantially similar email from James Brackett to employees at the Alliance, Nebraska facility with instructions to “*Sign off the general maintenance items; they do not need to be performed.*”

42. For fiscal year 2021, BNSF reported an operating income of nearly \$8.8 billion and a net income of nearly \$6 billion, a 14% and 16% increase from 2020, respectively. Those increases were accompanied by a 7% increase in total volume of freight compared to 2020. BNSF’s parent company, Berkshire Hathaway, announced that BNSF’s 2021 net income was the highest ever for the railroad.

43. As of the end of the third quarter of 2022, BNSF had reported an operating income of \$6.5 billion and a net income of \$4.5 billion, a 2% increase and 4% increase compared to the same periods in 2021, respectively, despite total volume of freight decreasing 5% compared to the same periods in 2021.

44. On about December 15, 2022, BNSF submitted a request to the FRA for an “enforcement discretion” that would temporarily relieve BNSF from its obligation to perform periodic inspections and annual tests for hundreds of locomotives. The FRA granted BNSF’s request, citing a “winter storm” as the reason for granting BNSF temporary relief. On about December 27, 2022, again in response to BNSF’s request, the FRA extended the “enforcement discretion” period until January 14, 2022.

45. Although the FRA granted BNSF an “enforcement discretion,” the procedures for petitioning the FRA for an emergency waiver of safety rules under 49 C.F.R. § 211.45 were never triggered because the FRA Administrator never declared an emergency event in December 2022. And the FRA has affirmatively stated that no waiver of the FRA’s safety rules was issued to BNSF.

46. On December 29, 2022, Henry Schafer of BNSF circulated an email to mechanical employees announcing that BNSF was planning to implement a “0% overtime initiative” in 2023 as part of BNSF’s efforts to reduce the mechanical budget by approximately \$51 million across its rail system. A copy of Schafer’s December 29 email is attached to the Complaint as **Attachment 2**.

47. On January 5, 2023, Derek Cargill, BNSF’s General Director of Labor Relations, sent a letter to representatives of the Unions giving notice of BNSF’s intent to “contract out for work needed to reduce the number of out of service locomotives in the system.” A complete and accurate copy of that letter is attached to the Complaint as **Attachment 3**.

48. The January 5 letter asserted that the need to contract out regularly scheduled maintenance was “driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop.” As a result, BNSF claimed that “it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months.”

49. More specifically, BNSF’s January 5 letter indicated that “[t]here are currently approximately 1,000 units currently FIO’d [inspected for federal items only] which need their full maintenance completed... BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop.”

50. All the locomotives that BNSF indicated in its January 5 letter to the Unions would be sent to subcontractors for their regularly scheduled periodic inspections and maintenance were

included among the locomotives for which BNSF sought an “enforcement discretion” from the FRA in December 2022.

51. Although the emergency waiver of the FRA’s safety rules was never invoked or granted, the “enforcement discretion” BNSF received from the FRA nevertheless allowed BNSF ample time to redirect a number of locomotives overdue for their regularly scheduled inspections, maintenance, and necessary repairs to subcontractors’ maintenance shops.

52. On January 18, 2023, representatives of the IBEW and BNSF held a conference over BNSF’s subcontracting of regularly scheduled locomotive inspection, maintenance, and repair.

53. On January 27, 2023, Derek Cargill sent a follow-up letter to IBEW General Chairman Jeff Allred further outlining BNSF’s reasons for its decision to subcontract the regularly scheduled locomotive inspection, maintenance, and necessary repair work.

54. In the January 27 letter, Cargill stated that “BNSF does not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and back log of scheduled maintenance events.” BNSF did not address, however, how permanent shop closures, force reductions, placing locomotives in storage, and deliberately deferring regularly scheduled maintenance likely affected the out of service count or maintenance backlog.

55. Despite BNSF’s acknowledgement in its January 27 letter that the “job market for electricians and other skilled crafts has been unusually tight over the last several years, resulting in a slower hiring pace at specific locations,” BNSF has not hired a sufficient number of employees to fill the electrician and machinist positions capable of performing the necessary locomotive inspection, maintenance, and repair work, and has not actively sought to hire any workers into

sheet metal worker positions. As stated in ¶¶ 36-38, the Unions have experienced net losses in the number of employees they represent since 2020, totaling approximately 750 workers.

56. BNSF's subcontracting plan has been implemented and is ongoing. As of February 8, 2023, subcontractors were completing the regularly scheduled inspection, maintenance, and repair of locomotives in 10.34 days per locomotive, on average, without accounting for the added time it takes to transport the locomotives to and from the subcontractors.

COUNT I
(Violation of the Railway Labor Act, 45 U.S.C. § 151 et seq.)

57. The allegations set forth in paragraphs 1 through 56 above are incorporated by reference.

58. Section 2, First of the RLA provides:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. § 152, First.

59. Section 2, First is “more than a mere statement of policy or exhortation to the parties; rather, it was designed to be a legal obligation, enforceable by whatever appropriate means might be developed on a case-by-case basis.” *Chi. & N.W. Ry. v. Transportation Union*, 402 U.S. 570, 577 (1971). “Congress intended the enforcement of § 2 First to be overseen by appropriate judicial means.” *Id.* at 581.

60. Under Section 2, First, BNSF was obligated to exert every reasonable effort to maintain its agreement with the Unions and to deal with the Unions in good faith, *see Chi. & N.W. Ry.*, 402 U.S. at 575-78, which required BNSF to comply with its contractual mandate that the

work performed by employees represented by the Unions would not be subcontracted out unless “genuinely unavoidable.”

61. BNSF’s actions, including laying locomotives up in storage; permanently closing mechanical shops; furloughing hundreds of qualified mechanical employees and failing to timely recall them; deferring regularly scheduled inspections and maintenance of locomotives; failing to maintain adequate staffing levels capable of performing the necessary and foreseeable inspection and maintenance work; and planning to implement a 0% overtime initiative for 2023, left BNSF unable to timely perform the most basic locomotive inspection and maintenance functions of a railroad. BNSF’s current locomotive inspection backlog is not an accident or the result of events outside BNSF’s control, but is the result of BNSF’s own affirmative decisions. These actions demonstrate a failure by BNSF to exert every reasonable effort to maintain its agreements with the Unions.

62. Furthermore, BNSF’s deliberate course of action, culminating in its January 5 pronouncement that it was subcontracting regularly scheduled inspection, maintenance, and repair work historically performed by employees represented by the Unions, constitutes a bad-faith attempt to evade its contractual obligations.

63. BNSF’s justifications for its claim that “it is necessary and essential to outsource up to 30 locomotives per week” rely solely on the conditions created by BNSF’s own bad-faith course of action.

64. Accordingly, BNSF’s course of action and plan to subcontract the regularly scheduled inspection, maintenance, and repair work historically performed by employees represented by the Unions, as communicated in its January 5 letter, constitutes a violation of

BNSF's duty under Section 2, First of the RLA to "exert every reasonable effort to make and maintain agreements."

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) Declare, pursuant to 28 U.S.C. § 2201, that Defendant's course of action and plan to subcontract the regularly scheduled maintenance of locomotives violated its duty under Section 2, First of the RLA to exert every reasonable effort to make and maintain agreements;
- (b) Enjoin Defendant from any and all acts and communications in furtherance of its plan to subcontract the regularly scheduled maintenance of locomotives as communicated in Defendant's January 5 letter to the Plaintiffs;
- (c) Order Defendant to exert every reasonable effort to maintain its agreements with Plaintiffs as required by Section 2, First of the RLA; and
- (d) Provide any other relief the Court deems just and proper.

Dated: February 24, 2023

Respectfully Submitted,

/s/ Quinlan B. Moll

Jason R. McClitis (MO Bar No. 61611)
Quinlan B. Moll (MO Bar No. 72940)
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Attorney for SMART-MD and IAM #19

FRQ + 095u opportunities inbound

BS

Brackett, James S

Thu 9/2/2021 3:05 PM



To:

- **MECH DL General Foreman;**
- **MECH DL Shop Superintendents;**
- **MECH DL Field Superintendents**

Cc:

- Rodriguez, Edmundo;
- Soto, Bruno;
- Grubbs, Mark L;
- Raza, Abid;
- Smith, Jeremy E;
- Lager, Eric;
- Morgan, Jonathan D;
- Murray, Robert A;
- Brackett, James S

Field leaders,

To assist in reducing a bubble of FIO units coming due maintenance we will be sharing a list of units each day that can have FIO only and 095u completed at one shopping event. These units will have the FRQ items completed, the fuel and oil filters changed and we will run the unit to the next maintenance.

To complete the process and not have an FIO defect applied follow the process below.

- ***Complete the FRQ items in MAM (blue card only items, same as FIO)***
- ***Complete Project 095U – fuel and oil filters change***
- ***Sign off the general maintenance items; they do not need to be performed. This is to prevent an FIO defect from being auto-generated.***
 - Due to the current structure of MAM, sign off of the general maintenance scope is the only way to prevent a FIO defect from automatically being added and potentially escalating to a level 7 defect or driving another shopping event for maintenance.
 - If we fail to sign off the general maintenance items and release the unit resulting in an FIO defect being auto-generated you may email MAMMECHHelp <MAMMECHHelp@bnsf.com> and request the FIO defect to be completed. Please communicate the 095u was complete and the unit was released without signing off the general maintenance items in error.

Thank you to the MAM help desk for assisting with this process.

The units shown below are inbound to shop and past due or due maintenance in the next 5 days. These will show due FRA, will not have an active FIO defect and have project 095u active at time of arrival.

FRQ/FIO Sign off items

BNSF 6549 FRA Due M184 - 09/01/2021 16/16

> ☐ **M184** 184 Days Running Maintenance-BNSF 6549 G [Show More](#) 00:00 0/0

▼ ☐ **FRQ** BNSF 6549 FRQ Inspection FRQ with ERI [Show More](#) **REG** 00:00 0/8

Operation	Tasks	Planned Start	Workers	Est.Time	Status
<input checked="" type="checkbox"/> Federal Inspection Items REG	0/7	00:00	0	02 H 30 M	Not Started
#	Tasks	Completed/NA By	Select All	<input type="checkbox"/>	
10	Mechanical FRA Item 1 - Brakes REG Supporting Material		<input type="checkbox"/>		
20	Mechanical FRA Item 2 - Running Gear REG Supporting Material		<input type="checkbox"/>		
30	Mechanical FRA Item 3 - Cab Equipment REG Supporting Material		<input type="checkbox"/>		
40	Mechanical FRA Item 4 - Mech Equipment REG Supporting Material		<input type="checkbox"/>		
50	Mechanical FRA Item 7 - Safety Appliances REG Supporting Material		<input type="checkbox"/>		
70	Electrical FRA Item 3 - Cab Equipment REG Supporting Material		<input type="checkbox"/>		
80	Electrical FRA Item 5 - Elect Equipment REG Supporting Material		<input type="checkbox"/>		

> ☐ Event Recorder Test **REG** 0/1 00:00 0 00 H 30 M Not Started

PTC Function Test are never completed and Brakes FRA item 1 is signed off by Machinist

WRK_RPT_DESC	FRA Code
FRQ Items	
Hand Brake - Inspect/Test/Clean	232.105c
Event Recorder - Inspect/Test/Download	229.135
Annual Test - Electrical Load Meter / Air Brake Gauges- Checked/Calibrated	229.27, 229.27
AFM Calibration	229.29(b), 232.205
Change Filters on Pre-Coalescers & Dirt Collectors in MR Lines to Brake Equipment, AUX Devices, & Pre-Coalescers on Air Dryer	229.29c(1)
Completed Level Two Airbrake Test (2AI, 3AI, 4AI, 5AI, 7AI, or 8AI).	229.29
RCL Function Test	229.25
PTC Function Test	

Brake System	
Mechanical Blue Card Item 1 Completed Per FRQ Blue Card Requirements.	
Perform Periodic Air Brake Test. (Self-Test)	229.29(a)
Test Air Gauges (plus or minus 2 psi).	229.59
MR Leakage Test - Check Valve	229.59(a)
Brake Pipe Leakage Test	229.59(b)
Brake Cylinder Leakage Test	229.59(c)
Document Control Air Setting (If Equipped) (Should be 80psi).	229.59(d)
Check for correct air pressure settings. >Main Res Compressor (130-140psi), >Brake pipe(90psi), >Equalizing Res(90psi)	229.49(b)
Drain main reservoirs and verify blowdowns are functioning properly - In the auto position - Venting	229.46(2)
Check Auxiliary Emergency Brake Valve. (Fireman's valve) for Proper Operation & Identification.	229.47(a)
Test Main Reservoir Safety Valve. (145-155 PSI)	229.49(a)(1)
Inspect Brake Rigging	229.57
Verify Piston Travel	229.55(a)
Check MU Air Lines, Valves & Clamps. Replace Any Valves with Defective Locks.	229.45

Mechanical Blue Card Items 2, 3, 4, & 6 Completed Per FRQ Blue Card Requirements.	
Item 2 Running Gear	
Inspect Draft Gear Pin / Inspect Pins & Bushing / Inspect Coupler for Defects & Height	229.61
Record Wheel Measurements. Also inspect Wheels for Defects such as: Cracks, Flat & Shell Spots.	229.75, 229.73
Verify Side Bearing Clearance	229.69
Verify Clearance above top of rail	229.71
Verify Snow Plow/Pilot Clearance	229.123
Inspect Trucks - Springs - Tie Bars - Pedestal Liners - Securement	229.65, 229.63, 229.67
Inspect Dampener for oil droplets	

Item 3 Cab Mech	
Inspect Toilet Operation / Clean, Charge, and Drain as Necessary	229.137
Inspect Operation of Toilet Room Door Modesty Lock	229.137
Inspect fire extinguisher date and inspect brackets.	229.45
Inspect all Windows for defects & Proper FRA Glazing Identification	223.11, 229.119(b)
Inspect Heater/Ventilation	229.119(d)
Inspect AC/Ventilation	229.119(h)
Inspect Seat for proper operation and securement	229.119(a)
Inspect Cab Locks functional - Interior and Exterior	229.119(i)
Test Bell for proper operation Lubricate as needed	229.129
Test Sanders for proper operation	229.131
Inspect condition of blue card and air slip holder	229.23

Under Item 4 Mechanical (PTC is never tested and verified) Under Item 3 & 5 the PTC alerter is not tested, Units are not taken to a pit to verify motors

Inspect and clean Reflectorization	224.101
Clean Cab/Passageways/Air Compressor,Engine,Electrical Compartments	229.119c

Item 4 Mechanical	
Check Operation of Engine Protective Devices: (Self-Test)	229.101
Check Exhaust System for Leaks or Cracks	229.43

Electrical Blue Card Items 3 & 5 Completed per FRQ Blue Card Requirements.

Item 3 Cab Elec	
Check Operation of All Emergency Fuel Shut Off Devices from All Locations	229.93
Check all Electrical Lamps, Replace as Required.	229.127, 229.125
Perform Operational Wheel Slip Test.	229.115, 229.101
Test and Inspect Speed Indicators	229.117
Inspect Head of Train Device (HED)	232.409
Test Alerter Function	229.14

Item 5 Electrical	
Inspect Jumper Cables and MU Receptacles.	229.89
Inspect Unit for Proper Decals-Replace any Missing or Faded.	229.85
Inspection traction motor covers	229.41
Make Visual Inspection of Electrical Switch Gear, Inspect Rotating Electrical Equip & Contactors, Relays, etc /	
Verify Insulation and Covers are in place	229.91, 229.83,
Inspect all Traction Motors >Inspect leads,boots,hose clamps,carbody leads	229.91
Check Operation of Ground Relay / Inspect or Replace Cutout Switch Seal.	229.91, 229.83,

Item 7 Saftey Appliance	
Inspect Uncoupling Lever/Anti Creep Clearance	231.29, 229.61(a)(3)
Inspect Step Condition	231.30
Verify Step Lighting or Outer edge must be painted a contrasting color	231.30
Vertical Hand Holds - 2.5" Clearance - Painted Contrasting Color	231.30
Inspect Continuous Barrier	229.119e

BNSF 6549 FRA Due M184 - 09/01/2021 16

All Work My Work Turnover Comment: Add / View Search

Grouped WO

>	<input type="checkbox"/>	SFS	523-3,BNSF 4665,BNSF 8391,BNSF 6549,BNSF 1025	REG	4	08:05	Complete	108(8)/116		
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Inspections

>	<input type="checkbox"/>	LOOS	BNSF 6549 Locomotive Outshop- Supervisor	Show More	00:00		0/70		
>	<input type="checkbox"/>	M184	184 Days Running Maintenance-BNSF 6549 G	Show More	00:00		0/0		
>	<input type="checkbox"/>	FRQ	BNSF 6549 FRQ Inspection FRQ with ERI	Show More	REG	00:00		0/8	
>	<input type="checkbox"/>	WSH	BNSF 6549 Wheel Sheet Maintenance Wheel		00:00		1/2		
>	<input type="checkbox"/>	TMLT	BNSF 6549 Traction Motor Lube Top Off Fi	Show More	00:00		0/6		

After the FIO (Federal Items Only) is completed, a 095U is applied on various units. Then the unit returns to get a Fuel and Oil Filter change, and that will get Deferred also by front line supervisors and AGF's

Projects

>	<input type="checkbox"/>	MOD	069S - Heated Blowdown EVO- 069S - Heate	Show More	00:00	Deferred	0/1	
>	<input type="checkbox"/>	MOD	090M - Kickstart EVO- 090M - Kickstart E	Show More	00:00	Deferred	0/1	
>	<input type="checkbox"/>	MOD	095U - Fuel and Oil Filter change at Ser	Show More	00:00	Deferred	0/1	

BNSF 6549 FRA Due M184 - 09/01/2021

>	<input type="checkbox"/>	FRQ	BNSF 6549 FRQ Inspection FRQ with ERI	Show More	REG	00:00	
>	<input type="checkbox"/>	WSH	BNSF 6549 Wheel Sheet Maintenance Wheel		00:00		
>	<input type="checkbox"/>	TMLT	BNSF 6549 Traction Motor Lube Top Off Fi	Show More	00:00		
>	<input type="checkbox"/>	INSP	SHUTTER MAG VALVE CO [3-YEAR]	Show More	00:00		
>	<input type="checkbox"/>	INSP	DWM TOP PINS CO [10-YEAR]	Show More	00:00		
>	<input type="checkbox"/>	INSP	DWM CYLINDERS CO [10-YEAR]	Show More	00:00		
>	<input type="checkbox"/>	INSP	184 Days Running Maintenance	Show More	00:00		
>	<input type="checkbox"/>	INSP	INJECTOR - R5 Positions are due for CO a	Show More	00:00		
>	<input type="checkbox"/>	INSP	AC TM GEAR CASE LUBE 24M CO	Show More	00:00		
>	<input type="checkbox"/>	INSP	736 Days Running Maintenance	Show More	00:00		
>	<input type="checkbox"/>	INSP	DWM LIFT PLATES AND CHAINS CO [5-YEAR]	Show More	00:00		
>	<input type="checkbox"/>	INSP	DWM FILL VALVE CO [5-YEAR]	Show More	00:00		
>	<input type="checkbox"/>	INSP	DWM LIFT PINS CO [10 YEARS]	Show More	00:00		

Defects

>	<input type="checkbox"/>	LVL3	conductor front side window smashed cond	Show More	00:00	
>	<input type="checkbox"/>	LVL3	At next shopping - liner, rings, oil fit	Show More	00:00	Complete
>	<input type="checkbox"/>	GERP	ENGINE OIL CONDITION	Show More	00:00	
>	<input type="checkbox"/>	UNSCD	UNSC Defects		03:00	

Projects

>	<input type="checkbox"/>	MOD	069S - Heated Blowdown EVO- 069S - Heate	Show More	00:00	Deferred
>	<input type="checkbox"/>	MOD	090M - Kickstart EVO- 090M - Kickstart E	Show More	00:00	Deferred
>	<input type="checkbox"/>	MOD	095U - Fuel and Oil Filter change at Ser	Show More	00:00	Deferred

Attachments/Comments

Attachments(0) +

Repair Comments (1)

P Johnson:
defer
September 4 2021 07:56

Close

Full 184 inspection
Component:OTHER
Symptom:OTHER - TEXT REQUIRED

P Johnson
FIO UNIT
Component:OTHER
Repair Action:OTHER - TEXT REQ

Add Comments

Patrick Johnson

They will also Defer the download approval from Wabtec. So basically it looks like they inspected and released the unit, but in reality they just defer it and it will not even get the basic filter maintenance.

Prior to release, after completing the notch 8 Outbound Load take a fresh download. Once the download is synced ask for a recommended release review with GPOC AT (888) 432-0209. Please complete this step with time to address any findings prior to release. Close this defect with the name of the GPOC representative you spoke with.

P Johnson
FIO UNIT
Component:OTHER
Repair Action:OTHER - TEXT REQ

[Add Comments](#)

Patrick Johnson



Long Text

09/02/2021 19:00:20 CST Interface ID From GE to XI (X_XI_GEHTTP)095U - Fuel and Oil Filter change at Ser---GE Last update By:

Close

From: Darrell Patterson IBEW <dpattersonsc16@outlook.com>
Sent: Friday, January 13, 2023 10:27 AM
To: ibewsc16@outlook.com; 'Jeff Burk'; 'Brad Carothers'; Mike Tschacher; Darrell Patterson IBEW
Subject: FW: Overtime Goal = 0% in 2023 (Locomotive Side)

Sent: Tuesday, January 3, 2023 3:11 PM
To: MECH DL TSSUPERS <MECHDLTSSUPERS@BNSF.com>
Subject: RE: Overtime Goal = 0% in 2023 (Locomotive Side)

Just FYI, due to winter weather impacts up North, we have been asked to start calling OT on the weekends to help push the UNSC units that have been sent to us, along with others.

Here we go, we can do this, done it before several times.

Henry

From: Schafer, Henry R <Henry.Schafer@BNSF.com>
Sent: Thursday, December 29, 2022 3:01 PM
To: MECH DL TSSUPERS <MECHDLTSSUPERS@BNSF.com>; MECH DL TSMT Local Chairs <MECHDLTSMTLocalChairs@BNSF.com>
Subject: Overtime Goal = 0% in 2023 (Locomotive Side)
Importance: High

All,

Some of you may have heard that we are moving to a 0% overtime initiative in 2023 and we wanted to help explain the reasoning behind this. As a whole, the mechanical department has a cost savings initiative to reduce the mechanical budget by \$51 million across the system. In an effort to help reduce those dollars we will try to avoid calling Overtime next year as much as possible as those dollars play a large role in that spending. We will continually monitor our progress through all areas of the shop and work to help with manpower issues, work strains, and material availability to help us achieve our 2023 TSMT goals and do our part in helping to reduce the 2023 mechanical budget. Please let us know if you have any questions, and thank you for all that you do.

Once we go through the first quarter, we will readjust as necessary. I will be covering this through a town hall later next week once I set the date

NOTE: Business Car trips cannot be avoided, so understand we will still have riders.

Henry Schafer | **BNSF Railway** | Topeka SMT | Henry.Schafer@bnsf.com | Office# 785-435-5600 | CELL 308-760-0558



Derek Cargill
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76161-0030
2600 Lou Menk Drive
Fort Worth, TX 76131-2830
Phone: (817) 352-1046

January 5, 2023

File No. 184-09-1417

Mr. Jeff Allred, General Chairman IBEW
Mr. John McCloskey, General Chairman SMART
Mr. Joe Fraley, International Representative SMART
Mr. Kenny Krause, General Chairman IAM

ibewsc16@outlook.com
jmccloskey@smart-gc2.org
jfraley@smart-union.org
kkrause@districtlodge19.com

Re: Bad Order Maintenance/Repair Outsource

All:

As information, BNSF intends to contract out for work needed to reduce the number of out of service locomotives in the system. The current out of service count is currently at 550, which is the highest mark we've seen in the last 5-7 years. This is driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop. Although we have taken steps to manage this bubble of work, including leveraging all shop capacities we have throughout the network, it is critical that we get the out of service count back to a healthy level (around 400-420) as quickly as we can. In order accomplish that, it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months. The primary focus will be on our maintenance and FIO backlog.

There are currently approximately 1,000 units currently FIO'd which need their full maintenance completed, and we have depleted our ready fleet to the point that our recovery capability is severely limited. In addition, we expect to face continued significant weather events in the upcoming months.

BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop. In 2022, we hired 474 Mechanical employees, with a hiring plan of 569. That delta of 95 was rolled over to the 2023 hiring plan. For 2023, we have a hiring plan of 711, and while we continue to press forward with this robust hiring plan, it will take time to get these additional employees hired and on the property.

As of December, year to date overtime was 12.07% with as much as ~23.0% on weekends for the month of December. At the same time, our locomotive availability has not been able to keep pace with our velocity demands. Accordingly, in order to have a reliable fleet to meet our customers' needs, we must temporarily supplement our forces by outsourcing a limited number of locomotives to outside vendors.

The initial batch of locomotives, currently due FIO maintenance, are provided as an attachment to this notice. **As always, we will continue to monitor shop capacity and work as many of these units on property as possible.** This notice will be supplemented as additional units are sent to a third-party vendor pursuant to this notice. We anticipate starting as soon as advance notice requirements are complete, barring unexpected circumstances. Please reference file number 184-09-1417 on any future correspondence regarding this matter.

The units outsourced under this notice will go to various shops for repairs, including the following:

1. QRS, Madison, IL – output of 10/wk
2. MEI East St Louis – output of 10/wk
3. Mid America Car – output of 3/wk
4. Wabtec PTR, San Angelo, AMP – Backup locations
5. MEI Burlington IA – Backup location
6. Progress Rail – Northport, Mayfield – Backup location
7. NRE – Mt Vernon, Paducah – Backup location

Sincerely,



Derek Cargill

Attachment: Initial List of Locomotives

cc: K. Solomons
E. Rodriguez
B. Soto
D. Dortch
A. Raza
J. Smith

Initial List of Locomotives

<u>979</u>	<u>BNSF</u>	<u>3940</u>	<u>ET44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>980</u>	<u>BNSF</u>	<u>4007</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>981</u>	<u>BNSF</u>	<u>4040</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>982</u>	<u>BNSF</u>	<u>4089</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>983</u>	<u>BNSF</u>	<u>4100</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>984</u>	<u>BNSF</u>	<u>4170</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>985</u>	<u>BNSF</u>	<u>4744</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>986</u>	<u>BNSF</u>	<u>5118</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>987</u>	<u>BNSF</u>	<u>5131</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>988</u>	<u>BNSF</u>	<u>5471</u>	<u>C44-9W</u>	<u>13CP</u>	<u>Winter Waiver</u>
<u>989</u>	<u>BNSF</u>	<u>5492</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>990</u>	<u>BNSF</u>	<u>5682</u>	<u>AC4400CW</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>991</u>	<u>BNSF</u>	<u>5685</u>	<u>AC4400CW</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>992</u>	<u>BNSF</u>	<u>5804</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>993</u>	<u>BNSF</u>	<u>5856</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>994</u>	<u>BNSF</u>	<u>5971</u>	<u>ES44AC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>995</u>	<u>BNSF</u>	<u>6065</u>	<u>ES44AC</u>	<u>13CP</u>	<u>Winter Waiver</u>
<u>996</u>	<u>BNSF</u>	<u>6260</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>997</u>	<u>BNSF</u>	<u>6275</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>998</u>	<u>BNSF</u>	<u>6291</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>999</u>	<u>BNSF</u>	<u>6323</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1000</u>	<u>BNSF</u>	<u>6333</u>	<u>ES44AC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1001</u>	<u>BNSF</u>	<u>6384</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1002</u>	<u>BNSF</u>	<u>6637</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1003</u>	<u>BNSF</u>	<u>6639</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1004</u>	<u>BNSF</u>	<u>6653</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1005</u>	<u>BNSF</u>	<u>6706</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1006</u>	<u>BNSF</u>	<u>7132</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1007</u>	<u>BNSF</u>	<u>7135</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1008</u>	<u>BNSF</u>	<u>7374</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1009</u>	<u>BNSF</u>	<u>7399</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1010</u>	<u>BNSF</u>	<u>7430</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1011</u>	<u>BNSF</u>	<u>7474</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1012</u>	<u>BNSF</u>	<u>7499</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1013</u>	<u>BNSF</u>	<u>7655</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1014</u>	<u>BNSF</u>	<u>7682</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1015</u>	<u>BNSF</u>	<u>7860</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1016</u>	<u>BNSF</u>	<u>7868</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1017</u>	<u>BNSF</u>	<u>8005</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>

<u>1018</u>	<u>BNSF</u>	<u>8024</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1019</u>	<u>BNSF</u>	<u>8051</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1020</u>	<u>BNSF</u>	<u>8057</u>	<u>ES44C4</u>	<u>16CP</u>	<u>Winter Waiver</u>
<u>1021</u>	<u>BNSF</u>	<u>8248</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1022</u>	<u>BNSF</u>	<u>8379</u>	<u>E4C4C</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1023</u>	<u>BNSF</u>	<u>9139</u>	<u>SD70ACE</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1024</u>	<u>BNSF</u>	<u>9382</u>	<u>SD70ACE</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1025</u>	<u>BNSF</u>	<u>9746</u>	<u>SD70MACE</u>	<u>M184</u>	<u>Winter Waiver</u>

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ERICH H. LANGE*

*MARYLAND BAR ONLY

March 8, 2023

Via Email (Amitabha.bose@dot.gov)

Amit Bose, Administrator
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: FRA Office of Railroad Safety's Bypassing of Emergency Waiver Procedures

Dear Administrator Bose:

This firm represents the International Brotherhood of Electrical Workers ("IBEW"). We are writing to bring to your attention a disturbing issue concerning the actions of the Office of Railroad Safety, specifically that office's grant of "enforcement discretion" to BNSF Railway Co. ("BNSF"), which relieved that carrier from complying with certain Federal Railroad Administration ("FRA") safety rules that require periodic inspections and annual tests of locomotives. This "enforcement discretion" appears to have been granted in a manner that directly conflicts with the FRA's emergency waiver procedures. Given your commitment to safety, we are confident that you will conduct a thorough investigation into this matter.

The IBEW represents Mechanical Electricians at BNSF who are responsible for the inspection, maintenance, and repair of BNSF's locomotives – a responsibility those employees take seriously. The Office of Railroad Safety's action to allow BNSF to postpone required inspections directly impacts these IBEW members, as well as the public at large.

On or about December 15, 2022, the Director of the Office of Railroad Infrastructure and Mechanical granted "enforcement discretion" to BNSF, relieving it from having certain locomotive inspections performed that would otherwise be required by 49 C.F.R. §§ 229.23, 229.25, and 229.27. On December 27, 2022, the Director of the Office of Railroad Infrastructure and Mechanical ("Director") extended that "enforcement discretion" until January 14, 2023. *See Attachment 1*. Absent the Director's actions, BNSF would have been required to remove from service any locomotive that had not been inspected and tested as required by FRA safety rules. *See* 49 C.F.R. § 229.7 (making it "unlawful for any carrier to use or permit to be used on its line any locomotive unless the entire locomotive and its appurtenances . . . have been inspected and tested as required by this part"). By granting "enforcement discretion," the Director appears to have permitted BNSF to continue to operate locomotives that had not been inspected and tested in accordance with the FRA's regulatory requirements.

In an email to IBEW Railroad Department Director Al Russo, the Director provided the letter in *Attachment 1*, and stated the reason for granting BNSF enforcement discretion was "the storm that closed

Administrator Bose

March 8, 2023

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down much of the northern properties around 13 December [2022].” That email also noted that, although “no waiver was requested or considered,” the “ED [Enforcement Discretion] is the action FRA can take for impacts from hurricanes, floods, and snow storms that negatively impact the country’s supply chain.” That email exchange with Director Russo is attached as **Attachment 2**.

Despite the Director’s assertions that his office can unilaterally grant “enforcement discretion,” FRA regulations provide a specific process by which a railroad can petition for a waiver of FRA safety rules due to impacts from emergency events like hurricanes, floods, and snowstorms. *See* 49 C.F.R. § 211.45. *Petitions for emergency waiver of safety rules*.¹ Under that section, the Administrator may declare that an emergency event has occurred. A railroad may then file a petition for an emergency waiver with the FRA according to the filing requirements in §§ 211.45(e) and (f). The FRA must post all emergency waiver petitions to the Emergency Relief Docket on the Federal eRulemaking Portal so the public may comment on the railroad’s petition. §§ 211.45 (g), (h). Although the FRA may grant petitions for emergency waivers without prior notice and comment, it must post its decisions to the Emergency Relief Docket. § 211.45(j).

The Director indicated that the Office of Railroad Safety granted enforcement discretion to BNSF because of a storm occurring about December 13, 2022. We have not found any indication that the Administrator declared an emergency event last December, and neither BNSF’s request for relief nor the Office of Railroad Safety’s letter granting enforcement discretion were made publicly available through the Federal eRulemaking Portal.

In 2019, BNSF requested “enforcement discretion” from certain locomotive inspections due to extreme weather conditions. The FRA properly treated that request as a petition for an emergency waiver. Administrator Batory declared extreme flooding throughout the Midwest to be an emergency event. *See* FRA-2019-0001-0013. BNSF requested relief from inspections required by 49 C.F.R. §§ 229.23, 229.25, and 229.27, for certain locomotives impacted by the flooding. The FRA treated BNSF’s request as a petition for an emergency waiver and followed the procedures outlined in § 211.45, which included posting BNSF’s petition and the FRA’s decision letter to the Emergency Relief Docket on the Federal eRulemaking Portal. *See* FRA-2019-0001-0014; FRA-2019-0001-0015.

Rather than treating BNSF’s December 2022 request in a similar manner, it appears that the Director unilaterally granted BNSF a month-long “enforcement discretion” for a storm that the Administrator never declared to be an emergency event. Although the FRA’s Associate Administrator for Railroad Safety & Chief Safety Officer appears to have known about and have been privy to this entire sequence of actions, *see Attachment 2*, it does not appear the Associate Administrator has done anything to address this issue. To our knowledge, to the extent that the FRA has “enforcement discretion,” it exercises that discretion to decide whether to take enforcement action concerning *existing* violations of FRA regulations. Given that the FRA has a specific regulatory framework for processing requests for both emergency and non-emergency waivers, we do not see any basis for officials within the Office of Railroad Safety to

¹ We note that the term “enforcement discretion” does not appear anywhere in § 211.45 or, for that matter, anywhere else in the FRA’s regulations.

Administrator Bose

March 8, 2023

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independently exercise “enforcement discretion” and give BNSF or other carriers permission to ignore FRA safety rules.


The FRA’s waiver procedures, with good reason, require that waiver petitions and FRA decisions follow a rigid process. That process allows the public to hold the government accountable by ensuring that regulators making weighty decisions regarding public safety follow the procedures prescribed by federal law and allow the public to scrutinize whether the circumstances in a particular situation justify waiving critical safety rules. By not following its own procedures, the Office of Railroad Safety’s actions – which occurred entirely outside of the public eye – created a potential public safety risk and constituted an abuse of authority.

The IBEW is confident that you were not aware of the Office of Railroad Safety’s actions described here, and given their disturbing nature, we request that you conduct an investigation into this matter and provide a response concerning the Office of Railroad Safety’s use of enforcement discretion to seemingly bypass the emergency waiver procedures required in § 211.45.

Your time and attention to this serious issue is greatly appreciated. Please do not hesitate to contact us if you have any questions.

Sincerely,

SHERMAN DUNN, P.C.

By: 

Lucas R. Aubrey
Erich H. Lange

cc: Martin J. Oberman – Chairman, Surface Transportation Board
Eric J. Soskin – Inspector General, Department of Transportation
Allison Fultz – Chief Counsel, Federal Railroad Administration
Jill Mulligan – Chief Legal Officer, BNSF
Greg Regan – President, Transportation Trades Department, AFL-CIO
Alphonse Russo – Director, IBEW Railroad Department
Jeff Allred – General Chairman, IBEW System Council 16
Richard Edelman

ATTACHMENT 1

Mr. Beau D. Price
Director Locomotive & Airbrakes
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
beau.price@bnsf.com

Re: December 2022 Enforcement Discretion Extension

Dear Mr. Price:

This reply is in reference to the BNSF Railway Company's (BNSF) December 27, 2022, letter to the Federal Railroad Administration (FRA) requesting an extension to a previously granted temporary enforcement discretion from the requirements of Title 49, Code of Federal Regulations (CFR) sections 229.23 Periodic Inspection General, 229.25 Tests, Every Periodic and 229.27 Annual Tests and associated rules governing periodic locomotive inspections for up to an additional 14 days. This requested enforcement discretion is for locomotives that have been stranded or seriously delayed from reaching locations where inspections can be performed. These severe weather impacted lines are located across the North, Midwest, and Central Plains regions on the BNSF system, encompassing FRA's Districts 4, 6, and 8.

On December 15, 2022, FRA considered BNSF's request and all associated information, and again on December 27, 2022. FRA hereby will use its enforcement discretion for the locomotives listed on the attached spreadsheets subject to the following conditions:

1. This enforcement discretion from the requirements of 49 CFR §§ 229.23 *Periodic Inspection: General*, 229.25 *Tests: Every Periodic Inspection*, and 229.27 *Annual Tests* is limited to the locomotives operated by the BNSF in the affected area. A spreadsheet of the locomotives utilizing this enforcement discretion; to include locomotive reporting mark and number, inspection due date, anticipated inspection date, and actual inspection date; shall be forwarded to the FRA's point-of-contact daily. At the end of the period, provide FRA a final spreadsheet indicating an actual inspection date for all locomotives utilizing this enforcement discretion.
2. BNSF must provide appropriate notice to the Mechanical and Operating Departments of this temporary change of inspection procedures.
3. A copy of this letter must be placed adjacent to FRA Form F6180.49A in the cab of each of the affected locomotives.

4. BNSF must report immediately to FRA's Office of Railroad Infrastructure and Mechanical Equipment any accident/incident and/or injury to any railroad employee that involves a locomotive covered by this enforcement discretion.
5. FRA reserves the right to amend or revoke this enforcement discretion upon receipt of information pertaining to the safety of rail operations, or in the event of non-compliance with any condition of this letter.
6. This enforcement discretion expires at 12:01 AM local time on Saturday, January 14, 2023. No further extensions are contemplated by FRA.

The point of contact for this action is Mr. Gary Fairbanks, Staff Director, Motive Power and Equipment Division. Mr. Fairbanks can be reached at (202) 493-6322, or at Gary.Fairbanks@dot.gov.

Sincerely,

Charles P. King
Director, Office of Railroad Infrastructure and Mechanical

Attachment

cc:
Gary Fairbanks
Douglas Yates,
Michael Lodge
Zacarias Biagtan

ATTACHMENT 2

F

[REDACTED]

[REDACTED]

From: Russo, Al <Al_Russo@IBEW.org>
Sent: Thursday, January 26, 2023 9:18 PM
To: King, Charles (FRA) <charles.king@dot.gov>
Cc: Alexy, Karl (FRA) <karl.alex@dot.gov>
Subject: RE: BNSF Enforcement Discretion ED

Charlie,

As a follow up to the zoom conference call today, you stated the FRA is going to conduct inspections on all work being performed by BNSF's third-party contractors. I curious to know how the FRA intends to perform approximately 1,000 inspections. As I mentioned during the call, I have serious concerns with respect to the safety and operation of those locomotives.

Thank you in advance.

Al

From: King, Charles (FRA) <charles.king@dot.gov>
Sent: Thursday, January 26, 2023 6:03 PM
To: Russo, Al <Al_Russo@IBEW.org>
Cc: Alexy, Karl (FRA) <karl.alex@dot.gov>
Subject: BNSF Enforcement Discretion ED

Al, here is a copy of the letter I sent BNSF for the storm that closed down much of the northern properties around 13 December. Initially, BNSF asked for two weeks, but with employees taking scheduled vacations over Christmas and New Year's, BNSF told me they couldn't get any overtime to work the backlog or crews to rescue the stranded engines. So, BNSF asked for and was granted another two weeks of ED on the listed engines to end on 14 January by me.

I have attached a copy of the list of locomotives I received daily from BNSF. BNSF referred to this as a Winter Waiver. As Karl stated, there was no waiver requested or considered. ED is the action FRA can take for impacts from hurricanes, floods, and snow storms that negatively impact the country's supply chain.

Finally, I have included the email correspondence from me that reiterated that we would not consider any additional ED for this weather event.

Regards,

Charlie

Charles King

Director, Office of Railroad Infrastructure and Mechanical

Office of Railroad Safety

Federal Railroad Administration

(o) 202-493-0120

(c) 202-329-5031

charles.king@dot.gov



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KENNETH W. COOPER
International President

PAUL A. NOBLE
International
Secretary-Treasurer

March 8, 2023

VIA EMAIL

Chairman Martin J. Oberman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Administrator Amitabha Bose
U.S. Federal Railroad Administration
1200 New Jersey Ave., SE
Washington, DC 20590

Dear Chairman Oberman and Administrator Bose:

On behalf of the International Brotherhood of Electrical Workers (IBEW), which represents 775,000 retired and active members, including 12,600 permanent railroad sector employees who keep our nation's critical goods and passengers moving, I write to you to express the IBEW's extreme concern regarding a recent decision by Burlington Northern Santa Fe Railway Company (BNSF or the carrier) to outsource the inspection, maintenance, and repair of up to 30 locomotives per week to third party vendors for the next 3-6 months.

In recent years, Class I rail carriers have adopted a business model widely known as Precision Scheduled Railroading (PSR). Although some carriers try to stray from this term and its related connotations by giving the practice different names, the Class I rail carriers' mission is clear: reduce costs and improve the bottom line. To accomplish these goals, carriers have used any means necessary, including slashing the overall workforce by 28% (IBEW forces have decreased by 42%), running longer trains, and deferring regular maintenance on their equipment, including rolling stock.

In December 2022, the U.S. Government Accountability Office released a report¹ to congressional leaders detailing its study of precision-scheduled railroading. Regarding deferred maintenance, the report provides:

Rail employees and inspectors have said that the combination of fewer maintenance employees and a focus on moving trains out of yards as quickly as possible has resulted in railroads deferring maintenance on tracks and equipment. Some FRA and state inspectors said that as a result of this deferred maintenance, in

¹ "Freight Rail: Information on Precision-Scheduled Railroading," GAO-23-105420, December 13, 2022. Available at <https://www.gao.gov/products/gao-23-105420>.



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some locations, they have seen an increase in certain types of defects in equipment and track, such as broken wheels, which could lead to accidents and injuries. Further, a variety of stakeholders – including rail workers, inspectors, and a rail customer – stated that using longer trains causes increased wear and tear on car couplings and track due to factors such as the increased train weight, which could cause derailments and other accidents if maintenance is deferred.

The IBEW echoes these concerns and agrees that deferring maintenance to save money can have disastrous effects. Nonetheless, rail carriers continue the practice.

On September 2, 2021, James Brackett, BNSF Locomotive Fleet Manager, sent a notice (Attachment 1) to all BNSF locomotive maintenance facilities instructing employees to inspect “federal items only” (FIO) on locomotives, and not to conduct anything beyond those inspections specifically required by FRA regulations.

BNSF’s notice specifically informs BNSF locomotive shop management to “***Sign off the general maintenance items; they do not need to be performed.***” Although BNSF provided a list of FIO items (Attachment 2) that should be inspected and repaired by a federal regulation qualified (FRQ) mechanical employee, simply “sign[ing] off the general maintenance items” would reflect in BNSF’s maintenance logs that those general maintenance items were also inspected and were in working order. In fact, it could be years since a qualified mechanical employee has actually set eyes on some of those critical items, potentially for the 17 months since BNSF issued their instructional notice to perform only FIO inspections.

Notably, some of these “general maintenance items” that BNSF has chosen to ignore include inspecting proper condition and operation of dynamic braking systems, cooling systems, throttle and braking handles, alarms, electrical grounds, batteries, alternator and generator outputs, all bearing lubrication, as well as modernization upgrades such as upgrading PTC software.

BNSF’s cost-cutting business practices (PSR) and unrelenting reliance on FIO inspections have now snowballed into an obscene backlog of BNSF locomotives which have not been properly maintained.

To address their backlog of neglected locomotives, on January 5, 2023, BNSF issued a letter (Attachment 3) stating its intent to outsource up to 30 locomotives per week for 3-6 months to several third-party vendors, which could



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result in BNSF contracting out maintenance work on almost 800 locomotives. This is concerning. In its letter to the IBEW, BNSF states "the current out of service count is currently 550 which is the highest mark we have seen in the last 5-7 years." BNSF cannot meet locomotive demands and is using early winter weather as the justification for their inexcusable number of "bad order locomotives" on the road and in the shop.

The narrative that BNSF pitches in its letter fails to mention the reality at hand. BNSF has claimed that they hired 474 mechanical employees in 2022, but there was a true net loss of 111 Mechanical Electricians in 2022 (Attachment 4). BNSF has intentionally failed to account for retirements, resignations, and refused recalls. BNSF has made no effort to adequately staff their locomotive repair facilities despite the overwhelming number of neglected locomotives in their fleet.

Several IBEW local unions and individual members have provided written statements detailing BNSF's past actions resulting in this enormous backlog. Excerpts from those statements provide a wealth of information.

BNSF has failed to maintain its locomotives or ensure quality repairs over the warnings of its own employees. One employee stated, "[e]ver since the railroad started the Federal Inspection Only (FIO) program over a year ago we have been complaining that this is going to cause long term problems for the railroad by not doing regular maintenance. We are now seeing on a regular basis, catastrophic failures like, [bad order] alternators, blown engines." Another employee observed, "[w]e just had a motor the other night, needed new oil and filters, they ran it and the machinist just shook his head saying it would be back soon for engine overheating or engine damage depending on how far it goes."

Employee statements also show the lack of adequate staffing from a front-line point of view. Since 2020, the number of electricians has been cut by 30% in Alliance, Nebraska; 50% in Fort Worth, Texas; 75% in Silsbee, Texas; and 81% in Houston, Texas. The frustration of employees is clear: "We have not hired here in Alliance since 2018. In 2020 they furloughed 28 electricians here in Alliance, they also closed our shop in Guernsey Wyoming which was another 9 electricians. Due to attrition here in Alliance from retirements, quitting, getting fired we have lost another 11 electricians. This facility on a regular basis ran about 140 electricians when I started in 2007, and as of today 1/11/23 we have 89 electricians and are going to lose at least 6 more electricians this year just to retirement." Another employee added, "I believe they are setting us up to fail."

Finally, the statements of these employees also describe having to repair work originally outsourced to subcontractors. For instance, one employee said



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that the “locomotives that we see come through the shop that have been worked on by contractors show a lack in quality at times baffling us that anyone would perform such work.” A different employee cited an example of outsourced motors returning from contractors, stating that “we ended up tearing out everything they did and starting over from scratch. Very rarely the work done by contractors even functioned at all hence why it had to come back into our shop. Outside of the functionality of the work done it was never done to the same standards that we are held to.”

BNSF employees also want answers to the serious safety concerns raised by BNSF’s business practices. For example, one employee asked “what kind of training requirements these [contractor] facilities have for their employees that will now be doing the work that we were trained to do. Will the FRA do their job and make sure that processes are followed?”

BNSF has decimated their workforce to the point that they can no longer properly maintain their locomotive fleet, resulting in FIO inspections and the band-aiding of their locomotives. BNSF mismanaged its maintenance of locomotives by performing just FIO’s, showing no intent to utilize its qualified workforce to properly maintain its fleet. This is further evidenced by BNSF’s August 15, 2021, Full Time Equivalent Employee Utilization report (Attachment 5), which exemplifies the carrier’s intent to reduce the number of employees and choose instead to subcontract this and other type work to outside third-party vendors.

In a January 19, 2023, letter (Attachment 6), and again in a January 23, 2023 (Attachment 7) follow-up letter, IBEW System Council 16 General Chairman Allred confirmed a conference held with BNSF on January 18 and further advised BNSF of the Organization’s safety concerns regarding “*the Carrier’s unprecedented intent to subcontract out this and other types of electrical work to a potentially unskilled and unqualified workforce.*” General Chairman Allred requested BNSF provide the qualifications of the intended subcontractors under 49 CFR § 243.

On January 27, 2023, IBEW Railroad Director Al Russo filed the following question with the FRA (Attachment 8):

BNSF plans to subcontract out approximately 1,000 locomotives for M-184 and M-386 inspections under the FRA’s Winter Waiver, the highest mark seen in 5-7 years. Alarming. BNSF intends to outsource these locomotive inspections to several third-party vendors. To ensure these vendors are capable of performing this and other type work in accordance with 49 CFR 229 and 49 CFR



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243 in a matter which guarantees the safe operation of these locomotives and avoids harm to the general public, please provide evidence that the following vendors meet the FRA's certification requirements: QRS, MEI, Mid America Car, Wabtec PTR, AMP, Progress Rail, NRE.

No response has been received from the FRA on this matter. And BNSF's response to General Chairman Allred was nothing more than a list of an additional 92 locomotives they plan to have subcontractors inspect (Attachment 9). BNSF has not addressed the safety concerns of using potentially unqualified subcontractors to perform discount inspections.

During a videoconference on January 26, 2023, in which various rail labor organizations met with the FRA's Chief Safety Officer and its Director of the Office of Railroad Infrastructure and Mechanical, Director Russo again raised concerns regarding BNSF's intent to use subcontractors with questionable or unknown qualifications. Specifically, Director Russo asked how the FRA would ensure that the inspections of locomotives being outsourced were being performed properly, safely, and in compliance with 49 CFR §§ 229 and 243. FRA representatives responded that the FRA would inspect all of the locomotives as they return to service with BNSF.

Director Russo emailed the FRA representatives that evening to ask "how the FRA intends to perform approximately 1,000 inspections. As I mentioned during the call I have serious concerns with respect to the safety and operation of those locomotives." The response came later that evening, in which the FRA representative instead referred to inspecting only some of the locomotives. He added that the inspections to be contracted out, according to BNSF, are "not their front-line locomotives. These units will likely remain in storage" (Attachment 10).

The safety concerns raised by the IBEW should be of great importance to the FRA, a federal agency whose "mission is to ensure the safe, reliable, and efficient movement of people and goods for a strong America, now and into the future."² That mission is important now more than ever.

In recent weeks, an eastbound Norfolk Southern Railway train carrying hazardous chemicals derailed in East Palestine, Ohio, resulting in thousands of residents being forced to evacuate for nearly a week. Initial comment from the National Transportation Safety Board indicated there was reason to believe a

² FRA Mission, available at <https://railroads.dot.gov/about-fra/about-fra>.



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defective freight car axle was the cause. It has since come to light that this train, complete with flaming axle, had traveled at least 20 miles before derailing. It is currently unknown if the freight car was properly or thoroughly inspected. But it is known that Norfolk Southern Railway utilizes PSR practices, including drastically cutting the daily, pre-trip inspection of freight cars. Moreover, this incident highlights the importance of having a trained, certified mechanic properly performing inspections on a regular basis of both freight cars and locomotives.

On behalf of our railroad members, I thank the Surface Transportation Board and the Federal Railroad Administration for your attention to this critical matter. I look forward to continuing to work with STB and the FRA to guarantee the continued safe operations of the railroad system throughout this country and providing the uninterrupted movement of freight along the networks that BNSF Railway serves.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ken W. Cooper", is positioned above the printed name.

Kenneth W. Cooper
International President

KWC:rmc

Attachments

Copy to Pete Buttigieg, Secretary of Transportation, Department of
Transportation

Michael Davissan, Staff Member, U.S. Senate Committee on Commerce,
Science, and Transportation

Katherine Ambrose, Staff Member, U.S. Senate Committee on
Commerce, Science, and Transportation

Victoria Lombardo, Staff Member, U.S. Senate Committee on
Commerce, Science, and Transportation

Frances Bourne, Staff Director, U.S. House of Representatives

Sam Morgante, Subcommittee Ranking Member Donald Payne
Legislative Director, U.S. House of Representatives

Drew Feeley, Staff Director of the Subcommittee on Railroads,
Pipelines, and Hazardous Materials, U.S. House of Representatives

Mark Ratto, Senior Policy Advisor to Representative Sam Graves, U.S.
House of Representatives

FRQ + 095u opportunities inbound

BS

Brackett, James S

Thu 9/2/2021 3:05 PM

To:

- MECH DL General Foreman;
- MECH DL Shop Superintendents;
- MECH DL Field Superintendents

Cc:

- Rodriguez, Edmundo;
- Soto, Bruno;
- Grubbs, Mark L;
- Raza, Abid;
- Smith, Jeremy E;
- Lager, Eric;
- Morgan, Jonathan D;
- Murray, Robert A;
- Brackett, James S

Field leaders,

To assist in reducing a bubble of FIO units coming due maintenance we will be sharing a list of units each day that can have FIO only and 095u completed at one shopping event. These units will have the FRQ items completed, the fuel and oil filters changed and we will run the unit to the next maintenance.

To complete the process and not have an FIO defect applied follow the process below.

- **Complete the FRQ Items in MAM (blue card only items, same as FIO)**
- **Complete Project 095U ~ fuel and oil filters change**
- **Sign off the general maintenance items; they do not need to be performed. This is to prevent an FIO defect from being auto-generated.**
 - Due to the current structure of MAM, sign off of the general maintenance scope is the only way to prevent a FIO defect from automatically being added and potentially escalating to a level 7 defect or driving another shopping event for maintenance.
 - If we fail to sign off the general maintenance items and release the unit resulting in an FIO defect being auto-generated you may email MAMMECHHelp <MAMMECHHelp@bnsf.com> and request the FIO defect to be completed. Please communicate the 095u was complete and the unit was released without signing off the general maintenance items in error.

Thank you to the MAM help desk for assisting with this process.

The units shown below are inbound to shop and past due or due maintenance in the next 5 days. These will show due FRA, will not have an active FIO defect and have project 095u active at time of arrival.

WRK_RPT_DESC	FRA Code
FRQ Items	
Hand Brake - Inspect/Test/Clean	232.105c
Event Recorder - Inspect/Test/Download	229.135
Annual Test - Electrical Load Meter / Air Brake Gauges- Checked/Calibrated	229.27, 229.27
AFM Calibration	229.29(b), 232.205
Change Filters on Pre-Coalescers & Dirt Collectors in MR Lines to Brake Equipment, AUX Devices, & Pre-Coalescers on Air Dryer	229.29c(1)
Completed Level Two Airbrake Test (2AI, 3AI, 4AI, 5AI, 7AI, or 8AI).	229.29
RCL Function Test	229.25
PTC Function Test	
Brake System	
Mechanical Blue Card Item 1 Completed Per FRQ Blue Card Requirements.	
Perform Periodic Air Brake Test. (Self-Test)	229.29(a)
Test Air Gauges (plus or minus 2 psi).	229.59
MR Leakage Test - Check Valve	229.59(a)
Brake Pipe Leakage Test	229.59(b)
Brake Cylinder Leakage Test	229.59(c)
Document Control Air Setting (If Equipped) (Should be 80psi).	229.59(d)
Check for correct air pressure settings. >Main Res Compressor (130-140psi), >Brake pipe(90psi), >Equalizing Res(90psi)	229.49(b)
Drain main reservoirs and verify blowdowns are functioning properly - In the auto position - Venting	229.46(2)
Check Auxiliary Emergency Brake Valve. (Fireman's valve) for Proper Operation & Identification.	229.47(a)
Test Main Reservoir Safety Valve. (145-155 PSI)	229.49(a)(1)
Inspect Brake Rigging	229.57
Verify Piston Travel	229.55(a)
Check MU Air Lines, Valves & Clamps. Replace Any Valves with Defective Locks.	229.45
Mechanical Blue Card Items 2, 3, 4, & 6 Completed Per FRQ Blue Card Requirements.	
Item 2 Running Gear	
Inspect Draft Gear Pin / Inspect Pins & Bushing / Inspect Coupler for Defects & Height	229.61
Record Wheel Measurements. Also inspect Wheels for Defects such as: Cracks, Flat & Shell Spots.	229.75, 229.73
Verify Side Bearing Clearance	229.69
Verify Clearance above top of rail	229.71
Verify Snow Plow/Pilot Clearance	229.123
Inspect Trucks - Springs - Tie Bars - Pedestal Liners - Securement	229.65, 229.63, 229.67
Inspect Dampener for oil droplets	
Item 3 Cab Mech	
Inspect Toilet Operation / Clean, Charge, and Drain as Necessary	229.137
Inspect Operation of Toilet Room Door Modesty Lock	229.137
Inspect fire extinguisher date and inspect brackets.	229.45
Inspect all Windows for defects & Proper FRA Glazing Identification	223.11, 229.119(b)
Inspect Heater/Ventilation	229.119(d)
Inspect AC/Ventilation	229.119(h)
Inspect Seat for proper operation and securement	229.119(a)
Inspect Cab Locks functional - Interior and Exterior	229.119(i)
Test Bell for proper operation Lubricate as needed	229.129
Test Sanders for proper operation	229.131
Inspect condition of blue card and air slip holder	229.23



Derek Cargill
General Director
Labor Relations

BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76161-0030
2600 Lou Menk Drive
Fort Worth, TX 76131-2830
Phone: (817) 352-1046

January 5, 2023

File No. 184-09-1417

Mr. Jeff Allred, General Chairman IBEW
Mr. John McCloskey, General Chairman SMART
Mr. Joe Fraley, International Representative SMART
Mr. Kenny Krause, General Chairman IAM

ibewsc16@outlook.com
jmccloskey@smart-gc2.org
jfraley@smart-union.org
kkrause@districtlodge19.com

Re: Bad Order Maintenance/Repair Outsource

All:

As information, BNSF intends to contract out for work needed to reduce the number of out of service locomotives in the system. The current out of service count is currently at 550, which is the highest mark we've seen in the last 5-7 years. This is driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop. Although we have taken steps to manage this bubble of work, including leveraging all shop capacities we have throughout the network, it is critical that we get the out of service count back to a healthy level (around 400-420) as quickly as we can. In order accomplish that, it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months. The primary focus will be on our maintenance and FIO backlog.

There are currently approximately 1,000 units currently FIO'd which need their full maintenance completed, and we have depleted our ready fleet to the point that our recovery capability is severely limited. In addition, we expect to face continued significant weather events in the upcoming months.

BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop. In 2022, we hired 474 Mechanical employees, with a hiring plan of 569. That delta of 95 was rolled over to the 2023 hiring plan. For 2023, we have a hiring plan of 711, and while we continue to press forward with this robust hiring plan, it will take time to get these additional employees hired and on the property.

As of December, year to date overtime was 12.07% with as much as ~23.0% on weekends for the month of December. At the same time, our locomotive availability has not been able to keep pace with our velocity demands. Accordingly, in order to have a reliable fleet to meet our customers' needs, we must temporarily supplement our forces by outsourcing a limited number of locomotives to outside vendors.

The initial batch of locomotives, currently due FIO maintenance, are provided as an attachment to this notice. **As always, we will continue to monitor shop capacity and work as many of these units on property as possible.** This notice will be supplemented as additional units are sent to a third-party vendor pursuant to this notice. We anticipate starting as soon as advance notice requirements are complete, barring unexpected circumstances. Please reference file number 184-09-1417 on any future correspondence regarding this matter.

The units outsourced under this notice will go to various shops for repairs, including the following:

1. QRS, Madison, IL – output of 10/wk
2. MEI East St Louis – output of 10/wk
3. Mid America Car – output of 3/wk
4. Wabtec PTR, San Angelo, AMP – Backup locations
5. MEI Burlington IA – Backup location
6. Progress Rail – Northport, Mayfield – Backup location
7. NRE – Mt Vernon, Paducah – Backup location

Sincerely,

Derek Cargill

Derek Cargill

Attachment: Initial List of Locomotives

cc: K. Solomons
E. Rodriguez
B. Soto
D. Dortch
A. Raza
J. Smith

Initial List of Locomotives

<u>979</u>	<u>BNSF</u>	<u>3940</u>	<u>ET44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>980</u>	<u>BNSF</u>	<u>4007</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>981</u>	<u>BNSF</u>	<u>4040</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>982</u>	<u>BNSF</u>	<u>4089</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>983</u>	<u>BNSF</u>	<u>4100</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>984</u>	<u>BNSF</u>	<u>4170</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>985</u>	<u>BNSF</u>	<u>4744</u>	<u>C44-9W</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>986</u>	<u>BNSF</u>	<u>5118</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>987</u>	<u>BNSF</u>	<u>5131</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>988</u>	<u>BNSF</u>	<u>5471</u>	<u>C44-9W</u>	<u>13CP</u>	<u>Winter Waiver</u>
<u>989</u>	<u>BNSF</u>	<u>5492</u>	<u>C44-9W</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>990</u>	<u>BNSF</u>	<u>5682</u>	<u>AC4400CW</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>991</u>	<u>BNSF</u>	<u>5685</u>	<u>AC4400CW</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>992</u>	<u>BNSF</u>	<u>5804</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>993</u>	<u>BNSF</u>	<u>5856</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>994</u>	<u>BNSF</u>	<u>5971</u>	<u>ES44AC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>995</u>	<u>BNSF</u>	<u>6065</u>	<u>ES44AC</u>	<u>13CP</u>	<u>Winter Waiver</u>
<u>996</u>	<u>BNSF</u>	<u>6260</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>997</u>	<u>BNSF</u>	<u>6275</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>998</u>	<u>BNSF</u>	<u>6291</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>999</u>	<u>BNSF</u>	<u>6323</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1000</u>	<u>BNSF</u>	<u>6333</u>	<u>ES44AC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1001</u>	<u>BNSF</u>	<u>6384</u>	<u>ES44AC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1002</u>	<u>BNSF</u>	<u>6637</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1003</u>	<u>BNSF</u>	<u>6639</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1004</u>	<u>BNSF</u>	<u>6653</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1005</u>	<u>BNSF</u>	<u>6706</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1006</u>	<u>BNSF</u>	<u>7132</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1007</u>	<u>BNSF</u>	<u>7135</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1008</u>	<u>BNSF</u>	<u>7374</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1009</u>	<u>BNSF</u>	<u>7399</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1010</u>	<u>BNSF</u>	<u>7430</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1011</u>	<u>BNSF</u>	<u>7474</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1012</u>	<u>BNSF</u>	<u>7499</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1013</u>	<u>BNSF</u>	<u>7655</u>	<u>ES44DC</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1014</u>	<u>BNSF</u>	<u>7682</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1015</u>	<u>BNSF</u>	<u>7860</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1016</u>	<u>BNSF</u>	<u>7868</u>	<u>ES44DC</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1017</u>	<u>BNSF</u>	<u>8005</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>

<u>1018</u>	<u>BNSF</u>	<u>8024</u>	<u>ES44C4</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1019</u>	<u>BNSF</u>	<u>8051</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1020</u>	<u>BNSF</u>	<u>8057</u>	<u>ES44C4</u>	<u>16CP</u>	<u>Winter Waiver</u>
<u>1021</u>	<u>BNSF</u>	<u>8248</u>	<u>ES44C4</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1022</u>	<u>BNSF</u>	<u>8379</u>	<u>E4C4C</u>	<u>M184</u>	<u>Winter Waiver</u>
<u>1023</u>	<u>BNSF</u>	<u>9139</u>	<u>SD70ACE</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1024</u>	<u>BNSF</u>	<u>9382</u>	<u>SD70ACE</u>	<u>M368</u>	<u>Winter Waiver</u>
<u>1025</u>	<u>BNSF</u>	<u>9746</u>	<u>SD70MACE</u>	<u>M184</u>	<u>Winter Waiver</u>

NEW HIRE AND TERMINATION REPORT TOTALS 2022

IBEW SYSTEM COUNCIL 16 BNSF EMPLOYEES

Does Not Account for Medical Leaves.

JANUARY:

Mechanical Resignations: 12
Mechanical Refused Recall: 41
Mechanical Dismissals: 1
Mechanical Furloughs: 0
Mechanical Primary Recalls: 27
Mechanical New Hires: 1
Mech/Tel Transfers In: 0
Mech/Tel Transfers Out: (1 Tel)
Telecomm Resignations: 1
Telecomm New Hires: 0
Retirement: 3 (Tel) 2 (Mech)
Scheduled to Exempt: 1 (Mech)
Deceased: 0

January Net Loss for Mechanical Electricians: 29

January Net Loss for Telecomm Employees: 5

FEBRUARY:

Mechanical Resignations: 14
Mechanical Refused Recall: 7
Mechanical Dismissals: 0
Mechanical Furloughs: 2
Mechanical Primary Recalls: 0
Mechanical New Hires: 1
Mech/Tel Transfers In: 0
Mech/Tel Transfers Out: 0
Telecomm Resignations: 4
Telecomm New Hires: 0
Retirement: 1 (Tel) 2 (Mech)
Scheduled to Exempt: 2 (Mech)
Deceased: 1 (Mech)

February Net Loss for Mechanical Electricians: 27 (YTD: 56)

February Net Loss for Telecomm Employees: 5 (YTD: 10)

MARCH:

Mechanical Resignations: 8
Mechanical Refused Recall: 5
Mechanical Dismissals: 0
Mechanical Furloughs: 0
Mechanical Primary Recalls: 1
Mechanical New Hires: 3
Mech/Tel Transfers In: 0
Mech/Tel Transfers Out: 0
Telecomm Resignations: 1
Telecomm New Hires: 1
Retirement: 4 (Mech)
Scheduled to Exempt: 0
Deceased: 0

March Net Loss for Mechanical Electricians: 13 (YTD: 69)
March Net Loss for Telecomm Employees: 0 (YTD: 10)

APRIL:

Mechanical Resignations: 6
Mechanical Refused Recall: 12
Mechanical Dismissals: 2
Mechanical Furloughs: 0
Mechanical Primary Recalls: 15
Mechanical New Hires: 2
Mech/Tel Transfers In: 2 (Mech)
Mech/Tel Transfers Out: 2 (1 Mech, 1 Tel)
Telecomm Resignations: 1
Telecomm New Hires: 11
Retirement: 3 (Mech)
Scheduled to Exempt: 2 (Mech) 1 (Tel)
Deceased: 0

April Net Loss for Mechanical Electricians: 7 (YTD: 76)
April Net Loss for Telecomm Employees: +8 (YTD: 2)

MAY:

Mechanical Resignations: 8
Mechanical Refused Recall: 1

Mechanical Dismissals: 0
Mechanical Furloughs: 0
Mechanical Primary Recalls: 0
Mechanical New Hires: 8
Mech/Tel Transfers In: 8 (Mech)
Mech/Tel Transfers Out: 2 (1 Mech, 1 Tel)
Telecomm Resignations: 3
Telecomm New Hires: 3
Retirement: 2 (Mech)
Scheduled to Exempt: 1 (Tel)
Deceased: 0

May Net Loss for Mechanical Electricians: +4 (YTD: 72)
May Net Loss for Telecomm Employees: 2 (YTD: 4)

JUNE:

Mechanical Resignations: 11
Mechanical Refused Recall: 0
Mechanical Dismissals: 1
Mechanical Furloughs: 0
Mechanical Primary Recalls: 1
Mechanical New Hires: 6
Mech/Tel Transfers In: 0
Mech/Tel Transfers Out: 4 (Mech)
Telecomm Resignations: 2
Telecomm New Hires: 2
Retirement: 7 (Mech) 2 (Tel)
Scheduled to Exempt: 2 (Mech)
Deceased: 0

June Net Loss for Mechanical Electricians: 18 (YTD: 90)
June Net Loss for Telecomm Employees: 2 (YTD: 6)

JULY:

Mechanical Resignations: 9
Mechanical Refused Recall: 0
Mechanical Dismissals: 0
Mechanical Furloughs: 0
Mechanical Primary Recalls: 0
Mechanical New Hires: 1
Mech/Tel Transfers In: 0
Mech/Tel Transfers Out: 0

Telecomm Resignations: 1
Telecomm New Hires: 5
Retirement: 3 (Mech)
Scheduled to Exempt: 2 (Mech)
Deceased: 0

July Net Loss for Mechanical Electricians: 13 (YTD: 103)
July Net Loss for Telecomm Employees: +4 (YTD: 2)

AUGUST:

Mechanical Resignations: 4
Mechanical Refused Recall: 0
Mechanical Dismissals: 0
Mechanical Furloughs: 1
Mechanical Primary Recalls: 0
Mechanical New Hires: 4
Mech/Tel Transfers In: 7 (Mech)
Mech/Tel Transfers Out: 1 (Mech)
Telecomm Resignations: 1
Telecomm New Hires: 3
System Elect. Dismissals: 1
Retirement: 4 (Mech) 2 (Tel)
Scheduled to Exempt: 0
Deceased: 0

August Net Loss for Mechanical Electricians: +1 (YTD: 102)
August Net Loss for Telecomm Employees: 1 (YTD: 3)

SEPTEMBER:

Mechanical Resignations: 6
Mechanical Refused Recall: 0
Mechanical Dismissals: 1
Mechanical Furloughs: 0
Mechanical Primary Recalls: 0
Mechanical New Hires: 7
Mech/Tel Transfers In: 1 (Mech)
Mech/Tel Transfers Out: 0
Telecomm Resignations: 1
Telecomm New Hires: 5
Retirement: 1 (Mech) 2 (Tel)
Scheduled to Exempt: 3 (Tel)

Deceased: 0

September Net Loss for Mechanical Electricians: 0 (YTD: 102)

September Net Loss for Telecomm Employees: 1 (YTD: 4)

OCTOBER:

Mechanical Resignations: 3

Mechanical Refused Recall: 0

Mechanical Dismissals: 0

Mechanical Furloughs: 0

Mechanical Primary Recalls: 0

Mechanical New Hires: 7

Mech/Tel Transfers In: 2 (Mech)

Mech/Tel Transfers Out: 1 (Mech)

Telecomm Resignations: 1

Telecomm New Hires: 2

Sys Elect New Hires: 1

Retirement: 2 (Mech) 1 (Tel)

Scheduled to Exempt: 1 (Mech)

Deceased: 1 (Mech)

October Net Loss for Mechanical Electricians: +1 (YTD: 101)

October Net Loss for Telecomm Employees: +1 (YTD: 3)

NOVEMBER:

Mechanical Resignations: 5

Mechanical Refused Recall: 0

Mechanical Dismissals: 0

Mechanical Furloughs: 0

Mechanical Primary Recalls: 0

Mechanical New Hires: 2

Mech/Tel Transfers In: 2 (Mech)

Mech/Tel Transfers Out: 0

Telecomm Resignations: 1

Telecomm New Hires: 3

Retirement: 2 (Mech) 1 (Tel)

Scheduled to Exempt: 4 (Mech) 1 (Tel)

Deceased: 2 (Mech)

November Net Loss for Mechanical Electricians: 9 (YTD: 110)

November Net Loss for Telecomm Employees: 0 (YTD: 3)

DECEMBER:

Mechanical Resignations: 2
Mechanical Refused Recall: 0
Mechanical Dismissals: 1
Mechanical Furloughs: 0
Mechanical Primary Recalls: 0
Mechanical New Hires: 2
Mech/Tel Transfers In: 2 (Mech)
Mech/Tel Transfers Out: 1 (Mech)
Telecomm Resignations: 0
Telecomm New Hires: 3
Retirement: 0
Scheduled to Exempt: 1 (Mech) 1 (Tel)
Deceased: 0

December Net Loss for Mechanical Electricians: 1 (YTD: 111)
December Net Loss for Telecomm Employees: +2 (YTD: 1)

2022 SC16 REPRESENTED MEMBERSHIP NET EMPLOYEE LOSSES

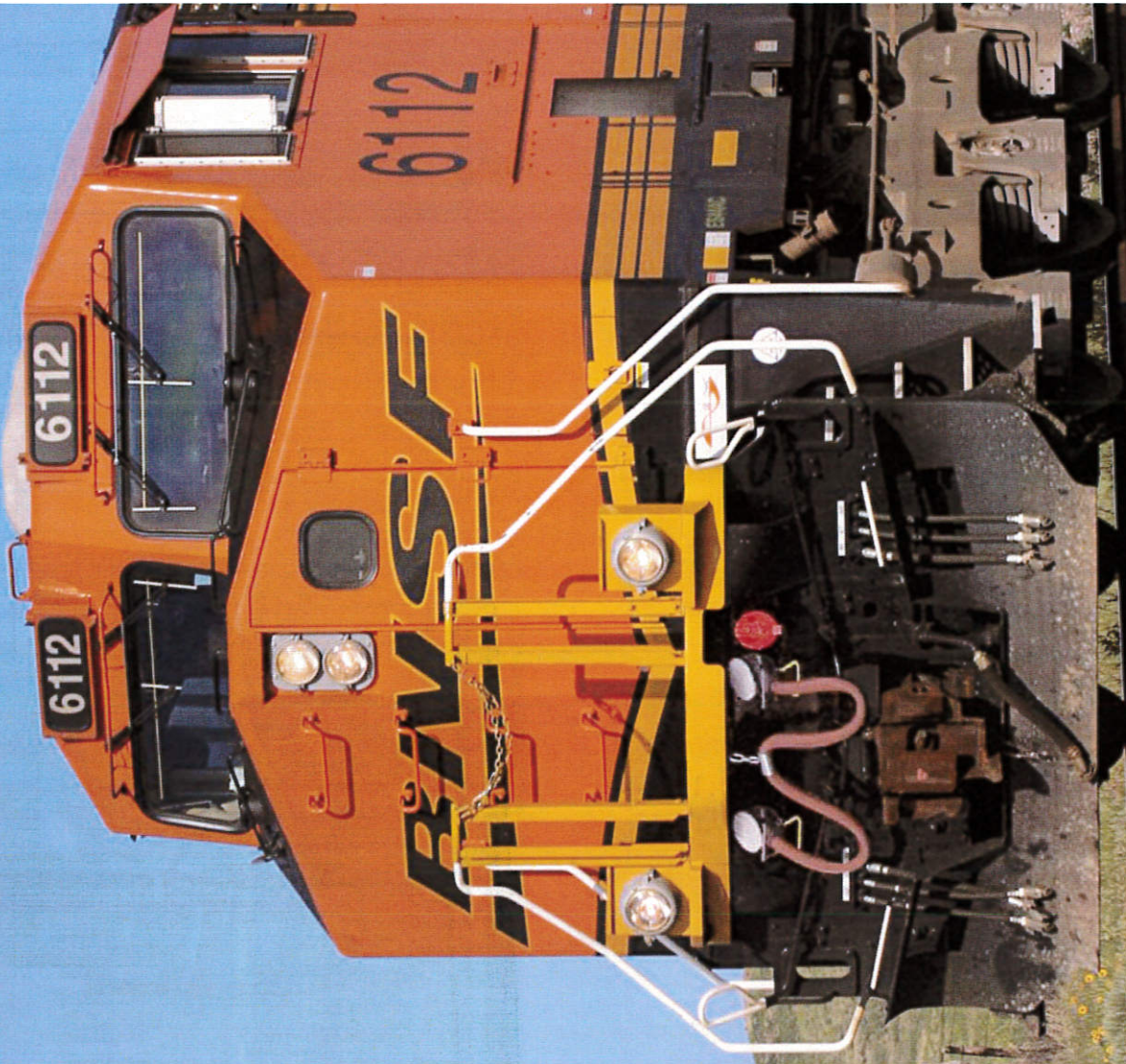
Mechanical Electricians: -111

Engineering (Telecomm & Sys. Electricians) Employees: -1



Shop FTE Utilization

08/15/2021



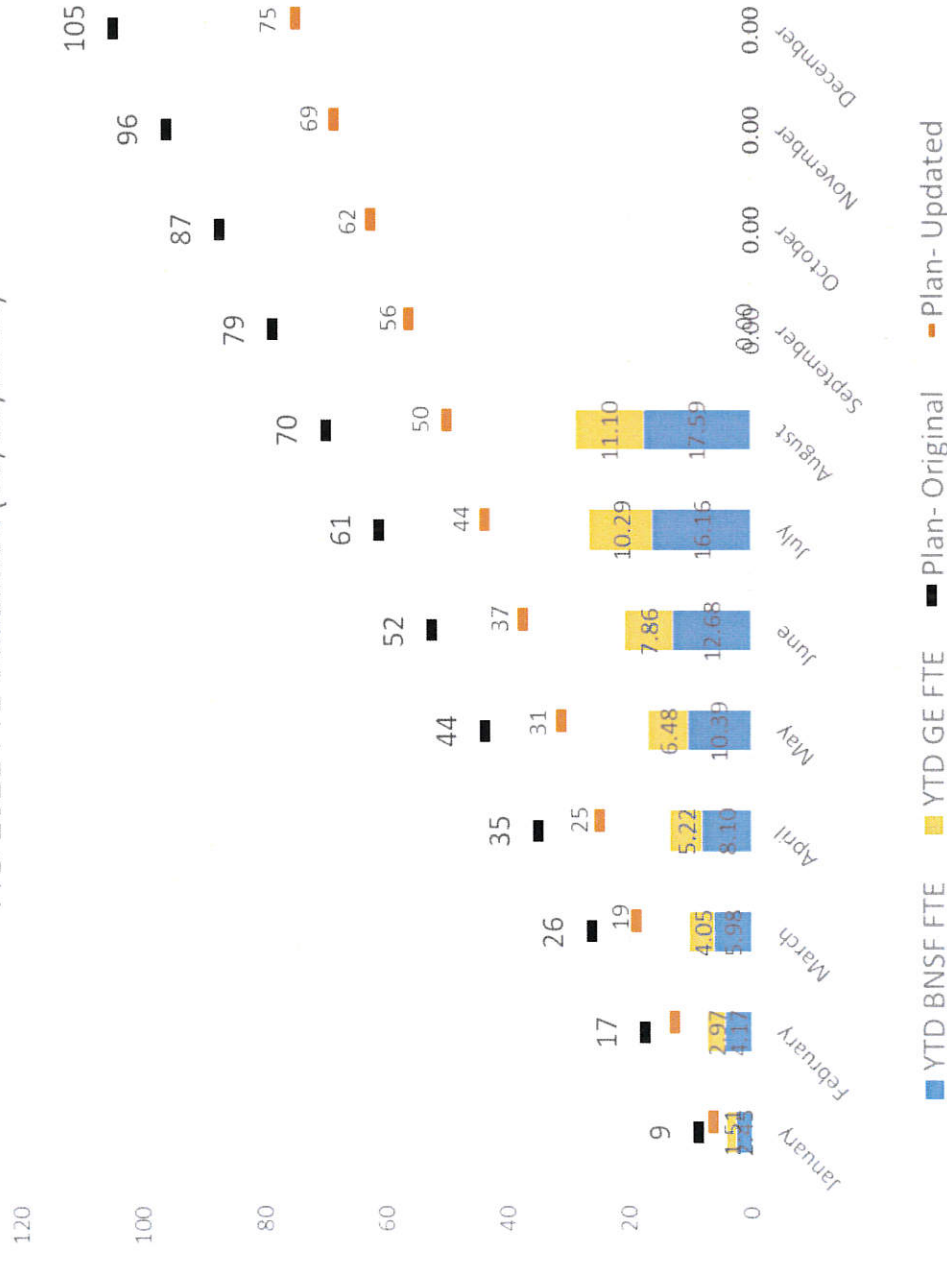
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ATTACHMENT 5 - PAC

BNSF & GE FTE Utilization All Shops

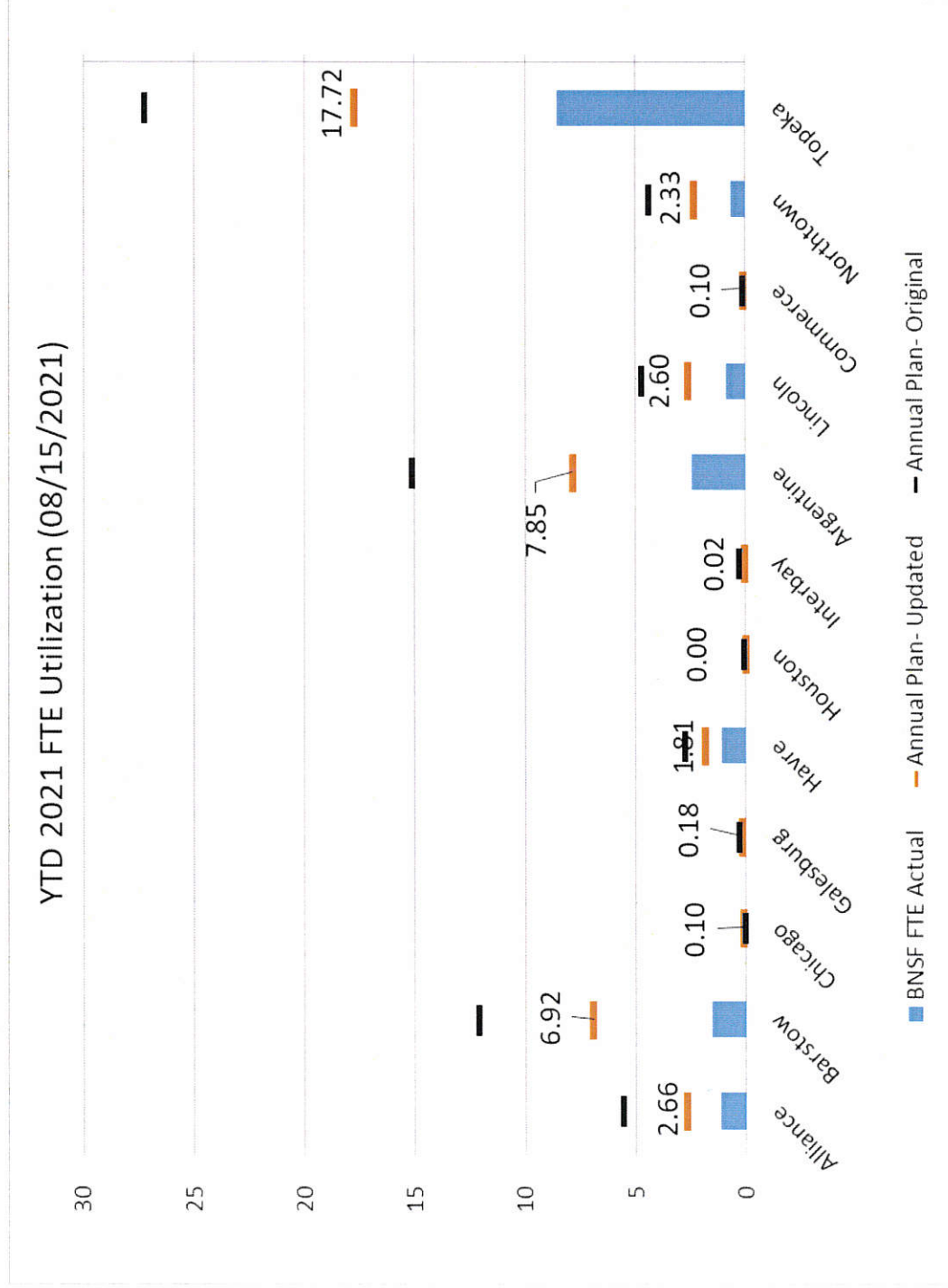
Full Time Equivalent(FTE) employee 1 FTE = 2000 labor hours

YTD 2021 FTE Utilization (08/15/2021)

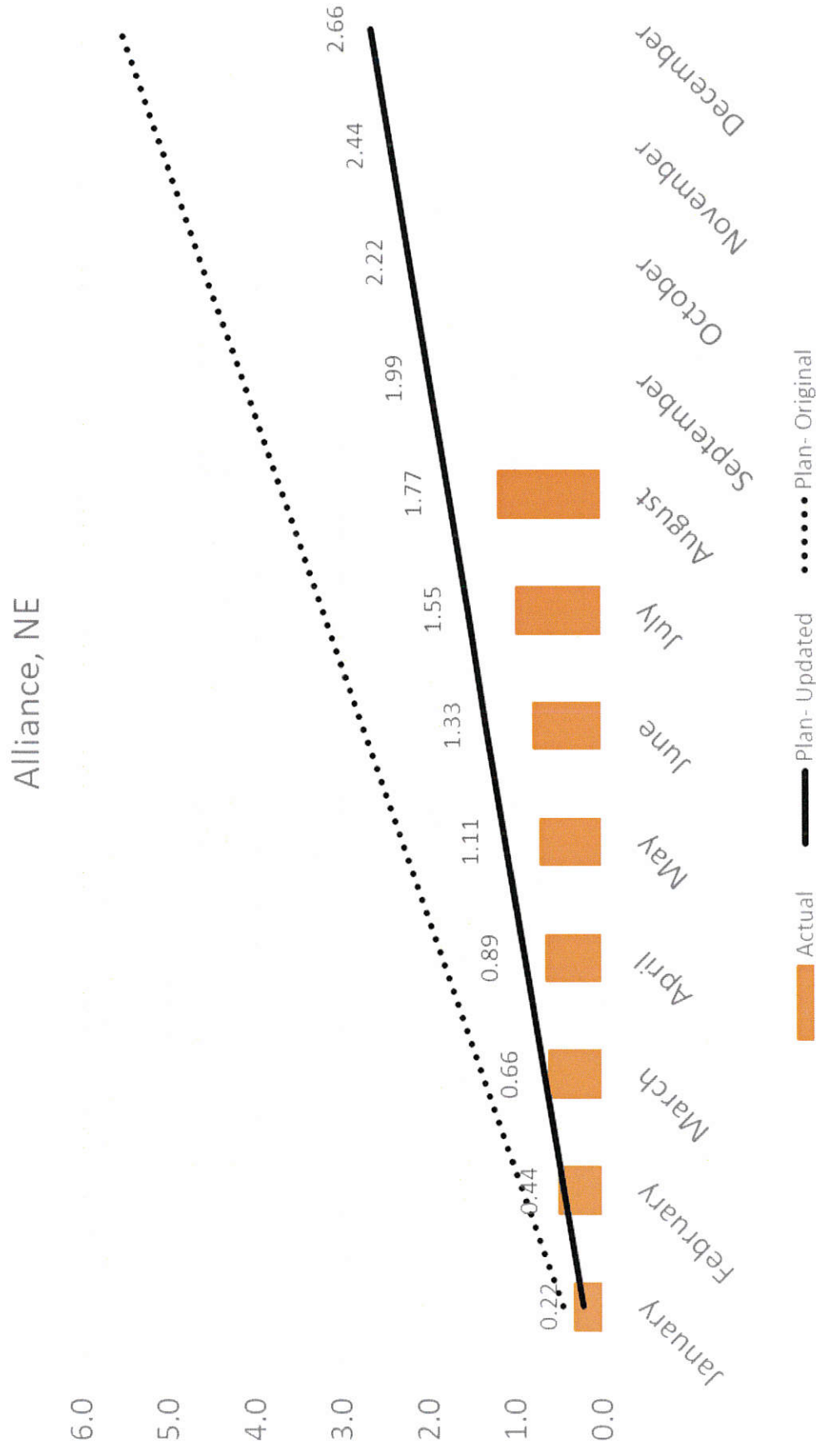


BNSF FTE Utilization by Shop

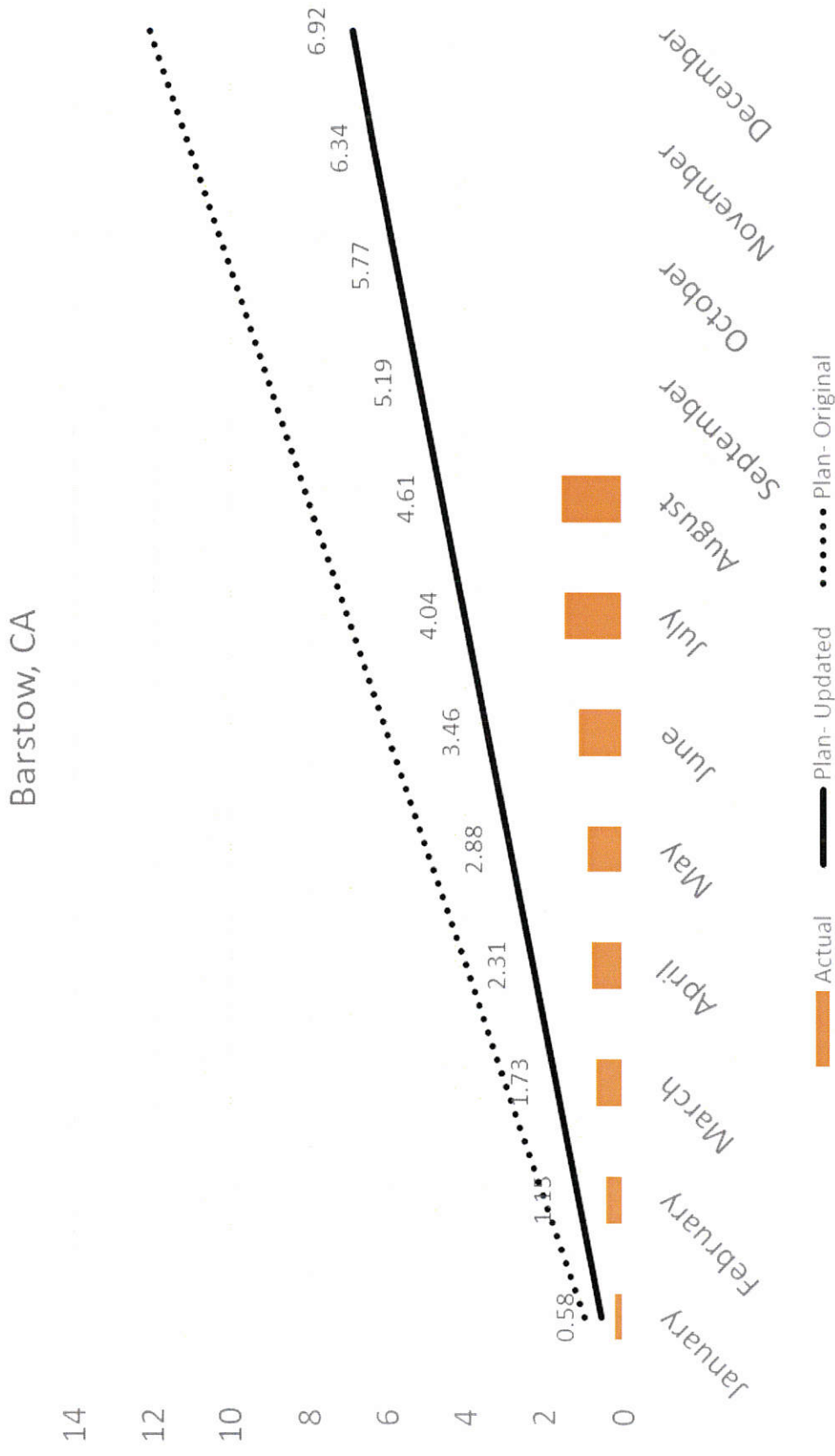
Full Time Equivalent(FTE) employee 1 FTE = 2000 labor hours



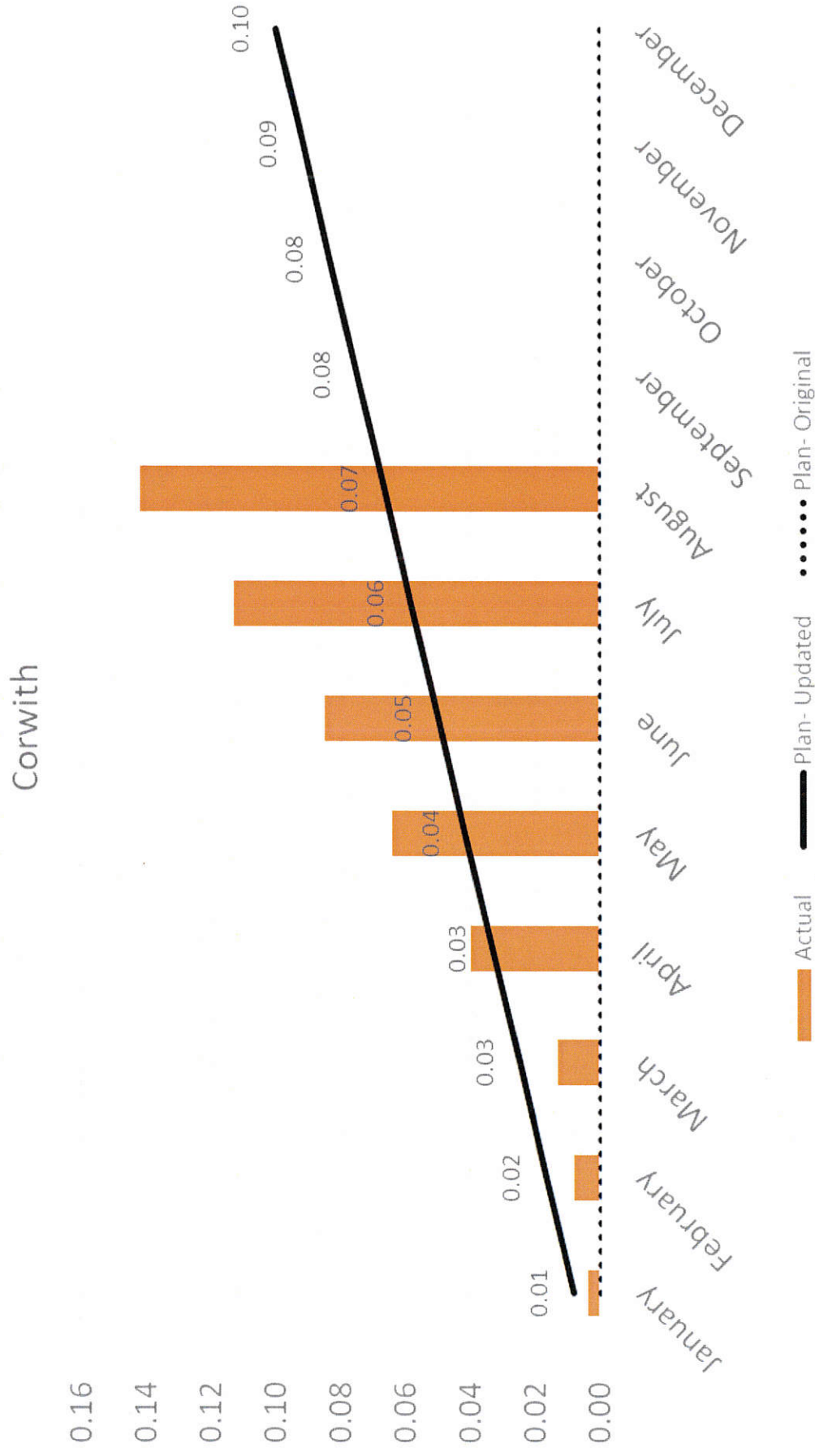
Alliance BNSF FTE Utilization Plan



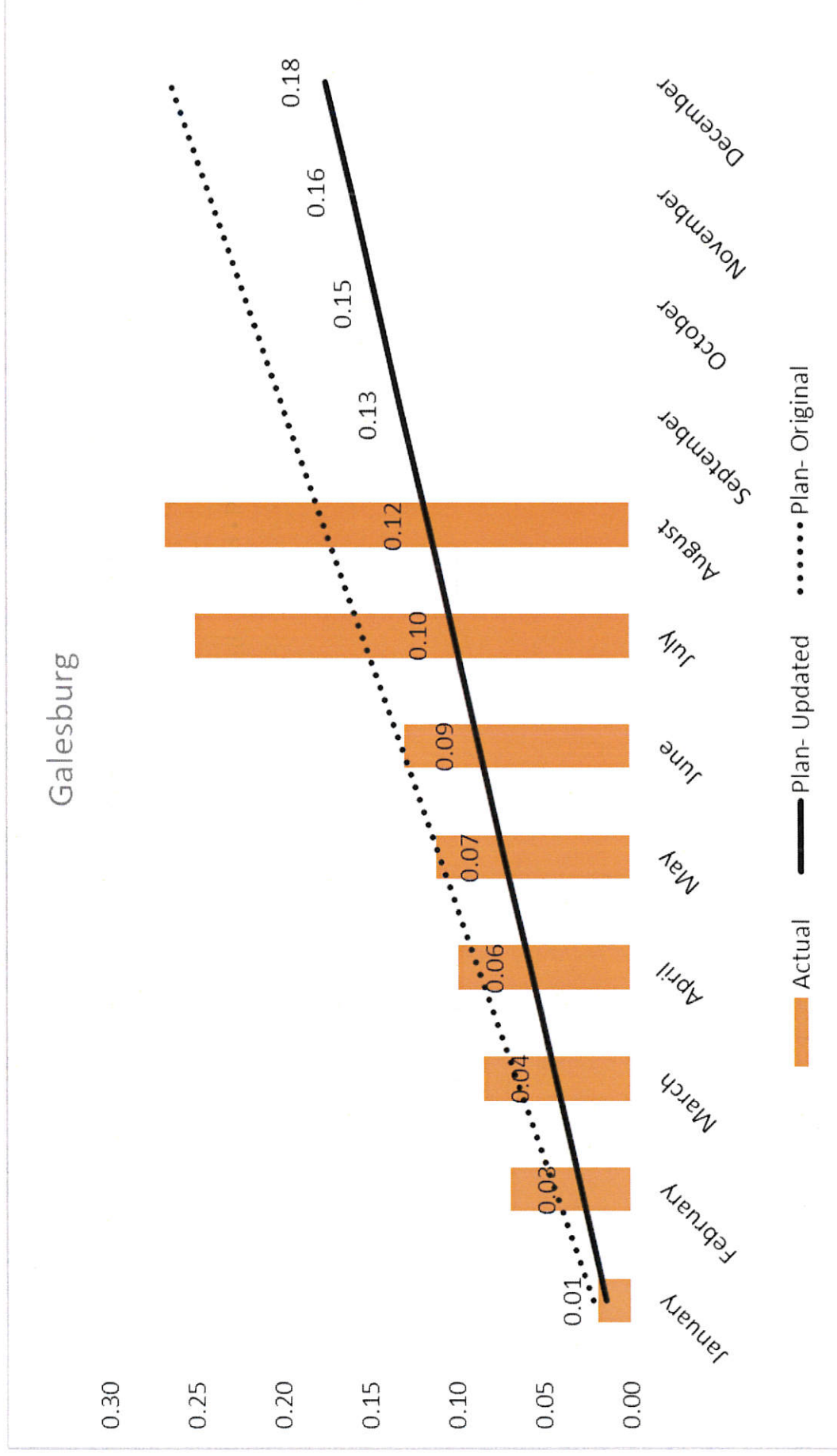
Barstow BNSF FTE Utilization Plan



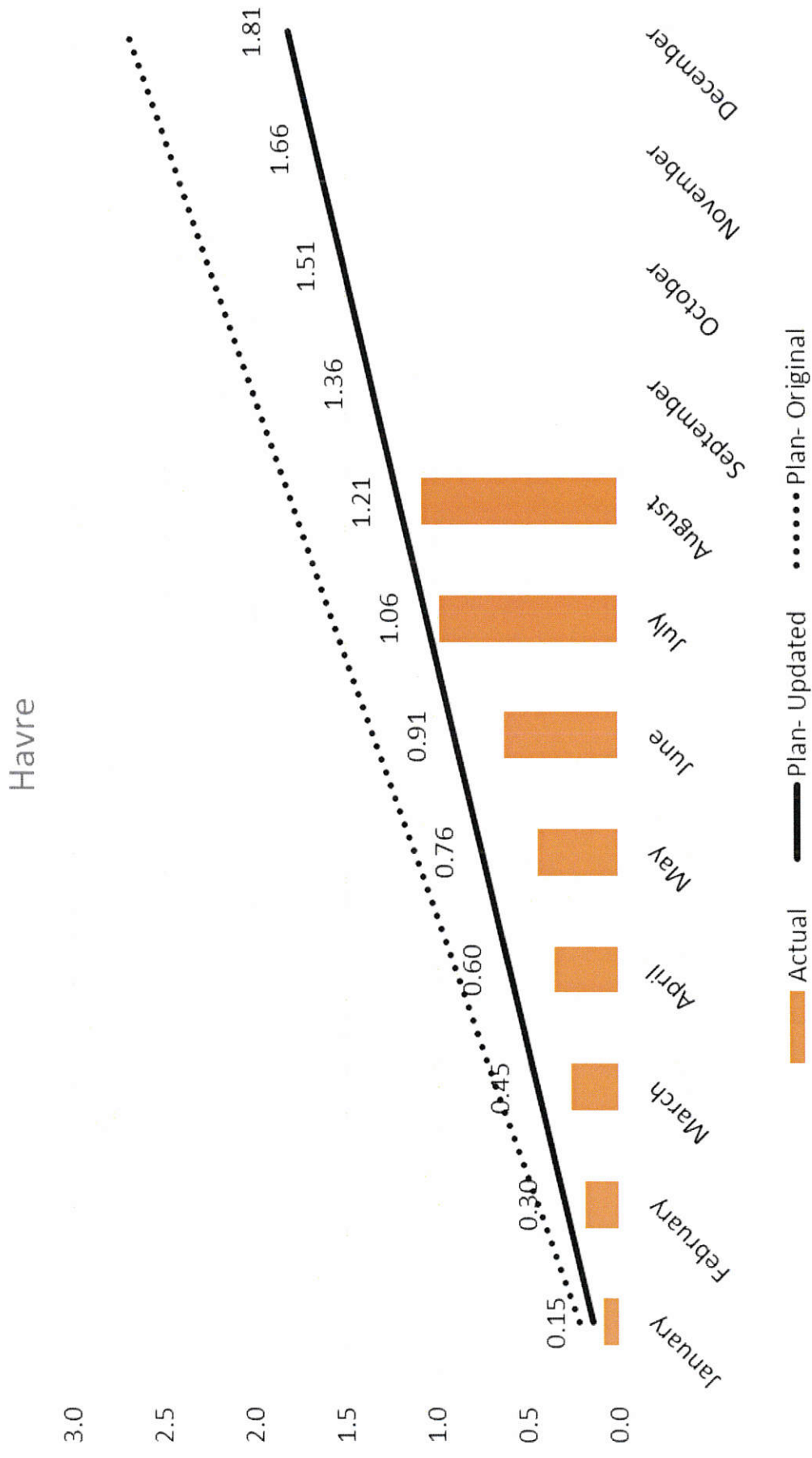
Corwith BNSF FTE Utilization Plan



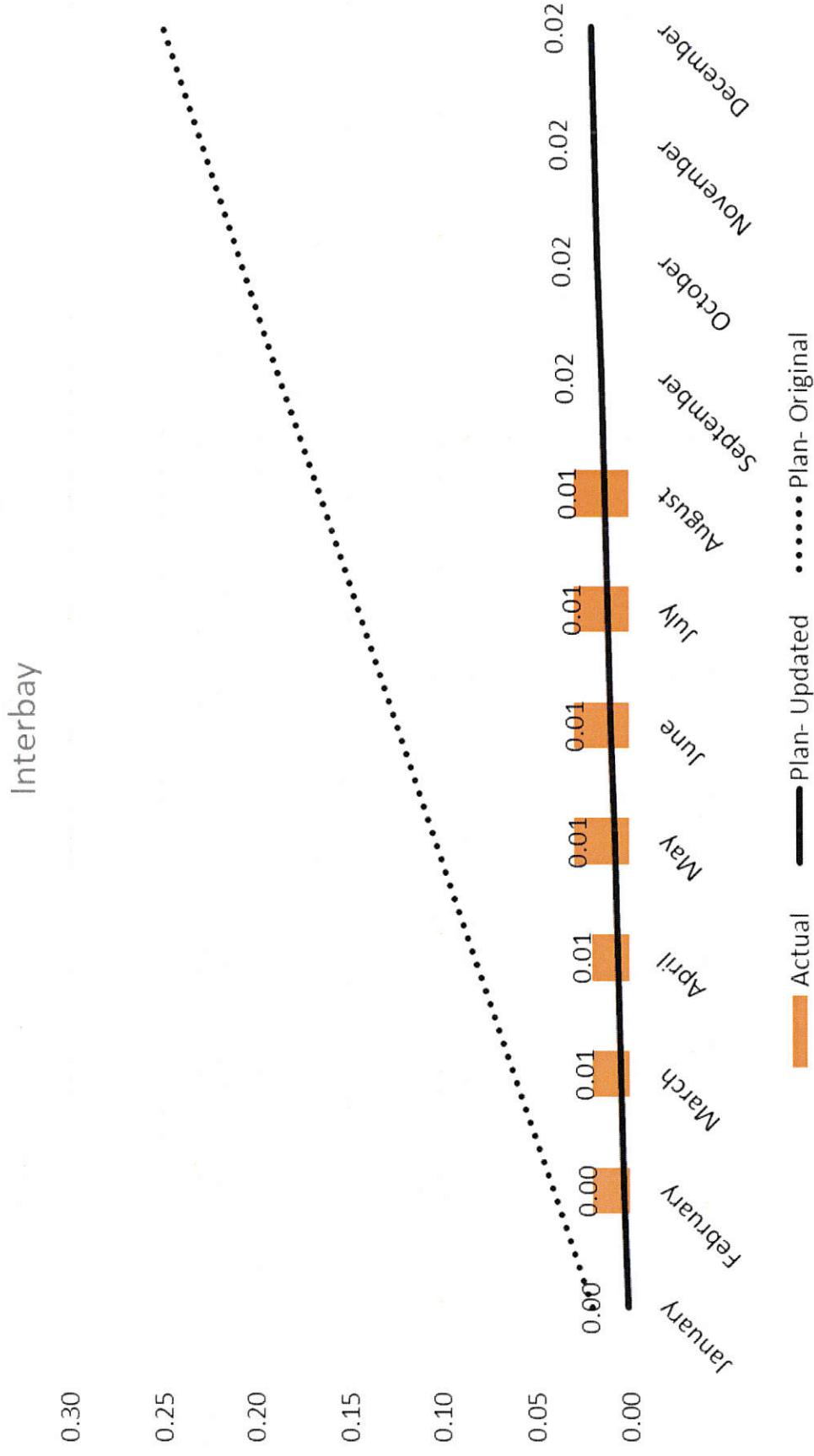
Galesburg BNSF FTE Utilization Plan



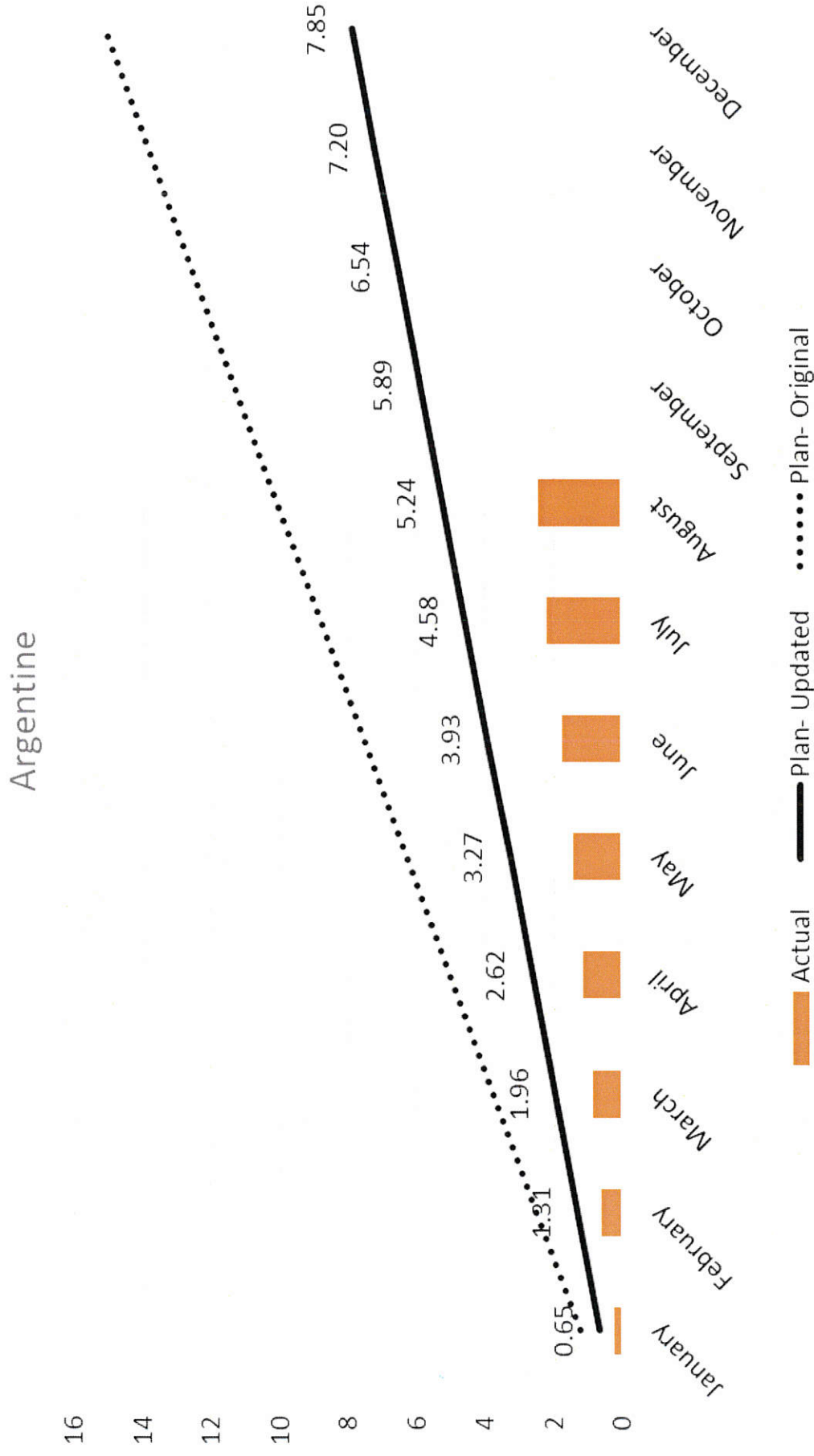
Havre BNSF FTE Utilization Plan



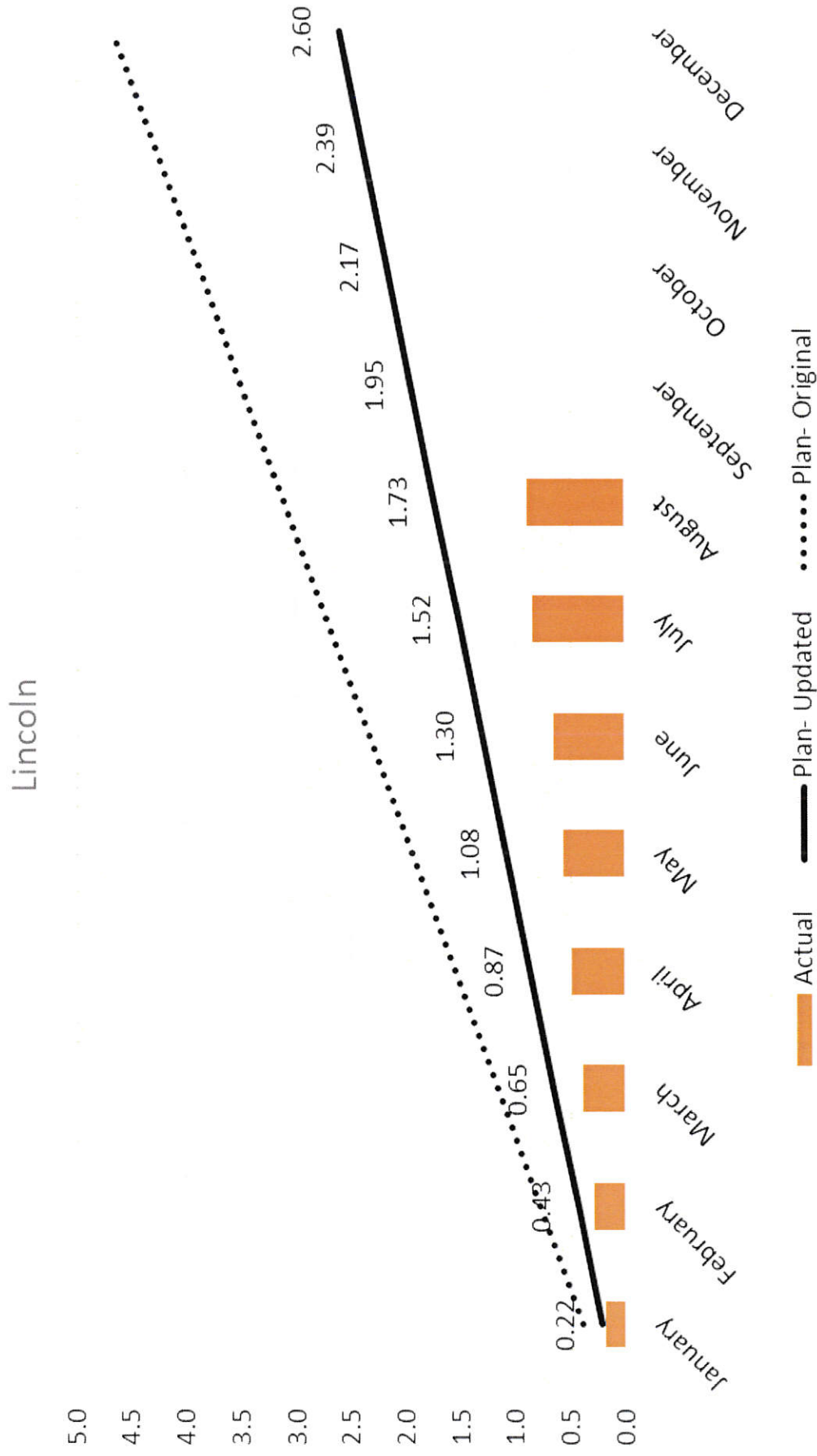
Interbay BNSF FTE Utilization Plan



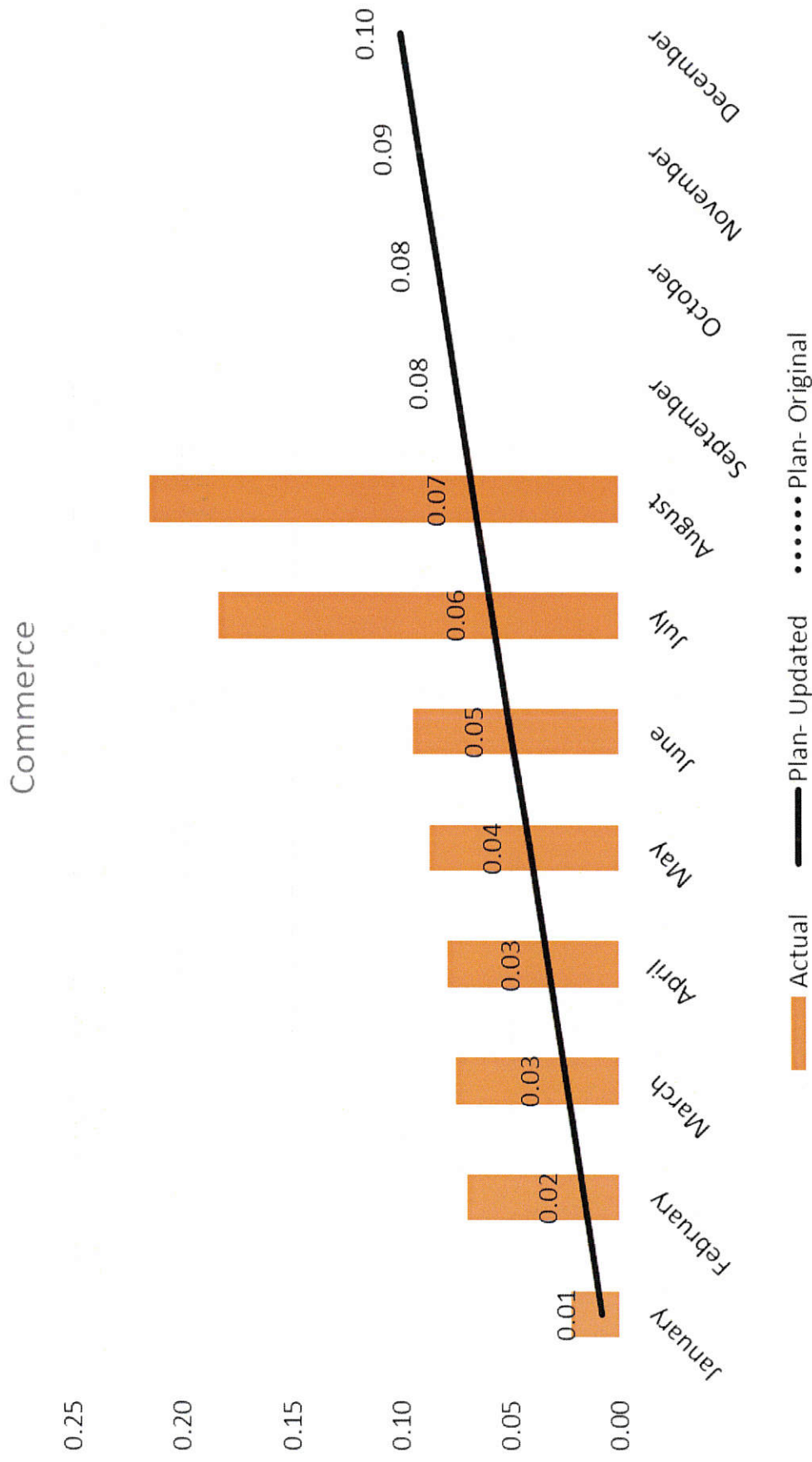
Argentine BNSF FTE Utilization Plan



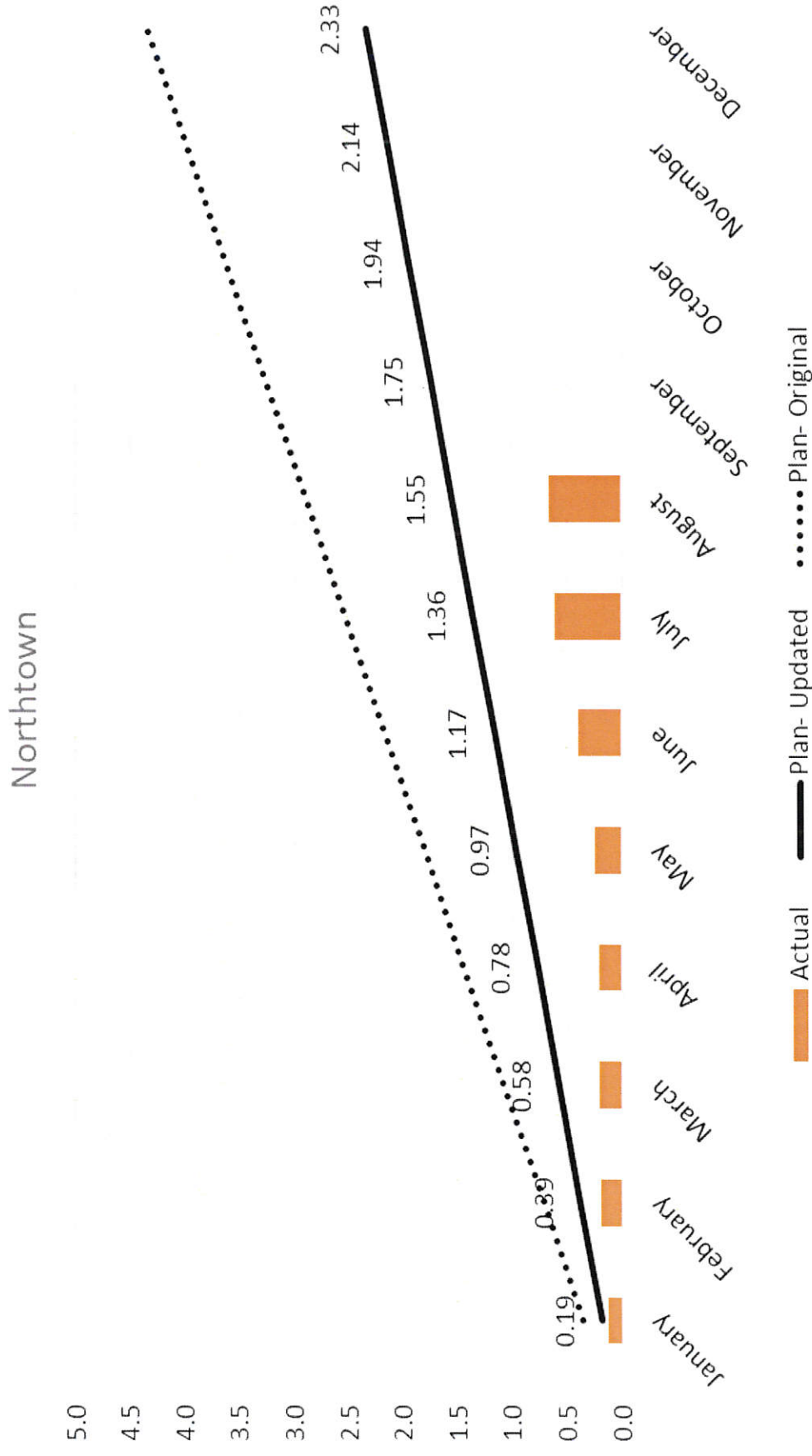
Lincoln BNSF FTE Utilization Plan



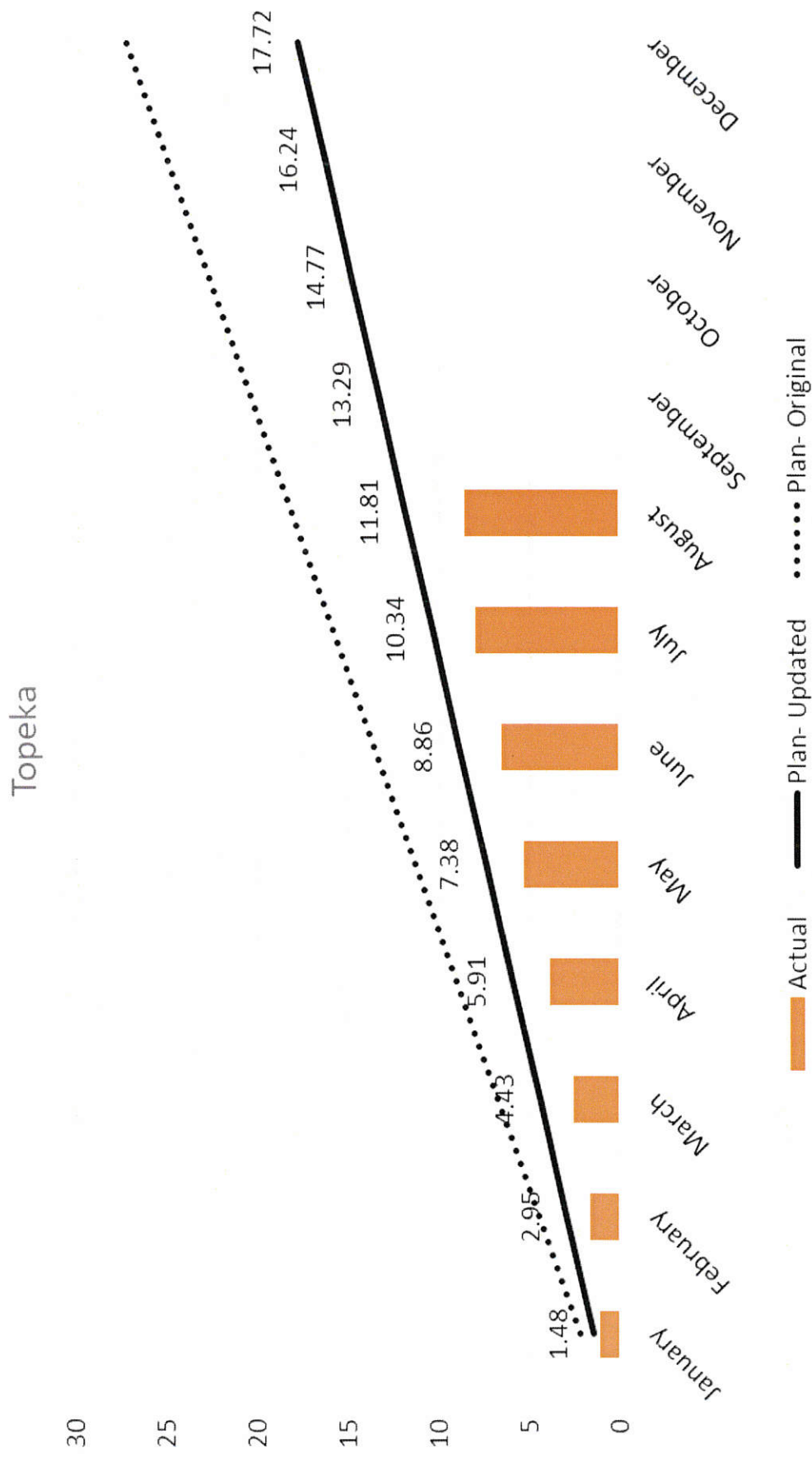
Commerce BNSF FTE Utilization Plan



Northtown BNSF FTE Utilization Plan



Topeka BNSF FTE Utilization Plan





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	Amanda Jacobs
General Chairman	Vice Chairman	Sec. Treasurer	Asst Gen Chairman	Asst Gen Chairman	Admin Asst

VIA ELECTRONIC MAIL
BNSFLR@BNSF.COM

January 19, 2023

Mr. Derek Cargill
General Director – Labor Relations
BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76161-0030

RE: Carrier Notice: 184-09-1417

Dear Mr. Cargill:

This letter concerns the above referenced Carrier Notice to outsource an unspecified number of locomotives that are among 1,000 units that have been given the Carrier's reduced/partial inspection known as Federal Items Only (FIO). Notice 184-09-1417 concerns the intent to contract out the completion of the full maintenance. During the conference, the Organization requested feedback on multiple concerns such as contractor manhours expected, electrical qualifications for quality and safety, wages and benefits for comparison, compliance with CFR 243, and the hiring plan. The Carrier did respond that they would provide their compounding math explaining their reasoning to outsource the numbers they are contemplating, a breakdown of their hiring plan, confirmation of CFR 243 qualifications if contractors will supply, overtime worked and overtime from current forces.

The notice was conferenced on January 18, 2023, with yourself and Jeremy Smith, BNSF Mechanical, along with Mike Tschacher and Darrell Patterson of my staff. In reference to this notice, please be advised that we are investigating this information and the Organization has not waived its right to file a claim.

Sincerely,

Jeff Allred
General Chairman

JA/aj

Cc: Council Staff

OUR BUSINESS – REPRESENTATION & SERVICE



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	Amanda Jacobs
General Chairman	Vice Chairman	Sec Treasurer	Asst Gen Chairman	Asst Gen Chairman	Admin Asst

VIA ELECTRONIC MAIL
BNSFLR@BNSF.COM

January 23, 2023

Mr. Derek Cargill
General Director – Labor Relations
BNSF Railway Company
P.O. Box 961030
Fort Worth, TX 76161-0030

RE: Carrier Notice: 184-09-1417

Dear Mr. Cargill:

This letter is in conjunction with, and made a part of, my Confirmation of Conference letter dated January 19, 2023. That letter refers to the above referenced Carrier Notice to outsource an unspecified number of locomotives that are among 1,000 units that have been neglected due to the Carrier's reduced/partial inspection known as Federal Items Only (FIO). Notice 184-09-1417 adds serious concerns with the Carrier's unprecedented intent to subcontract out this and other types of electrical work to a potentially unskilled and unqualified workforce in an effort to complete the Federal 184-Day and 368-Day full scheduled maintenance and inspection work as part of 49 CFR 229. During the conference, the Organization addressed multiple concerns and requested the Carrier provide the Organization with the following:

- Total Estimated Subcontractor Manhours
- Subcontractor Qualifications, as part of 49 CFR 243
- Electrical Worker Locomotive Qualifications, as part of 49 CFR 229
- Wage and Benefit Comparison
- Carrier's Hiring Plan

At the Organization's request, the Carrier responded that they would provide information detailing the Carrier's intent to subcontract out the approximately 1,000 or so locomotives.

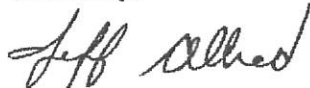
OUR BUSINESS – REPRESENTATION & SERVICE

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Additionally, this letter acknowledges the above referenced notice was conferenced on January 18, 2023, with yourself, BNSF Mechanical, Jeremy Smith, IBEW Assistant General Chairman Mike Tschacher, and IBEW Assistant General Chairman Darrell Patterson, of my staff.

In closing, again, be further advised the Organization has not waived its right to file a claim as we are continuing to gather information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Allred". The signature is fluid and cursive, with the first name "Jeff" and last name "Allred" clearly distinguishable.

Jeff Allred
General Chairman

JA/aj

Cc: Council Staff

From: no-reply@dot.gov <no-reply@dot.gov>
Sent: Friday, January 27, 2023 3:40 PM
To: Russo, Al <Al_Russo@IBEW.org>
Subject: Violation Report Submission Received

Thank you for your submission. FRA will review it shortly, and if you provided contact information you may be reached by FRA personnel

Report Type	Complaint
Name	Mr. Alphonse Russo
Email	Al_Russo@ibew.org
Phone Number	2027286018
Mailling Adress	900 Seventh Street NW Washington DC 20002
Preferred Contact Method	Email
Your Position	Railroad Employee
Category of Alleged Violation, Complaint, or Inuiiry	General Rules and Regulations
Date of Alleged Violation	01/05/23
Time of Alleged Violation	
Alleged Violation Location	FT Worth TX
Railroad or Company that Committed the Alleged Violation	BNSF Railway (BNSF)
Please provide a description of the Alleged Violation	BNSF plans to subcontract out approximately 1,000 locomotives for M-184 and M-386 inspections under the FRA's Winter Waiver, the highest mark seen in 5-7 years. Alarming. BNSF intends to outsource these locomotive inspections to several third-party vendors. To ensure these vendors are capable of performing this and other type work in accordance with 49 CFR 229 and 49 CFR 243 in a matter which guarantees the safe operation of these locomotives and avoids harm to the general public, please provide evidence that the following vendors meet the

	FRA's certification requirements: QRS, MEI, Mid America Car, Wabtec PTR A, AMP, Progress Rail, NRE.
--	---

From: Cargill, Derek A <Derek.Cargill@BNSF.com>
Sent: Wednesday, February 8, 2023 5:01 PM
To: Dale Doyle <ibewsc16@outlook.com>
Subject: RE: 184-09-1417 Confirmation of Conference Followup 2

Mr. Allred,

Please see the table below, in response to your Confirmation of Conference Follow up #2 letter.

Derek Cargill

Contract Shop	Initial	Number	Maintenance Type	Model	Winter Waiver	Arrival Date	Release Date
MEI	BNSF	7210	M184	ES44DC	Y	1/9/2023	1/19/2023
MEI	BNSF	6729	M184	ES44C4	Y	1/9/2023	1/19/2023
MEI	BNSF	789	M184	C44-9W	Y	1/9/2023	1/20/2023
MEI	BNSF	961	M368	C44-9W		1/9/2023	
MEI	BNSF	7718	M184	ES44DC		1/9/2023	2/3/2023
MEI	BNSF	6702	M184	ES44C4	Y	1/9/2023	
QRS	BNSF	9204	M368	SD70ACE		1/9/2023	2/3/2023
QRS	BNSF	6958	M184	ES44C4		1/9/2023	1/24/2023
QRS	BNSF	5368	M184	C44-9W	Y	1/9/2023	1/25/2023
QRS	BNSF	6949	M184	ES44C4		1/9/2023	1/26/2023
QRS	BNSF	5459	M184	C44-9W		1/9/2023	1/20/2023
QRS	BNSF	4555	M368	C44-9W		1/9/2023	1/30/2023
QRS	BNSF	5639	M368	AC4400CW		1/9/2023	1/20/2023
QRS	BNSF	7936	M368	E4C4C		1/9/2023	1/26/2023
QRS	BNSF	5131	M184	C44-9W		1/9/2023	1/23/2023
QRS	BNSF	6612	M184	ES44C4	Y	1/11/2023	1/23/2023
QRS	BNSF	9746	M184	SD70MACE	Y	1/11/2023	2/1/2023
QRS	BNSF	8170	M368	ES44C4		1/11/2023	1/19/2023
QRS	BNSF	6716	M184	ES44C4		1/11/2023	1/19/2023
QRS	GECX	4905	M184	C44-9W		1/11/2023	1/19/2023
QRS	BNSF	7324	M184	ES44DC	Y	1/11/2023	1/19/2023
QRS	BNSF	7474	M184	ES44DC	Y	1/11/2023	1/24/2023

QRS	BNSF	8268	M184	ES44C4	Y	1/11/2023	1/24/2023
QRS	BNSF	7556	M368	ES44DC		1/31/2023	2/3/2023
QRS	BNSF	1055	M368	C44-9W		1/11/2023	1/26/2023
MEI	BNSF	1085	M184	C44-9W	Y	1/23/2023	2/1/2023
MEI	BNSF	6069	M184	ES44AC	Y	1/24/2023	1/31/2023
MEI	BNSF	5242	M368	C44-9W		1/24/2023	1/31/2023
MEI	BNSF	7881	M368	ES44DC		1/23/2023	
MEI	BNSF	4133	M184	C44-9W		1/23/2023	
MEI	BNSF	7373	M368	ES44DC		1/23/2023	2/2/2023
MEI	BNSF	7204	M368	ES44DC	Y	1/23/2023	2/3/2023
MEI	BNSF	5325	M368	C44-9W		1/12/2023	1/24/2023
MEI	BNSF	5004	M368	C44-9W	Y	1/12/2023	1/25/2023
MEI	BNSF	5712	M368	AC4400CW	Y	1/12/2023	1/23/2023
MEI	BNSF	5113	M184	C44-9W		1/12/2023	1/20/2023
MEI	BNSF	1063	M184	C44-9W	Y	1/12/2023	1/30/2023
MEI	BNSF	8075	M368	ES44C4		1/12/2023	1/26/2023
MEI	BNSF	7828	M368	ES44DC		1/12/2023	1/27/2023
MEI	BNSF	4009	M368	C44-9W		1/9/2023	
MEI	BNSF	7950	M368	E4C4C			
MEI	BNSF	4338	M368	C44-9W			
MEI	BNSF	4040	M184	C44-9W		1/23/2023	1/25/2023
MEI	BNSF	4252	M368	E4C4C			
MEI	BNSF	774	M368	C44-9W			1/26/2023
MEI	BNSF	8248	M184	ES44C4			2/1/2023
MEI	BNSF	7232	M368	ES44DC			
MEI	BNSF	711	M368	C44-9W			1/31/2023
MEI	BNSF	4007	M184	C44-9W		1/23/2023	1/27/2023
MEI	BNSF	6513	M184	ES44C4			2/1/2023
MEI	BNSF	9241	M184	SD70ACE			
MEI	BNSF	6957	M184	ES44C4			
MEI	BNSF	625	M184	C44-9W			
MEI	BNSF	7869	M184	ES44DC			2/2/2023
MEI	BNSF	4765	M368	C44-9W			
MEI	BNSF	5379	M184	C44-9W			
MEI	BNSF	4323	M184	C44-9W			
MEI	BNSF	6993	M184	ES44C4			1/23/2023
MEI	BNSF	5386	M368	C44-9W		1/23/2023	1/30/2023
MEI	BNSF	4700	M368	C44-9W		1/23/2023	1/24/2023
MAC	BNSF	4129	M368	C44-9W			
MAC	BNSF	4136	M184	C44-9W			
MEI	BNSF	4994	M184	C44-9W			
QRS	BNSF	4089	M184	C44-9W	Y	1/31/2023	2/1/2023
QRS	BNSF	5221	M368	C44-9W		1/31/2023	2/3/2023
QRS	BNSF	4130	M184	C44-9W	Y	1/31/2023	2/2/2023

QRS	BNSF	5203	M368	C44-9W		1/31/2023	2/3/2023
QRS	BNSF	6047	M184	ES44AC		1/31/2023	
QRS	BNSF	7703	M368	ES44DC	Y		
QRS	BNSF	8270	M184	ES44C4			
QRS	BNSF	7313	M184	ES44DC	Y		
QRS	BNSF	8991	M184	SD70ACE			
QRS	BNSF	4350	M184	C44-9W	Y		
QRS	BNSF	8032	M368	ES44C4	Y		
QRS	BNSF	5498	M368	C44-9W	Y		
QRS	BNSF	5350	M368	C44-9W			
QRS	BNSF	4001	M184	C44-9W			
MAC	BNSF	1098	M184	C44-9W			
MAC	BNSF	4744	M368	C44-9W			
QRS	BNSF	7428	M368	ES44DC			
QRS	BNSF	5315	M368	C44-9W			
QRS	BNSF	4209	M368	E4C4C			
MEI	BNSF	4148	M368	C44-9W			2/6/2023
MEI	BNSF	5387	M184	C44-9W			
MEI	BNSF	5340	M368	C44-9W			
MEI	BNSF	5526	M184	C44-9W			
MEI	BNSF	4980	M184	C44-9W			
MEI	BNSF	7840	M184	ES44DC			
MEI	BNSF	4213	M184	E4C4C			
MEI	BNSF	5220	M368				

From: IBEW SC 16 <ibewsc16@outlook.com>

Sent: Thursday, February 2, 2023 11:20 AM

To: BNSFLR <BNSFLR@BNSF.com>

Cc: Cargill, Derek A <Derek.Cargill@BNSF.com>; Merrell, Donald J <Donald.Merrell@BNSF.com>; Jeff Burk <jaburk@live.com>; dpattersonsc16@outlook.com; carox353@gmail.com; Mike Tschacher - 0778 (miketschacher@outlook.com) <miketschacher@outlook.com>; Dale Doyle <ibewsc16@outlook.com>

Subject: 184-09-1417 Confirmation of Conference Followup 2

*** This email includes an ATTACHMENT from outside of BNSF and could contain malicious links. Ensure email is from a **trusted** sender before opening the attachment.

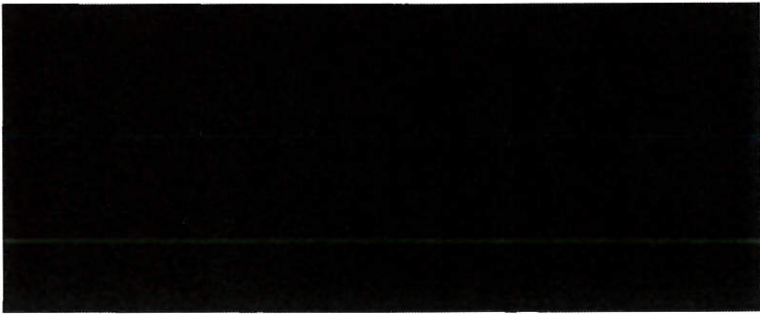
Never enter your login credentials if prompted. Click the **Email Alert** button on the Outlook toolbar to send SPAM email to Security.

EXTERNAL EMAIL

Jeff Allred

General Chairman

System Council 16 - IBEW
7306 SW 34th Ave, Ste 1-371
Amarillo, TX 879121
Phone 651-438-2927



From: King, Charles (FRA) <charles.king@dot.gov>
Sent: Thursday, January 26, 2023 10:32 PM
To: Russo, Al <Al_Russo@IBEW.org>
Cc: Alexy, Karl (FRA) <karl.alexey@dot.gov>
Subject: RE: BNSF Enforcement Discretion ED

Al, good evening. I said on the call today that the FRA will get a list of all locomotives that BNSF sent off the property during the winter storm. We will inspect those units for Federal compliance items when or if they return. We will not check or inspect program work or modifications that are not within the scope of the CFR. BNSF indicated that the locomotives they sent off the property are not their front-line locomotives. These units will likely remain in storage until the railroad needs additional horsepower. BNSF also indicated that they might sell some of the units, which we will have no oversight.

Thank you,
Charlie

From: Russo, Al <Al_Russo@IBEW.org>
Sent: Thursday, January 26, 2023 9:18 PM
To: King, Charles (FRA) <charles.king@dot.gov>
Cc: Alexy, Karl (FRA) <karl.alexey@dot.gov>
Subject: RE: BNSF Enforcement Discretion ED

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Charlie,

As a follow up to the zoom conference call today, you stated the FRA is going to conduct inspections on all work being performed by BNSF's third-party contractors. I curious to know how the FRA intends to perform approximately 1,000 inspections. As I mentioned during the call, I have serious concerns with respect to the safety and operation of those locomotives.

Thank you in advance.

Al

From: King, Charles (FRA) <charles.king@dot.gov>
Sent: Thursday, January 26, 2023 6:03 PM
To: Russo, Al <Al_Russo@IBEW.org>

Cc: Alexy, Karl (FRA) <karl.alexu@dot.gov>

Subject: BNSF Enforcement Discretion ED

Al, here is a copy of the letter I sent BNSF for the storm that closed down much of the northern properties around 13 December. Initially, BNSF asked for two weeks, but with employees taking scheduled vacations over Christmas and New Year's, BNSF told me they couldn't get any overtime to work the backlog or crews to rescue the stranded engines. So, BNSF asked for and was granted another two weeks of ED on the listed engines to end on 14 January by me.

I have attached a copy of the list of locomotives I received daily from BNSF. BNSF referred to this as a Winter Waiver. As Karl stated, there was no waiver requested or considered. ED is the action FRA can take for impacts from hurricanes, floods, and snow storms that negatively impact the country's supply chain.

Finally, I have included the email correspondence from me that reiterated that we would not consider any additional ED for this weather event.

Regards,

Charlie

Charles King
Director, Office of Railroad Infrastructure and Mechanical
Office of Railroad Safety
Federal Railroad Administration
(o) 202-493-0120
(c) 202-329-5031
charles.king@dot.gov

**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 4th QUARTER 2022**

SAVINGS CERTIFICATE STATEMENT:	BALANCE
Mid Country	\$105,765.84
Freedom Bank of MO CD 1	\$220,000.00
Freedom Bank of MO CD 2	\$220,000.00
Unity One Credit Union CD 1	\$110,292.26
Unity One Credit Union CD 2	\$105,328.84
Guaranty Bank CD 1	\$107,981.27
SFC Bank	<u>\$210,339.70</u>
TOTAL SAVINGS CERTIFICATES	\$1,079,707.91
 GENERAL FUND (SAVINGS ACCOUNTS)	
Freedom Bank of MO	\$75,137.49
Unity One Credit Union	\$5.00
 CONVENTION FUND (CHECKING ACCOUNT)	
Bank of America	\$237,749.82
 MISC. INCOME	
 CHECKBOOK ENDING BALANCE - MIDCOUNTRY BANK	 \$147,450.65
 TOTAL - ALL ACCOUNTS	

**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 4th QUARTER 2022**

PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>October</u>	<u>November</u>	<u>December</u>
366	\$2,314.75	\$2,314.75	\$6,845.75
418	\$3,546.00	\$3,595.25	\$3,595.25
452	\$7,190.50	\$2,462.50	\$2,413.25
506	\$10,096.25	\$0.00	\$0.00
533	\$4,038.50	\$0.00	\$4,777.25
547	\$15,169.00	\$0.00	\$0.00
708	\$394.00	\$492.50	\$0.00
757	\$0.00	\$13,642.25	\$6,747.25
778	\$0.00	\$4,137.00	\$11,327.25
783	\$0.00	\$3,940.00	\$0.00
784	\$1,034.25	\$1,034.25	\$1,083.50
866	\$0.00	\$11,918.50	\$11,820.00
881	\$0.00	\$4,334.00	\$4,334.00
886	\$1,723.75	\$2,167.00	\$1,822.25
906	\$197.00	\$197.00	\$394.00
946	\$4,284.75	\$2,019.25	\$0.00
959	\$16,449.50	\$8,126.25	\$0.00
1022	\$0.00	\$0.00	\$9,062.00
1023	\$6,649.00	\$0.00	\$22,753.90
1146	\$1,625.25	\$0.00	\$3,102.75

**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 4th QUARTER 2022**

PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>October</u>	<u>November</u>	<u>December</u>
1155	\$0.00	\$0.00	\$0.00
1199	\$1,920.75	\$2,019.25	\$2,068.50
1517	\$15,169.00	\$4,777.25	\$0.00
1559	\$1,034.25	\$1,034.25	\$1,034.25
1769	\$0.00	\$5,368.25	\$0.00
1856	\$0.00	\$14,381.00	\$4,829.50
2355	\$0.00	\$2,314.75	\$4,678.75
TOTAL	\$92,836.50	\$90,275.25	\$102,689.40

**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 4th Quarter 2022 and 1st Quarter 2023:

October 5—7, 2022 – Memphis, TN – Local 778 and 881 Visits

October 15—22, 2023 – Myrtle Beach, SC – Railroad Progress Meeting, General Chairman Meeting

November 1—2, 2023 – Springfield, MO – Local 778 Officer Meeting and Site Visit

November 7—11, 2023 – Fort Worth, TX – BNSF LAT and LR Meetings

November 15, 2023 – Springfield, MO – Local 778 Meeting

December 5—8, 2023 – Virginia Beach, SC – PLB 6987 Hearings

December 27—30 – Tulsa, OK – File Organization

January 10—12, 2023 – St. Paul, MN – CP Ratification Vote

February 15—17, 2023 – Chicago, IL – Gary RR Negotiations, T/A Reached

February 22—23, 2023 – Kansas City, KS and Springfield, MO – Banking and Site Visit

Darrell Patterson's Travel 4th Quarter 2022 and 1st Quarter 2023:

October 16—21, 2022 – Myrtle Beach, SC – IBEW RR Dept. Conference

November 9—11, 2022 – Fort Worth, TX – BNSF LAT Meetings

November 16—18, 2022 – Battle Creek, MI – GTW Investigation

December 6—8, 2022 – Virginia Beach, VA – PLB 6987 Arbitration Hearings

Jeff Burk's Travel 4th Quarter 2022 and 1st Quarter 2023:

October 15—21, 2022 – Myrtle Beach, SC – IBEW Railroad Dept Conference

October 31—November 3, 2022 – Springfield, MO – Meet with LU778 Officers/Members

December 27—30, 2022 – Tulsa, OK – File Cleanup/Convention Planning

January 10—12, 2023 – St. Paul, MN – CP Ratification Vote

February 15—17, 2023 – Chicago, IL – Gary RR Contract Negotiations

February 20—21, 2023 – Springfield, MO – Attend Local 778 Meeting and Site Visit

February 22—23, 2023 – Springfield, MO – Close Unity One Bank Accounts and Transfer to Freedom Bank

March 6—7, 2023 – Belen, NM – Attend Local 1199 Meeting and Site Visit

March 9—10, 2023 – Fort Worth, TX – Attend BNSF SAC Meeting

March 13—14, 2023 – Alexandria, MN – BNSF Telecom Meeting

March 15—16, 2023 – Brainerd, MN – BNSF Site Visit, Local 783

Brad Carothers' Travel 4th Quarter 2022 and 1st Quarter 2023:

October 15—21, 2022 – Myrtle Beach, SC – IBEW Railroad Dept Conference

February 2—9, 2023 – Whitefish, MT - Investigation

Mike Tschacher's Travel 4th Quarter 2022 and 1st Quarter 2023:

October 15—21, 2022 – Myrtle Beach, SC – IBEW Railroad Dept Conference

November 1—2, 2022 – Vancouver, WA – Investigation

December 5—8, 2022 – Norfolk, VA – PLB 6987 Arbitration Hearings

December 28—29, 2022 – Broken Arrow, OK – File Cleanup/Convention Planning

January 30—February 2, 2023 – Phoenix, AZ – BNSF Trainers Conference and Meetings with LR and CMOs



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	Mike Tschacher Asst Gen Chairman	Amanda Jacobs Admin Asst
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August 11, 2023

Second Quarter, 2023 Report to the Members of System Council 16

Dear Members,

I want to begin by thanking Local 366 officers and their courageous members for assisting us in the successful removal of a verbally abusive and anti-union shop manager. Without their statements under fear of retaliation, this never would have happened. We attempted to work with this manager for years without any success. I also need to commend CN for listening, investigating, and doing the right thing.

I also need to thank Local 2355, President/Local Chairman, Zachary Trunk for his assistance in Codifying the Agreement with the Northern Indiana Commuter Transportation District (NICTD). This Agreement hadn't been codified after being amended many times, with many rule changes over the years through negotiations. Zach's immense knowledge of his Agreement was instrumental in this success.

CPKC continues to be focused on their merger, so there isn't much happening outside of that. They are moving their headquarters to Kansas City. The difficulty we are fearing is that any telecom work moved to the former KCS will be lost, as Telecom workers on the KCS are exempt employees. We will be attempting to persuade CPKC to bring them under IBEW jurisdiction.

Contract negotiations on the Paducah and Louisville will begin this month.

We are currently in negotiations with CN to bring the former GTW telecom members under a monthly rate by adopting the former IC/WC Agreement. This will benefit our members as their Agreement is from the 1940's and very outdated. This is a slow and meticulous process and will take some time.

BNSF Mechanical continues down its' path of PSR, although they claim they aren't. I could write a book about what has transpired on this property since my last report. To keep this manageable, I will use bullet points as most of the BNSF members are fully aware of what is happening.

- BNSF implemented a hiring freeze in Mechanical for most of the summer.
- Abolished roughly a 3rd of our training positions.

OUR BUSINESS – REPRESENTATION & SERVICE

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

- Abolished many service track jobs giving our inspection work to the Laborers under the guise of Simple Task.
- Forced our members at larger shops to work their first rest day on two occasions.

Normally forcing our members to work is better than contracting out the work, but it is obvious that BNSF has no intention of hiring either. If you recall, in response to our lawsuit and in BNSF's Motion to Dismiss our lawsuit, they kept referencing their robust hiring plan that far exceeded attrition. Not long after the Motion was filed, BNSF enacted the above. These actions resulted in the IBEW, IAMAW, and SMART-MD filing a Motion to file a supplemental declaration informing the Court of what BNSF had done versus what they claimed they were doing. Attached, you will find the Motion as well as my second Declaration.

I also want to thank the Locals that are taking on the mundane task of filing claims for every locomotive that other crafts are inspecting our items on.

Recently BMWED also sued BNSF in Federal Court for allowing their maintenance of way employment numbers to fall to unprecedented low levels.

For the first time in decades, BNSF Telecom now has a construction crew. If it goes well, we hope to see more in the future.

Last but certainly not least, as many of you already know, Assistant General Chairman, Darrell Patterson has retired. Darrell was a huge asset to the Council and will be missed. We hope he has a happy and lengthy retirement.

We are looking forward to seeing all of the delegates at our Convention in Branson, MO in October.

Sincerely,



Jeff Allred
General Chairman
System Council 16 – IBEW

Attachments: Motion for Leave
2nd Declaration
Plaintiffs' Suggestions
SC16 Financials
SC16 Travel

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, et al.,)	
Plaintiffs,)	
)	
v.)	Case No. 3:23-cv-5012
)	
BNSF RAILWAY CO.,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATIONS
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

Plaintiffs International Brotherhood of Electrical Workers, International Association of Machinists and Aerospace Workers, District 19, and International Association of Sheet Metal, Air, Rail & Transportation Workers – Mechanical and Engineering Department, pursuant to Local Rules 15.1 and 7.0, respectfully move the court for leave to file the attached supplemental declarations of Jeff Allred, Kyle Loos, and Charles Fraley, Jr., in this matter in further opposition to Defendant BNSF Railway Company's motion to dismiss.

Respectfully submitted,

/s/ Jason R. McClitis

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Attorney for SMART-MD and IAM

Dated: July 7, 2023

CERTIFICATE OF SERVICE

I certify that on July 7, 2023, I filed a copy of the foregoing Motion for Leave with the Court through the Court's CM/ECF system, which serves copies on all attorneys of record.

/s/ *Erich H. Lange*
Erich H. Lange

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, et al.,)	
Plaintiffs,)	
)	
v.)	Case No. 3:23-cv-5012
)	
BNSF RAILWAY CO.,)	
)	
Defendant.)	

SECOND DECLARATION OF JEFF ALLRED

1. My name is Jeff Allred. I am of legal age and competent to provide this Declaration. I am the General Chairman of System Council No. 16, International Brotherhood of Electrical Workers (“System Council 16”), which is the exclusive bargaining representative of all Mechanical Electricians employed by BNSF Railway Company (“BNSF”). I previously provided a declaration in this case (Doc. 23-1) in support of Plaintiffs’ opposition to BNSF’s motion to dismiss.

2. Since May 5, 2023 – when BNSF filed its reply brief and the supplemental declaration of General Director of Labor Relations Derek Cargill – I have become aware of certain actions taken by BNSF that are significant to this case.

3. In several of BNSF’s filings, which I have reviewed, BNSF asserted that it “is doing all it can to bolster its existing workforce.” Def.’s Br. in Supp. of its Mot. to Dismiss, at 9 (Doc. 18). But despite its supposed efforts, including purportedly offering hiring incentives, BNSF claimed that it has nevertheless been unable to hire sufficient Mechanical Electricians, Machinists, and Railroad Sheet Metal Workers. *Id.* BNSF also claimed that its 2023 hiring plan is “well above

projected attrition levels,” *id.* at 12, and that BNSF “has [] made substantial efforts to hire new employees and to train them,” *id.* at 17. BNSF reiterated those claims in its reply brief and the supplemental declaration from Derek Cargill.

4. Although BNSF has represented to the Court that it is actively trying to hire and train shop mechanics to adequately staff its maintenance shops, BNSF has implemented a hiring freeze for Mechanical Electricians and other shop mechanics in different crafts. The hiring freeze began sometime in May 2023, and is expected to last at least sixty (60) days. BNSF’s Chief Mechanical Officer Edmundo Rodriguez notified the IBEW verbally of the hiring freeze at a system LAT meeting, which took place May 16 through 18, 2023, in Kansas City, Kansas.

5. Additionally, on May 30, 2023, BNSF announced to the IBEW in a phone call that it is eliminating numerous “trainer positions” across crafts, including five (5) of the sixteen (16) total Mechanical Electrician trainer positions – roughly one-third of all Mechanical Electrician trainers. Trainer positions, as the name suggests, are critically necessary to train newly hired mechanics and craftworkers to ensure they are capable of performing locomotive maintenance and inspections. In its May 30 announcement, BNSF explained that the trainer positions were being eliminated because BNSF does not foresee hiring very many apprentices in the future.

6. BNSF’s mechanical workforce has not significantly increased, and is still far below pre-pandemic levels. As of May 31, 2023, the IBEW has seen a net loss of eight (8) Mechanical Electricians since the beginning of 2023. From 2020 through May 31, 2023, there has been a net loss of 349 Mechanical Electricians at BNSF. Although BNSF has discontinued its outsourcing of routine locomotive inspection and maintenance, it faces the same mechanical staffing shortage as before. Unless BNSF hires and maintains an adequate mechanical workforce, BNSF will almost

certainly encounter the same high out-of-service counts and large maintenance backlogs in the future.

7. BNSF now has so few Mechanical Electricians available that it is abolishing Mechanical Electricians' service track positions and reassigning those Mechanical Electricians to staff shop maintenance positions. The safety sensitive work performed by Mechanical Electricians on service tracks, which includes daily locomotive inspections, has instead been assigned to workers with less experience and training than IBEW-represented Mechanical Electricians.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 6, 2023.

A handwritten signature in black ink, reading "Jeff Allred", written over a horizontal line.

Jeff Allred

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, et al.,)	
Plaintiffs,)	
)	
v.)	Case No. 3:23-cv-5012
)	
BNSF RAILWAY CO.,)	
)	
Defendant.)	

**PLAINTIFFS' SUGGESTIONS IN SUPPORT OF THEIR MOTION FOR LEAVE TO
FILE SUPPLEMENTAL DECLARATIONS IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Plaintiffs International Brotherhood of Electrical Workers (“IBEW”), International Association of Machinists and Aerospace Workers, District 19 (“IAM”), and International Association of Sheet Metal, Air, Rail & Transportation Workers – Mechanical and Engineering Department (“SMART-MD”) (collectively “the Unions”) respectfully move the court for leave to file supplemental declarations in this matter in further opposition to Defendant BNSF Railway Company’s (“BNSF”) motion to dismiss (Doc. 17).

Pursuant to Local Rules 15.1 and 7.0, the Unions propose to submit the supplemental declarations attached to their Motion for Leave to File Supplemental Declarations in Opposition to Defendant’s Motion to Dismiss, to address actions taken by BNSF since briefing of Defendant’s motion to dismiss concluded on May 5, 2023. Those actions are contrary to representations made by BNSF in both its brief in support of its motion to dismiss (Doc. 18) and its reply brief (Doc. 27).

In its brief in support of its motion to dismiss (Doc. 18) and its reply brief (Doc. 27), BNSF asserted that it has made substantial efforts to hire and train more Mechanical Electricians, Machinists, and Railroad Sheet Metal Workers. Specifically, BNSF represented to the Court that it has offered hiring bonuses to recruit shop mechanics, that it “has a 2023 hiring plan that is well above projected attrition levels, and that it “has also made substantial efforts to hire new employees and to train them.” Def.’s Br. in Supp. of its Mot. to Dismiss, at 9, 12, 17 (Doc. 18). In its reply brief, BNSF again represented to the Court that it was trying to increase hiring and that it was offering “hiring bonuses and the like.” Def.’s Reply Br., at 2-3 (Doc. 27).

Since briefing of BNSF’s motion to dismiss concluded on May 5, 2023, BNSF implemented a hiring freeze for the mechanical department. BNSF has also announced it plans to abolish a number of “trainer” positions. Those positions are necessary to ensure newly hired shop mechanics can correctly perform locomotive inspections, maintenance, and repairs. The stated reason for abolishing these positions is that BNSF is not planning to hire many apprentices in the future.

This new information is detailed in the declarations of Kyle Loos, Jeff Allred, and Charles Fraley, Jr., attached to the Unions’ motion, for which the Unions seek leave to file. Despite BNSF’s representations to the Court, its hiring freeze and abolishment of numerous trainer positions clearly demonstrates that BNSF has abandoned any intention it may have had to hire and train more mechanics. BNSF’s actions not only contradict its own representations to the Court, but further support the Unions’ claim that BNSF has acted, and continues to act, in bad faith in violation of Section 2, First of the Railway Labor Act, 45 U.S.C. § 152, First.

BNSF’s mechanical workforce remains dramatically below pre-pandemic levels, and even well below 2020 and 2021 levels. Even if BNSF had been making serious efforts to increase its

shop mechanic workforce, it plainly is no longer doing so. By implementing a hiring freeze, BNSF has effectively abandoned efforts to increase staffing. By abolishing many trainer positions, BNSF has effectively disabled itself from increasing staffing since it will not have enough trainers necessary to train a sufficient number of apprentices to actually increase BNSF's workforce.

Unless BNSF actually makes a good-faith effort to hire and maintain an adequate mechanical workforce to conduct inspections and routine maintenance, it is likely that BNSF will again fall behind on locomotive inspections and maintenance work, and will again seek to catch up by outsourcing routine locomotive inspection and maintenance work to the detriment of Machinists, Mechanical Electricians, and Railroad Sheet Metal Workers represented by the Unions.

The Unions submit that this information – which became known to the Unions after briefing of Defendant's motion to dismiss had completed – is relevant to the Court's consideration of BNSF's motion to dismiss and the Unions' opposition thereto. Accordingly, the Unions respectfully request that the Court grant the Unions leave to file the attached second declarations of Messrs. Loos, Allred, and Fraley.

Respectfully submitted,

/s/ Jason R. McClitis

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Dated: July 7, 2023

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Attorney for SMART-MD and IAM

CERTIFICATE OF SERVICE

I certify that on July 7, 2023, I filed a copy of the foregoing with the Court through the Court's CM/ECF system, which serves copies on all attorneys of record.

/s/ Erich H. Lange
Erich H. Lange

**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 2nd Quarter 2023**

SAVINGS CERTIFICATE STATEMENT:

Mid Country	\$107,336.36
Freedom Bank of MO CD 1	\$220,000.00
Freedom Bank of MO CD 2	\$220,000.00
Freedom Bank of MO CD 3	\$150,000.00
Guaranty Bank CD 2	<u>\$213,944.78</u>
TOTAL SAVINGS CERTIFICATES	\$911,281.14

GENERAL FUND (SAVINGS ACCOUNTS)

Freedom Bank of MO	\$252,103.67
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CONVENTION FUND (CHECKING ACCOUNT)

Bank of America	\$243,650.82
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MISC. INCOME

CHECKBOOK ENDING BALANCE - MIDCOUNTRY BANK	\$81,250.80
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TOTAL - ALL ACCOUNTS	\$1,488,286.43
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**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 2nd Quarter 2023**

<u>L.U.</u>	<u>April</u>	<u>May</u>	<u>June</u>
366	\$2,672.73	\$2,656.02	\$2,558.00
418	\$4,017.75	\$4,014.00	\$4,125.50
452	\$2,787.50	\$0.00	\$0.00
506	\$7,454.75	\$0.00	\$0.00
533	\$0.00	\$0.00	\$2,284.74
547	\$0.00	\$17,003.75	\$0.00
708	\$501.75	\$557.50	\$0.00
757	\$7,451.00	\$22,379.00	\$0.00
778	\$4,683.00	\$0.00	\$9,254.50
783	\$6,762.50	\$2,071.25	\$0.00
784	\$1,059.25	\$1,003.50	\$1,059.25
866	\$26,258.25	\$0.00	\$27,068.00
881	\$4,906.00	\$9,209.25	\$0.00
886	\$2,440.00	\$2,620.25	\$2,620.25
906	\$197.00	\$0.00	\$669.00
946	\$0.00	\$4,000.00	\$2,341.50
959	\$9,143.00	\$9,087.25	\$8,920.00
1022	\$0.00	\$19,568.25	\$0.00
1023	\$0.00	\$35,680.00	\$0.00
1146	\$1,728.25	\$1,603.75	\$0.00

**SYSTEM COUNCIL 16, IBEW
FINANCIAL REPORT - 2nd Quarter 2023**

PER CAPITA TAX RECEIPTS:

<u>L.U.</u>	<u>April</u>	<u>May</u>	<u>June</u>
1155	\$3,791.00	\$0.00	\$9,087.41
1199	\$2,341.50	\$2,397.25	\$2,397.25
1517	\$0.00	\$15,833.00	\$0.00
1559	\$1,157.75	\$1,170.75	\$1,170.75
1769	\$0.00	\$4,629.50	\$0.00
1856	\$5,830.50	\$5,401.25	\$5,407.75
2355	\$4,937.75	\$5,105.00	\$2,620.25
TOTAL	\$100,121.23	\$165,990.52	\$81,584.15

NOTE: \$52.75 Per Capita Tax + \$2.00 deposited to S.C. Convention Fund + \$1.00 to Railroad Legal Fund (RRCC) = \$55.75

Jeff Allred's Travel 2nd Quarter 2023:

April 11—14, 2023 – Bend, OR – BNSF Telecom Meetings

May 1—4, 2023 – Memphis, TN – BNSF Meetings – CN Investigation

May 22—26, 2023 – Fort Worth, TX – BNSF Telecom Meetings – LR Meetings

May 30—June 1, 2023 – Charlotte, NC – Arbitration

June 19—22, 2023 – St. Louis, MO – 11th District Progress Meeting

June 27—30, 2023 – Oklahoma City, OK – Staff Meetings – Darrell's Retirement

Darrell Patterson's Travel 2nd Quarter 2023

April 13, 2023 – Roeland Park, KS – Local 866 Meeting

April 17—18, 2023 – Lincoln, NE – Local 1022 Meeting

May 11, 2023 – Roeland Park, KS – Local 866 Meeting

May 16—18, 2023 – Overland Park, KS – BNSF LAT Meetings

June 8, 2023 – Roeland Park, KS – Local 866 Meeting

June 28—30, 2023 – Oklahoma City, OK – SC16 Staff Meetings

Jeff Burk's Travel 2nd Quarter 2023:

April 11—14, 2023 – Bend, OR – BNSF Telecom Meeting

May 22—25, 2023 – Fort Worth, TX – BNSF Signal/Telecom/LR Meetings

June 5—9, 2023 – Phoenix, AZ – IBEW 7th District Progress Meeting

June 27—30, 2023 - Oklahoma City, OK – SC16 Staff Meetings

Brad Carothers' Travel 2nd Quarter 2023

May 30—June 1, 2023 – Charlotte, NC – PLB7621

June 5—9, 2023 – Phoenix, AZ – District Progress Meeting and Shop Visit

June 27—30, 2023 – Oklahoma City, OK – Staff Meetings

Mike Tschacher's Travel 2nd Quarter 2023

March 8—10, 2023 – Minneapolis, MN – Local 506 Investigation and Meeting

March 15, 2023 – Topeka, KS – Topeka shop visit and Local 959 Union Meeting

March 27—30, 2023 – Kansas City, KS – Telecomm Meetings and CRF Visit

May 1—4, 2023 – Memphis, TN – Local 881 Investigation and Meetings

May 23—25, 2023 – Minneapolis, MN – Local 506 Investigation

June 19—22, 2023 – St. Louis, MO – 11th District Progress Meeting

June 27—30, 2023 – Oklahoma City, OK – Staff Meetings and Convention Planning