



# SYSTEM COUNCIL NO. 16

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

7306 SW 34<sup>th</sup> Ave, Ste 1 - 371 • Amarillo, TX 79121 • Phone (651) 438-2927 • [ibewsc16@outlook.com](mailto:ibewsc16@outlook.com)

**Jeff Allred**  
General Chairman

**Brad Carothers**  
Vice Chairman

**Jeff Burk**  
Sec Treasurer

**Darrell Patterson**  
Asst Gen Chairman

**Mike Tschacher**  
Asst Gen Chairman

**Amanda Jacobs**  
Admin Asst

April 9, 2021

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

Dear Members,

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

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

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

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

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

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

OUR BUSINESS – REPRESENTATION & SERVICE

## INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

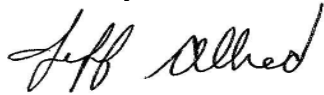
The first Quarter has seen a dramatic increase in discipline on several properties. Many cases are attributed to absenteeism and could have been avoided if the member would have utilized Sick Leave or FMLA.

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

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

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

Sincerely,

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

Jeff Allred  
General Chairman  
System Council 16 – IBEW

Attachments: Aubrey Opinion  
IBEW Employee OTVB

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

**Jeff Allred**

Good morning,

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

#### Proof of Vaccination

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

#### Required Vaccination

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

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

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

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

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

Thanks,

Lucas R. Aubrey  
Sherman Dunn, P.C.



# HILDEBRAND McLEOD & NELSON LLP.

Representing Injured Railroad Employees Since 1926



## IBEW EMPLOYEES HAVE A PROBLEM

### ATTORNEYS & OFFICES

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

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

Victor A. Russo

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

### THE REALITY:

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

### THE REAL RISK:

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

### THE PROBLEMS:

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

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

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

#### 2. If another driver or public entity (think defective road) is at fault.

In this situation the injured employee or their family can bring a claim against the other driver or that driver's employer or public entity if the roadway is unsafe. The vast majority of drivers only carry 30/60 coverage meaning that the most an individual can recover is \$30,000.

#### 3. When the injured employee was the driver of the company vehicle and they are solely at fault.

In this situation the employee would be very lucky if they planned ahead and had sufficient insurance to provide for themselves or family. This would require a robust disability policy and/or life insurance coverage.

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

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



# HILDEBRAND McLEOD & NELSON LLP.

Representing Injured Railroad Employees Since 1926



## IBEW EMPLOYEES HAVE A PROBLEM

### ATTORNEYS & OFFICES

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

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

Victor A. Russo

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

### THE REAL WORLD:

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

### THE ACTION PLAN:

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

### YOU ARE NOT ALONE:

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

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

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

**SAVINGS CERTIFICATE STATEMENT:**

**BALANCE**

Mid Country	\$100,423.47
Old Missouri Bank	\$217,803.95
Freedom Bank of MO	\$224,453.90
Unity One Credit Union CD 1	\$106,422.15
Unity One Credit Union CD 2	\$101,430.74
Guaranty Bank CD 1	\$107,981.27
Guaranty Bank CD 2	\$13,546.74
SFC Bank	<u>\$204,550.65</u>
<b>TOTAL SAVINGS CERTIFICATES</b>	<b>\$1,076,612.87</b>

**GENERAL FUND (SAVINGS ACCOUNTS)**

Freedom Bank of MO	\$127.95
Unity One Credit Union	\$5.00

**CONVENTION FUND (CHECKING ACCOUNT)**

Bank of America	\$151,457.21
-----------------	--------------

**MISC. INCOME**

<b>CHECKBOOK ENDING BALANCE - MIDCOUNTRY BANK</b>	<b>\$468,235.30</b>
---	---------------------

<b>TOTAL - ALL ACCOUNTS</b>	<b>\$1,696,438.33</b>
-----------------------------	-----------------------

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

**PER CAPITA TAX RECEIPTS:**

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



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

**PER CAPITA TAX RECEIPTS:**

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

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

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

February 1—6, 2021 – Fort Worth, TX/Temple, TX – BNSF Labor Relations Meeting, Staff Meeting and BNSF Barrier Meeting

February 21—25, 2021 – Fort Worth, TX – New Hire Tower Rescue Class

March 15—17, 2021 – Sand Springs, OK – Meeting with Mike Tschacher

March 28, 2021 – April 2, 2021 – Amarillo, TX – Local 1146 Visit, Belen, NM – Local 1199 Visit

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

January 7, 2021 – Roeland Park, KS – Local 866 Meeting

February 8, 2021 – Kansas City, KS – CRF Meeting

March 9, 2021 – Des Moines, IA – CP Investigation (Postponed)

March 11, 2021 – Roeland Park, KS – Local 866 Meeting

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

February 1—5, 2021 – Fort Worth, TX – Meet with BNSF LR – Temple, TX – BNSF Barrier Meeting and Staff Meeting

February 22—25, 2021 – Fort Worth, TX – BNSF Telecom Fall Pro Class

March 15—16, 2021 – Sand Springs, OK – Setup Office for AGC Tschacher

March 17—18, 2021 – Springfield, MO – Local 778 Visit

March 30—April 1, 2021 – Belen, NM – Local 1199 Visit

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

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