

BMWED

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
Of The International Brotherhood Of Teamsters

JOURNAL



Volume 118 ■ Number 1

www.bmwe.org

January/February 2009

Rail Safety Bill and Amtrak Funding Signed into Law *Congress Mandates Random Drug and Alcohol Testing for MofW Employees*

Crucial revisions of federal rail safety statutes were signed into law on October 16, 2008. The first omnibus rail safety legislation since 1970, the 315-page Rail Safety Improvement Act of 2008 (RSIA) also contains an Amtrak re-authorization and authorization for expenditures on expanded high-speed rail operations.

The RSIA builds on the work of the BMWED and other rail labor organizations that, along with the leadership of Cong. James Oberstar (D-Minnesota), Chairman of the House Transportation Committee, refused to accept that the wholesale federal regulatory failure of enforcement of safety laws and rules was leading to purposeless death

and injury of workers and citizens.

The RSIA requires the FRA to engage in extensive reviews, reports, studies, pilot projects, all of which is required to lead to expansive rule-making. The new law requires the FRA, carriers, and labor to approach safety regulation from a scientific/statistical basis rather than the approach of 'this is how we've always done it'.

The BMWED will encourage the newly appointed leadership of the FRA to effectively implement the RSIA by seeking complete funding by Congress of the programs contained in the law and cooperating with its monitoring progress.

With specific goals of reducing accident and injury rates, the new law contains many significant changes affecting BMWED members including:

- Provisions requiring the Secretary of Transportation to complete a track inspection time study within two years to determine whether track inspection speeds and territory size should be regulated, and if inspection frequency and remedial action should be amended;
- Provisions requiring each Class I railroad and intercity/commuter passenger railroad to develop a safety risk reduction program (RRP) to reduce accidents, injuries, and fatalities; and
- Provisions requiring the Secretary

of Transportation to establish minimum training standards for each class and craft of safety-related rail employees and equivalent rail contractors;

Other provisions address health and welfare matters of rail workers such as:

- Provisions prohibiting railroads from denying, delaying or interfering with medical or first aid treatment of injured workers;
 - Provisions requiring regulation of camp cars to protect the health of railroad employees and contractors utilizing camp cars by April 1, 2010, with full compliance of the regulation by December 31, 2010; and
 - Adopting radiation exposure limits
- See **Rail Safety Bill** on Page 11

BMWED System Federations Announce Merger *Allied and Southern Pacific Atlantic Federations Combine Resources*

The governing bodies of the Allied Federation and the Southern Pacific Atlantic Federation of the Brotherhood of Maintenance of Way Employees Division convened in Kansas City, MO on December 10, 2008. The purpose of the meeting was to finalize a merger between the two federations. The merger was successful and the newly created federation will retain the name, Allied Federation.

The Allied Federation will now represent more than 7,000 members of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters and currently maintains offices in Hendersonville, TN (suburb of Nashville), Longview, TX and Humble, TX. Dennis Albers was elected to head the new federation as General Chairman and offered, "I am proud of each and every one of the officers and board members that had the vision to make this happen. Our respective members will be the beneficiary of a more efficient and stronger organization."

The Allied Federation represents members employed at CSX, Kansas

City Southern, Union Pacific and a number of short line railroads. The federation represents members in 27 states that stretch from the Atlantic Coast to Gallup, NM.

The Allied Federation is the product of numerous mergers that have been achieved over a period of almost two decades and includes at least nine former federations.

"I would like to extend my congratulations to the officers and members of both the Allied and the former Southern Pacific Atlantic Federation," said BMWED National Division President Freddie Simpson. "It is gratifying to see these two great organizations come together in an effort to better represent our members. Both have great histories and I am sure that together they can achieve even more for their members."

"Realizing that the rail industry's mergers have had a huge impact on the way they deal with their employees, federations like the Allied have sought merger partners that would place its members in a better position to deal with management," said BMWED Southwest Region Vice President Roger Sanchez. "It is no secret that

the railroads consult one another in their effort to thwart the union's efforts to improve conditions for its members. This merger will go a long way in leveling that playing field."

"By combining the two federations, the members of both former federa-

tions will have a larger pool of resources," said BMWED Southeast Region Vice President Randy Cook. "I commend the officers of the newly merged Allied Federation and congratulate the members on this historic achievement."



Southwest Region Vice President Roger Sanchez pictured with newly elected Allied Federation Officers: Seated left to right, Vice Chairman Pedro Amaro, Vice Chairman Malcolm Davison, Vice Chairman Larry Phillips, First Vice Chairman Terry Miracle, General Chairman Dennis Albers, Roger Sanchez, Vice Chairman Jeffrey Finch, Vice Chairman Nate Trawick, Vice Chairman Scotty Niswonger. Standing left to right, Vice Chairman Russell Farmer, Vice Chairman Brian Thies, Vice Chairman David Lopez, Vice Chairman Roy Griffith, Vice Chairman Len Buckley, Vice Chairman Andrew Shelton, Vice Chairman Larry Wright, First Vice Chairman Bill Palmer, First Vice Chairman W. G. "Bubba" Foehr.



Roadway Worker Protection

Saving Lives is Priority One

There are hundreds of pages of federal regulation applicable to the railroad industry and the workers who make it run. And while all these regulations play a role in the safety of railroad operations, none is more important to the lives of BMWED members than the Roadway Worker Protection regulations.

The Roadway Worker Protection (RWP) regulations were promulgated into law on January 15, 1997; more than seven years after BMWED first petitioned the Federal Railroad Administration to adopt regulations for the protection of Roadway Workers. BMWED's 1990 Petition for Rulemaking was driven by the unacceptable death toll of BMWED members being struck and killed by trains and equipment in preventable on-track safety accidents. While every BMWED member is covered under the regulation any time they are out working on the tracks, most members likely have never been provided access to the actual Federal regulation, 49 CFR Part 214 C, Roadway Worker Protection. Every BMWED member should familiarize themselves with the com-

plete text of the regulation, which can be found on the BMWED website (www.BMWED.org) by clicking "links," then "safety related links" and then "Roadway Worker Protection." Your railroad's "Roadway Worker On-Track Safety Program," which you are undoubtedly familiar with, must comply with all the provisions of the Federal regulation.

Saving Lives is First Priority

The sole purpose of the Roadway Worker Protection (RWP) regulation is to "prevent accidents and casualties caused by moving railroad cars, locomotives or roadway maintenance machines striking roadway workers or roadway maintenance machines." (See 49 CFR 214.301(a)) In other words, the regulation exists solely to protect and preserve the lives and limbs of Roadway Workers. A Roadway Worker is defined under the regulation as "any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal

and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section." (See 49 CFR 214.7, Definitions) Thus, the regulation covers any railroad worker or contractor to a railroad engaged in these roadway worker duties on railroads across the nation.

On-Track Safety

What exactly is "on-track safety"? Under the regulation, on-track safety is defined as "a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment." (See 49 CFR 214.7, Definitions) Unfortunately, this "state of freedom from the danger of being struck by a moving train or equipment" has been less than absolute and not yet fully realized. Although the RWP regulations have considerably reduced on-track fatalities since becoming law in 1997, fatalities to Roadway Workers continue to occur with alarming frequency, with 2008 being the worst year for Roadway Workers since the RWP regulation became law.

An Unacceptable Toll

Between 1997 and 2008, forty (40) Roadway Workers have been struck and killed on the tracks in preventable on-track safety accidents. These terrible tragedies are a reminder of just how dangerous and unforgiving MW work is and how quickly lives can be lost. In 2008 alone, there were seven (7) Roadway Worker fatalities nationwide; the highest one year total in the history of the RWP regulation. In order to reverse this unacceptable toll, we must all redouble our efforts and find ways to halt this preventable carnage and assure that every Roadway Worker makes it home alive every workday. The only way we will achieve this is through better understanding of, and full compliance with, the Roadway Worker Protection regulations.

Everyone is Responsible for On-Track Safety

Employers and employees each have responsibilities for compliance under the RWP regulations. Those responsibilities include the specific provisions articulated in (49 CFR 214) Sections 214.311 and 214.313 as follows:

Section 214.311, Responsibility of Employers

Each employer is responsible for the understanding and compliance by its employees with the rules and the

requirements of this part.

Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved. (Emphasis added)

Each employer shall have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with Sections 214.311(b) and 214.313(d).

Section 214.313, Responsibility of Individual Roadway Workers

Each roadway worker is responsible for following the on-track safety rules of the railroad upon which the roadway worker is located.

A roadway worker shall not foul a track except when necessary for the performance of duty.

Each roadway worker is responsible to ascertain that on-track safety is being provided before fouling a track.

Each roadway worker may refuse any directive to violate an on-track safety rule, and shall inform the employer in accordance with Section 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad. (Emphasis added)

Sections 214.311 and 214.313 give members an absolute right to challenge in good faith anytime on-track safety at the worksite does not comply with the regulation and the rules of the operating railroad.

Right to a Good Faith Challenge

If you do not have full compliance with on-track safety, it is vital to your safety and the safety of your co-workers to make a good faith challenge under Section 214.313. The law provides you with this right, and it is an absolute right protected under the law. When making a good faith challenge, it is vitally important to make your intentions clear by saying the words "I am making a good faith challenge." In this way, there will be no misunderstanding that you are not only "questioning" on-track safety but also exercising your Federally-protected absolute right to "challenge in good faith" the on-track safety provisions in effect at the job location. Remember, once a legally protected good faith challenge is initiated under Section 214.313, each challenging employee has the absolute right to remain clear of the track until the challenge is resolved under the carrier's written challenge resolution procedures.

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Jan./Feb. 2009 ■ BMWED DIVISION JOURNAL ■ VOLUME 118 ■ NUMBER 1

The BMWED Journal is the official news publication of the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters

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The BMWED Journal (ISSN 1049-3921 /USPS 067640) is published bi-monthly-6 times annually at 20300 Civic Center Drive, Suite 320, Southfield, Michigan 48076-4169. Periodicals postage paid at Southfield, Michigan and additional mailing offices.

ATTENTION POSTMASTER:

Send address changes to BMWED, 20300 Civic Center Drive, Suite 320, Southfield, Michigan 48076-4169.

Subscription Price: U.S. and Canada—\$20.00 (U.S.) per year, in advance.

www.bmwed.org

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Director of Government Affairs Danny Gates Retires

Brother Danny Gates retired from his position as Director of Government Affairs effective December 31, 2008. Brother Gates held this position, headquartered in Washington, DC, for the past seven years.

Prior to his employment with Amtrak and his subsequent position with the BMW, Brother Gates served in the U. S. Navy Seabees for 6 years. During his time in the Seabees he served two tours of duty in Vietnam. In November, 1978 Brother Gates entered service as a Trackman for Amtrak in the heavy repair facility in Beech Grove, Indiana where he later worked as a B&B Mechanic.

Brother Gates, a member of Consolidated Rail System Federation Local Lodge 1980, served in a number of BMW positions during his career. Over his 30 year career Brother Gates has served as Local Chairman, System Federation Officer, CRSF Joint Protective Board Member, Indiana State Legislative Director and in his most recent capacity as Director of Government Affairs.

Brother Gates says that he plans to just enjoy life and spend more time with his wife of 43 years, Helen; their two sons and eight grandchildren.

Brother Gate's motto has always been "just make a difference" and he has done just that. He has led the BMWED's legislative battles on Capitol Hill as its chief lobbyist and has had an integral part in legislation that has improved the lives of BMWED members.

"Having worked with Danny at both



Danny Gates

the System and National level, I can attest to his contribution to the BMWED," said BMWED National Division Secretary Treasurer Perry Geller. "As a long-time friend I know how hard Danny has worked and what this Brotherhood has meant to him."

"It has been an absolute pleasure working with Danny over these past years," offered BMWED National Division President Freddie Simpson. "Hopefully Danny will stay active as a retiree and we won't have a chance to miss him. I would like to extend my gratitude to Danny for his years of service to this Brotherhood and wish him and Helen a long and happy retirement."

Robert J. "Bob" Williamson Deceased

The BMWED is sad to announce the death of Brother Bob Williamson who passed away January 2, 2009 at the age of 84. Brother Williamson, a resident of Grosse Point, MI, previously served on staff at Grand Lodge as Associate Editor of the *BMW Journal*.

Brother Williamson was born on July 25, 1924 in Wilkes - Barre, PA. He was the high school class valedictorian and graduated from King's College also in Wilkes -Barre.

Brother Williamson served in the U.S. Coast Guard during World War II and was honorably discharged in 1946. He became a member of Consolidated Rail System Federation Local Lodge 427 on August 1, 1963 and held the position of Associate Editor of the *BMW Journal* from 1963 until his retirement in 1987.

Brother Williamson, a devout Catholic, was a skilled figure skater and enjoyed tennis. He also enjoyed gardening and opera.

"For quarter of a century Brother Williamson performed a valuable service for the members of the BMW,



Robert J. "Bob" Williamson

for which we are grateful," said BMWED National Division President Freddie Simpson. "Brother Williamson will be missed."

Brother Williamson is survived by his wife of 46 years, Helen; sons, Michael and John; and seven grandchildren.

Lodge Secretary-Treasurer's Roll of Honor

The Local Lodge Secretary-Treasurer plays a significant roll in the operation of the Local Lodge and our union. The financial and business affairs of the Lodge are handled by the Secretary-Treasurer. The Secretary-Treasurer receives all communications, conducts the correspondence and has charge of the seal and records of the Lodge. Additional responsibilities include keeping a correct financial and membership account between the Lodge and the System Secretary-Treasurer and/or National Division Secretary-Treasurer, setting up Local Lodge meetings, maintaining the Lodge checking account and investments,

paying Lodge bills, working with National Division Auditors and the Lodge Auditing Committee, maintaining minutes of the Local Lodge, assisting Local Officers in the overall operation of the Lodge, and fulfilling other duties as may be imposed upon him/her by applicable law, including the execution and filing of any required reports.

Below is the Secretary-Treasurer Roll of Honor recognizing those Local Lodge Secretary-Treasurers who have held this important elective office for 10 or 20 years respectively. Please join us in honoring these Secretary-Treasurers and thanking them for a job well done!

LODGE SECRETARY-TREASURER SERVICE PINS 10 YEAR SERVICE PINS

NAME	LODGE	SYSTEM	AWARD
Guadalupe Ramirez	0134	USD-W	10
Kenneth Knox	0176	CRSF	10
Timothy Russell	0424	AF-SE	10
Marcus Hood	0627	SOU	10
Clifford Whitaker	0725	AF-SE	10
Frankie Hawkins	0927	AF-SW	10
Keith Janes	1148	USD-NW	10
Murphy Evans, Jr	1171	ICGF	10
Ronald Vaughn	1297	CRSF	10
Henry Bittner	1466	CRSF	10
George Swanson, II	1489	MIDW-S	10
Gary Banks	1504	CRSF	10
Dan Overly	1788	USD-NW	10
Thomas Taylor	2914	SEAB	10

LODGE SECRETARY-TREASURER SERVICE PINS 20 YEAR SERVICE PINS

NAME	LODGE	SYSTEM	AWARD
Earl Stewart	0230	BURL	20
Joseph Kile	0505	CRSF	20
William Snell	0798	BURL	20
Mike Mc Quitty	0833	MT&PLS	20
Alan Stouder	0888	ASF	20
Robert Odle, Jr.	1107	ASF	20
James Gleason	1214	BURL	20
Edward Obregon	1280	BURNOR	20
James Ashlock	1302	BURL	20
Roger Stein	1316	BURL	20
Dennis Franke	1320	BURL	20
William Taylor	1547	FRISCO	20
Khalid Sheikh	1709	MT&PLS	20
Reed Leach	1854	AF-SE	20
A.J. Venturi	2414	AT&SF	20
Richard Hernandez	2416	AT&SF	20
Michael Schroeder	2600	FRISCO	20
Daniel Tropea	2775	CRSF	20
Gene Anirina	3014	PENN	20
Gary Duke	3030	PENN	20
Frank Fuller	3073	PENN	20

DEATH BENEFITS

Report of Claims Paid during Nov. thru Dec., 2008

NAME	LODGE NUMBER	SYSTEM	NAME	LODGE NUMBER	SYSTEM
DAVID ADKINS	0130	AF	HARVEY OHNSTAD	0249	BURNOR
FRANK BIALOBRZESKI	2800	CRSF	EUGENE SIMPKINS	0627	SOU
ROBERT H. BICK	3072	PENN	SEBERT J. WILKINSON	0076	CRSF
JAMES I. BRUCE	0338	AF			
JULIAN CAPPELO	0866	CRSF			
LONNIE JOHNSON	1763	BURNOR			
JOSEPH J. LONG	3077	PENN			
DEWEY L. MILLER	3011	PENN			
			PAID NOV. 1, 2008 TO DEC. 31, 2008	\$	5,500.00
			AMOUNT PREVIOUSLY PAID		\$45,217,807.75
			TOTAL AMOUNT PAID TO DATE		\$45,223,307.75
			NUMBER OF CLAIMS PAID		- 11



Freddie N. Simpson

PRESIDENT'S PERSPECTIVE

As reported elsewhere in this edition of the *Journal*, 2008 proved to be the deadliest year in the history of the Roadway Worker Protection (RWP) regulations. Seven roadway workers were struck and killed by trains or MofW equipment in 2008, the single highest toll among roadway workers since the regulation became law in 1997. Sadly, 2009 has begun where 2008 left off, with two additional roadway worker fatalities occurring in January in New York and Arizona.

This unacceptable toll has to stop and I am calling upon every single member to help us end this tragic cycle of death and sorrow. It is up to

each of you to assure and demand that appropriate on-track safety is in effect every single time you walk out on the track. We owe it to our families, and to the families of our co-workers, to keep each other safe out on the track every single day of our working lives.

Together, we mourn the deaths of those we've lost already in 2009, and the seven struck and killed in 2008, and all those roadway workers — 42 in all — who have perished in preventable on-track safety accidents since 1997. But mourning the loss of our Brothers and friends is not enough. We must honor their memory and their sacrifice by standing up and committing to each other that we will end this tragic cycle of death and sorrow.

From tomorrow forward, I challenge each and every member to analyze and question every single aspect of on-track safety established at every work site nationwide. Cutting corners or making do is not an option. Only full compliance and a demand from each of you for the highest level of on-track safety every single day will get us to our goal of assuring that every member returns home to their families at the end of every work shift.

Virtually every BMWED crew nationwide, whether headquartered or production, is working undermanned. There is tremendous pressure from management for increased production and an expectation that you will get the job done regardless of manpower, weather, equipment or other factors. We cannot allow these factors or management's expectations to cloud our determination and resolve to protect ourselves and our co-workers from the dangers of being struck by moving trains and equipment. We must insist not only on the establishment of on-track safety; we must also insist on the highest and most effective levels of on-track safety.

As you know, watchman/lookout protection is a recognized form of on-track safety under RWP rules. However, watchman/lookout protection is not "positive protection" because the train retains its authority to move on the track. Several of the striking fatalities which recently occurred were under watchman/lookout protection. Whether protecting the track you're working on or protecting the adjacent track, watchman/lookout protection is a lesser form of protection because trains and equipment are not withheld from movement under watchman/lookout protection.

At your daily job briefings, each member has a right and an obligation to ask questions about the job assignment and the form of on-track protection. If watch-

man/lookout is the form of protection, ask yourself if such protection is sufficient for the task at hand and whether a higher form of protection is warranted based upon all conditions present at the job location. If watchman/lookout is to be used, are there enough watchmen to do the job? Does the terrain and other conditions provide required sight distances? Does the nature of the work interfere with your or a coworker's ability to see and hear the watchman/lookout warning? Can every member of the crew get to and occupy a designated place of safety at least 15 seconds before the arrival of a train? Equally important, is the watchman/lookout properly trained and equipped with an air horn, whistle or other audible device to communicate a warning that is "distinctive and clearly signifies" the approach of a train? If the answer to any one of these questions is "no," you have an absolute right and obligation to make a Good Faith Challenge and remain clear of the track until the challenge is resolved.

Every member is strongly encouraged to make a Good Faith Challenge to any and every directive that might put you or your co-workers in danger of being struck by a moving train or equipment. You have a legally protected right to challenge under the law, and if you do not exercise that right every single time you feel that the level of on-track safety is insufficient for the task at hand, you are risking your life and the lives of your co-workers.

Yes, making a Good Faith Challenge takes guts; but you are not alone. If you have a concern, your co-workers very likely share that concern. As union members, our strength is our solidarity and unity. We must use our solidarity and unity as a tool to confront unsafe conditions and demand they be rectified prior to stepping into the foul of any track. I commit to you that the BMWED will be there with you in support of your legally protected right to initiate a Good Faith Challenge. BMWED will stand with you to assure that every Good Faith Challenge is properly heard and resolved in accordance with the law. And, I commit to you that BMWED will use every resource at our disposal to protect and preserve the lives of our members through legislation, regulation, collective bargaining and collective action.

Mother Jones (1830-1930), the great labor activist said, "Pray for the dead, fight like hell for the living." Together, in honor of our fallen Brothers and Sisters, and for the sake of our families and loved ones, we are committed to doing just that.

Message from Teamsters General President Jim Hoffa



Change We Can Believe In

No president since Franklin D. Roosevelt has had the opportunity to positively impact the lives of every American that Barack Obama has before him. He has inherited quite a mess, but I know that he is up to the challenges that lie ahead.

Last month's dreadful auto sales are just one indication of how bad things have gotten. GM and Ford's U.S. sales plunged by a third in December, Chrysler's by more than half.

Working families in Detroit and across the Midwest have long suf-

fered the effects of a declining industrial base. More recently the housing market's disintegration spread the pain to Southern California, Nevada, Arizona and Florida. Finally, America's deep troubles swamped everyone when the global financial system teetered on the brink of collapse.

It didn't happen by accident. It happened because Wall Street captured our government and held the middle class hostage. Under the Bush regime, America became a place where financial plunderers were rewarded lavishly and work was no longer respected. In 2007, the top pri-

vate-equity and hedge fund managers earned more in 10 minutes than average workers earned all year.

It wasn't important anymore to make sure middle-class workers earned decent wages. The Labor Department became a useful tool for predatory employers. Labor Secretary Elaine Chao ignored flagrant union busting and the widespread theft of wages and benefits.

Nor did it matter any more if people were killed or maimed on the job or in transit or in their homes. OSHA simply quit enforcing workplace safety rules.

See Hoffa on Page 11



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Louisville & Nashville Railroad
Seaboard Coast Line Railroad
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Laurens Railroad
Atlanta and West Point—The
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Monon Railroad
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SECRETARY-TREASURER'S REPORT



Perry K. Geller, Sr.

On January 28, 2009, BMWED testified before the Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials. The Subcommittee requested our comments on the following topics: (1) The role of freight and/or passenger rail in the U.S. economy; (2) the impact of the current economic crisis on the railroad industry and its worker; and (3) the benefits and importance of investing in freight and/or passenger rail. The Subcommittee hearing was held, in part, to assist the Obama Administration in understanding the role of railroads in our nation's economy as part of its overall effort to shape an economic stimulus plan.

Our oral testimony was presented by BMWED Director of Government Affairs Leon Fenhaus. BMWED pointed out that rail transportation is among the most energy efficient means of moving goods and people and emphasized how important rail transportation is to the current and future needs of the U.S. economy.

Although railroads carry more ton-miles of freight than trucks, fuel usage by rail is dwarfed by rubber tired transportation. In 2005, the Class I railroads used 4,098 million gallons of fuel compared to a whopping 24,411 million gallons for combination trucks. These statistics demonstrate how increased reliance on rail transportation can contribute to the overall goals of a "green economy" by reducing fuel usage, reducing emissions, and reducing congestion on our nation's highways.

The productivity of rail employees also contributes to the overall health of the economy and the viability of the industry. Employee productivity in the railroad industry increased by 42 percent between 1997 and 2006, far outpacing productivity in other sectors of the economy and proving rail employees to be among the most productive workers in America. BMWED also testified that reasonable railroad wages and benefits provided under union contracts benefit the economy by helping sustain middle class families and giving them the means to own a home, purchase durable goods, and provide higher education for their children.

Collective bargaining in the railroad industry as of 2007 resulted in a \$11.6 billion payroll for approximately 167,000 overwhelmingly unionized rail employees of the nation's Class I railroads. Collective bargaining also resulted in these employees being covered by a national health insurance plan that paid out approximately \$1.7 billion in health benefits to rail workers and their dependants in 2008. These collectively bargained benefits reduce the burden on local and state governments already saddled with the cost of caring for the uninsured and the underemployed.

BMWED emphasized that unionized rail workers have a collectively bargained wage and benefit structure that forms the backbone of the U.S. economy and will help sustain it until other sectors of the economy rebound.

BMWED also encouraged the Subcommittee to assure that railroad transportation continues to provide jobs and benefits for railroad employees. BMWED highlighted a number of schemes occurring within rail transportation developed for the purpose of circumventing collective bargaining agreements and the application of federal laws intended to govern railroads and railroad employees. There have been a number of new passenger rail operations that have been created as non-railroad operations, even in situations where the service is provided on rail lines that are owned, or were owned, by a railroad and are still being used for interstate freight and passenger operations. The result has been that persons performing railroad work on these lines are not covered by railroad laws, rates of pay and benefits. Good railroad jobs are being undercut by these schemes. Long-term railroad employees are being denied employment on lines they have worked and maintained for decades, and safety is compromised when railroad operations and maintenance functions on individual lines are contracted to multiple entities and no one entity has overall responsibility or accountability for safety. BMWED encouraged the Subcommittee to put an end to these corporate schemes and assure that all railroad operations, both freight and passenger, remain subject to all laws, regulations, and statutes applicable to railroads and railroad employees.

BMWED commended the Subcommittee for its work in the last Congress in passing the Passenger Rail Investment and Improvement Act of 2008. The Act provides generous multi-year authorization for Amtrak capital improvements and establishes a coherent plan for the development and growth of Amtrak which will ease trans-

portation congestion in major corridors across the U.S. and create new, good paying railroad jobs for those involved in Amtrak's expansion. BMWED encouraged the Subcommittee to insure that the expansion of passenger rail is not allowed to be done on the

cheap with unqualified workers and contractors who lack experience and do not have overall responsibility for the entire operation.

The full text of BMWED's written testimony can be accessed through the BMWED website at www.bmwe.org.

A Vice President Speaks

Over the next few years a large number of BMWED elected officers and staff will retire. Like the railroads, the union is losing a large portion of its work force and will be looking to train and motivate a number of new union leaders. Fortunately, the BMWED has a pool of more than 35,000 prospective applicants to draw from - the membership.



Beginning in 2004, the nation's railroads began hiring new employees in large numbers. Some sources speculated that the railroads would hire as many as 80,000 new employees extending over a six-year period from 2004 through 2010. While the economic downturn will probably have some impact on those numbers, we know that the BMWED's rank and file has already taken on a different look. In large measure, our members are younger and in many cases college educated. It reminds me of the old adage, "Out with the old and in with the new." Maybe a better way of stating it would be, "We're losing a lot of experience and we need to prepare for the future."

With nearly 38 years of railroad seniority and 30 years as a full-time union officer, I've seen a lot of changes in both the railroad industry and within the BMWED. Careers with both have become increasingly more challenging and sophisticated over the past years. Encouraging partici-

pation in our union and providing representational education is the key ingredient for the continuation of competent and professional union representation of our members.

Recognizing the urgent need to prepare for our future needs the BMWED has made local leadership education a priority. President Simpson has designated a new Director of Education, Gregory Kreie, with a singular focus on membership education. Local Lodge Leadership Seminars have been initiated in an effort to provide Local Chairman and Secretary-Treasurer training. And, many of the federations have initiated their own training programs focused on union leadership training. However, all of the training and encouragement in the world will be of no use unless you, the membership, take the initiative and get involved with your local lodge or federation.

The livelihood of working men and women are improved economically and personally as members of a union. Even those who have not yet had an opportunity to be a part of a union benefit because many employers are forced to compete with union employers for workers. In order to continue the good fight we need new blood and new ideas. I would ask each of you to get involved with your union. If you have no interest in a leadership role, at least support your local lodge and make your voice heard.

Randy Cook, Vice President
*Southeast Region
Member Rail Conference
Policy Committee*



LEGAL AID PROGRAM LIST

Listed below is an updated list of the approved attorneys in the BMWED's Legal Aid Program who can be called on for advice and assistance when needed in case of on-the-job personal injury or death.

BMWED members who are injured on the job, or the dependents of members killed as a result of such injuries, should ascertain their rights and protections under the Federal Employers' Liability Act (FELA) before attempting any settlement with a railroad company.

Under the Legal Aid Program, in case of personal injury or death while employed on a railroad, a BMWED member or his family has access to competent legal counsel in making claims under the FELA.

The BMWED-approved legal aid attorneys are well qualified to handle cases under the FELA.

Blunt & Slocumb, Ltd.
60 Edwardsville Professional Park
P. O. Box 373
Edwardsville, IL 62025
TELEPHONE: (618) 656-7744
FAX: (618) 656-7849
TOLL FREE
NATIONAL: (800) 323-5538
www.bluntlaw.com

The Crow Law Firm
700 "E" Street
Sacramento, CA 95814
TELEPHONE: (916) 441-2980
FAX: 916-441-3846
TOLL FREE
NATIONAL: (800) 345-2889
www.crowlaw.com

Daniel J. Downes, P.C.
111 W. Washington Street,
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FAX: 312-781-1854
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Hubbell, Peak, O'Neal, Napier & Leach
Union Station
30 West Pershing Road, Suite 350
Kansas City, MO 64108-2463
TELEPHONE: (816) 221-5666
FAX: 816-221-5259
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www.hubbelfirm.com

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FAX: 612-342-2990
TOLL FREE
NATIONAL: (800) 282-6393

Johnson & Hatch
10 West Broadway, Suite 400
Salt Lake City, UT 84101
TELEPHONE: (801) 363-6363
FAX: 801-363-6666

Jones, Granger, Tramuto, Christy & Halstead
P. O. Box 4340
Houston, TX 77210-4340
TELEPHONE: (713) 668-0230
FAX: 713-956-7139
TOLL FREE
TX ONLY: (800) 392-0620
NATIONAL: (800) 231-3359
www.jonesgranger.com

Moody, Strople, Kloeppel, & Higginbotham, Inc.
500 Crawford Street, Suite 300
Portsmouth, VA 23704
TELEPHONE: (757) 393-4093
FAX: 757-397-7257
TOLL FREE
NATIONAL: (800) 368-1033
www.moodyrllaw.com

Moody, Strople & Kloeppel & Higginbotham Inc.
7400 Baymeadow Way, Suite 105
Jacksonville, Florida 32256
TELEPHONE: 904-256-0018
FAX: 904-256-0019
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NATIONAL: (800) 368-1033
www.moodyrllaw.com

Moody, Strople & Kloeppel & Higginbotham Inc.
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Atlanta, GA 30361
TELEPHONE: 404-870-9020
FAX: 770-373-4905
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www.moodyrllaw.com

Pratt & Tobin, P.C.
P. O. Box 179
Route 111 at Airline Drive
East Alton, IL 62024
TELEPHONE: (618) 259-8011
TOLL FREE
(800) 851-5562

Rossi, Cox & Vucinovich, P.C.
3801 E. Florida Avenue, Suite 905
Denver, CO 80210-2500
TELEPHONE: (303) 366-3501
FAX: (303) 759-3180
TOLL FREE: (800) 325-4014
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www.rcvpc.com

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Bellevue, WA 98004-4456
(425) 646-8003
FAX: 425-646-8004
TOLL FREE
(866) 357-RAIL (7245)
www.rcvpc.com

Thornton & Naumes, LLP
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Boston, MA 02110
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FAX: 617-720-2445
TOLL FREE
NATIONAL: (800) 431-4600
www.tenlaw.com

Vice Chairman Guy Sackett Retires

Allied Federation Vice Chairman Guy Sackett retired effective October 31, 2008 after almost 39 years with the BMWED.



Guy Sackett

Prior to his career, both with the railroad and the BMWED, Brother Sackett served in the U. S. Army from January 1966 until October 1969. Brother

Sackett was deployed to Vietnam in 1967, 1968 and 1969.

Brother Sackett began his career with the Kansas City Southern Railway on February 2, 1970 in Gentry, Kansas as a trackman. He served as Secretary-Treasurer for Local Lodge 1540 before transferring membership to Local Lodge 564. In January 1985, Brother Sackett was elected to a full-time position with the BMWED. He has held the positions of Vice Chairman, Assistant General Chairman and First Vice Chairman with the former Missouri Pacific Federation and most recently with the Allied Federation.

"Guy has been a dedicated advocate for labor for almost 39 years and has worked full-time doing nothing else for the past 24 years", said Allied Federation General Chairman Dennis Albers. "It will be impossible to replace the knowledge and experience that Guy has provided this Brotherhood."

Brother Sackett and his wife Pam plan to spend their retirement in Riverside, Missouri.

We Want To Hear From You

If you have a special hobby or talent, hold public office, or you would like to share your hunting or fishing stories, we would like to hear from you. Share your story with our BMWED Brothers and Sisters in the BMWED Journal.

Please send us your pictures or brief details along with a name, address and telephone number. You may email, or send by U.S. Mail to the following:

Rbrassell1@aol.com

Or,

BMWED Journal
c/o Randall Brassell
242 West Main Street, #394
Hendersonville, TN 37075

Why Choose A BMWED-Designated FELA Attorney?

In this day of specialization, most lawyers, like most doctors and other professionals, tend to specialize. If you have tax problems, you go to a lawyer who knows the tax laws. If you have family matters to be handled, you go to a lawyer who knows the laws about wills, estates, probate, divorce, etc. That is why, if you're injured on the railroad, you need to go to a lawyer who knows the Federal Employers' Liability Act (FELA).

FELA became law in 1908. Under FELA, an injured railroad employee or his/her family survivors have the right to recover damages in court (state or federal). They have the right to a jury trial which can award damages based upon the railroad's negligence that resulted in the employee's injury or death.

Choosing a BMWED-designated FELA attorney is important because, as one court case stated, "injured workers or their families often fall prey ... to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employees, or to a lawyer either not competent to

try these lawsuits against the able railroad counsel or too willing to settle a case for a quick dollar."

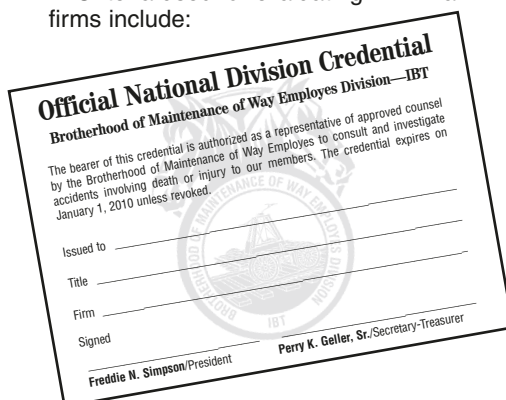
Since most people don't deal with lawyers except in a time of need, the BMWED has a long-standing policy of evaluating FELA law firms. Using established guidelines, the BMWED chooses the best to be on its approved or designated list which is printed twice yearly in the BMWED *Journal*.

Criteria used for evaluating FELA law firms include:

- Must have an established record of successful litigation experience.
- Must furnish National Division with a summary of cases handled (insofar as such disclosure is consistent with "attorney-client" privilege).
- Must charge a contingency fee of no more than 25 percent.
- Must give injured members free advice in connection with their injury and render free assistance to them in related matters.

Because the BMWED recognizes the importance of competent and fair legal counsel for its members, it regularly monitors the activities of the law firms on its list and makes changes when needed.

If you do not have a copy of the approved list of attorneys when you need it, just call your system division or federation office and they will give you names and other necessary information. In addition, all approved attorneys are issued official BMWED credentials each year. If an attorney contacts you, be sure to ask for his credential.



NOTICE

Article XV, Section 8 - Transfer Refunds

Sec. 8. Refunds of monthly dues, fees and assessments for those who transfer outside the jurisdiction of BMWED will only be allowed for the months following the month the applicable General Chairman involved receives a written request and/or a valid revocation of the Dues Deduction Agreement wage assignment authorization. A notice pertaining to the Brotherhood's dues refund Bylaws provision will be published semi-annually in the Secretary-Treasurer Report of the Journal or its successor publication.

Rail Safety Bill Continued from Page 1

to workers from cargoes.

The FRA was mandated to increase its enforcement efforts by hiring 200 more rail safety inspectors and support staff over four years as well as changing how it measures safety improvement and its reporting functions to Congress.

Rail carriers are now required to install positive train control (PTC) technology by December 31, 2015 on all main-line tracks where passenger and commuter railroads operate;

Congress also included the remainder of BMWED who were not already safety-sensitive positions into provisions requiring all maintenance of way employees and contractors to be placed under federal random drug and alcohol testing by October 2010;

Congress addressed the persistent underfunding of Amtrak by enacting provisions authorizing \$13.1 billion in passenger-rail spending over the next five years. Three-fourths of that amount is for Amtrak operations, capital and debt service. While states can spend some of the money on other rail lines, Amtrak would get at least an average of \$1.93 billion in annual subsidies, up from \$1.3 billion now. Note, the law authorizes expenditures up to those amounts; however, the actual dollar amounts provided to Amtrak each year is part of the appropriation process that can result in amounts less than the maximum "authorized" amounts.

Additional detail on some of the provisions is:

Track Inspection Study

Within two years the Secretary of Transportation shall complete a study to determine:

- Whether intervals of track inspections for each class of track should be amended;
- Whether track remedial action requirements should be amended;
- Whether different track inspection and repair priorities or methods should be required;
- Whether the speed at which track inspection vehicles operate and the scope of the territory they generally cover are appropriate for proper inspection, and whether such inspection speed and territory scope should be regulated.

Not later than two years after the completion of the study, the Secretary of Transportation shall prescribe regulations based upon the results of the study.

Drug and Alcohol Random Testing

The provisions of the law mandating maintenance of way employees and contractors to be placed under random drug and alcohol testing by October 2010, has its origins in the January 2007 fatal accident on the Massachusetts Bay Commuter Railroad where 2 employees were killed and several others seriously injured. The National Transportation Safety Board investigated that tragic accident and found that one of the

fatally injured employees tested positive for marijuana, with use probably on the day of the accident. The Safety Board thereafter reviewed industry-wide post accident test data for accidents involving maintenance-of-way employee fatalities. Post accident test data provided to the Board by the FRA show that over the 10-year period ending January 9, 2007 (the date of this accident), the post accident testing of 26 maintenance-of-way fatalities resulted in 5 positive test results, a 19.23 percent positive rate. NTSB noted that the positive rate for maintenance-of-way employees is in marked contrast to the post accident test results of covered employees currently subject to random testing (train, engine, dispatching and signal). The Safety Board concluded that post accident test data for fatally injured railroad employees indicate greater alcohol and drug use among maintenance-of-way employees than among railroad employees subject to random and post accident testing requirements. The Safety Board also concluded that the FRA's random alcohol and drug testing program has been a deterrent to alcohol and drug use by covered employees, as evidenced by their significantly lower positive rate in post accident tests than maintenance-of-way employees who are not subject to random testing. Thus, the NTSB recommendations to FRA included the following:

- "Revise the definition of "covered employee" under 49 *Code of Federal Regulations* Part 219 for purposes of Congressionally mandated alcohol and controlled substances testing programs to encompass all employees and agents performing safety-sensitive functions, as described in 49 *Code of Federal Regulations* 209.301 and 209.303."

While the FRA has not yet acted on the NTSB recommendation, Congress has now signed into law the following language contained in Section 412 of the Rail Safety Improvement Act of 2008:

- "Not later than 2 years following the date of enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.

Camp Cars

The final statutory language is a disappointing substantial weakening of language originally contained in the Bill that passed the House in 2007. That legislation, which was strongly supported by BMWED, contained the following provision in Section 202 providing for the elimination of camp cars:

- Camp Cars- Effective 12 months after the date of enactment of this subsection, a railroad carrier and its officers and agents may not provide

Roadway Worker

Continued from Page 2

Full Compliance Saves Lives

Compliance with the RWP regulations is mandatory under Federal Law and employees and employers can be held individually liable and subject to civil penalties for violation of the RWP regulations. Most importantly, full compliance is the means to achieve zero Roadway Worker fatalities and end the cycle of death and serious injury. During 2003-2004, there were no Roadway Worker fatalities for a period of almost eighteen months, so we know that zero fatalities is achievable.

Productivity can never be allowed to take precedence over on-track safety. It is a known fact that BMWED crews are being worked shorthanded across the country and that railroads are continually pushing for more production, often at the expense of safety. Shortages in manpower, tools, equipment, and track & time are not the responsibility of Roadway Workers, and we cannot allow these factors to influence our level of on-track safety protection. Remember, full compliance saves lives.

An Injury to One is an Injury to All

Every day, Roadway Workers make important safety decisions about track quality, slow orders, train speeds and conducting MW operations in a safe, efficient, and productive manner. However, of all the safety-critical decisions you make each day, nothing is more important than those decisions you make relative to on-track safety protection. BMWED members know that we cannot leave on-track safety up to the railroads. We must all be our "brothers' keeper," watch each other's back, and insist on full compliance with Roadway Worker Protection every hour of every day when we are out on the track. Nothing is more important to your family, your co-workers, and your union.

sleeping quarters through the use of camp cars, as defined in Appendix C to part 228 of title 49 of the Code of federal Regulations, for employees and any individuals employed to maintain the right of way of a railroad carrier.

The Senate also passed companion legislation in the Senate version of a rail safety bill. While Section 410 in the Senate Bill eliminated the House version's outright ban on camp cars, the legislation still granted discretion to the Secretary of Transportation to outlaw the use of camp cars. However, when the two competing Bills went to a joint House-Senate conference, the provisions of both Section 202 in the House Bill and Section 410 in the Senate Bill were superseded by the even more railroad-friendly language contained in the present law that does not ban camp cars outright nor even provide for their discretionary ban; but merely includes additional health and safety standards for them. Obviously, the con-

Hoffa Continued from Page 4

We opened our borders to dangerous Mexican trucks and our markets to Chinese goods, but we didn't require them to meet U.S. standards.

Somehow we forgot that our prosperity and growth depended on a solid industrial base. In the name of a pleasant fantasy called "free-trade" we sent our factories overseas and pauperized the workers left behind. Regulatory agencies created to serve and protect the middle class were allowed to atrophy. Our infrastructure crumbled.

I have confidence that President Obama understands the cause and the consequence of our decay. Obama said he'll review bad trade deals like NAFTA, and I believe him. I also expect him to support reforms that set standards for trade agreements, restore congressional oversight and require reviews of existing trade pacts.

I expect him to start the long, slow process of restoring our regulatory agencies so they do what they were supposed to do. He has, for example, pledged that he will close the border to dangerous Mexican trucks. He is no foe of regulation, having said that flexible and sensitive regulation can spur private sector innovation and investment in the energy sector.

He supports the most significant labor law reform in decades: the Employee Free Choice Act. Passage of that bill will restore some balance to the relationship between Wall Street and workers. Incoming Labor Secretary Hilda Solis will revive OSHA and fine abusive employers.

Of course, President Obama's first order of business must be to resuscitate the economy. Then he has to restore our ability to make things. And he has to revitalize our government institutions and rebuild our infrastructure.

Fraternally,
James P. Hoffa
Teamsters General President

feeres were convinced by persons unknown that it was acceptable to reduce the protections for employees in camp cars below that previously passed by both chambers.

Who actually was involved in this process is unknown because the conference process is not public and those legislative decisions are made in complete privacy and anonymity. Although the bill does mandate some improvements by requiring indoor toilet facilities, potable water, and other features to protect the health of employees housed in camp cars, it falls far short of BMWED goals. BMWED is very disappointed by the weak language on camp cars in the final bill and will continue its decades-long efforts to gain safe, sanitary, restful, healthful, and appropriate lodging for all BMWED members.

BMWED will continue to monitor implementation of the Rail Safety Improvement Act and periodically report on its implementation and impact in future editions of the *Journal*.



Sol Hammons Jr. Deceased

The BMWED is sad to announce the death of Brother Sol Hammons who passed away at home Friday, January 23, 2009 at the age of 77. Brother Hammons was born October 22, 1931 and was a resident of Kansas City, Missouri. He previously served the BMWED as Vice President of the Southwest Region until the time of his retirement September 1, 1994.

Having entered service on the former Wabash Railroad as a B&B Helper in July, 1950 he was quickly promoted to the position of Crane Operator. In 1952 he took leave from the railroad in order to enter the military where he served in the Korean War. He left the military in 1954 and returned to railroad service and his position as Crane Operator.

In 1970 Brother Hammons was elected to the position of Local Chairman for BMWED Lodge 301 and also to the Wabash Federation Joint Protective Board. He served in those positions until 1972 when he was elected to serve out the unexpired term of Wabash Federation General Chairman. He was reelected to the General Chairman position in 1974, 1978 and 1982 and served in that position for 14 years until he was elected Vice President for the Southwest Region in 1986. Brother Hammons served as Vice President until his retirement in 1994. He also served for many years as the Chairman of the Southwest Region Association and served on numerous Grand Lodge Preconvention Committees.



Sol Hammons

Brother Hammons was a life-time member of the BMWED and is a previous recipient of a 50 year BMWED Merit Award. Brother Hammons had remained active as a retired member of the BMWED until the final days of his battle with cancer.

"Sol was a true friend to the men and women of the BMWED and consistently illustrated this through his dedication and service to their well-being," said National Division President Freddie Simpson. "Sol dedicated his life to this organization and to our members. I am proud to have had Sol as a friend and I am saddened by his passing."

Brother Hammons is survived by his three children, Nancy Lewis, Julie Bodine and Gary Hammons.

Leon Fenhaus Appointed Director of Government Affairs

President Freddie Simpson has named former Assistant to the President Leon Fenhaus to head the Brotherhood's Legislative Department, headquartered in Washington, DC. Brother Fenhaus replaces retiring Director of Government Affairs Danny Gates.

A former Track Department employee on the C&NW Railroad, Brother Fenhaus has served the Brotherhood for more than 36 years in both the legislative and the protective side of the BMWED. Over the years he has held a variety of former positions with the Brotherhood including; C&NW System Local Lodge 960 Secretary Treasurer and Legislative Delegate, South Dakota State Legislative Representative, C&NW System Vice Chairman, C&NW System General Chairman, BMWED National Division Vice President for the Northwest Region, and most recently Assistant to the President.

"Leon has always had a keen interest in legislative issues and has the



Leon Fenhaus

experience and knowledge to head that department," said BMWED National Division President Freddie Simpson. "I have no doubt he will do a great job serving in this capacity."

Brother Fenhaus began his new duties on January 1, 2009.

Centenarians

"Happy Birthday" wishes to the following BMWED retiree who recently celebrated his 100th birthday:

Bernard C. Barkow

An Athens, Wisconsin resident, Brother Barkow celebrated his 100th birthday on January 5, 2009. He last worked for the Soo Line Railroad Company as a Section Foreman.

The BMWED extends its sincere best wishes. Happy Birthday!



Brotherhood of Maintenance of Way Employees Division
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Southfield, Michigan 48076-4169



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