



## **National Bargaining Update**

### **“Final Decision Arbitration Board No. 602”**

A final and binding decision regarding the design of health insurance benefits applicable to BMWED/SMART-Mechanical Department represented railroad workers has been rendered by a majority of Arbitration Board No. 602.

The Board majority, consisting of Neutral Chairman Gil Vernon and Carrier Member A. Ken Gradia, refused to apply the BMWED/SMART-MD Coalition’s “357 Plan” proposal despite its apparent equivalence in healthcare savings and, instead, adopted the health and welfare terms and conditions of the CBG Agreement. The Board majority ultimately determined that the CBG Agreement’s health and welfare terms and conditions were “more reasonable” than the 357 Plan given a “fair balancing of all the relevant facts and circumstances surrounding this round of national bargaining,” including that so many other rail unions accepted those terms and those agreements were reportedly ratified by large margins. The Board majority further adopted the Carrier’s proposed “true-up” of deducting from members’ back pay checks the estimated monthly savings that would have resulted in favor of the railroads had the CBG’s healthcare changes been implemented February 1, 2018. The Board majority’s position was that the “true-up” would put BMWED and SMART-MD members in the same position as the members of the other unions and likening it to deductions for COLAs and other wage items in retroactive pay calculations. Back pay checks are to be issued within 60 days from the date of the award, and the Board majority has granted the railroads a deduction of \$73.24 per month for the months of February, March, April and May 2018. However, the Carriers’ position on penalty – that BMWED/SMART-MD Coalition members should be penalized for not voluntarily accepting the CBG Agreement - was rejected by the Board.

During the May 7 and 8, 2018 arbitration hearing, the BMWED/SMART-MD Coalition and the Carriers presented their cases. BMWED/SMART-MD made a clear and compelling case that the 357 Plan resulted in the same total economic value as the CBG Agreement and that total economic value – not identical terms and conditions of other rail craft’s settlements - has been the definition of “pattern” throughout the history of national negotiations. Furthermore, the Coalition demonstrated that the BMWED and SMART-MD members should receive the 357 Plan rather than the CBG deal, because it maintained their current level of healthcare benefits as desired by the members and it was pursued by their bargaining representatives in accordance with their rights under the Railway Labor Act. And that given the choice of the members pay more or providers make less, the Board should adopt the 357 Plan, which would provide the carriers the savings they wanted without harming the members.

The railroads, on the other hand, contended that the CBG terms and conditions were the precise pattern that had to be adopted by the Board because it was the first settlement that was reached at the bargaining table that set the pattern, which was ultimately adopted by the majority of railroad workers. The railroads also spread doubt about the implementation timeline presented by BMWED/SMART MD in an attempt to lower its value. The railroads also alleged that adopting the 357 Plan would cause disruption amongst railroaders because BMWED/SMART-MD members would have better healthcare benefits than their fellow co-workers who voluntarily accepted the CBG health and welfare benefit changes. Indeed, during the May 7<sup>th</sup> and 8<sup>th</sup> arbitration hearing, the railroads' expert witnesses and counsel continually asserted that the 357 Plan could not be adopted because the 357 Plan was actually a better agreement because it maintained a higher level of health and welfare benefits. The railroads also argued that the 357 Plan could not be adopted because maintaining current benefit levels continues to encourage railroaders to use their healthcare benefits irresponsibly.

When asked about the results of the National Arbitration, BMWED President Simpson offered the following statement:

“We fought the railroads to the very end, but we ultimately fell victim to the healthcare pattern argument again. The ‘pattern’ was established by the CBG Coalition, and the true-up that was voluntarily adopted by the IBB certainly did not help railroad workers. The Board majority did not dispute Cheiron’s valuation of the value of the 357 Plan. In fact, the Board agreed the proposal would save money, but the carriers’ argument that the plan could not be implemented fast enough to produce significant savings over the terms of the agreement confounded the Board. The Board also did not dispute that railroad workers of a particular craft have a right to fight for their interests at the bargaining table. However, the Board’s adoption of the true-up seems to cut against our right to bargain for our members’ interests. In fact, the true up seems to be punishment for attempting to voluntarily resolve our dispute, even if it did take longer than other settlements. The true-up is not rooted in rail labor national bargaining history, including the last round of PEB 243. Calling it a true up is a disingenuous term that means nothing more than a penalty for bargaining on your respective members’ behalf. The Board’s decision ultimately confirms that it continues to remain a substantial challenge to beat the ‘pattern’ that other crafts establish when they’re the first to reach an agreement.

The railroads were successful in this round and the last round of national negotiations in establishing a pattern agreement with an operating craft union that was exposed to threat of major work rules changes; those unions saved those work rules by making health care concessions. The next round of national negotiations is only 18 months away. Given that the railroads have successfully exploited the operating crafts work rules for major healthcare concessions applicable to the entire industry in two consecutive rounds of negotiations, and given their success on ‘pattern agreements,’ the railroads will use the same

strategy to attack our healthcare in the next round unless something changes within rail labor.

Being a trade unionist is about solidarity. Solidarity is standing in the face of adversity while fighting to find an intelligent way to bargain over work rules and healthcare that doesn't hurt your fellow union brothers and sisters. BMWED and SMART-MD honored that philosophy in our proposals and in our position in arbitration, but voluntary agreements covering 70% of rail workers were just too much to overcome. Hopefully the next round of national negotiations will favor hard working railroaders, not the railroads' bottom line."

A copy of the award of Arbitration Board No. 602 and the May 7 and 8, 2018 hearing transcripts can be found on the BMWED's website.

A video from President Simpson regarding the award of Arbitration Board No. 602 will be forthcoming.