

Allied Federation

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
of the International Brotherhood of Teamsters



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General Chairman

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UPDATE ON UNION PACIFIC IMPROPERLY CONTRACTING OUT MAINTENANCE OF WAY CROSSING WATCHMAN AND FLAGGING DUTIES

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This letter concerns Union Pacific (UP) improperly allowing outside contractors to perform Maintenance of Way crossing watchman and flagging duties. Starting in 2013, UP engaged in an intentional scheme designed to remove crossing watchman and flagging duties from Maintenance of Way forces. The crossing watchman and flagging work at issue was required and instigated by UP. The work was controlled by UP and it provided UP with direct benefit. The work had, since the inception of the railroad, been Maintenance of Way work. UP even had to abolish Maintenance of Way crossing watchman and flagging positions so that it could allow contractors, such as RailPro, to step in and assume the track protection duties.

The BMWED immediately disputed UP's actions. With your assistance, the BMWED filed numerous claims which directly challenged UP and its scheme to remove work and income opportunities from Maintenance of Way members and instead give it to outside contractors. To date, there are several hundred outstanding claims with new claims continuing to be filed.

Last year the BMWED and UP formed an arbitration board to resolve this important dispute. This arbitral board was created expressly to decide "lead claims" which would in turn be used to resolve the numerous outstanding claims. At this time, I confirm that the arbitral board has issued awards on the "lead claims". These awards vindicate the BMWED's position that UP improperly contracted out Maintenance of Way crossing watchman and flagging duties. The main takeaways from these awards include:

- Crossing watchman and flagging work has always been, and remains, Maintenance of Way work;
- The basis relied upon by UP in an attempt to justify contracting out such work is extremely narrow in application, is heavily fact specific and does not provide the railroad the ability to contract out work at will; and

- If UP tries to contract out Maintenance of Way work on such a basis, UP may only do so in limited circumstances and, even then, must provide proper sufficient evidence and the failure to do so is completely fatal.

In the last few weeks, it has come to my attention that there has been talk that the crossing watchman and flagging issue had been lost at arbitration. I myself observed UP openly making such assertions (i.e., the letter dated June 28, 2018 from UP Vice President E. Gehringer). To be clear, these rumors and statements are completely inaccurate. Indeed, these are nothing more than attempts by UP to cloud the issue, confuse Maintenance of Way employees and protect its scheme to remove work from Maintenance of Way employees. What I have just stated is not my opinion. It was confirmed by an arbitration board whose express job was to decide “lead claims” which would be used to resolve the numerous outstanding crossing watchman and flagging claims. These awards confirm that crossing watchman and flagging work has been, and remains, Maintenance of Way work. The awards also discount any argument that the work can simply be contracted out.

Moving forward, your BMWED officers and I will remain vigilant and we will continue to ensure that UP complies with its contractual requirements. I have no doubt UP will explore other avenues in an attempt to remove this work from the collective bargaining agreement and allow outside contractors to perform it. In light of this, we will continue to need your help. Should you observe what you believe to be a violation, please contact your local BMWED officer as soon as possible. Be prepared to offer statements, photos or evidence to assist filing and progressing a claim. It is only through working together that we can protect what is rightfully yours under the collective bargaining agreement.

Lastly, this situation should be a clear reminder that UP actively tries to undermine the integrity of our collective bargaining agreement. Keep this in mind anytime you hear a rumor or see something such as the letter dated June 28, 2018 from UP Vice President E. Gehringer. Please contact your local BMWED officer if you ever have questions on what the collective bargaining agreement actually provides, or what your rights and benefits are as a UP Maintenance of Way employee.

Your BMWED officers are proud to serve as your designated representative and will continue to actively police and protect the collective bargaining agreement. Thank you for your hard work and assistance in fighting for this victory.

In Solidarity,

A handwritten signature in black ink that reads "Dennis R. Albers". The signature is written in a cursive, slightly slanted style.

Dennis R. Albers, General Chairman
Allied Federation/BMWED/IBT