TESTIMONY OF DENNIS R. PIERCE
NATIONAL PRESIDENT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
PRESIDENT, TEAMSTERS RAIL CONFERENCE

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SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

THE STATE OF THE RAIL WORKFORCE
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Good morning, Chairman Lipinski, Ranking Member Crawford, and Members of the Sub-committee. I appreciate the opportunity to appear before you this morning. I also want to thank Chairman DeFazio for kindly inviting me to testify today, and for his and Ranking Member Graves' leadership of the Transportation & Infrastructure Committee.

My name is Dennis Pierce, and I am the National President of the oldest trade union in North America, the Brotherhood of Locomotive Engineers and Trainmen, which was founded in 1863. I also am the President of the Teamsters Rail Conference, of which the BLET is the founding Union.

The subject of today's hearing is "The State of the Rail Workforce." I have a number of comments and observations regarding this question on a national scale.

Although the productivity of the rail workforce has never been better, that increased productivity does not always translate into reliable or safe jobs. Productivity is going ever upward, but employment levels are headed in the other direction, with many hundreds — if not several thousand — in furlough status as I sit here today.

A small fraction of this likely is due to a modest downturn in traffic currently being experienced. A more significant portion is due to the deployment of technologies as "labor-replacing" rather than "labor-saving" devices. But the most serious threat looming over the horizon — at least in the short term — is the industry's fascination with Precision Scheduled Railroading.

I don't deny that investors should receive a reasonable return on their investment. And I understand that railroads have to compete in the marketplace for financing when they have such a need.

But, the fact of the matter is that the Class I railroad industry has been enjoying multi-billion-dollar profits for many years. Operating revenues for the seven Class I carriers totaled nearly 90 billion dollars last year alone.

In spite of this profitability, PSR has become the norm, and the key component of PSR is termed "asset maximization." Every corporate asset is squeezed in order to obtain every single available financial benefit. Through this process, hundreds of locomotives and cars already have been mothballed, and that number will increase into the thousands in the next few years. Dozens of shops and yards already have been closed or are slated to be shuttered.

And where a line doesn't pass muster under the asset maximization test it will be sold off or leased to some short line. NS did just that last year with an entire operating division, and CSX recently completed the sale of its main line along the Florida Panhandle.

While all this unfolds, thousands of railroad workers will join the furlough lines, so that the already immensely profitable Class I railroad industry can become even more profitable.

Beyond the loss of employment for Union-represented employees, the Carriers' collective drive for profits has also impacted those who manage, as well as those employees who should be able to count on a well-managed workplace. As information, the vast majority of the nation's engineers and conductors working in freight service are considered "on call employees." They must stand ready to go to work for up to 12 hours on duty in safety-sensitive positions with only an hour and half notice in many cases, 24 hours a day, 7 days a week. The round trips that they report for can range anywhere from 18 to 48 hours. One would ask — How could anyone be prepared to report to work truly rested, able to work safely in such an environment?

Scheduled on-duty times, or reliable train line ups that predict work start times, are the only way that can happen; but, unfortunately, the quality of many Class I train lineups has become another victim of the PSR mentality. In many cases, the positions of the employees who previously managed and updated our train lineups, as well as those who previously managed the balancing of our crew bases with train traffic flows that are not directionally even, have also been eliminated.

As a result, train crews are routinely called to go to work, unable to obtain meaningful rest, all because the employer-provided prediction for their next work shift was completely inaccurate. Once they do report to work, crews are routinely left at their away-from-home terminals for longer than they are allowed to stay at home between trips. This further compounds the problems associated with this "do more with less" PSR management style in that employees who are not properly utilized are no more available for service than those who were furloughed.

Adding insult to injury, many freight Carriers have implemented draconian attendance policies that force employees to report to work, regardless of their ability to obtain meaningful rest

due to the poor predictability provide by the employer. Put yourself in this proverbial Catch-22 — if I tell them I am too tired to work safely, I could be terminated. The days of this treatment must come to an end; forcing employees to work fatigued to avoid disciplinary action is a danger to not only the workforce, but to the general public in the cities that we operate trains through.

Ironically, Congress took action to address fatigue with the passage of the Rail Safety Improvement Act in 2008. Unfortunately, the Federal Railroad Administration ("FRA"), the Federal Agency obligated to implement the fatigue mitigation mandated by the 2008 RSIA, refuses to do anything that uses the word "regulate." As a result, avoidable fatigue continues every day, and the nation's railroads are less safe due to this failure to regulate as RSIA required. I am hopeful that this Committee can take action to see that meaningful steps are taken to mitigate fatigue in the rail industry. We must have an FRA that fulfills its obligations to the railroad workforce, as well as to the general public.

Of equal concern is FRA's refusal to take even the slightest interest in the longer and longer trains that have become a cornerstone of the PSR mentality. It is obvious to most observers that the ever-increasing use of Distributed Power (or "DP") locomotive consists — where extra locomotives are placed in the middle and rear of trains and are controlled via telemetry from the head end — has led to longer and longer trains. Day in and day out, a single locomotive engineer is charged with the responsibility of controlling and operating these longer and longer trains. As a credit to the engineer's professionalism, the majority of these trains arrive safely at their destination.

But this push for longer trains that use fewer crews has now reached a breaking point insofar as the technology involved. In case after case, the limits of the two-way telemetry technology that allows one engineer to communicate from the head end of the train to the rear end of the train are being exceeded. What is known as "comm loss" to working engineers has become common place day after day.

Here is why this is a safety concern that FRA should take an interest in. When things go wrong on a moving train, they generally go horribly wrong. There are documented cases where blockages in the train's air brake system have prevented the engineer from utilizing all of the train's brakes from the head-end locomotive. Technology has been in place for over 25 years that allows the engineer to activate an emergency brake application from the rear end of the train forward when the train line is blocked, thus stopping the train safely. That technology is being defeated on a daily basis because the train lengths associated with PSR exceed the reach of that technology. The railroads and FRA turning a blind eye to this daily occurrence are contributing to a workplace that is not as safe as it could be. FRA's primary mission is to take the action necessary to ensure safety on the nation's railroads. History makes it clear that, in some cases, this safety mission requires regulations. And in cases where FRA would not regulate, history also shows us that Congress must legislate to ensure rail safety. That was the case with RSIA in 2008.

Despite stellar productivity and efficiency improvements over the past several decades, the rail workforce nonetheless finds itself approaching a period of potentially serious job insecurity. There are two causes of this insecurity — the manner in which new technologies are being deployed and, as I have noted, the adoption of the "PSR" business model.

Regarding the first cause, locomotive cabs are in the midst of a technological revolution. Technology systems such as "Trip Optimizer" and the "Locomotive Engineer Assist/Display & Event Recorder" — or "LEADER" — have been installed for fuel conservation purposes. They impose a level of control over train operations that supersedes the judgment of the engineer. Many railroads impose disciplinary suspensions, or worse, upon engineers who don't subordinate their professional judgment to recommendations from these systems. As a result, engineers all too often have their attention diverted from the track ahead in order to monitor the control system, so that they may avoid potential discipline.

We, along with the SMART Transportation Division, asked the FRA in early 2016 to issue an Emergency Order restricting the use of these systems pending a review of their impact on railroad safety, and possible regulatory action. FRA denied our request, and instead formed an Integrated Product Team within its Research & Development, Human Factors Division, on which we participate. However, after nearly 3½ years, the Agency has not moved to address this problem via a rulemaking. Again, the industry's safety regulator will not regulate.

We are seeing similar problems with locomotive monitoring systems. As you may know, the technology in state-of-the-art locomotives can provide real-time data concerning a number of locomotive systems and operating conditions. This technology can be configured to provide text or email notifications to designated railroad officials whenever certain types of events occur, such as heavy braking or when a train experiences an emergency brake application.

When an engineer experiences an unanticipated degrading of a train's braking capability, or even slightly miscalculates the braking distance needed to conservatively slow or stop the train,

the tendency is to avoid heavy braking or initiating an emergency brake application that will trigger an alert … even if that results in a riskier outcome. This, too, is because of the industry's "command and control" discipline philosophy — where the only tool is a hammer and, consequently, every engineer looks like a nail.

And, unfortunately, we are receiving numerous reports regarding Positive Train Control system communication interruptions that are leading to PTC system enforcements with little or no prior warning, also resulting in disciplinary charges. We are beginning an internal survey to quantify this problem, so I am not prepared to discuss this particular difficulty further at this time, but we will address it in the future when we have sufficient reliable data.

What all these technologies — from fuel conservation systems, to locomotive monitoring systems, to PTC and its numerous screens of data display — have in common is that they require the train crew, and especially the engineer, to divert significant portions of their attention from actual operation of the train and vigilantly monitoring the route ahead.

Railroads are fond of using the term "loss of situational awareness" when an incident occurs that includes a human factor cause. The implication when one alleges that someone lost situational awareness is that he or she wasn't paying adequate attention. The fact of the matter is that all of the new technologies have created "task saturation" or "task overload" — there are simply too many inputs requiring the individual attention that each one needs.

It is this task saturation that leads to situational awareness problems, when they arise. Equally concerning is the fact that the way these technologies have been deployed causes engineers

to operate their trains in whatever manner will produce the least number of warnings or event reports, and regardless of what their experience tells them. This will lead to the degradation of engineers' train handling skills over time.

Then, when one or more systems fail — as they inevitably do — it will be extremely difficult for the engineer to rely upon skills that have not been practiced for some time. This could be catastrophic in an emergency, as recent conflicts between avionics systems and flight deck crew control over an aircraft have shown us. For the railroad industry, there also is a particular concern because these types of systems are vulnerable to being hacked or attacked from the outside.

The other problem is that many technologies being studied today are not intended to be "labor-saving" devices. They are being proposed as "labor-replacing" devices. There is talk of replacing track inspection by maintenance of way employees — who also are members of the Teamsters Rail Conference — with fly-by aerial inspection using drones. There also is ongoing study of replacing physical inspection of freight cars with electronic scanning. In fact, one of the four largest Class I railroads went on record last year as being interested in pursuing completely autonomous train operations, and eliminating the need for train operation by a human.

But the most significant public debate today is over the size of train crews. The industry argues that, in some cases, PTC has made the two-person crew redundant, and that a job should be eliminated. However, PTC is not designed or intended to prevent all accidents. PTC cannot prevent low speed collisions. Nor does it reduce the potential for accidents at highway/rail crossings caused by motorists who fail to yield to the train. In other words, PTC is not the silver bullet that some would have you believe. Regardless of what Carrier witnesses may tell this Committee,

there is no technology even on the horizon that can replace the safe workplace resultant from having two crew members on the train.

In fact, PTC significantly contributes to the task saturation problem I mentioned before. To be sure, the benefits of the technology outweigh its risks, but by any objective analysis the need for a two-person crew — both in terms of workload management and to enhance public safety in the event of a derailment or mechanical breakdown — has not been diminished in the least by PTC deployment. Not to mention PTC will be implemented on only a portion of our nation's railroad tracks.

In spite of all of this, the industry's safety regulator has again refused to regulate. Although the previous Administration promulgated a rule making that would have required two crew members on many forms of freight service, the current Administration has withdrawn that rule making. In doing so, FRA has further attempted to "negatively preempt" all State laws that make any effort to legislate crew size. For all of these reasons, and to ensure the safety of all rail workers, we strongly support H.R. 1748 — The Safe Freight Act of 2019 — which has been sponsored by Congressman Young and has over six dozen bipartisan cosponsors. We urge passage of this Bill by the House and the Senate, and that President Trump sign it into law.

In the end, this Committee can help insure that technologies are not implemented in ways that make safe human performance in the workplace a near impossibility, and that they are "labor-saving" rather than "labor-replacing." And the Committee can help insure that our national rail transportation system is not harmed by speculators seeking to swoop in, extract as much value

from the railroad as possible, in the short term, and then run away to create another victim. We look forward to working with you to that end.

Finally, I want to talk about a front-burner issue involving BLET members in Laredo, Texas.

There is a bridge in Laredo — called the International Bridge — that is used for cross-border rail freight traffic between our Nation and Mexico. Since the Bridge was built in 1920, the cars carrying the cross-border freight were interchanged right at the border. In more recent times, Mexican crews turned over northbound trains to U.S. crews at that point, where our crews also turned over southbound trains to Mexican crews.

When a northbound train enters the United States, it undergoes a small number of FRA-required safety inspections and tests in order to be authorized to move to Laredo Yard, which is less than ten miles away. The full range of required FRA inspections and tests are performed after the train arrives at Laredo Yard. The less rigorous inspection and testing at the border are permitted under a 12-condition waiver initially granted by FRA in 2008, and the majority of the conditions that were imposed were suggested by this Union.

A little over a year ago, we were informed by the Kansas City Southern Railway, and its subsidiary The Texas Mexican Railway, that our Tex-Mex crews would be replaced by Mexican crews — who are employed by yet another KCS subsidiary — in the operation between the Bridge and Laredo Yard. This has been a very complex dispute, which has been and is being contested in a number of forums.

I am not going to discuss today the railroads' lawsuit to enjoin our strike over our members being replaced by Mexican crews, except to say that I disagree with the judge's conclusion, because that litigation has been completed. I also am not going to discuss today either our lawsuit against the FRA — for its actions and inaction regarding this matter — in the D.C. Circuit Court of Appeals, or our arbitration case against the railroads, because both are pending matters.

I will tell you that I wrote President Trump on July 10th of last year regarding what was happening in Laredo, but I have yet to receive the courtesy of a response. I also will tell you that — with the assistance of the Teamsters Legislative and Global Strategies Departments — we reached out to Trade Representative Lighthizer to request that the pending United States-Mexico-Canada Agreement include a provision reciprocal to a labor condition granted to Mexico as part of the original North American Free Trade Agreement; this effort has been similarly unsuccessful to date.

Under Mexican law, all "Railway crew members must be Mexican nationals." This requirement was accepted by the United States over 25 years ago as a condition of NAFTA, and is set forth in NAFTA Annex I, Schedule of Mexico at I-M-63 (citing Ley Federal del Trabajo, Capítulo I)), available at https://www.nafta-sec-alena.org/Portals/0/Documents/en/Schedule%20of%20Mexico.pdf.

For purposes of American railroad safety law — and specifically under FRA regulations governing certification of locomotive engineers and conductors — the only foreign nationals authorized to serve as a crewmember where certification is required are Canadians. *See* 49 C.F.R.

§§ 240.227, 242.127. Nevertheless, it is an absolute certainty that, at some point during this hearing, there will be a Mexican crew running a train somewhere between Laredo Yard and the International Bridge.

I am bringing this issue to your attention because I hope that your Committee becomes involved in addressing this injustice. So I will tell you certain facts that you should know from the very start:

- You will be told that cross-border rail operations can create significant delays for automobile and pedestrian traffic in Laredo. This is true.
- You also will be told that this is largely because of the crew change at the border. This is demonstrably false; the tests and inspections mandated by the FRA waiver still must be performed, and there is an extremely low speed limit in effect when the train is scanned by the Customs/DHS VACIS system.
- You will further be told that this Union has been obstructionist; the truth is that we made multiple suggestions how to either eliminate any delay from crew change altogether, or shorten it from the 2–3 minutes the change typically requires.

The main reason for the delays is not the exchange of crews but the border patrol, which uses an x-ray machine to inspect the train for contraband and human trafficking. If they see something suspicious, the train must be stopped and inspected further.

This Congress has the ability to do what Trade Representative Lighthizer was unable to do — and what the President has not seen fit to do. We seek legislation that is identical to the national law in effect in Mexico. We seek a statute that says: "Trains originating in Mexico may only be operated in the United States by crews comprised entirely of citizens or nationals of the United States."

Stepping back, now, to the systemic question, from the perspective of the men and women who operate America's freight, passenger and commuter trains — and, I believe, their brothers and sisters who work in the various crafts to provide the best railroad transportation in the world — I think the state of the rail workforce can be summarized in two brief statements.

One is that the rail workforce faces serious challenges in the years ahead, which I've already discussed. The other is that the rail workforce — despite all the challenges and the uncertainty — has never been more productive and efficient.

As measured in terms of productivity and efficiency, the rail workforce has never been better, according to statistics published by the AAR:

- Between 1980 and 2016, traffic density tripled, from 5.58 million ton-miles per mile of road to 16.99 million ton-miles per mile of road.
- Railroads today can move one ton of freight 479 miles on one gallon of fuel, which is double the fuel efficiency in 1980.
- Further, from 1980 through 2017, rail employee productivity — measured by ton-miles per employee — rose 467 percent … locomotive productivity — measured by ton-miles per locomotive — rose 93 percent … and average freight carried per train rose 63 percent.
- Lastly, the most commonly used broad measure of rail-industry productivity — ton-miles per constant-dollar operating expense — was 159 percent higher in 2017 than in 1980.

I thank you for your time and attention this morning, and am happy to attempt to answer any question you may have.