

# *Fight to Save the Two-Person Crew Gains Steam*

Much to the chagrin of the Class One rail carriers, recent weeks have witnessed a series of tactical victories and provided inspiration to railroad workers in their ongoing fight to save the two-person crew.

## **The Departure of FRA Director Ron Batory**

Lifelong rail CEO Ronald Batory – appointed by the Trump Administration to head the Federal Railroad Administration (FRA) in February 2018 – was sent packing after serving for just under three years as Agency head. As one may have guessed, he moved on to assume yet another rail CEO position, as head of RJ Corman Railroad Group. Among other anti-worker and anti-union actions taken during his time at the helm of the FRA, Batory took a stand for the elimination of the two-person crew. He reversed the previous FRA position that the Agency would engage in rulemaking on minimum crew size, and stated that the FRA would do nothing of the kind. In May 2019, he went further, declaring that state laws adopted in previous years that mandated a minimum of two person train crews were all unconstitutional, and in fact were immediately null and void by his federal “power of preemption.”

Batory is succeeded by Amit Bose, with a long career in rail and transportation organizations and government agencies, including the FRA. According to SMART-TD National Legislative Director Gregory Hynes, “We’ve had several conversations and he understands and supports our issues. It is a welcome new day for rail labor.” While it remains of course to be seen what position Bose will take on the crew size issue, one can only assume it will not be worse than Batory’s.

## **The End of the Trump Presidency**

Former FRA Director Batory served at the behest of President Trump, leading one to conclude that Trump had no interest in preserving two-person train crews. Alternately, the new President Biden professes to be a supporter and a friend of rail workers and has clearly stated his support for a two-person crew on all freight trains. Note: If and when a stalemated contract on this issue were to go before a Biden Presidential Emergency Board (PEB), the chances are better for labor to achieve a favorable ruling.

## **Court Ruling in Favor of States and Rail Unions**

On February 24<sup>th</sup>, a three-judge panel with the U.S. Court of

Appeals for the 9<sup>th</sup> Circuit Court ruled that the FRA did not conduct adequate due process and failed to undergo an adequate public review process prior to declaring that its May 2019 order on train crew size preempted state laws that required a minimum of two-person crew on freight trains (see above). As such, the Court has remanded the issue back to the FRA for review. What the FRA does now under a new administration remains to be seen.

In the wake of this court ruling, four more states – Virginia, New York, Missouri, and Wyoming – have all seen bills introduced and/or advanced in their respective state legislatures. Other states are expected to follow. While the American Association of Railroads (AAR) was “perplexed and frustrated” by the ruling, the rail unions and the AFL-CIO Transportation Trades Department (TTD) were elated. According to the TTD, “The Ninth Circuit rightfully cast aside the FRA’s order ... We are thankful that state safety laws can go back into effect, but today’s decision is only a first step.” TTD is correct, this is of course but the first step. The unions must now go on the offensive to consolidate this win.

## **Conclusion**

All railroaders who have been engaged in the fight to preserve the two-person crew should be heartened by the victories outlined above. However, we remember that the fight goes on. These are tactical victories in the war over this issue that dates back to 2004. The 9<sup>th</sup> Circuit Court ruling can be appealed and overturned. Biden’s resolve on the issue is by no means guaranteed. And it remains to be seen what position the new FRA administrator will assume on this vital question. Therefore, rails must continue to be vigilant. As we have stated endlessly, RWU believes this fight must ultimately be won on the property, where rank and file railroaders will decide our fate. It comes down to our resolve and our solidarity versus that of the carriers. They will no doubt attempt to coax, cajole, blackmail, and bribe us and our unions to go down the single crew road, just like they did in 2014 on the BNSF. But we can beat them in the coming years – just like we did then – but we cannot rely on the courts, regulators, nor politicians to win this for us. Rather, we must strengthen our resolve, build up our unity, solidarity and alliances, keep our ear to the rail, refuse to be bought or intimidated, and always believe in our collective power to win!