Volume 6 Number 2 SPRING 2013



The Highball

Official Publication of

Railroad Workers United

OSHA Whistleblower Protection Committee Meets in D.C.

The new Whistleblower Protection Advisory Committee, which was created in 2012 to advise, consult and make recommendations to improve OSHA's whistleblower protection programs, met for the first time on January 29th. The 12 members of this committee include 4 representatives from labor. While no rail labor officials were appointed, the



While OSHA clearly states that it is illegal for an employer to take reprisal against workers who report unsafe work-place conditions or injuries, the rail carriers continue to harass, discipline and fire rail workers on a daily basis.

Committee does include a special friend of rail labor, Nancy Lessin from the United Steelworkers' Tony Mazzocchi Center for Health, Safety & Environmental Education (see The Highball, Fall 2012). "Nobody should ever live in fear because they saw something wrong and spoke out to make it right," Lessin points out. "Meaningful whistleblower protections and strong enforcement of whistleblower provisions are vital to uphold safety in our workplaces, the health of our communities and the protection of the public."

The WPAC was created in 2012 to advise, consult with and make recommendations to the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety & Health on ways to improve the fairness, efficiency, effectiveness and transparency of OSHA's whistleblower protection programs.

Rail labor officials from at least three unions -- BLET, BMWED and UTU were present at the meeting. Vincent Verna, Director of Regulatory Affairs for the BLET, and Rick Inclima, Safety Director for the BMWED spoke on behalf of the Teamsters Rail Conference. Also present were UTU Assistant Legislative Rep John Risch and BLET Iowa State Legislative Board Chairman Jeff Kurtz.

Railroad workers have an acute interest in this issue as the big carriers are among the worst offenders when it comes to violating the law and taking reprisals against workers who report injuries and/or unsafe conditions at work. To date, hundreds of whistleblower complaints have been filed by railroad workers since the law went into effect in 2009. And while many cases have been won, the carriers have appealed each and every one, leaving the aggrieved workers denied justice until the appeal process -- and the aggrieved worker -- is exhausted.

According to Committee Member Lessin, the carriers are simply using the appeal process to circumvent the law. And while they may lose many, or even all of the appeals eventually, their actions appear to be an attempt to intimi-

Continued on Page 4

In this Issue of *The Highball*:

RWU Organization News	Page 2
Railroad Workers Memorial Day	Page 3
BNSF Blames Co-workers for Tragedy	Page 4
Switch Targets: Outmoded, Hazardous?	Page 5
Crew Van Drivers Struggle On	Page 5
Concessions: How Did We Get Here?	Page 6
Defend Whistleblowers: Fight BBS!	Page 7
Join RWU Today	Page 8

RWU Charters More New Chapters in the USA

In the first few months of 2013, Railroad Workers United chartered three new Chapters -- Kentucky, Midwest and Northern California. Plans are for regular meetings to be held to unite railroad workers in the same geographic region. In the coming months, RWU hopes to start up other Chapters in the Chicago area, Southern illinois, Southern California, and elsewhere.

The initial meeting of Chapter #1 was held in Louisville at the UFCW Local 227 union hall, where RWU organizer JP Wright led a discussion into what sorts of issues all crafts in the yard face. More than a dozen attended, including

trainmen, engineers, a yardmaster and a carman. There was general excitement about the idea of conducting a regular "all-union" meeting of this nature on a regular basis.

If you are interested in building a chapter of RWU in your neck of the woods, please contact RWU Organizer JP Wright. Chapters are open to all railroad workers regardless of craft, union affiliation or carrier in a specific geographical region. We suggest a larger geographical area to get started. As membership grows, smaller units may be chartered at the city-wide level.

RWU Adopts Resolutions of Solidarity

At the March meeting of the RWU Steering Committee, Railroad Workers United adopted a resolution of support for our brothers and sisters of ILWU Local #4 locked out of their jobs in Vancouver, Washington. In late February, their employer, Mitsui-United Grain, locked out the members of the International Longshore Workers Union.

On March 8th, railroad workers joined a crowd of 500 in a show of solidarity at the Port of Vancouver. Robert Hill, member of the RWU Steering Committee delivered our resolution directly to members on the picket line. "It is vital that railroad workers support other transportation workers in these struggles," pointed out Brother Hill. "Only when we stand together in solidarity do we stand a chance against these huge multinational transport companies." Teamster drivers pledged to not cross the picket line. Stated Tony Andrews, president of Teamsters Joint Council #37. "We protect your work; you protect ours." Local railroad officials appear to be taking a similar stance.

RWU also adopted resolutions in support of workers in Greece, specifically a heroic group who have occupied their abandoned



factory and have begun to run it as a workers' cooperative. Workers in Greece have been subject to harsh austerity measures and massive unemployment for a number of years now.

In addition, RWU adopted a resolution in support of social security and medicare. While most railroad workers fall under the Railroad Retirement System, the survival and security of both medicare and social security are vital to railroaders and their families. The resolution calls for mass struggle and action against any and all attempts by politicians to degrade either program.

Railroad Workers United

Railroad Workers United was organized in April 2008 at a Founding Convention in Dearborn, MI. RWU grew out of decades of struggle within the craft unions for unity, solidarity, and democracy. We are carrying on a tradition of rank-and-file activity which dates back to the 1890s and the time of Eugene V. Debs.

RWU is a cross-craft inter-union caucus of rail labor activists across North America. All rail workers of all crafts from all carriers who support our Statement of Principles are welcome to join in our efforts. Please write, call or email the address below.

Statement of Principles

- Unity of All Rail Crafts
- An End to Inter-Union Conflict
- Rank-and-File Democracy
- Membership Participation & Action
- Solidarity Among All Railroaders
- No to Concessionary Bargaining

Railroad Workers United P.O. Box 1053 Salem, IL, 62881

International Steering Committee

Mark Burrows	UTU #1433	СР	Chicago, IL
Jon Flanders	IAM #1145	CSX	Selkirk, NY
Robert Hill	BLET #75	BNSF	Vancouver, WA
Robert Hull	UTU #199	BNSF	Creston, IA
Ron Kaminkow	BLET #51	Amtrak	Reno, NV
Shaun Kelley	BLET # 642	BNSF	Creston, IA
Ed Michael UTU #97	9 BLET #724	UP	Salem, IL
Hugh Sawyer	BLET #316	NS	Atlanta, GA
James Wallace	UTU #305	BNSF	Lincoln, NE
Chet Whyers	UTU #979	UP	Salem, IL
John Wright	BLET #78	CSX	Louisville, KY

206-984-3051 info@railroadworkersunited.org www.railroadworkersunited.org

Railroad Workers Memorial Day is Friday, June 14th

On Mother's Day, 2009, a young conductor, Jared Boehlke, was killed on the job in Selkirk, NY while working a single-employee RCO job in the hump yard. Like so many other railroad fatalities, Jared's death could so easily have been avoided had the carrier maintained a safe workplace. In response to this tragic accident, Railroad Workers United called for a national day of remembrance a few weeks later, on Father's Day Friday. Urging all railroaders to wear black shirts to work that day, we proclaimed the day "Railroad Workers Memorial Day", and have pledged the organization to observe this day every year in honor and remembrance of those railroad workers who have died on the job.

Unfortunately, when one of our co-workers is killed on the job, work continues apace, the carriers have a "safety blitz" and throw the fear of God into us, and our organizations just lay down and parrot the company's refrain to "work safely", "maintain situational awareness", "remember the rules", etc. All of this is profundly insulting. We need to hold the carriers accountable for our fatalities on the job. The west coast longshore workers stop work for a day or so when a brother or sister is killed on the docks. This gives time to pause and reflect, time to make an initial investigation into what led to the tragedy, and provide the space for workers to come together in solidarity in face of the tragic death of one of their own. Perhaps this is something for railroaders to consider.

This year we once again call on all railroaders to observe Railroad Workers Memorial Day. RWU members will be wearing our RWU T-shirts to work on June 14th. We ask that ALL railroaders wear a black shirt to work and join with us in standing in solidarity with our fallen comrades. Help us to make a statement to the carriers that we will not go along with business-as-usual corporate sponsored safety programs that only look at our behaviors and fail to take an interest in alleviating the hazards that lead to accident, injury and of

RAILROAD WORKERS
MEMORIAL DAY
"Black Shirt Friday"

Fathers Day Friday

A time for all railroad workers
to mourn for the dead
and fight like hell for the living.

Order yours today at 206-984-3051 or see

the RWU website and visit the RWU Store.

to take an interest in alleviating the hazards that lead to accident, injury and death on the job. See the RWU website for posters, flyers and more, or call 206-984-3051 or email info@railroadworkersunited.org.



Railroad workers in the Twin Cites picket against the union busting tactics of shortline Progressive Rail at the company's headquarters. Unions like the UTU and the BLET need to use creative and militant tactics to bring anti-union shortline railroads to heel. Recent decades have witnessed countless "spinoffs" which often are simply a way for operations to continue as non-union outfits.

Whistleblower Protection Advisory Committee Meeting

Continued from Page 1

date and discourage workers from further whisleblowing, making it clear to co-workers: you best think twice before you consider subjecting yourselves to this grueling drawn out punishment. Lessin suggested that there should be "conditional reinstatement" for workers who win their case while the appeal process drags on.

Jeff Kurtz believes that a surcharge of 50% or more on top of the original award for punitive damages every time the appeal process is used unsuccessfully by the carriers, could curb the carriers' zeal to appeal every case. "If the carrier was informed by OSHA that, upon award, the company must on the one hand reinstate the worker *and* suffer an increased penalty upon loss of appeal on the other, the carriers might not be so quick to delay justice for our members."

Dr. David Michaels, the Assistant.Secretary of Labor for Health & Safety, took the opportunity at the meeting to point out the worthlessness of Behavior Based Safety. He believes that hazard abatement is key to safety at work. For now, the jury is still out on how much power to effect change this committee really has. Regardless, rails must continue to organize and fight back with independent conferences, demonstrations, and even strikes as necessary. We must be vigilant and make sure that any recommendations that the Committee issues are favorable to railroad workers. RWU will continue to advocate for good representation on the Committee. and we will continue to report on this vital issue in the months and years ahead.



Conductor Suffers Injury; Carrier Disciplines All at the Scene!

In the early morning of April 2nd, 2012 a conductor on the BNSF Railway was injured when he fell off a bridge with no guard rail while changing crews at Afton, IA. This new crew change location was selected by the company as a cost saving measure to move trains through Creston, the normal crew change location for over 120 years, in order to reduce the number of relief crews needed to move trains east to Galesburg.

When announced as the new crew change location, safety concerns were immediately expressed and documented by train and engine crews, including the lack of lighting, unsafe walkways and the absence of railings on the bridge. Despite these hazards, company officers did nothing to make the location safer, and did not even issue a track condition message to warn crews until after the accident. It was the carrier's complete indifference to the concerns of the rail workers that directly led to this tragic event.

Incidents such as these are the reason that RWU has taken a strong stance in favor of fixing workplace hazards and against behavior-based safety programs which lead to blaming the worker when falling victim to unsafe working conditions. In the investigation that followed, BNSF retaliated against both the engineer and the conductor who was injured. In addition, the other workers who were merely present at the site (and not members of the crew of the injured conductor) were also disciplined by placing four of them on the highest level of probation while terminating one employee! The final investigation meeting was held in January 2013.

Ironically, on January 15th, 2013, the BNSF announced a voluntary revision of several personnel policies that OSHA alleged had been in violation of the whistleblower provisions of the Federal Railroad Safety Act and dissuaded workers from reporting on-the-job injuries. FRSA's Section 20109 protects railroad workers from retaliation for, among other acts, reporting suspected violations of federal laws and regulations related to railroad safety and security, hazardous safety or security conditions, and on-the-job injuries. While the BNSF -- perhaps the worst rail carrier when it comes to flouting the FRSA -- publicly touts their newfound respect for the law and for their employees' rights, they continue to discipline these same workers in direct violation of the FRSA!

RWU commends the UTU and BLET members who had identified the existing hazards that caused the Creston incident and who had unsuccessfully sought to fix them in the face of indifference to safety on the part of the carrier. And we call on all railroaders to take a union approach to safety that focuses on eliminating hazards on the job rather than worker behavior. These programs set discipline precedents which lead to workers being blamed for every unsafe incident which occurs on the property, whether or not human error was the root cause. This mindset further allows our brothers and sisters to become victims of retaliation by carriers who hand out vengeful discipline in order to maintain a culture of fear in the workplace and prevents whistleblowers from coming forward in identifying hazards.

Switch Targets & Banners: A Hazard to be Eliminated?

Switch banners (or targets as they are sometimes called) have long been controversial. In use now for more than 150 years, the banner is used to indicate which way a switch is lined. When approaching a switch either trailing or facing, the banner can indicate at a glance whether the switch is lined for the move or lined against the move. Simple right? Well ... not quite.

As the railroad itself will maintain, workers are to check the points and not trust the banner to tell them which way the switch is lined. Why have a switch banner at all if it is not to be trusted? And let's consider all that just might be problematic with a switch banner:

- The target may be bent or otherwise out of alignment so that the true position of the switch is masked.
- The target is generally white or green for straight ahead moves, while it is yellow or red for turnout moves. However, there are exceptions. When the main or the lead is the rail that is curved, then this route will show green or white, while the straight route will show yellow or red. For newer less experienced rails or those working new unfamiliar territory, this can present a trap.
- Switches that are very close to one another create confusion. The various switch banners can add to the confusion just by their close proximity.
- Perhaps most importantly, the switch banner is

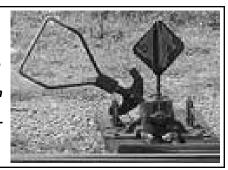
designed to be read by the engineer or trainmen when facing the switch *in the direction of movement*. However, the switch banner is often viewed from a 90 degree angle to the track, presenting the opportunity for confusion.

So, instead of the old time switch target, some rails are advocating their replacement with a "switch point indicator" that can give only one indication, thereby reducing the confusion as to which way that the switch is lined.

Considering the number of run-through switches in this day and age, and the great danger that a run-through switch represents to train crew members when they have gone undetected, perhaps it is time to reconsider a longtime fixture on the railroad, the switch target.

For further information about alternatives to switch targets, see the website http://www.switchrite.com.

Is it time for the old switch banner to be relegated to the railroad museum? Some train crews feel that they create confusion and unsureness about the actual position of switches and should be replaced.



Crew Van Driver Organizing Continues, Targets NS

Crew van drivers at Renzenberger in Northern New Jersey are fighting for a first contract and are asking for the support and solidarity of the rest of the labor movement, espe-

Stop Running Over Usi Over Usi

Crew van drivers protest Renzenberger at an earlier picket in Chicago to demand paid sick days and adequate rest. (Photo by Kari Lydersen)

cially railroad workers. On March 14th, drivers and their allies held a rally at the entrance to the big NS Croxton yard in Jersey City, NJ. The union, United Electrical (UE) is targeting Norfolk Southern (NS), who subcontracts the work of crew transportation to Renzenberger.

Drivers make just \$8 per hour or \$16,640 in 2012 and work under difficult conditions, with no paid holidays, no vacations, and poverty wages. Drivers in New Jersey organized with UE in March of 2012, to fight for living wages and justice on the job. After 11 months of negotiations with this abusive employer, these dedicated workers still are without a contract.

Railroad workers are urged to support these brothers and sisters in the struggle. Remember, these are railroad jobs that were contracted out long ago by greedy rail carriers more interested in saving a buck than their employees' safety. RWU asks that all rails -- not just those in the New Jersey area -- consider getting involved in the fight to organize these fellow workers. Better pay, benefits and working conditions translates into a safer and more secure working environment for us! To help out with this effort, contact UE organizer Jim Ermi at 610-832-0560, or via e-mail at local155ue@verizon.net.

Opinion & Commentary

The Concessionary Landscape: How Did We Get Here?

In the first two Commentaries of this series we discussed concessions past, present and future. Now, the discussion will shift towards addressing the following questions: How have the carriers effortlessly succeeded over the years in the following: 1) driving down our real wages, relative to the cost-of-living while simultaneously achieving major increases in productivity; 2) getting away with operating a more dangerous work environment that puts us and the public at greater risk; and 3) compromising our dignity, not only on the job, but our quality of life off the job as well?

A critical component of this discussion will be to take an objective, critical look at the role played by the leadership of our unions, as well as the federal government, in driving us down to our current situation. The short explanation can be broken down into four basic elements:

1) The impact of the *direct* intervention of the federal government cannot be overstated. While there have been numerous regional and local disputes where the federal government has intervened, I'll highlight the three major national disputes we have been involved in during my career, going back to 1974.

After three days of the 1982 nationwide BLE strike, we were ordered back to work by President Reagan. A Presidential Emergency Board (PEB) was established to draft a proposed contractual agreement. The proposed "agreement" was then rammed down our throats by the House of Representatives and the Senate, both voting in favor of this wretched concessionary "agreement" by overwhelming majorities of approximately 9-to-1. Reagan's signature was a foregone conclusion; a token formality.

The 1991 national BLE strike pretty much followed the same script with two exceptions: a) it was under the reign of President George H.W. Bush, and b) we were only allowed to have a fleeting taste of our potential power for all of 19 hours. And then in 2011, President Obama, friend to all labor bureaucrats, wouldn't even let us taste a "drop" of our potential power, putting the PEB wheels in motion a few hours before we were due to hit the picket lines. This time, the BLE leadership encouraged its membership to simply approve and accept the PEB's recommendations.

My own opinion is that it might have been a tad bit embarrassing for the BLET leadership to have all of our so-called "friends" of labor, mainly Democratic Party politicians, including President Obama, get their hands dirty by ramming another contract down our throats against our will.

2) From *direct* government intervention flows *indirect* government intervention, or what I like to refer to as the "gun to the head" threat of a PEB. Stop me if you've heard this before: "Well boys and girls, this contract proposal we are submitting to you for your approval is not as favorable as

we would have preferred, but this is as good as it's going to get. We *strongly* recommend that you vote for and approve this tentative agreement because we don't want to roll the dice with a 'third party' settling our contract."

3) Historically, the rail bosses have been masters at playing "divide & conquer". It's bad enough that we are fragmented into a dozen-plus different craft unions. At contract time, as soon as one union settles, that agreement becomes the "bar" for the rest of us. On top of that, we are divided carrier by carrier. The concept of a national standard of wages, work rules and conditions has been obliterated. Individual carrier agreements are becoming increasingly the norm, from major Class I's like the CN, to all the regional "short lines". Then within each individual carrier, we see more and more individual terminal agreements. With each and every individual terminal, carrier and/or union agreement, the "bar" is lowered and then inevitably used as a club to beat the rest of us into submission down the road.



4) As if they don't already have enough weapons in their arsenal to batter us, occasionally, when they must be in a depraved state of boredom, to amuse themselves at our expense, they will throw the proverbial "bone" to a certain demographic to get a concessionary contract through. Throw a "bone" to the yard workers while shafting the road workers, and vice versa. Speed up the rate of wage progression for younger workers while including work rule changes that they are not seasoned enough to grasp the impact of. By the time they do, the deal is done.

In the next issue of <u>The Highball</u>, I'll go into a more indepth analysis on how the perspectives of the leadership of our unions, and the strategies that flow from them has contributed to our predicament. Until then, I strongly recommend that you go to the RWU website and look up "You Railroad Men" by Eugene V. Debs. This should be required reading for every rail worker. We should have classes in our union meetings to discuss its meaning and relevance for us today. We should be required to take a "must-pass-with- 85%" biannual exam on this document. Check it out! (See RWU Home Page-RWU Blog-Blog Spot -2012-November).

Mark Burrows is a Co-Chair of Railroad Workers United, a member of UTU Local #1433 and an engineer for the CP Rail in Chicago, IL. This is the third installment in this series.

Opinion & Commentary

To Defend Whistleblowers, Fight Behavior Based Safety!

The rail union leadership has been rallying around the idea of stronger whistleblower protections in order that working railroaders feel empowered to report injuries and accidents and dangerous working conditions. And while RWU applauds the leadership for their action and determination on this issue, we continue to be perplexed at that very same union leadership's failure to condemn "behavior based safety" programs that are sponsored by the carrier. To date, not one rail union has gone on record in opposition to these programs that shift the blame for accidents, injuries and fatalities onto our members' behaviors, rather than focus on hazard elimination.

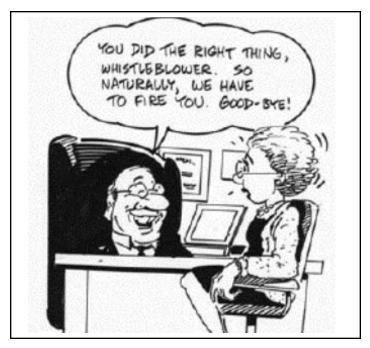
Railroads are fond of safety slogans that make it clear that "safety begins and ends with you." These slogans shift responsibility for accidents and injuries away from the carrier and onto the worker. Slogans like "You are responsible for your safety while on the property", coupled with "All accidents and injuries are avoidable" are designed to cause workers to conclude that "if I get hurt on company property, it must have been my own damn fault!" There really is no other logical conclusion that one can draw when you buy into such meaningless sloganeering that BBS programs are based upon. Yet our unions have bought into management's safety programs hook, line and sinker time and time again!

The railroad has promulgated a series of rules and regulations, guidelines and policies, memos and notices that instruct railroad employees to work safely. We all know that if and when we get hurt, the railroad will claim that it was a result of our own behavior; that is, that you must not have followed one or more safety rules, operating rules, special instructions, division notices, road foreman notices, superintendent's notices, bulletin orders, general orders, track bulletins, track warrants, etc. etc.

Each and every time there is a serious injury or fatality on the railroad, where is the union to say "enough!" ? Where is the union to say "the company is to blame"? Where is the union to say "the hazards must be fixed that lead to this"? Instead, we hear platitudes like: "OK boys, work safe now, stay focused, get your rest, follow the rules" on and on ad nauseum. The leadership is in effect practically parroting the carriers, agreeing that, in fact this or that brother or that sister got hurt because he or she screwed up. When Tommy "Two Notch" Kenny and Chris Loeher were killed at that dangerous private crossing that BNSF refused to fix after countless complaints were filed, was that our fault? When Tom Andrews and Patricia Hyatt were killed when they rammed into the back of that work train at Red Oak, IA after worker complaints of massive fatigue went ignored by the carrier, was that our fault? When Jared Boehlke was

coupled up in the class yard in Selkirk, NY after unsuccessfully protesting the assignment of a dangerous task as a single RCO crew member, was that too our fault?

The rank & file is getting a contradictory mixed message from their union officials. The union leadership simply cannot have it both ways. It is a blatant contradiction to say on the one hand that you want to protect the working rails' right to report accidents, injuries and hazards, yet all the while buying into carrier safety programs that focus on worker behavior as the basis of all injuries and accidents. Because it is these very same programs that foster a climate of fear and a culture of guilt among railroad workers. "If I got hurt it must have been my fault." When is the union leadership going to stop apologizing for the rail carriers and be consistent?



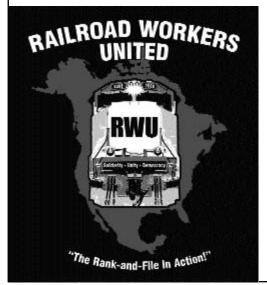
So let's get real on the whole question of our safety. Union locals have been pulling out of joint safety committees and rejecting behavior based safety programs of the carriers. At the local level, many workers on the ground know that these programs are a company scam. We must keep up the pressure on the carriers, the FRA, OSHA and our union leadership by escalating our opposition to behavior based safety. Only when we have safety programs that are run by the union rank and file, only when we focus on hazard elimination rather than this obsession with worker behavior, only then will we achieve our goal of a safer workplace. And only then will railroad workers feel empowered to blow the whistle on dangerous and hazardous conditions and the outlaw rail carriers who discipline and fire us for reporting workplace injuries.

Railroad Workers United Membership Application

Railroad Workers United needs you! If you believe that our unions should fight the carriers and not each other, then RWU is for you. If you believe that the carriers' "Behavior Based Safety" Programs do more harm to us than good, and If you want real union-based safety committees built upon cross-craft solidarity and rank-and-file control, then RWU is for you. If you want to stop the carriers' push for single employee crews; if you wish to see an active, informed and mobilized union membership -- of all rail labor -- then RWU is for you!

Name	ne Date			
Address				
City	State Zip			
Phone	Cell Phone			
Email Address Union Position (if any)				
Union Local #	Employer			
Terminal Craft _	Years of Service			
I am a (check one): Railroad Employee	Railroad Retiree Railroad Family Member			
Please check to affirm this statement: I am not a manager or officer of a rail company.				
I'd like to join for (check one): I year \$50	0.00 2 Years \$90.00 3 Years \$120.00			
Clip and mail together with your dues to: Ron Kaminkow, RWU Secretary P.O. Box 2131 Reno, NV. 89505				

Get Your RWU Union-Made-in-the-USA T-shirts and Hats



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