



The International Brotherhood of Teamsters

**TESTIMONY
OF
LaMONT BYRD
Director
Safety and Health Department**

Before the

**Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit**

**“Improving and Reforming the Nation’s Surface
Transportation Programs”**

March 29, 2011

**International Brotherhood of Teamsters
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Mr. Chairman, Ranking Member DeFazio and Members of the Subcommittee:

Thank you for the opportunity to appear here today and convey our views on issues that we feel will improve our surface transportation programs, especially those related to motor carrier safety. For the most part, our Teamster members are some of the most experienced and safe drivers on our nation's highways. Good union wages and benefits have helped create a stable workforce that has a tendency to stay with a union employer. But of our 1.4 million Teamster members, 600,000 members turn a key in a truck to start their workday and deserve their workplace (our nation's highways) to be as safe as any factory floor. Unfortunately, that's not the case.

While there appears to be a downward trend in fatalities and injuries involving large trucks (gross vehicle weight rating greater than 10,000 pounds) in the last few years for which data is available (2007-2009), it is difficult to determine the exact causes of those reductions. Certainly, increased roadside inspections, compliance reviews and enforcement activities by the Federal Motor Carrier Safety Administration (FMCSA) can play a role. And initiatives like the distracted driver campaign and the Pre-employment Screening Program can help. But external factors like the recession have led to a severe downturn in the trucking industry. We know first hand that more than 20% of our members in the Less-than-Truckload (LTL) sector of the industry were unemployed at the height of the recession. Hopefully, some of them will get back to work soon. And while Vehicle Miles Traveled (VMTs) data for large trucks is not available for 2009 and 2010, we would presume that those figures are down significantly from previous years. Therefore the recession could certainly be factor in the reduction of

fatalities in the last two years. Nevertheless, 3,380 fatalities in crashes involving large trucks in 2009 is unacceptable, and if someone told you that over 5,000 workers would die on the job in a certain industry in a ten-year period, you would probably say that is intolerable. According to NHTSA, an average of 93 people died each day in motor vehicle crashes in 2009 – an average of one every 16 minutes. Clearly, more needs to be done to reduce all traffic accidents and fatalities on our highways, not just those involving large trucks.

Speed Limiters

NHTSA data indicates that speeding was a contributing factor in 31 percent of all fatal crashes in 2009, and that percentage has not changed more than a percent or two in the last 10 years. Many commercial motor vehicles (CMVs) operated by Teamster members are currently equipped with speed limiting devices, and our drivers report no significant problems or safety hazards associated with the use of such equipment. However, in some instances, the union and motor carriers negotiated contract language that requires the vehicles to be able to reach an agreed to speed to ensure that the vehicles can be safely operated on highways and throughways. For our LTL sector, limiters are set at 62mph. The union is particularly concerned that the vehicles be able to attain sufficient speeds to safely merge onto highways and pass other vehicles, if necessary. Further, CMVs should also be able to maintain safe speeds while traveling up hills and inclines. The Teamsters Union could support the industry-wide use of speed limiters under those conditions.

Electronic On-Board Recorders (EOBRs)

While the FMCSA has proposed the use of EOBRs for motor carriers that have had a history of serious non-compliance with the hours-of-service rules, there

have been several legislative proposals introduced recently that would require the use of EOBRs on all interstate commercial motor vehicles. The Teamsters Union believes that EOBR technology may have utility in ensuring compliance with the Hours of Service (HOS) regulations. Fatigue is often an under-reported cause of crashes involving large trucks. However, in our view, the use of the technology is not a panacea relative to compliance with the HOS regulation. EOBRs are designed to automatically capture information regarding the time during which a CMV is operating, however, recording devices will not automatically capture data concerning "on duty, not driving" time. The driver will have to manually input this information, thus allowing an unscrupulous individual the opportunity to input erroneous information. Further, we have concerns about how drivers will be identified as actually being the operator of the EOBR-equipped CMV. While there has been discussion about methods that could be employed to identify drivers, it is possible that some methods could be defeated, thus allowing a driver who has no available driving hours to operate while using another driver's identity. In addition, we have serious concerns about other information that can be collected by the "black box" technology. Our experience has been that carriers utilizing this type of technology want to combine it with Global Position Satellite (GPS) technology and collect information on the "real time" position of the vehicle, in addition to information on various operational criteria (engine speed, braking operations, etc.) Some carriers have attempted to use this information to critique the driving patterns of drivers, including forcing drivers to drive faster and make fewer and shorter stops and pressuring drivers to maintain the posted speed limit in a particular area, although there may be weather or traffic conditions that preclude the driver from doing so. In extreme situations, motor carriers have attempted to use the information to implement disciplinary actions against drivers for failure to follow a management directive. This practice has contributed to job stress (which

may contribute to driver fatigue), overall job dissatisfaction, and in some instances has an adverse impact on safety. We would strongly recommend that as legislation moves forward mandating the use of EOBRS, that the use of EOBRS be used for HOS compliance only and not to monitor or measure the “productivity” of the driver.

Drug and Alcohol Clearinghouse

The Teamsters Union has a long history of being proactive in our efforts to deter the abuse of controlled substances and alcohol in the trucking industry. For well over two decades, the International Brotherhood of Teamsters (IBT) has negotiated drug and alcohol testing programs with virtually all of our larger employers in the trucking industry. Our collective bargaining agreements (CBAs) provide our employers with a strict set of rules to ensure that the implementation of the testing programs comply with both provisions of the agreements and governing regulations as promulgated by the FMCSA and its precursors. In addition, the CBAs provide the signatory parties with instruction on how to adjudicate disciplinary issues for which the regulations are “silent” and also provide guidance as to the process that must be followed to allow workers who have substance abuse issues the opportunity to obtain treatment and rehabilitation prior to returning to work in safety-sensitive functions.

Drug and alcohol use among truck drivers has decreased steadily over the years and has actually caused the FMCSA to reduce the rate of random testing for alcohol. The IBT reviewed the random drug testing results for large LTL carriers for the period of 2003-2006. During this period, the LTL companies conducted 64,477 random drug tests of which 395 were validated by Medical Review Officers as being positive, resulting in a positive test rate of 0.6%. That would allow us to

conclude that there is no significant drug use problem among commercial drivers indicating violations of the FMCSA regulations.

That said, we do know that there are instances where prospective drivers who fail a drug test at one trucking company wait a requisite number of days and apply for a job at another company – trying to test drug free. As a result, there have been several legislative proposals calling for a national clearinghouse for records relating to alcohol and controlled substances testing. While we have significant concerns about the creation of a clearinghouse with respect to driver privacy issues, because certain states, such as North Carolina, have moved forward in collecting the data, we would prefer a national clearinghouse, operated by the Federal Government, rather than data being collected on a state-by-state basis.

The IBT does not want its members sharing the road with impaired drivers and could support the implementation of a centralized reporting and inquiry system. We believe such a system could have positive safety benefits; provided, however, that such a requirement should only be imposed if and when the FMCSA is able to devise a system that would: 1) adequately protect the drivers' confidentiality; 2) provide a reasonable mechanism for drivers to learn of and correct reporting errors; and 3) devise a uniform and fair method for expunging the records of drivers that have undergone treatment and are rehabilitated.

Current regulations require prospective employers to obtain written authorization from drivers before contacting former employers about previous drug results. Employers should still be required to obtain such authorization before obtaining information from the national clearinghouse. Further, a system must be devised for the government to verify with reasonable certainty that the driver has consented before it releases the information. Drivers should be permitted to access their own records to ensure that there is no incorrect information. Drivers should be notified if an inquiry produces a report of a verified positive drug test. The

driver should be permitted to dispute any inaccuracies and have the record corrected. In addition, records should be expunged after three years, consistent with the current inquiry requirement. At the maximum, records should only be available for five years, which is the existing time frame for employers and Medical Review Officers to maintain records. If records are maintained in the database longer than the underlying records are required to be kept, there will be no way to correct errors or verify disputed information after that period. Information that cannot be verified or challenged cannot reasonably be used against the driver.

Hair Testing

The method of drug and alcohol testing using hair presents some interesting challenges for the trucking industry. While not necessarily linking the use of drugs and alcohol to impairment, it does give a prospective employer the opportunity to identify those prospective drivers that may show a proclivity to abuse drugs. For that reason, we could support the use of hair testing for drug use in pre-employment testing if the science supports this method of testing and is certified by the Department of Health and Human Services. Since there are numerous questions about racial bias, hair color bias, privacy issues and certain patented processes for testing, we would strongly oppose any end-around approval of this method of testing by Congressional action, without the express approval of this method by the agencies designated to properly review and evaluate this testing procedure through the regulatory process.

Distracted Driving

Distracted driving continues to be a major factor in motor vehicle crashes on our nation's highways. Any activity that distracts the driver or competes for their attention while driving has the potential to degrade driver performance and have serious consequences for road safety. The issue of driver distraction, from sources both inside and outside the vehicle, has received increasing attention from the public, government, industry and safety agencies. Twenty percent of injury crashes in 2009 involved reports of distracted driving (NHTSA). In that same year 5,474 people were killed and 448,000 were injured in motor vehicle crashes that were reported to have involved distracted driving (FARS). Much has been done by the Department of Transportation, and especially Secretary LaHood, in the last two years to focus on this problem and take steps to change driver behavior. Certainly, the ban on texting by CMV drivers is a good start, and texting while driving is prohibited in 30 states and the District of Columbia. Eight states and the District ban the use of hand-held cell phones. But more needs to be done. It's not enough to prohibit texting by CMV drivers. While it's certainly dangerous to be distracted driving an 80,000 lb. truck or a busload of passengers, a distracted passenger vehicle driver can easily cause accidents involving those vehicles or cause an equal amount of damage. The IBT supports legislation that would prohibit texting by all motorists, and we would support initiatives by DOT that would encourage the states to take further action to reduce distracted driving.

Detention

While detention has not been as prevalent in the LTL sector as in the truckload sector of the industry, our Teamster drivers are reporting more instances of waiting time for loading and unloading than ever before. While our members are paid for all time spent not driving, they revert to an hourly wage rate in a

detention situation. We know that it is a very serious problem in the ports, where drivers can be lined up for hours waiting to pick up a container. In that sector, drivers are severely financially disadvantaged because they are paid by the number of containers that they can haul out of the ports in a day. Waiting for two, three or four hours in line is not uncommon for these low-paid workers, and it significantly reduces their opportunity to earn enough to even cover their expenses for the day. We strongly believe that in those types of situations, there is a strong incentive for drivers to violate the hours-of-service regulations. Wait time can take a big chunk out of driving time and on-duty time. The GAO report, requested by Rep. DeFazio, confirms much of what goes on in the industry. Therefore, while the need for further study of this issue will delay a solution, we support his legislation directing the Secretary to issue regulations for the maximum amount of time a driver can be detained before receiving compensation. We would hope that this legislation would be included in the larger surface transportation reauthorization.

Hours of Service

We believe that fatigue continues to be a factor in the safe operation of CMVs and a contributor of large truck crashes and resulting fatalities. The trucking industry, conversely, has made claims that the decline in truck crash and fatality statistics proves that the current hours-of-service regulations, allowing for the 11-hour driving limit and the 34-hour restart, are safe. However, there is no evidence to demonstrate any link or scientific relationship between reduced fatality rates and any hours-of-service regulation. Large truck crash fatalities declined four years in a row before FMCSA issued its new HOS rule, according to FMCSA data. Truck crashes involving fatalities actually increased three years in a row, 2003-05, the last two years after the new HOS rule took effect, according to NHTSA. In addition, the large truck fatality rate actually increased in both 2004 and 2005, after

the new HOS rule went into effect. It is clear that other safety factors are at work in influencing these statistics. What cannot be argued is the fact that the U.S. Court of Appeals twice struck down the current HOS rule, questioning, "the exponential increase in crash risk that comes with driving greater numbers of hours." FMCSA admitted that studies showed that driver performance began to degrade after the 8th hour and increases geometrically during the 10th and 11th hours. In the 2007 court ruling, it questioned the agency's failure to address cumulative fatigue and characterized as "problematic" the fact that the agency justification for the 34-hour restart provision "did not even acknowledge, much less justify, that the rule dramatically increases the maximum permissible hours drivers may work each week." The current HOS rulemaking should be allowed to proceed without Congressional interference. A third lawsuit is being held in abeyance while FMCSA develops a new rule. Under the terms of the settlement between the plaintiffs and DOT, FMCSA has issued an NPRM, has taken comments through March 4th and will issue a final rule by August 2011. Arguments by the industry that a new rule will undermine the economic recovery and actually be a step back on the safety front are unfounded. It is estimated that the new rule will actually create 44,000 jobs (2010-2011 HOS Rule/Regulatory Input Analysis/RIN 2126-AB26) at a time when our economy is desperate for job growth. Also, it's implausible that reducing the time a driver is behind the wheel is any "step back" on safety. Congress should not inject itself into the current HOS rulemaking process, nor should a surface transportation bill be a magnet for special interest exemptions from the HOS regulations. There is a process for petitioners to obtain an exemption from safety regulations and that process should not be short-circuited by Congress.

Truck Size and Weight

As this Committee considers ways to improve safety, meet the challenges of rebuilding our deteriorating highway and bridge infrastructure, and meet the transportation needs of the future, the issues of truck size and weight play a central role in that decision making process. Proponents of heavier trucks claim that adding a sixth axle will mitigate highway pavement damage. While that may be true, a sixth axle will do nothing to alleviate the increased weight on our nation's bridges, half of which are more than 40 years old and one in four of which are structurally deficient or functionally obsolete. The claim that increasing truck weights will result in fewer trucks on the road is unfounded. Every time there has been an increase in truck weights, truck traffic has grown, as shippers take advantage of cheaper rates. Our current highway system is not designed for heavier trucks. Longer stopping distances and greater distances to merge for bigger trucks create unsafe conditions on overtaxed and congested highways.

The trucking industry has used its influence to pressure states to increase both truck weights and trailer lengths on non-federal highways. That in turn has led to demands to increase truck size and weight on the interstate system, so that big truck traffic can be diverted from state roads that aren't equipped to handle it.

The Teamsters Union supports the *Safe Highways and Infrastructure Preservation Act*, or SHIPA, and encourages you to include it as part of your surface transportation bill. SHIPA extends the current state and federal weight limits on the Interstate system to the non-Interstate highways on the National Highway System and prohibits any further increases. The legislation recognizes and protects the states' existing grandfathered rights to allow certain differences in truck axle and gross weights than the maximum weight figure in federal law. It essentially takes a "snapshot" of what states currently permit and freezes those

weights and lengths. We believe this action will improve safety and protect our infrastructure investment.

Mexican Conviction Data Base

The Teamsters Union has serious safety concerns about the Administration's pending Mexican Cross-Border Trucking Program. We hope that the Committee will soon hold a hearing so that we will have an opportunity to expand upon those issues. However, there is one issue that we would like to bring to the Committee's attention that left unattended, could have very detrimental effects on highway safety. The Mexican Conviction Data Base (MCDB) was put in use until Mexico's Licencia Federal Information System (LIFIS) is fully developed and operational to track Mexican Federal CDL holders. States were asked to report two categories of convictions: traffic convictions of Mexican Federal CDL holders operating commercial and non-commercial vehicles; and traffic convictions in a commercial vehicle when the driver used a Mexican personal or Mexican state-issued CDL. The audit report of the DOT Inspector General (Report Number MH-2009-068) issued August 17, 2009, found that states were not consistently reporting the traffic convictions that FMCSA had requested. The MCDB is not required by statute, and the states are not required to report convictions. The IG found that one border state hadn't reported convictions for two years. This lack of reporting and conviction data could allow Mexican Federal CDL holders that should have been disqualified to continue to drive in the United States. These Mexican drivers could also incur convictions under personal or a Mexican state-issued CDL that are not recorded in the MCDB. These are not Mexican drivers participating in any pilot program at this time; these are drivers who are currently permitted to operate in the commercial zones. Obviously, if and when a pilot long-haul program is initiated, this will become an even greater safety issue. U.S. truck drivers have only one

license that covers their driving both commercial and non-commercial vehicles. It isn't fair to them to allow Mexican drivers who should be disqualified to continue driving on our highways. We urge you to include language in your bill that will address this matter.

National Registry of Medical Examiners

While the Teamsters could support a National Registry of Medical Examiners, we are concerned that the certification process not be burdensome to the extent that a sufficient number not participate in the program, making it difficult for drivers to be examined in a timely manner. We are also leery of a process that would require medical examiners to submit results of a medical exam directly to the state licensing agency. If there is a dispute between the examining doctor and the driver's personal physician, the dispute should be resolved prior to the medical examiner submitting the exam results to the licensing agency. If this is not done prior to submission, it could create problems for the driver to correct his file. The driver should also receive notification of the information that has been placed into his driver qualification record.

Vehicle Stability Systems/Advanced Safety Technologies

Equipping trucks with the latest safety technologies will eventually help reduce truck crashes. Brake Stroke Monitoring Systems, Vehicle Stability Systems, Lane Departure Warning Systems and Collision Warning Systems are all devices that can help drivers avoid accidents. However, it is important to provide the proper training so that these systems are not a distraction to the driver, that the driver understands the warning signal(s), knows what evasive action to take, and the driver does not overcompensate or defeat the assistance of the device. These

systems must be used for the purpose for which they are designed and not as a tool to harass the driver.

Conclusion

Surface transportation in the United States is at a crossroads. Structurally deficient roads and bridges pose a significant safety hazard to users and a challenge to meet the transportation needs of the country. Increasing traffic and more congested highways demand that we find ways to utilize multimodal systems to move freight efficiently throughout the country. At the same time, we have to develop programs that reduce the risk of accidents across the surface transportation modes to ensure that we move people and products safely. This Committee can help lead the way as you develop transportation policy that recognizes and addresses the challenges ahead. The Teamsters Union looks forward to working with you to help grow a transportation network that will meet the future needs of this country.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: LaMont Byrd

(2) Other than yourself, name of entity you are representing:
The International Brotherhood of Teamsters

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

GRANT AWARDED FROM	CFDA #	GRANT AWARD NUMBER	BUDGET PERIOD	AWARD AMOUNT
National Institute of Environmental Health Services (NIEHS)	93.701	3 U45 ES014084-05S1	9/06/09 - 7/31/11	\$628,000.00
National Institute of Environmental Health Services (NIEHS)	93.142	2 U45 ES014084-06	8/01/10 - 7/31/11	\$1,888,454.00
National Institute of Environmental Health Services (NIEHS)	93.142	2 U45 ES014103-06	9/01/10 - 8/31/11	\$677,326.00
U.S. Department of Transportation (DOT)	20.703	HM-HMI-0017-11-01-00	10/01/10-9/30/11	\$750,000.00

Signature

Date

3/25/2011

LaMont Byrd

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CERTIFICATION Certified Industrial Hygiene in Comprehensive Practice Cert.# 7622,CP

EDUCATION East Carolina University, B.S. (Environmental Health), 1982;
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International Brotherhood of Teamsters Industrial Hygienist 1990 – 1995
International Brotherhood of Teamsters Worker Training Program, Principal Investigator 1995 – 1996;
International Brotherhood of Teamsters, Director of Safety and Health, 1996 - Present

AFFILIATED SOCIETIES: Member, Academy of Industrial Hygiene (1998 – Present), American Industrial Hygiene Association (1992 – Present), National Advisory Committee on Occupational Safety and Health (1999 – 2001); Member, American Society of Safety Engineers; Past Member, Board of Directors, Academy of Industrial Hygiene; Past Member, American Industrial Hygiene, Ethics Committee; Member, Motor Carrier Safety Advisory Committee (2010 – Present)

Primary Work Activities

Mr. Byrd is actively involved in developing the IBT's safety and health related policies. He is also responsible for managing a staff of technical professionals who provide technical and regulatory support to rank-and-file Teamster members, IBT Trade Divisions, and Local Union Affiliates on issues including but not limited to, transportation safety, occupational safety and health, drug and alcohol testing, and worker safety and health training. In addition, Mr. Byrd works closely with IBT Trade Division leadership during collective bargaining and various organizational initiatives. He also serves as the Principal Investigator for the IBT Safety and Health worker training program.