

The LVVR-Provisions of Bill C-49

October 16, 2017

Unifor and the Canadian Rail Industry

Of Unifor's 315,000 members, roughly 9,000 work in the rail industry from coast to coast, with a large geographic concentration in the Prairie Provinces. Roughly 75 percent work for private sector railways like CN Rail and CP Rail, leaving 25 percent employed with publically-owned railways like Via Rail and Ontario Northland.

Unionization in this industry is strong, with two-thirds of the workforce being covered by a collective agreement. One-third of unionized rail workers in Canada are Unifor members.

The single largest Unifor employer is CN Rail, whose 4,300 members make up nearly half of sectoral membership. CP Rail and Via Rail together account for a further one-third of sectoral membership, while the remaining 20 percent are spread across short-line and regional carriers.



Contextualizing Bill C-49

Recent decades have witnessed a shift in Canada's regulatory regime in favour of so-called 'self-regulation', but the Lac-Mégantic tragedy revealed the folly of this approach. The ever-present financial imperative to reduce costs will sometimes mean that rail companies face a tradeoff between safety and profitability. But this is a false tradeoff, which is why Unifor supports a vigorous regulatory regime with appropriate funding for inspections and with levies and penalties attached to non-compliance.

The most significant element of Bill C-49 is the requirement that all railway operators install and utilize Locomotive Voice and Video Recorders (LVVRs hereafter) in the cab, after extensive lobbying by the railway companies themselves. This aspect of the legislation, which grows out of the Transportation Safety Board of Canada (TSB) report—*Railway Safety Issues Investigation Report*, released in September 2016—is based on the presumption that LVVRs will enhance safety.

In its current form the legislation goes beyond the Standing Committee on Transport, Infrastructure and Communities report (*An Update on Rail Safety*, published in June of 2016) in that it will allow railway companies and governmental agencies to access and make use of the data gathered using LVVRs.

Unifor's Stance on the LVVR Provisions of Bill C-49

It is unclear how the use of LVVR technology will improve safety. The Black Box already records the speed of the train, the use of air breaks and every other operative action taken by the locomotive engineer. Given that this information is already recorded and preserved in the Black Box, we fail to see how the use of LVVR technology will reduce railway incidents or improve the accuracy of the post-accident investigation.

Moving from safety to privacy, in its current form the proposed legislation provides some protection for our member's privacy interests. For instance, the railway companies and the relevant government bodies would be prohibited from using or disclosing LVVR data or its contents, aside from some limited and defined circumstances. The information collected using the LVVRs could not, in general, be used against employees in disciplinary or other legal proceedings.

However, in some respects Unifor's members' privacy could be significantly compromised by the proposed legislation. Railway companies would be permitted to monitor randomly selected LVVR data on an ongoing basis, and the legislation as currently drafted does not require the railway companies or governmental agencies to take any specific action to secure the LVVR data.

It is also unclear how the TSB will maintain the integrity of the data (meaning its access and usage) once the train leaves Canada's borders. It seems possible that the American-sub-sidiaries of CN Rail and CP Rail could capture and store the LVVR data once the trains have entered U.S. territory.

It also seems that, despite the TSB's desire to improve safety, this legislation is just more of the 'self-regulation' that was an integral part of the fatal Via Rail incident and the Lac Megantic tragedy. There are simply not enough controls on the companies' access to, and potential usage of, LVVR information. These legislative shortcomings mean that Unifor's membership will be subject to ongoing surveillance by their employer.

Unifor's Recommendations Regarding Bill C-49

In June 2016, the Standing Committee on Transport, Infrastructure and Communities released its report on rail safety, *An Update on Rail Safety*. This report recommended the use of voice and video recorders by railways. However, the recommendation provided that the data gathered by the LVVRs ought to only be used by 'the appropriate government authorities during Transportation Safety Board accident investigations or in subsequent criminal investigations to which they directly relate', but not by the railway companies themselves.

If Bill C-49 is destined to proceed, Unifor's first proposal is this: only the TSB should have access to the LVVR data, and only then for the purposes of rail safety, namely, as part of an investigation into a railway accident that led to an injury or a fatality. While the TSB should have access to the LVVR data, at no time should the LVVR information be shared with the railway companies.

As a secondary proposal, if Bill C-49 ends up allowing the railway companies access to the LVVR data, this access should be restricted to the instances in which a TSB investigation is underway. Furthermore, under no circumstances should the companies be allowed to use the data for disciplinary purposes.

Additional Information

Unifor's submission to the federal government on Bill C-49 is available online: <http://www.unifor.org/en/whats-new/briefs-statements/bill-c-49-unifors-response-transportation-modernization-act>.

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