

Bill C-49
***Unifor's Response to
the Transportation
Modernization Act***

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Who We Are

Unifor is Canada's largest labour union in the private sector, representing more than 310,000 workers nationwide in every major industry. Built by its members, Unifor represents more than 9,000 Canadians in the rail transportation industry and some 46,000 in the wider transportation sector. The industries where Unifor members work, transportation included, are essential to the success of the Canadian economy and serve as the nation's leading centres of advanced technology and innovation. They are also Canada's top exporters and a source of increasingly scarce good jobs. Unifor members have the highest interest in the success of their industries and have a long track record of partnering with employers and governments to enhance workplace health and safety. On behalf of these members, I welcome the opportunity to share Unifor's views on Bill C-49.

Contextualizing Bill C-49

Unifor and its predecessor unions have always believed in, and sought to promote, workplace health and safety. Safety is a cornerstone value for us and Unifor is supportive of governmental efforts reduce railway incidents. Unifor sits on Transport Canada's Advisory Council on Rail Safety (ACRS), for example, and provides a workplace health and safety training course to its members through its Paid Education Leave program.

Recent decades have witnessed a shift in Canada's regulatory regime, both in rail and in the wider transportation sector, in favour of so-called 'self-regulation'. Unifor believes that, while companies and labour unions ought to regulate their own behaviour, government also has a role to play in regulating commercial activity, especially in instances where worker and community health are on the line.

The Lac-Mégantic tragedy (and other fatal railway accidents, including the Via Rail incident in Burlington) revealed the folly of self-regulation in rail transportation. The omnipresent financial imperative to reduce costs will sometimes mean that companies face a tradeoff between safety and profitability. But this is a false tradeoff and it should not be left to the rail companies to decide how that tradeoff is made. That is why Unifor supports a vigorous regulatory regime, with appropriate funding for inspections and with levies and penalties attached to non-compliance.

With respect to Bill C-49, the most significant element for our members 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 appears to grow out of the Transportation Safety Board of Canada (TSB hereafter) report—*Railway Safety Issues Investigation Report R16H0002*, released in September

2016—is predicated on the notion that LVVRs will enhance safety if implemented as part of a non-punitive safety management system.

In its current form, however, 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. It is the legislative elements surrounding the use of LVVRs to which I now turn.

Unifor’s Objections to the LVVR Provisions of Bill C-49

Here is our stance on the LVVR aspects of Bill C-49, very briefly:

- The TSB wants to improve rail safety. So does Unifor;
- However, we do not believe that Bill C-49, in its current form, will improve railway safety;
- We do believe that Bill C-49 will violate the privacy rights of our membership and, by increasing the stress-level experienced by those in the cab of the locomotive, may even reduce safety;
- We also believe that employers will use this technology as a disciplinary tool;
- It is unclear about how the TSB plans to maintain the integrity of the LVVR data once the locomotive leaves Canada and enters U.S. territory, which concerns us;
- Furthermore, Bill C-49 will open the door to other transportation employers (namely those in air transport, road transport and marine transport, for example) to adopt LVVR technology, making privacy violations the government-sanctioned standard in the wider transportation sector.

In what follows, I expand on these concerns.

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. This is concerning to us. It seems possible that the American-subidiaries 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 formed part of the context 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. Given the serious privacy considerations as well as the increased on-the-job stress levels associated with continual managerial surveillance, Unifor believes the proposed legislation ought to be amended.

Unifor's Recommendations Regarding Bill C-49

In June of 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.

We would be pleased to discuss this urgent matter with you further at your earliest convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Dias".

JERRY DIAS
NATIONAL PRESIDENT
Unifor

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