



BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Freddie N. Simpson
President

David. D. Joynt
Secretary-Treasurer

June 24, 2021

Mr. Dennis R. Albers
Chairman (South Region)
111 Imperial Blvd., Suite C-300
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Secretary
1113 E. South Street
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Member (Northeast Region)
3321 Vestal Pkwy East #B
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Mr. Jeffery L. Fry
Member (West Region)
521 S. E. 10th Street
Newton, KS 67114

Re: June 14, 2021 Letter from Majority Executive Board Members

Dear Sister and Brothers:

I am writing in response to your June 14, 2021 letter (attached) to me, received in my office on June 21, 2021, wherein you make numerous allegations; primarily that I am not permitted to expend any National Division funds for the purpose of establishing employer specific Joint Protective Boards for the BNSF, Canadian National, Canadian Pacific, CSX, Norfolk Southern, Union Pacific and Amtrak. Your letter and allegations are rather concerning and disheartening, particularly when consideration is given to your respective capacities as both National Division Executive Board Members and System Officers.

Before thoroughly responding to your allegations below, it needs to be made clear that these new employer specific Joint Protective Boards will deliver better, more cost-effective representation for the membership, will make the new officers of the respective employer Joint Protective Board directly accountable to the membership on each railroad and it will allow the Members and Officers to speak to railroad management with a single, united and more powerful voice. None of you have expressed a valid reason yet as to why I should not proceed under Article XIX, Section 1. In fact, many of you have privately admitted to me that the establishment of these employer specific Joint Protective Boards is in the best interests of the Members of this Union.

With that said, you have not asserted that the BMWED National Division President does not have the authority to establish employer specific Joint Protective Boards in accordance with Article XIX, Section 1 of the BMWED National Division Bylaws. Instead, your allegations are that I am not approved to carry out the establishment of the employer specific Joint Protective Boards because I have not received approval for such expenditures by the National Division Executive

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Board through their adoption of the National Division's Annual Budget, which inadequacies I will address in further detail below. Nevertheless, your failure to assert that the National Division President does not have the authority to establish employer specific Joint Protective Boards is a clear acknowledgement that my interpretation of the Bylaws is correct and accurate, and that I do indeed have the authority to proceed.

Notwithstanding the above, your allegations are nothing less than a sad and impermissible attempt to subvert the clear authority granted to the BMWED National Division President through the express provisions of the National Division Bylaws. But to be very clear; the BMWED Executive Board Members do not have the authority to stop the BMWED National Division President from establishing employer specific Joint Protective Boards in accordance with Article XIX, Section 1, through alleging that they will not approve the expenditures for such. Indeed, Article XIX, Section 1 gives the express authority to the BMWED National Division President to carry out the establishment of employer specific Joint Protective Boards.

In this connection, you have alleged that the costs of establishing the employer specific Joint Protective Boards would violate Article V, Section 3 of the Bylaws because it would exceed income from dues and investments and thus, the expenditures approved/adopted by the National Division Executive Board within the 2021/2022 Budget. These are simply uninformed and uneducated assertions that are neither rooted in fact nor practicality and historical practice. Article XIX, Section 1 permits the BMWED National Division President to establish employer specific Joint Protective Boards when he/she sees fit in his/her judgement. It is my judgement as the BMWED National Division President that the BNSF, Canadian National, Canadian Pacific, CSX, Norfolk Southern, Union Pacific and Amtrak employers have each reached a level of organization to warrant the establishment of a Joint Protective Board specifically for each respective employer. There is no express exception within said Article that prohibits the President from establishing such employer specific Joint Protective Boards accordingly.

Furthermore, the Executive Board's adoption/approval of National Division's annual Fiscal Year Budget is not a requirement defined anywhere within the Bylaws. Rather, the Executive Board's adoption of an annual budget is an administrative process; the annual budget is intended to serve as a guide for how National Division operates and monitors operations, expenses, etc. on an annual basis while carrying out its duties and obligations in representing the Members and providing services to the System Divisions and Federations as well as the Local Lodges. History demonstrates that there have been numerous junctures where the National Division Executive Board adopted a Fiscal Year Budget and exceeded such. Indeed, from Fiscal Years Ending (FYE) March 31, 2012 through March 31, 2021, the respective National Division Executive Board Members adopted/approved budgets that they then directly exceeded themselves and/or were directly involved in the exceeding of such budgets without further approval by the National Division Executive Board in the manner you have alleged in your June 14, 2021 letter.

For FYE 2012, 2013, 2015 and 2016, the National Division Executive Board Members approved Budgets of \$39,174.00, \$38,932.00, \$41,949.00 and \$103,911.00, respectively, for themselves on the Executive Board Cost Center (5400), but the Executive Board's actual expenses were \$66,246.53 for 2012, \$42,648.09 for 2013, \$110,310.74 for 2015 and \$146,598.06

for 2016 against said cost center). No additional approval was solicited or given by the National Division Executive Board.

If you also analyze Executive Board Members' charges against the National Negotiations Cost Center (5740), you would find that the Executive Board Members further exceeded their approved Executive Board budgets – albeit allocating it under a different Cost Center - by spending in excess of: **\$56,058.92 for FYE 2012; \$7,476.29 for FYE 2013; \$81,308.01 for FYE 2015; \$84,739.76 for FYE 2016; \$52,562.72 for FYE 2017; and \$4,139.14 for FYE 2018 (attached)**. In other words, the Executive Board Members routinely adopt/approve budgets that they exceeded themselves – under multiple cost centers -without further approval by the National Division Executive Board Members in the manner you have alleged within your June 14th letter. That's because this alleged requirement does not exist. This is further verified by the logic and fact that each time each Executive Board Member submitted a request for your respective compensation and expenses (while over the approved/adopted budgets), you were submitting that these expenses were legitimate, accurate and true. To this point, the Executive Board's annual audit of the National Division Officers' and Staffs' expenditures would be the appropriate time to raise such concerns and/or objections. The Executive Board Members have reviewed these expenditures during their annual audits and have never raised any such objections. These facts clearly demonstrate that there is no such budget requirement as you have now alleged.

Additionally, if you review National Division Secretary Treasurer Joynt's National Division Budget History (summary) Report for Fiscal Years Ending in 2015 through 2021, which was provided to you and discussed during the Executive Board's February 18, 2021 Meeting (Slide 37 – attached), you would find that the Executive Board has routinely adopted/approved budgets that were then exceeded without further approval by the National Division Executive Board on an exhaustive basis for each expense. More importantly and concerning is that absolutely none of you, as Executive Board Members, have ever taken any exception to such historical administrative practice until now. This too clearly demonstrates that there is no such budget requirement as you have alleged. But even if the annual budget was a requirement, which it is not, all four (4) of you National Division Executive Board Members would be in breach of your alleged requirement. Again, however, no such budget requirement exists.

But let's again assume this annual budget was a requirement, which again it is not, had you conducted a simple inquiry with National Division Secretary-Treasurer Joynt, which you did not, you would have been advised that National Division income from investments are currently in excess of \$2,000,000 of the original projections for the 2021/2022 Budget. Furthermore, I anticipate the costs of conducting each of these founding Conventions to being comparable and most likely less than the costs of conducting Local Chairperson and Secretary-Treasurers' Training seminars in a given year. In other words, the costs to establish the employer specific Joint Protective Boards will not cost multi-millions of dollars, and clearly will not exceed the income from dues and investments for the 2021/2022 Budget and, more importantly, is permitted by the BMWED Bylaws.

Your June 14, 2021 letter also contains a request to hold a National Division Executive Board Meeting in conjunction with a National Division Association meeting, because a majority of the

Executive Board Members are requesting such in accordance with the Bylaws. Conducting such a meeting would be costly and a wasteful use of the Members' dues dollars, particularly given the fact that following Chairman Albers' request, I scheduled and conducted a meeting via Zoom on June 15, 2021, with the National Division Officers and System Division and Federation General Chairpersons and many Vice Chairpersons. The participants had more than adequate time to take part in that meeting and nothing substantive was presented during that meeting – or subsequent thereto - that would prohibit me from exercising the express authority granted to the BMWED National Division President per Article XIX, Section 1 in establishing the employer specific Joint Protective Boards.

Within your June 14th letter and during our June 15th Zoom meeting, you alleged that I have somehow violated Article III, Section 1 of the Bylaws because I have not advised the National Division body of my intention to carry out the establishment of the employer specific Joint Protective Boards since my election as President at the Fourth Regular Convention of the BMWED held June 18-20, 2018. This is simply a frantic attempt to distract from the facts and distort reality. The only requirements pertaining to the National Division President's authority as it relates to this subject matter is clearly defined within Article XIX, Section 1 of the Bylaws. And so long as the President fulfills those requirements defined in Article XIX, Section 1, he/she has fulfilled his duties and obligations. But even if I were obligated to advise the National Division body of my intentions as it relates to Article XIX, Section 1, which I am not, **each of you have been well aware - for years - of my intentions to exercise the authority granted to the National Division President as it relates to this issue.**

In this regard, during our June 15th Zoom meeting, **National Division Executive Board Member and Chairman, Dennis Albers stated, "You've (President Simpson) been saying that you were going to do this for years, that it has been your dream, but we did not take you seriously."** Brother Albers's statement is entirely correct, as I have raised this subject repeatedly at various junctures during my Presidency, and I have repeatedly asserted that Article XIX, Section 1 grants the BMWED President the authority to establish such employer specific Joint Protective Boards. As Brother Albers clearly stated, it is apparent all of you did not take me seriously, because despite my repeated assertions, none of you have ever properly contested the authority granted to the BMWED President under the Bylaws by requesting an interpretation of Article XIX, Section 1. Furthermore, none of you have ever proposed to amend Article XIX, Section 1 in accordance with Article XX, Section 1 of the Bylaws.

To this point, **you four Executive Board Members have all served on the BMWED Constitution and Bylaws Committee at National Division Quadrennial Conventions at different junctures spanning the last approximate decade.** Indeed, Brother Albers served on the 2010, 2014 and 2018 Constitution and Bylaws Committees; Sister Moody-Gilbert served on the 2014 and 2018 Constitution and Bylaws Committees; Brother Bogart served on the 2014 Constitution and Bylaws Committees; and Brother Fry served on the 2018 Constitution and Bylaws Committee. As each of you are aware; the Constitution and Bylaws Committee is responsible for thoroughly reviewing and considering the existing National Division Bylaws and any proposed amendments thereto that are properly brought before it. Said Committee is also responsible for providing a report and recommendations to the disposition of proposed Bylaws

changes to the respective Convention Delegations. At no time from 2010 through 2018 did any of you Majority Executive Board Members propose and/or recommend amendment to Article XIX, Section 1 to thereby restrict the authority of the BMWED National Division President as it relates to this subject matter. Nor did any of you propose and/or recommend expanding the authority of the Executive Board under the Bylaws as you have disingenuously attempted to do here.

Aside, the facts are that all of you have known of my intentions for numerous years, that you have each had ample opportunities in your respective capacities to voluntarily restructure and rationalize the Membership's representation structure, and that you have each had the opportunities and influence given your capacities to amend Article XIX, Section 1 of the Bylaws in order to restrict the authority of the BMWED National Division President. Yet, all of you have utterly failed to take the appropriate action to do such. Your pretending otherwise is baseless, dishonest and clearly divorced from reality.

The establishment of the employer specific Joint Protective Boards under the express provisions of Article XIX, Section 1 of the Bylaws is permitted when in the judgement of the National Division President. The establishment of these employer specific Joint Protective Boards will not exceed dues and investments for the 2021/2022 Budget and will not cost multi-millions of dollars. All of you have known for numerous years of my intent to exercise the authority granted to the National Division President under Article XIX, Section 1 and none of you have ever so much as asserted the President did not have the authority to do this, nor have any of you made a single effort in over a decade that encompassed numerous opportunities to attempt to limit such authority by proposing an Amendment to such Bylaw provision. More importantly, establishing employer specific Joint Protective Boards is in the best interests of the Members because it will improve their representation, as many of you have privately admitted to me.

Therefore, it is my judgement as National Division President that the BNSF, Canadian National, Canadian Pacific, CSX, Norfolk Southern, Union Pacific and Amtrak Employers have reached a stage of organization that warrants the establishment of a Joint Protective Board for each specific employer. Accordingly, I will proceed with the establishment of the employer specific Joint Protective Boards in accordance with the authority granted to the BMWED National Division President pursuant to Article XIX, Section 1 of the Bylaws.

Sincerely and fraternally,



Freddie N. Simpson
President

Attachments

cc: National Division Officers
System Officers

Sent via Email and Registered Mail

June 14, 2021

President Simpson,

This is official notification from the Majority Members of the BMWED National Division Executive Board that you are not to expend any National Division funds on "founding conventions" as outlined in your recent correspondence disbursed via a June 11, 2021, Email by Mr. P. Kennedy, or any other post correspondence. As allowed by Article 6, Section 6 written request has been drafted by a majority group of National Division Executive Board and a meeting is requested in conjunction with a National Division Association meeting to address this serious issue.

We refuse to approve the disbursement of funds because your proposal was performed in secret outside of any National Division meeting, and because your proposal would severely damage the welfare of the Brotherhood of Maintenance of Way Employees Division – IBT. If you move forward with any expenditures related to this issue, such action will be seen as an unauthorized use of funds and appropriate action will be taken.

Article III Section 1 of the BMWED National Division Bylaws requires the National Division President to submit a message setting forth the affairs of the BMWED during his term of office and suggestions for legislation and changes in Bylaws for the best interest of the BMWED. He is also to set forth other suggestions and recommendations as he may deem advantageous to the BMWED and its members. Since your reelection at the 2018 National Division Convention, you have never indicated to a National Division body that you were even remotely thinking about the drastic plan you have recently proposed. Thus, expending funds without first outlining your plans does not comport with Article III, Section 1 of the Bylaws and thus it would be wholly improper to approve any expenditures in connection with your plan.

Another important reference here is to the damage your proposal would do to our financial position. You are reminded that by letter dated February 12, 2021, to National Division Officers, S/T David Joynt outlined a budget at your direction, which stated that you and he worked together to achieve a balanced budget "all-be-it by a razor thin margin". Additionally, that letter reads:

"However, in order for this budget to be accomplished over the next fiscal year requires sacrifices, difficult decisions, and some changes in habits and work processes for all of us. As you will see, when we go through the membership numbers at our meeting, we must reduce our costs at every opportunity because we all know our membership is not at a point where they would tolerate a dues increase. No officer that I know of wants to consider a dues increase, except as a last resort."


Importantly on February 18, 2021, there was a meeting of National Division Officers, which was followed by a meeting of the National Division Executive Board. During the meeting of the National Division Officers S/T Joynt presented a 2021 Budget Report and then provided a proposed budget for fiscal year 2022. The financial reports were adopted at the National Division Officer meeting with there never being a mention about expenditures for seven (7) founding conventions in September and October 2021. Likewise, during the meeting of the National Division Executive Board on February 18, 2021, S/T Joynt again presented the BMWED Financials and the proposed budget for fiscal year 2022. Again, there was never a mention about any significant expenditures on "founding conventions" for a major recalibration of the BMWED.

Based on the information that was provided, the Executive Board approved the 2022 budget. Now, just a few months later you are proposing massive expenditures that will harm our union financially and you have not provided a proposal for the potentially multi-million dollar expenditure. The Budget that was approved provides you with the necessary funds in which to administer the affairs of the BMWED and you are not to expend any additional funds without Executive Board approval. It is also noteworthy that we have incurred additional expenses months into the fiscal year by extending out the National Division Internal Organizers. Consequently, the razor thin balanced budget we approved is already out of balance.

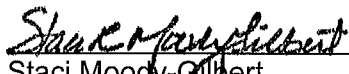
The National Division Budget was balanced on a razor thin margin, and you are expected to operate within that budget unless we incur unplanned and unforeseen emergencies, and your "founding conventions" plans are not an emergency. In addition to notifying, you of our rejection of spending on this proposal, you are further notified that the undersigned will not consider Disbursements exceeding income from dues and investments (Article V Section 3) if any funds are spent on this proposal. Clearly spending on these "founding conventions" will exceed our investments and dues.

You are directed not to expend any National Division Funds on mailers, material, equipment, attorneys, consultants, or any other expenditure in connection with this plan until the Executive Board has a chance to meet to vote on whether to approve funds.

Sincerely,




Dennis Albers
ND Executive Board Chairman



Staci Moody-Gilbert
ND Executive Board Secretary



Dale Bogart
ND Executive Board Member – East



Jeffery Fry
ND Executive Board Member – West

E-Board Budget vs. Actual
 FYE 3/31/12 thru FYE 03/31/21

<u>FYE</u>	<u>E-Board Budget</u>	<u>E-Board Actual</u>		<u>Total</u>	(+ under Budget)
	<u>5400</u>	<u>5400</u>	<u>5740</u>	<u>Actual</u>	(- over Budget) <u>Variance</u>
FYE 03/31/2012	39,174.00	66,246.53	28,986.39	95,232.92	(56,058.92)
FYE 03/31/2013	38,932.00	42,648.09	3,760.20	46,408.29	(7,476.29)
FYE 03/31/2014	41,783.00	32,896.20	750.94	33,647.14	8,135.86
FYE 03/31/2015	41,949.00	110,310.74	12,946.27	123,257.01	(81,308.01)
FYE 03/31/2016	103,911.00	146,598.06	42,052.70	188,650.76	(84,739.76)
FYE 03/31/2017	146,263.00	124,417.11	74,408.61	198,825.72	(52,562.72)
FYE 03/31/2018	150,912.00	127,601.86	27,449.28	155,051.14	(4,139.14)
FYE 03/31/2019	148,200.00	101,557.89	10,615.11	112,173.00	36,027.00
FYE 03/31/2020	109,050.00	66,304.67	16,768.11	83,072.78	25,977.22
FYE 03/31/2021	50,276.00	8,122.06	-	8,122.06	42,153.94
Total:	\$ 870,450.00	\$ 826,703.21	\$ 217,737.61	\$ 1,044,440.82	\$ (173,990.82)

BMWED MEMBERSHIP TRENDS



