

**AGREEMENT**  
between  
**UNION PACIFIC RAILROAD**  
and the  
**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, Unified System  
Division, Pacific Federation and Mountain and Plains Federation**

Union Pacific Railroad (UP) and the Brotherhood of Maintenance of Way Employees Division/IBT (BMWED), Unified System Division, Pacific Federation and Mountain and Plains Federation, desire to establish a pilot program which encourages employees to report rule violations and personal injuries without fear of reprisal from UP. The parties have entered into the following agreement, also referred to as the Settlement Agreement, to implement this pilot program.

**SECTION 1 - PILOT PROGRAM**

**A. Affected Employees.** The provisions of this pilot program will be implemented on the territories coming within the jurisdiction of the collective bargaining agreements dated July 1, 2001 (UP), November 1, 2001 (CNW), and December 31, 2003 (SPWL).

**B. Preliminary And Pilot Project Trial Period.** After a preliminary period of six (6) months from the effective date of this agreement, time necessary to permit training and other necessary preparatory steps, this pilot program will have a duration of two (2) years.

**C. Post-Pilot Program Evaluation.** At the conclusion of this two year period, the parties will meet to evaluate the program and provide, within a reasonable period, a written report documenting the results of the pilot program and make recommendations as to whether the program (1) should be continued permanently on a system wide basis, (2) modified, or (3) discontinued.

**SECTION 2- SAFETY COACHES**

**A. Establishing Safety Coaches.** UP will establish Maintenance of Way Safety Coach positions to promote safety awareness and safe work practices. UP will initially establish seven (7) full time Safety Coach positions to cover the high density "Red X" territory from Granger, Wyoming east through Omaha to Chicago and the Denver Service Unit. Every six (6) months during the two (2) year pilot program, the parties will

meet to evaluate the pilot program and consider increasing the number of Safety Coaches to cover the UP, C&NW and SPWL Agreement territories.

It is understood that Safety Coaches may cover more than one seniority district. The term of the appointment will extend through the length of the pilot program. If the parties agree to continue the program, the terms of the existing Safety Coaches will be extended an additional year. Thereafter, the term of a Safety Coach will be for a three (3) year period and may be extended only upon the agreement of the BMWED Western Region Vice President (VP) and the Assistant Chief Engineer Workforce Optimization (ACE). Upon completion of the term, as outlined above, or if a Safety Coach elects to relinquish his position, the Safety Coach will be allowed to return to the position previously held or to exercise seniority to any bulletined position that has been filled during the term of their appointment.

**B. Chain Of Command And Training Of Safety Coaches.** Safety Coaches will report directly to and take instructions from the UP Director of Safety. UP will be responsible for the education and training of Safety Coaches in safety related matters and specifically those areas where the Safety Coach will train others. Safety Coaches and BMWED system officers and their designees will receive related Labor Management Training (LMT) to effectively fulfill the requirements of Section 5(D) of this agreement. Safety Coaches must be willing to receive and complete all training necessary to successfully fulfill their duties.

**C. Rate Of Pay And Expenses.** Each Safety Coach will be paid at the rate of \$4150.00 per month which will cover all services rendered within a forty (40) hour work week with two consecutive rest days, which may not be the same rest days each week. Overtime provisions of the CBA will apply to all services rendered in excess of a forty (40) hour work week. Safety Coaches will be headquartered at the UP station nearest to their place of residence. When held away from headquarters, they will be reimbursed for any actual and necessary expenses incurred. Except as expressly stated herein Safety Coaches will be covered in all other respects by their applicable CBA.

**D. Selection Of Qualified Safety Coaches.** UP will bulletin all Safety Coach positions through the Bulletin and Assignment process to the seniority divisions encompassed within the territory to be assigned to the Safety Coach. All Safety Coach applications received by UP will be forwarded to the BMWED Western Region VP along with each applicant's work history, seniority dates, prior safety record and record of previous training and rules examination, any safety awards received, and discipline record. The BMWED Western Region VP will make the appointment after consultation with the ACE. The ACE will arrange for the assignments to be made.

**E. Removal Of Safety Coaches.** Should either BMWED or UP desire to remove an employee from the Safety Coach position before the expiration of his/her term, the matter will be discussed by the ACE and BMWED Western Region VP. If the

matter cannot be resolved, the Safety Coach will be removed and replaced using the procedures set forth in Section 2(A) and 2(D) above.

**F. Limits On Activities Of Safety Coaches.** Safety Coaches will not attend any disciplinary proceeding or give any statement associated with any disciplinary procedure involving any other employee.

**G. Duties And Responsibilities Of Safety Coaches.** The following is an outline of duties and responsibilities of the Maintenance of Way Safety Coach. This outline is neither all inclusive nor does it limit the opportunity for Safety Coaches to work toward a safer work environment for maintenance of way employees.

1. Participate in safety awareness and training classes for engineering employees.
2. Conduct job site visits and perform safety observations of work operations of BMWED represented personnel. Recommend or initiate appropriate corrective actions where necessary, exclusive of disciplinary action; e.g. coaching and counseling, training, removal of hazard. Any serious issues that cannot be resolved by the Safety Coach will be brought to the attention of management and the BMWED VP, as appropriate.
3. Serve as a liaison between BMWED represented employees and management. Listen to and convey safety concerns of the employees to management. Attempt to resolve questions or concerns on safety related matters, and provide advice regarding improving safety performance, where appropriate.
4. Identify and recommend safety training where appropriate. Participate in the development of training programs.
5. Maintain current knowledge of and communicate current safety rules, orders, and other rule changes to all applicable employees.
6. Participate in LMT-related analysis involving BMWED personnel when available.
7. Work to build trust between BMWED members, the Safety Coach and management.
8. Attend local Total Safety Culture review meetings and safety meetings.
9. Participate in Maintenance of Way New Hire Orientation classes to explain the importance of Safety, PPE and explaining the FRA good faith challenge procedures.

10. Attend yearly start up meetings and town hall meetings as appropriate.

**H. Protections.** UP will indemnify and defend those Safety Coaches who are named in any lawsuit claimed to be arising from their employment as Safety Coaches. UP's duties extend to the Safety Coaches regardless of whether arising in law or equity, court, arbitration, or otherwise. UP's duty is coextensive with its duty to defend and indemnify its management employees.

### **SECTION 3 - TRAINING OF EMPLOYEES**

Proper training is essential to maintaining a safe work place. UP and BMWED will continue to explore areas of training which may be beneficial to the maintenance of way craft. An Advisory Committee will be established for the purpose of effectuating this ongoing exploration of training and safety initiatives that will enhance the work environment for maintenance of way craft employees. The committee will consist of the Vice President Engineering, Assistant Chief Engineer Work Force Optimization, General Manager of Safety, BMWED President, BMWED Director of Safety, and BMWED Western Region Vice President.

All employees will receive training in accordance with their job responsibilities. UP will ensure that all training required by applicable law or company policy is available and provided to appropriate employees. All employees are empowered to refuse in good faith to perform an act which they feel may not be safe.

Employees will be permitted to request training in any area associated with their specific job in which training is available. Employees will make their request in writing to their immediate supervisor with copy to the Safety Coach. The Manager will arrange for the training as soon as reasonably possible. If the training is denied or delayed an unreasonable amount of time, the matter will be referred by the Safety Coach to the ACE and BMWED VP.

### **SECTION 4 - REPORTING OF INJURIES**

All injuries will be reported. Injured employees will not be required to fill out any reports before receiving medical treatment, if required or sought,

### **SECTION 5 - SAFETY ANALYSIS PROCESS (SAP)**

**A. The Goals Of SAP:** The objective of SAP is the identification and elimination of factors that lead directly to an incident or accident experience. This process is divided into four key areas:

1. Analysis of factors found to be involved in an accident or injury.
2. Developing and implementing a Corrective Action Plan (CAP) that eliminates or reduces the chance for occurrence of future similar incidents.
3. Providing scheduled follow-up to ensure the CAP is working as expected.
4. Creating, collecting, and analyzing data for proper statistical evaluation of CAPs and this pilot program.

**B. Availability Of SAP To Employees.** SAP will be utilized when any employee who is subject to discipline as a result of an accident or injury requests its use as an alternative to discipline. Level 1 and Level 2 incidents will not be considered discipline and will not be documented in the employees discipline record. An employee will be considered disciplined if he is charged with an infraction that is Level 3 or greater in the UPGRADE Policy.

**C. Unavailability Of SAP To Employees.** SAP will not be available under the following circumstances:

- (1) when a potential violation of UP's Drug and Alcohol policy occurs.
- (2) where the potential rule violations were willful and wanton. The determination of willful and wanton must be made for the UP by the Vice President Engineering or the UP Regional Vice President applying a consistent standard.
- (3) An employee commits a rule violation of the same rule more than two (2) times in any one year period, which results in an accident or injury.

UP will provide notice to the employees involved and their General Chairmen using a form jointly developed by the parties. If, after a SAP process has been commenced, it is determined that the employees involved were under the influence of drugs or alcohol, the SAP process will be terminated, and the employees will revert to the normal discipline process.

**D. SAP Procedures.** When SAP is utilized the following process will apply:

**Step One: Effect on normal disciplinary processes**

Nothing in this Agreement will be construed to change current UP practice of how it aggregates information concerning the facts of accidents, incidents, or injuries as a predicate for possible disciplinary proceedings.

## **Step Two: Request for SAP**

- (a) After UP notifies the affected employee(s) of a possible disciplinary charge(s) associated with an accident, injury, or incident, an employee(s) may request SAP treatment.
- (b) Employee requests for SAP treatment are subject to determination of eligibility as outlined in paragraph C above.
- (c) If eligible for SAP, the disciplinary hearing scheduled in connection with the incident will be cancelled.
- (d) Those involved will fully participate in the SAP process.
- (e) The SAP process will not be counted as discipline.

## **Step Three: Assembly of a Labor/Management Team**

The LMT will consist of a Safety Coach or an employee selected by the BMWED Western Region Vice President who has been trained in accordance with the provisions of this agreement and a management representative. The nearest available Safety Coach will participate in the LMT-related analysis of all accidents and injuries involving BMWED represented employees. In the unlikely event that a Safety Coach is not available, the BMWED Western Region Vice President will designate an employee to participate in the analysis.

The LMT will meet with the involved employees and gather information concerning the incident. The information will not be used in future formal disciplinary hearings under the collective bargaining agreement. Upon the request of the LMT Safety Coach or UP management representative, UP will arrange for the incident to be re-enacted, but only in those instances where the VP Engineering determines that re-enactment would be likely to aid in the analysis of an accident.

## **Step Four: Accident and incident evaluation and recommendations by the LMT.**

The parties will develop a LMT-CAP Form and the LMT will use it in every SAP application. The form will reflect the LMT's findings and will form the basis of a CAP and will be submitted only to the person(s) responsible for statistical reporting of the pilot program's progress. A CAP will be developed during the process using recommendations arising from the LMT's analysis. The LMT will use consensus to determine the most appropriate and effective CAP to reduce or eliminate the risk of future incidents. If consensus cannot be reached, the matter will be referred to the appropriate General Chairman and Director of Safety. A CAP can include recommended changes to work processes, work environment, it can include skills training, recommendations for rule or policy development or modification, hazard correction, environment modifications, counseling, sharing of the incident with others,

enhancements to inspections. A CAP may also include disqualification from a position on terms determined by UP, up to and including permanent disqualification without the opportunity to re-qualify and thereafter with requalification only by agreement between UP and the employee's General Chairman.

#### **Step Five: Follow UP Review**

The LMT will schedule a follow-up within 90 days of the CAP to gauge progress. The LMT-CAP form will be kept on file by the employee's General Chairman and the employee's immediate supervisor.

#### **Step Six: Correction of Unsafe Practices**

The parties will consult and UP will correct unsafe practices that are found to contribute to such incident.

### **SECTION 6 - INTERACTION OF ALTERNATIVE HANDLING WITH CONTRACTUAL DISCIPLINE RULES**

Except as modified in this Agreement, existing schedule agreements pertaining to disciplinary action remain in effect. Nothing in this agreement infringes on the entitlement or right of an employee to a formal investigation under the existing collective bargaining agreement. However, once the employee and General Chairman sign a waiver for SAP, he/she waives all rights to formal investigation and appeal and agrees to abide by the terms specified in the SAP.

### **SECTION 7 – FEB 7<sup>th</sup> AGREEMENT**

If an employee assigned is assigned as a Safety Coach and receives a lower rate of pay as a result of their selection, their protected rate will not be adjusted. The employee however will not be entitled to a differential allowance as a result of this move.

### **SECTION 8 – CLOSE CALL INCIDENT REPORTING**

The Advisory Committee will promptly meet after the implementation of this agreement to develop a close call incident reporting system.

### **SECTION 9 - PROTECTION OF SAP RELATED WORK AS SUBSEQUENT REMEDIAL MEASURES TAKEN IN THE PUBLIC INTERES AND DISMISSAL OF ACTION.**

The parties agree that all efforts undertaken after the employee executes the waiver of disciplinary procedures in favor of electing SAP (including but not limited to

statements made, deliberations, discussions, documents created, recommendations, and monitoring, whether oral or written) constitute subsequent remedial measures as a result of self critical analysis which is protected by Federal Rule of Evidence 407. The parties further agree that any information that is developed through the SAP procedures should be considered inadmissible under Federal Rule of Evidence 403 because the dangers of unfair prejudice to the parties and confusion to a trier of fact substantially outweigh the probative value any such information may have. Therefore, and in order to support the social policy of encouraging people and companies to take steps in furtherance of added safety, the parties agree as follows:

1. No documents, observed events, or statements exclusively prepared for, conducted or spoken during or as a part of SAP activities under this agreement and so designated, will be offered for any purpose by any employee who participated in the SAP, or party, or their agents in any FELA matter.

2. All SAP- related information is confidential and is created for the sole purpose of reducing the rate of accidents and injuries. No person will use such SAP-related information in any litigation, including in any FELA case. The parties hereto agree that when they receive any demands, including discovery requests, for the SAP information they will communicate the demand to the other party, and the parties will jointly contest such demands by seeking enforcement of the court order approving the settlement herein, and in reliance on Federal Rules of Evidence 402, 403, 407, 601, and any other applicable rule or doctrines.

3. The parties agree that they will jointly file a motion to dismiss the Complaint filed in Case No. 2:08-CV-2401 (D.Kan.) and a proposed Order Approving Settlement Agreement and for Dismissal for federal court approval as part of the settlement of Case No. 2:08-CV-2401 (D.Kan.). The parties agree that the proposed order will include the following language:

“When any party to the Settlement Agreement becomes aware of a discovery request or other demand, including subpoena, for SAP Information in any other matter, including any FELA case, then that party will promptly notify the requestor that the Settlement Agreement and Order bar dissemination of SAP Information. The party also will notify the requestor that it is bound by an order of the federal court prohibiting release of SAP Information. If the requestor fails to withdraw its request for SAP Information, then the parties jointly will inform the federal court and seek appropriate protection. When a party to the Settlement Agreement becomes aware that a person or entity that is not a party to the Settlement Agreement is in possession of SAP Information, the party with such knowledge will promptly notify the other party to the Settlement Agreement.”

4. Any documents, observed events, or statements not exclusively prepared for, conducted, observed, or stated during and in the direct course of SAP proceedings under this Agreement will be usable and admissible for any purpose to the same extent

it would be usable in the complete absence of this Agreement. Nothing in this agreement will be construed to abridge these rights.

5. Unified System Division, as Plaintiff in the above-referenced lawsuit, agrees to release all claims, including claims for declaratory, injunctive and representational relief, whether known or unknown, up to the date of this Agreement.

**SECTION 9 – CANCELLATION CLAUSE**

If either party believes this agreement is not achieving its stated goals, a ninety day cancellation notice may be served on the other party. During this notice period, the parties will meet to discuss the concerns of the cancelling party. Good faith and best efforts are required to address the concerns of the cancelling party.

**SECTION 10 – EFFECTIVE DATE**

This agreement will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Signed in Omaha Nebraska, this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

FOR THE BMWED:

FOR THE CARRIER:

\_\_\_\_\_

\_\_\_\_\_

Tentative Agreement pending ratification.

*W. E. Mars*