

# In letter defending sellout of railroad workers, SMART-TD union president falsely claims US Constitution prohibits workers from striking

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In an open letter to railroaders Friday, SMART-TD union President Jeremy Ferguson attempted to justify the unions' decision to avoid a national rail strike and force through a sellout tentative agreement brokered by the Biden administration.

The letter is the latest in a series of increasingly desperate statements from top rail union officials, which alternate between defensiveness and threats, indicating that they are afraid of the growing rank-and-file opposition. The same day, the Brotherhood of Locomotive Engineers and Trainmen (BLET) issued a separate statement shifting blame for the TA from themselves onto Congress.

SMART-TD President Ferguson's statement is dripping with hypocrisy. Titled "Ultimately, decision about tentative agreement is in members' hands," in reality, it is devoted to "proving" the opposite, that the final decision lies in the hands of Congress and the railroads. Most of the letter is devoted to a self-serving account of the last several months of negotiations, in which Ferguson claims the unions' hands were tied by both the refusal of the carriers to bargain in good faith and the threat of congressional intervention to block a strike.

Ferguson briefly acknowledges the widespread anger among the workers, who are determined to strike against brutal levels of exploitation. But then he adds:

In the face of all this, why did we not strike? It is not due to the RLA, but rather because of the commerce clause contained within the Constitution of the United States of America. The fact is, Congress would not risk any more harm to the supply chain than what the railroads have already committed

since the advent of Precision Scheduled Railroading (PSR). We were then faced with an ugly reality. We could refuse to negotiate any further and initiate the strike procedures, which, in turn, would have been blocked by Congress with the PEB imposed upon us, or we could come to a tentative agreement that then gives you a voice in these proceedings through a direct up or down vote.

This is an argument with sweeping implications. For years, the rail unions have conveniently justified one sellout after another by citing the anti-worker Railway Labor Act, which sharply restricts workers' ability to strike. Now that the provisions of the RLA have finally been exhausted, Ferguson constructs a new, far broader argument that the Commerce Clause of the Constitution, which empowers Congress "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," overrides workers' constitutional right to strike, which is protected via freedom of speech and freedom of association in the First Amendment of the Bill of Rights.

If this were the case, it would mean that not only railroaders but all workers in the United States do not have the right to strike. Ferguson is arguing that the United States, since the ratification of the Constitution in 1788, is a de facto dictatorship in which workers' rights can simply be ignored when convenient on the grounds of the good of the "economy."

This is far more revealing about the mindset of a well-heeled union bureaucrat than that of the framers of the Constitution. Ferguson may not remember, but the United States was founded in a revolution against the tyranny of the British Crown in which the colonists set up new, alternative institutions, beginning with the Committees of Correspondence and culminating in the Continental Congress and the revolution itself.

The Declaration of Independence, one of the most powerful revolutionary documents in history, justified the revolution by declaring, “But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.”

Ferguson’s own position is more comparable to King George than to the American revolutionaries. He and the rest of the union officials are facing their own rebellion by railroads workers, who have formed the Railroad Workers Rank-and-File Committee to challenge the bureaucratic dictatorship and put workers in control.

Ferguson’s interpretation of the Constitution is the same as that of Wall Street and the railroads. Indeed, the recognition of the legal right to strike was only won by workers in the course of decades of bitter struggles against both the corporations and against the corporate-controlled government. But after earlier generations shed their blood to defend and uphold this basic right, Ferguson flippantly casts it aside in the course of a few sentences and defends congressional intervention against a strike as legally legitimate.

This is a devastating self-exposure. If the entire political system is rigged against workers, then why have the unions incessantly focused workers’ attention on appeals to the political establishment and the Democratic Party? Why the endless promotion of the RLA, to the point that Ferguson himself called on Biden to appoint the Presidential Emergency Board (PEB) whose recommendations formed the basis for the current sellout contract? Ferguson only exposes himself as an enforcer of a management dictatorship.

Ferguson adds, “During mediation, the political climate became more influential, as the elected representatives who would eventually have oversight of our dispute were known to be more labor friendly.” In reality, the political climate, by which he presumably means the coming into office of the Biden administration, is not more “labor friendly” but more “bureaucracy friendly.” Biden vastly prefers to use the services of unions to enforce de facto strike injunctions than to risk a direct confrontation with the working class, which has unpredictable, explosive consequences. Indeed, the unions have even served as the primary messengers for threats of congressional injunctions, allowing Nancy Pelosi and her Republican counterparts to remain largely silent.

As far as the bureaucracy is concerned, workers only have the “right” to vote the way they and Congress want them to. Ferguson’s letter comes only two days after the IBEW “passed” the railroad electricians’ contract in a vote marked by massive irregularities, including countless cases where

workers did not receive ballots. The day before, the International Association of Machinists announced a “new” contract nearly identical to the one which workers already voted by 60 percent to reject earlier this month and unilaterally extended the strike deadline to early December.

The same methods are in store for the other crafts. As for SMART-TD, it and the Brotherhood of Locomotive Engineers and Trainmen are rumored in the press to be considering using binding arbitration in order to override a “no” vote.

Workers have responded with widespread anger and derision on social media. Responding to his reference to the threat of congressional intervention, one worker commented, “As if we don’t remember how close we got, as if we don’t remember realize the PEB is the TA, as if we don’t realize that they are treating us like we are stupid. F\*\*\* this guy.” He added incredulously, “Why do they keep agreeing to a no-strike clause if Congress and the Constitution is preventing us from striking?”

“His statement pissed me off,” another worker said. “Sounds like something a politician would say.” A third worker agreed, adding, “Lots of soothing words but basically, ‘we think you’re doing a great job but you’re our b\*\*\*\*\*es.’”

Another worker said, “This guy seems focused on ‘legal’ striking. He forgets that the nature of striking doesn’t give a s\*\*\* about legality.”

Another worker, responding to the BLET statement released the same day, wrote: “[BLET official] Mark Kenny hasn’t run a train in 20 years? Somehow earns \$200,000+ a year and scored a seeming lifetime appointment. Time for big name unions to go. [This is the] last railroad negotiation the BLET will ever be a part of.”



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