

Rail Labor Dispute May Involve President and Congress

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President Biden has until July 18 to create an Emergency Board to resolve a labor dispute affecting six major railroads and many smaller ones. Depending on what actions the President or Congress take, and the bargaining between railroads and 12 unions, the dispute could lead to a work stoppage later this summer.

Negotiations have occurred against a backdrop of declining railroad employment, a trend that began well in advance of the Coronavirus Disease 2019 (COVID-19) pandemic. Since November 2018, railroad employment has shrunk by some 40,000 jobs, or by over 20%, [according to the Bureau of Labor Statistics](#). Some of these job losses can be attributed to the decline in the transportation of coal, while others may have been due to new approaches to staffing and asset use within the rail industry.

After more than two years of bargaining, the unions requested the assistance of the National Mediation Board (NMB)—a federal agency responsible for facilitating labor negotiations in the railroad and airline industries—in January 2022. On June 17, the NMB announced that both sides would exit mediation without a new contract in place. Since then, the parties have been in a federally mandated “cooling-off” period during which no action may be taken that would result in a work stoppage. This cooling-off period expires after 30 days, after which the railroad companies could begin a lockout or unions could go on strike if no other action is taken.

Overview of Rail Labor Law

Labor disputes in the railway and airline industries are governed by the Railway Labor Act (RLA). If a dispute is not settled through RLA-prescribed negotiation, mediation, or arbitration, and if the NMB determines that the dispute “threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service,” the law authorizes the President to establish an Emergency Board to investigate and issue a report. The Presidential Emergency Board’s recommendations are not binding on the parties, and either party may reject them.

The RLA is silent as to how the NMB determines what constitutes a substantial threat to interstate commerce, though in the past the NMB has considered the effect of a strike or shutdown on the state of the economy as a whole and the immediate economic impact on carriers, shippers, and travelers.

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Negotiation Issues

Workplace Rules and Precision Scheduled Railroading

Several of the largest railroads in North America employ a loosely defined set of industry practices designed to maximize efficient use of railroad assets, collectively known as “precision scheduled railroading” (PSR). Rather than adhere to regular schedules as the name suggests, these practices often involve planning train movements so as to reduce the amount of physical assets needed (such as yards and locomotives) to generate revenue, thereby improving an indicator of railroad performance called the operating ratio. PSR can sometimes be accompanied by a reduction in labor demand (e.g., fewer locomotives require fewer engineers and mechanics), but labor unions have contended that it has also placed unrealistic workloads and duty schedules on remaining employees. Federal law limits how many hours railroad employees can work in a shift and how closely shifts can be spaced apart, but unions are demanding the retraction of specific workplace operating and attendance rules, in addition to wage increases and changes to vacation and medical benefits.

The surge of freight volume and other supply chain disruptions experienced since the start of the COVID-19 pandemic may already be prompting a retrenchment from some of the more aggressive implementations of PSR among large railroads.

Train Crew Size

Railroads have explored the use of one-person train crews to further maximize asset utilization, while unions and some lawmakers have sought to establish a two-person crew minimum on safety grounds. The Federal Railroad Administration proposed a crew size rule in 2016 after several crashes but [withdrew it in 2019](#), stating that available data “does not establish that one-person operations are less safe than multi-person train crews.”

In the run-up to the current bargaining session, some rail unions asserted that preexisting moratorium provisions prevented negotiations over train crew sizes. However, in response to a lawsuit filed by the rail carriers, a federal judge ordered that the unions must engage in good-faith negotiations over train crew size proposals put forth by rail carriers as part of a new labor agreement.

Options for Executive and Legislative Action

If the President forms an Emergency Board, it will have 30 days to investigate the facts and report to the President with nonbinding recommendations for settlement of the dispute. During this initial 30-day period and for 30 days after the report has been issued, the NMB continues to mediate the dispute. If no agreement is reached by the end of this final 30-day period, whether on a contract or on an extension of the cooling-off period, the parties may engage in work stoppages. Assuming a Presidential Emergency Board is created at the end of the cooling-off period that began June 18, the parties could not generally engage in strikes or lockouts until the conclusion of the investigation and cooling-off periods on September 16. The last time a Presidential Emergency Board was created to resolve a freight railroad labor dispute was in 2011, and while the final cooling-off period was extended several times, a new agreement was reached in April 2012 without a strike or lockout.

On several occasions, Congress has intervened in labor disputes by enacting legislation to delay or prohibit railway and airline strikes. For example, in 1986, Congress passed P.L. 99-385, which extended the final cooling-off period by an additional 60 days to allow the parties to the Maine Central Railroad dispute to continue negotiations. In 1992, Congress approved P.L. 102-306, which required Amtrak and

Conrail to enter into arbitration with their employees in an effort to resolve various labor disputes. Additionally, Congress has from time to time enacted legislation requiring the parties to a railroad labor dispute to submit to another emergency board or to accept a board's recommendations.

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