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INSIGHT

Rail Labor Dispute Could Result in Work Stoppages

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On August 16, 2022, a three-person Emergency Board appointed in July by President Biden issued its recommendations to resolve a labor dispute affecting over 100,000 employees of six major railroads and many smaller ones. The two sides reached a tentative agreement on September 15, averting a strike that could have begun the following day, but the agreement requires ratification by union members. Depending on what actions the railroads, unions, and Congress take, the dispute could lead to work stoppages as early as December 9.

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.

Overview of Rail Labor Law

Labor disputes in the railway and airline industries are governed by the Railway Labor Act (RLA), which created the National Mediation Board (NMB) to facilitate negotiations. 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 current negotiations began in November 2019 between a coalition of labor unions and several railroads. After more than two years of bargaining, the unions requested the assistance of the NMB in January 2022. On June 17, the NMB announced that both sides would exit mediation without a new contract in place. Since then, a Presidential Emergency Board was appointed and the parties have been in a series of federally mandated "cooling-off" periods during which no action may be taken that would result in a work stoppage. The current cooling-off period will expire if union members vote to reject a new agreement, though it may be voluntarily extended.

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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 adhering to regular schedules as the name suggests, these practices often involve planning train movements so as to reduce the amount of physical assets (such as yards and locomotives) needed to generate revenue, thereby improving an indicator of railroad performance called the operating ratio. PSR sometimes can be accompanied by workforce reductions, but labor unions have contended that it also has placed unrealistic workloads and duty schedules on remaining employees. Federal law limits how many hours railroad employees can work during 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 new crew size rule in in July 2022 after the withdrawal of an earlier proposal was vacated by a federal court.

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. Train crew size rules are being negotiated locally on a railroad-by-railroad basis and will not be affected by the current labor dispute.

Positions of the Parties

Eight unions (out of 12) have voted to ratify new agreements with rail carriers. This does not include the largest union, representing over 30,000 conductors and yard workers. The largest and three other unions have voted to reject the tentative agreement, triggering new cooling-off periods, which will expire on December 9 unless they are extended or a new agreement is reached. One area of contention appears to be sick and personal leave policies, which some workers contend are not adequate to maintaining a desired quality of life.

Options for Legislative Action

If the unions do not agree on new contract terms or an extension of the cooling-off period before it expires, either side may engage in work stoppages. If this occurs, workers in other unions might refuse to cross the picket line, expanding the stoppage. In the last freight railroad dispute that involved a Presidential Emergency Board, the final cooling-off period was extended several times without congressional involvement before a new agreement was reached in April 2012 without a strike or lockout.

On several past 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 unions and the Maine Central Railroad to continue negotiations. In 1992, P.L. 102-306 required Amtrak and Conrail to enter into arbitration with unions representing 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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