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INSIGHT

Legislation to Avert Railroad Strike Advances

Updated December 1, 2022

On November 30, 2022, the House passed two bills intended to resolve a labor dispute affecting over 100,000 employees of six major freight railroads and many smaller ones. This dispute could result in widespread work stoppages as early as December 9. The first bill, H.J.Res. 100, would avert a stoppage by imposing the terms of a tentative agreement reached in September but that was rejected by some unions. The second, H.Con.Res. 119, would amend the enrolled text of H.J.Res. 100 to provide workers seven paid sick days per year. The Senate could pass both House bills, pass just the bill averting a strike, or propose alternative legislation.

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. An Emergency Board appointed by President Biden issued its recommendations in August 2022; since then, the parties have been in "cooling-off" periods during which no action may be taken that would result in a work stoppage. 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 to take effect.

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https://crsreports.congress.gov
IN11966

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. The remaining four have voted to reject it, 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. Essentially, the tentative agreement would provide three days of unpaid medical leave but no paid sick time.

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 occasions, Congress has intervened to delay or prohibit strikes. For example, in 1994, Congress passed P.L. 103-380, which extended the final cooling-off period by four months to allow the United Transportation Union and the Soo Line Railroad to continue negotiations. In 1970, P.L. 91-226 imposed a tentative agreement ratified by three unions but rejected by a fourth, similar to H.J.Res. 100. Congress has also moved to require binding arbitration, impose an emergency board's recommendations, or convene new emergency boards but has tended not to stipulate specific terms in new agreements as proposed by H.Con.Res. 119.

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