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Legal Sidebar

The Railway Labor Act and Congressional Action

Updated March 30, 2023

The Railway Labor Act (RLA; 45 U.S.C. §§ 151 et seq.) governs disputes between railway carriers and labor unions. Beginning in 2019, labor unions representing railway employees and the National Carriers' Conference Committee (which represents the railway carriers) took part in direct negotiations over employee pay, hours of service, and benefits. In September 2022, following recommendations by the Presidential Emergency Board, the parties reached a tentative agreement, subject to ratification by union members. During October and November 2022, the members of four unions voted to reject their contracts with the carriers, jeopardizing the agreement. Following these events, the unions entered into a "cooling-off period" that was scheduled to end on December 9, 2022, which could have culminated into a nationwide railway strike. To avoid a strike, the 117th Congress passed H. J. Res 100, implementing the recommendations of the Presidential Emergency Board. President Biden signed the joint resolution into law on December 2, 2022.

In response to future disputes between railway carriers and labor unions, Congress may consider various options, including extending the cooling-off period requiring the parties to maintain the status quo or implementing the terms of either an unratified agreement or the recommendations of the Presidential Emergency Board. This Sidebar provides background on the RLA and discusses executive and legislative action to resolve the 2022 dispute.

Railway Labor Act (RLA)

Congress enacted the RLA in 1926 in response to the nation's growing reliance on railroads and as part of a pattern of federal attempts at regulating labor relations in the industry. The statute is broken into two subchapters, with the first generally dealing with the railway carriers and the second, added by amendment in 1936, dealing with air carriers. The statute's purposes, stated in 45 U.S.C. § 151a, are to prevent any interruption to commerce or to the operation of any carrier; forbid any limitation on the right of employees to join a labor union; provide for the independence of carriers and employees in self-organization; and provide prompt settlement of disputes concerning rates of pay, rules, or working conditions and disputes growing out of grievances or the interpretation or application of agreements.

The RLA provides dispute resolution processes for railway carriers and labor unions. It also establishes a National Railroad Adjustment Board (NRAB) and a National Mediation Board (NMB). The NRAB,

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LSB10861

which is an adjudicatory board, has primary jurisdiction over minor disputes growing out of grievances or out of the interpretation or application of agreements between rail labor unions and carriers. In contrast, for major disputes concerning changes in rates of pay, rules, or working conditions and "[a]ny other dispute not referable to the [NRAB]," there are lengthy requirements of bargaining and mediation between labor unions and railway carriers before the NMB.

Under 45 U.S.C. § 160, if the NMB determines that a dispute could "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service," it shall notify the President, who then may decide to issue an Executive Order to "create a board to investigate and report respecting such dispute." The board, known as the Presidential Emergency Board, has 30 days to issue its recommendations to the President, and the parties must maintain the status quo for an additional 30 days after the issuance of the report. During this 60-day period known as the cooling-off period, "no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." The Supreme Court has described the cooling-off requirements in the RLA as stopping "the union from striking and management from doing anything that would justify a strike." If no agreement is reached at the end of the cooling-off period, the parties may engage in self-help, including through strikes, lockouts, and changes in terms and conditions of employment.

Presidential Emergency Board Recommendations and 2022 Dispute

Direct negotiations between the railway carriers and labor unions representing railway employees began in November 2019 over employee wages, benefits, workloads, and duty schedules, among other topics. By February 2022, the unions had filed mediation applications with the NMB. In July 2022, mediation ended, and the NMB notified President Biden, in accordance with 45 U.S.C. § 160, that the dispute threatened substantially to interrupt interstate commerce. On July 15, President Biden issued an Executive Order establishing a Presidential Emergency Board.

On August 16, 2022, Presidential Emergency Board No. 250 issued its recommendations. These recommendations included changes to employee wages and benefits such as:

- increase wages (24% over the life of the contract) during the five-year period from 2020 through 2024;
- additional $5,000.00 in service recognition bonus payments;
- removal of the cap on monthly employee contributions to health plans;
- increase the annual maximum for hearing benefits to $2,000.00; and
- an additional personal day per year.

The Board recommended that the labor unions withdraw their proposal to include paid sick leave.

On September 15, 2022, following negotiations with the Biden Administration, the parties reached a tentative agreement subject to ratification votes by union memberships. Industry groups, such as the Association of American Railroads, announced that the tentative agreement included "a 24 percent wage increase during the five-year period from 2020 through 2024, including an immediate payout on average of $11,000 upon ratification," but that the agreement did not include paid sick leave and other items that had been the subject of prior negotiations. The agreement was also reported to extend the cooling-off period until after the union membership voted either to approve or reject new contracts. For more information on the dispute negotiations, please see CRS Insight IN11966, *Legislation to Avert Railroad Strike Advances*, by Ben Goldman.

After reaching the agreement, eight unions involved in the dispute voted to ratify new contracts, and four unions voted to reject. On October 10, 2022, members of the Brotherhood of Maintenance of Way

Employes Division, the third-largest railway union, rejected ratification. On October 23, 2022, the members of a second union, the Brotherhood of Railroad Signalmen, announced that its members had rejected ratification. The unions initially stated that their cooling-off periods would expire on November 19, 2022. On November 14, 2022, a third union, the International Brotherhood of Boilermakers, announced that its members had also rejected ratification. In a split decision, train and engine service members of the International Association of Sheet Metal, Air, Rail and Transportation Workers' Transportation Division voted to reject their proposed contract, while the union's yardmaster members voted to accept it.

Considerations for Congress and Legislative Developments

Article I, Section 8, clause 3, of the U.S. Constitution confers Congress with broad authority to regulate interstate and foreign commerce. In 1917, the Supreme Court confirmed that this authority empowers Congress to intervene in rail labor disputes that threaten to disrupt interstate commerce. Following a bargaining impasse and strike threat that would have affected the entire country, Congress enacted a law that established an eight-hour workday and temporarily regulated the wages for employees of railway carriers engaged in interstate and foreign commerce. The carriers challenged the law, arguing that Congress lacked the authority to enact it. In *Wilson v. New*, the Court concluded that Congress's authority over railway carriers in interstate commerce was within its legislative power to regulate commerce and "not subject to dispute." The Court contended that Congress has the ability to "guard against the cessation of interstate commerce" by responding legislatively to a failure of employers and employees to agree to work conditions, such as a wage standard that was "an essential prerequisite to the uninterrupted flow of interstate commerce."

Pursuant to its constitutional authority, Congress has intervened on several occasions to respond to rail disputes that were not resolved under the RLA's procedures. These resolutions sought to resolve the disputes using various approaches. For example, P.L. 99-385, a "Joint Resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute," extended the final cooling-off period by an additional 60 days. Another example, P.L. 100-429, a "Joint Resolution to provide for a settlement of the labor-management dispute between the Chicago and North Western Transportation Company and the United Transportation Union," imposed the Presidential Emergency Board's recommendations on the parties. Other laws provided for the establishment of another board to investigate the dispute and issue a binding determination or for the parties to submit an unresolved dispute to binding arbitration.

To resolve the 2022 dispute, Members of Congress introduced joint resolutions that would have imposed Presidential Emergency Board No. 250's recommendations if certain conditions were not met. H. J. Res. 100, enacted in December 2022, made binding "the most recent tentative agreements, side letters, and local carrier agreements entered into by the covered parties" that the parties had not yet ratified, effectively implementing the Presidential Emergency Board recommendations. To try to address railroad employees' concerns regarding sick leave, which the recommendations omitted, the House passed H. Con. Res. 119 (117th Congress). This measure was not agreed to in the Senate, where the vote was 52-43 under an order requiring 60 votes for adoption.

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