

Railroad Labor Act Overview

HIGHLIGHTS OF THE RAILWAY LABOR ACT ("RLA"), AND DOTS ROLE IN RLA DISPUTES

I. Overview Of The Railway Labor Act ("RLA")

History. The RLA was enacted in 1926 as the joint work product of rail labor and management. It was amended slightly in 1934 and 1966, and expanded to include airlines in 1936. 45 U.S.C. §151 *et seq.* Special bargaining dispute resolution procedures applicable to publicly owned and operated rail commuter carriers was added in 1981. 45 U.S.C. §159a. The RLA is administered by the National Mediation Board ("NMB"), an independent Federal agency.

General Purposes. The purposes of the RLA are to avoid any interruption of interstate commerce by providing for the prompt disposition of disputes between carriers and their employees and protects the right of employees to organize and bargain collectively. The RLA imposes a duty on carriers and employees to exert every reasonable effort to make and maintain collective bargaining agreements, and to settle all disputes, whether arising out of the application of such agreements or otherwise. The RLA also provides mandatory dispute resolution procedures (outlined below) that preclude strikes over union representation and grievance disputes, and postpone the ability of the parties to take action in bargaining disputes until they have completed an elaborate, time-consuming process involving negotiation, mediation by the NMB, possible review by a Presidential Emergency Board ("PEB"), and cooling-off periods.

Process Designed to Produce Collective Bargaining Agreements. The RLA's elaborate procedures for resolving bargaining disputes (referred to by the courts as "major disputes") are designed to facilitate negotiations, narrow disputes, and focus public opinion on the participants in order to pressure the parties to voluntarily reach an agreement. The NMB's ability to hold the parties in mediation to force good faith negotiations and to assist the parties in reaching settlements, coupled with the status quo requirements of the RLA, provide incentives to the parties to settle their disputes peacefully. The NMB can time the release of the parties from mediation to coincide with a period when Congress is in session and able to deal with the dispute. PEBs also contribute to the settlement process by providing the parties with an impartial assessment of their dispute and recommendations that can assist the parties in reaching a negotiated agreement. Where the parties are unable to reach a peaceful solution to their labor disputes, PEB recommendations help Congress and the Administration to quickly respond to self-help actions by the parties.

Composition of NMB. The NMB is an independent agency in the Executive Branch, headed by a three-member board appointed by the President, with the advice and consent of the Senate. The board members cannot have any interest in an airline or railroad, and not more than two of the board members can be of the same political party. Board members serve for three-year terms, unless their predecessor left prior to the end of his or her term, in which event they serve only the unexpired term of their predecessor. Two of the members in office

constitute a quorum for the transaction of business. The chairperson rotates among the board members.

II. Employee Representation

Craft Representation. The RLA contemplates that employees will be represented on a carrier-wide basis through crafts or classes of employees (e.g., railroad engineers and airline pilots), and that the majority of the employees in each class or craft may select a bargaining representative. Representational disputes include issues of whether: (1) a majority of a craft or class of employees desire to be represented by a particular union or to be unrepresented; (2) a union's certification survives a merger; and (3) two related carriers will be treated as one (or two) for representation purposes. The RLA commits representational disputes to the exclusive jurisdiction of the NMB, and requires the NMB, upon the request of either party to a dispute among a carrier's employees, to investigate and certify bargaining representatives for a class or craft. A carrier is required to deal with the representatives certified to it by the NMB.

III. Collective Bargaining Disputes (So Called "Major Disputes")

Definition of Major Dispute. Major disputes involve the creation or changing of collective bargaining agreements on rates of pay, work rules and working conditions, and are subject to conciliation procedures that are purposely long and drawn-out. Unlike other industries, collective bargaining agreements under the RLA do not expire on certain dates, but remain in full force and effect until changed in accordance with the procedures of the RLA.

RLA Bargaining Procedures. The RLA's procedural steps for major disputes are as follows:

- A party desiring to effect a change of rates of pay, work rules, or working conditions must give advance written notice (so called "Section 6 notices").
- The parties must confer, and if they fail to resolve the dispute, either or both may invoke the services of the NMB. The NMB may also offer its services if it finds a labor emergency to exist.
- The NMB can keep the parties in mediation indefinitely, so long as it feels there is a reasonable prospect for settlement. However, if mediation fails, the NMB must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place, however, only if both consent.
- If arbitration is rejected, the parties must maintain the status quo for a 30-day period. 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 NMB shall notify the President, who **may** create a PEB to investigate the dispute for a 30-day period and issue non-binding recommendations for resolving the dispute. The parties typically agree to PEB requests for extensions of time to further study a dispute. The last stages of the conciliation procedures differ slightly for publicly funded and operated rail commuter carriers.
- While the dispute is working its way through these stages, and for an additional 30

days following the issuance of the PEB's report, the parties must maintain the status quo, and cannot utilize self-help measures. Although not specifically provided for in the RLA, the NMB typically works with the parties to try to induce a last-minute settlement or voluntary extension of the status quo.

- If, after the final 30-day status quo period has expired, a settlement has not been reached, the parties are free to resort to self-help and cannot be enjoined from doing so.

Self-help. The RLA is silent on the scope of allowable self-help available to the parties after they have exhausted the major dispute resolution procedures. However, court decisions have made clear that the scope of permissible self-help is broad, extending considerably beyond the bounds of self-help that would be permitted to employers and unions covered by the National Labor Relations Act ("NLRA"). Courts have ruled, for example, that an RLA union may strike and peacefully picket a carrier with which it has a primary dispute, engage in intermittent work stoppages (e.g., "selective" or "rolling strikes"), and secondarily picket other neutral RLA employers (a practice prohibited under the NLRA). For carriers, self-help includes: implementing their proposed contract changes; making a national response to defend against a selective strike that jeopardizes national bargaining, including locking out striking workers and, if the labor contract with non-striking workers permits, other workers; and replacing striking workers. The courts cannot enjoin such self-help activity.

Secondary Picketing. While neutral RLA carriers cannot block lawful secondary picketing by employees of other carriers, they may be able to secure injunctive relief preventing their own employees from honoring the picket lines. To secure such relief, a carrier would need to show that applicable labor contracts arguably prohibit the carriers' employees from honoring secondary picket lines; the contract interpretation dispute would then be submitted to binding arbitration under the RLA. This course of action was successfully followed by Amtrak and the New York commuter operators in 1989 when they secured court orders blocking walk-outs by their employees in response to threatened picket lines by striking Eastern Airline employees.

Airline vs. Railroad Bargaining. While the airline and railroad industries are subject to the same statutory procedures, collective bargaining in the two industries differs. Individual airlines and their employees typically negotiate comprehensive bargaining agreements for a definitive period; if a class or craft of employees is represented by a union, that union represents all the employees of the carrier. Railroad collective bargaining, on the other hand, is dominated by national bargaining. However, some railroad carriers such as Amtrak are not part of the national bargaining committee and some general union chairmen on carriers may elect to negotiate directly with the carrier rather than to grant the national union officers the authority to bargain for them in national negotiations.

IV. Grievance Disputes (So Called "Minor Disputes")

Definition of Minor Disputes. Disputes that arise out of the interpretation or application of existing contractual rights are considered minor disputes. Courts have ruled that a dispute is minor if the employer's action complained of by a contract employee is "arguably justified" by the collective bargaining agreement. Minor disputes initially are dealt with through the carrier's internal dispute resolution procedures. If a minor dispute is not settled through initial discussions, it may be referred for binding arbitration by either party to a grievance adjustment

board composed of union and management representatives - system adjustment boards in the case of airlines, and the National Railroad Adjustment Board or to special boards of adjustment in the case of railroads.

Strikes Prohibited. Strikes over minor disputes are prohibited and can be enjoined. Judicial review of adjustment board decisions is narrowly limited to whether the board exceeded its jurisdiction, failed to comply with the RLA's statutory requirements, or was influenced by fraud or corruption. 45 U.S.C. §153, First and Second, and 184.

V. DOT'S ROLE IN RLA LABOR DISPUTES

Rail Bargaining Disputes. DOT/FRA becomes involved in contract disputes at key junctions:

- FRA monitors the progress of the contract negotiations.

- FRA projects the economic impact of a strike at the time the NMB ends mediation; these projections help form the basis for the NMB's determination of whether to recommend the appointment of a PEB.

- The Secretary advises the President regarding the convening of a PEB. The Secretary's analysis is especially critical when the dispute involves a regional carrier or a carrier that is financially marginal.

- If a PEB is appointed and its recommendations are rejected, FRA prepares an updated economic impact statement.

- FRA prepares the Secretary's testimony for any Congressional hearings, briefs the Secretary, and assists at the hearings.

- FRA Chief Counsel's Office drafts back-to-work legislation in consultation with the General Counsel, and works with Congressional committee staffs on fashioning appropriate legislative relief.
- FRA monitors the national rail transportation situation during the strike.