



U.S. House of Representatives
Committee on Transportation and Infrastructure

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SUMMARY OF SUBJECT MATTER

To: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials
From: Staff of the Subcommittee on Railroads, Pipelines, and Hazardous Materials
Subject: Subcommittee Briefing on Rail Labor Presidential Emergency Board 243

PURPOSE OF BRIEFING

On Tuesday, October 25, 2011, at 10:00 a.m. in 2253 Rayburn House Office Building, the Subcommittee on Railroads, Pipelines, and Hazardous Materials will be briefed by members of the National Mediation Board (NMB), the independent agency that coordinates labor-management relations within the nation's railroad and airline industries. NMB Chairman Linda Puchala and Board Member Elizabeth Dougherty will update Subcommittee Members on the ongoing dispute between freight railroads and their unions, and describe the Presidential Emergency Board process under the Railway Labor Act (RLA). Attendance at this informational briefing is limited to Subcommittee Members and their staffs.

CURRENT RAIL LABOR DISPUTE

In General

The current railway labor dispute is between the National Carriers' Conference Committee of the National Railway Labor Conference (NCCC) and two rail labor coalitions representing 11 unions.¹ The NCCC represents more than 30 freight railroads, including the

¹ The 11 unions include: the Brotherhood of Railroad Signalmen, Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers; Sheet Metal Workers' International Association; National Conference of Firemen & Oilers; Transportation-Communications International Union (TCU); American Train Dispatchers Association; International Association of Machinists and Aerospace Workers; International Brotherhood of

following Class I railroads: CSX Transportation, Norfolk Southern Corporation, BNSF Railway Company, Union Pacific Railroad Company, Kansas City Southern Railway Company, and Soo Line Railroad (Canadian Pacific). The 11 unions represented by the two labor coalitions include approximately 70% of the rail labor workforce or about 94,000 employees.

The primary issues in dispute are wage increases and health care benefits. As a point of reference, in 2010 employees of the two labor coalitions received on average \$67,836 in wages, including supplemental pay and paid leave. When benefits such as health care, retirement, and disability are included, the average total compensation package is \$93,046.²

UTU Agreement

Not included in the dispute is the United Transportation Union (UTU) which represents about 30% of the rail labor workforce or roughly 38,000 employees. UTU reached an agreement with the freight railroads through NMB facilitation, which was ratified on September 2, 2011, by the six eligible crafts of UTU. The agreement included the following terms:

- A 17% wage increase over 6 years (compounded 18.24% increase) retroactive to January 1, 2010;
- A 78-month \$200 cap on health care insurance contributions;
- Improved health-care benefits, including personalized medicine and access to centers of excellence;
- Reduction in employee prescription drug co-pays from \$10 to \$5 for retail and \$20 to \$5 for mail order;
- Introduction of small health-care deductibles (\$200 individual/\$400 family) and 5% co-insurance with a cap of \$1,000 individual/\$2,000 family;
- Provides for certification pay, a faster process for new hire to reach full pay;
- No work-rule changes in the national agreement; and
- No prior cost-of-living adjustment offsets.³

Dispute History and Procedure

In November 2009, the collective bargaining process began with the exchange of Section 6 notices between the parties.⁴ Subsequently, the parties entered into direct negotiations in January 2010. After not reaching an agreement through direct negotiations, the TCU coalition applied to the NMB in July 2010 for mediation. The RLBC coalition applied for mediation in January 2011.

Electrical Workers; and Transport Workers Union of America. The unions are divided into two coalitions, one led by TCU and one led by the Rail Labor Bargaining Coalition (RLBC).

² According to information from the National Railway Labor Conference.

³ Press Release, United Transportation Union, National Rail Contract Ratified (Sept. 2, 2011); National Railway Labor Conference, Backgrounder: Freight Rail Collective Bargaining, <http://www.raillaborfacts.org/wp-content/uploads/2011/10/NMB-Release-Backgrounder-10-6-11-v7.pdf>

⁴ Under Section 6 of the RLA, the collective bargaining process begins with notice, called a Section 6 notice, by the parties of "an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference." 45 U.S.C. § 156.

After unsuccessful mediation before the NMB, the NMB offered the parties binding arbitration, which the two labor coalitions declined. Consequently, the NMB released the parties from mediation on September 6, 2011, beginning a 30-day cooling-off period. On October 6, 2011, the President signed an Executive Order establishing Presidential Emergency Board (PEB) number 243 to investigate and report on the dispute by November 6, 2011.

On October 7, 2011, PEB 243 notified the parties of its hearing schedule, to be conducted from October 13th through 20th. PEB 243 also explained that it would meet informally with the parties on October 20th and 21st, and continuing thereafter if the Board determines such meetings would be productive.

Once PEB 243 completes its investigation and submits its report to the President on November 5, 2011, there will be another 30-day cooling-off period beginning November 6 and expiring on December 6, 2011. During that time, the parties may come to an agreement voluntarily, as have many disputes in the past. If no agreement is reached by December 6, however, the parties may engage in self-help, that is, the unions can strike and the railroads can lockout.

To avoid a strike or lockout, Congress may take action. In the past, such actions have included extending the cooling-off period, imposing binding arbitration, or imposing a settlement.⁵

Timeline

- November 2009 – Section 6 notices served; collective bargaining process begins
- January 2010 – Direct negotiations begin
- July 2010 – TCU coalition applies to NMB for mediation
- January 2011 – RLBC coalition applies to NMB for mediation
- September 6, 2011 – NMB releases parties from mediation; begins 30-day cooling-off period
- October 6, 2011 – President establishes Presidential Emergency Board 243
- October 13-20, 2011 – PEB hearings scheduled
- November 5, 2011 – PEB report and recommendations for resolution of dispute due⁶
- November 6, 2011 – Begin 30-day cooling-off period
- December 6, 2011 – Cooling-off period expires; parties may engage in self-help if they do not accept the PEB recommendations or otherwise reach an agreement

⁵ Historically, Congressional action comes in the form of a joint resolution introduced in either body. Generally, joint resolutions are used to solve a limited or temporary problem.

⁶ While the report is due November 5, 2011, it is possible that the report could be submitted by the PEB on an earlier or later date. Because the self-help date is tied to the issuance of the PEB report, i.e., the 31st day after the issuance of the PEB report, any change in the date the report is submitted to the President could change the dates of the cooling-off period. The RLA does not specifically provide for extensions of the PEB reporting period, but extension requests can be requested with written consent of all the parties and the PEB.

RAILWAY LABOR ACT

The RLA was enacted in 1926 to avoid interruption of interstate commerce by providing for the prompt disposition of disputes between railroad carriers and their employees. In 1936, Congress expanded the RLA to include airlines. The RLA contains the collective bargaining process for rail and airline labor disputes.⁷ Generally, parties seeking to change the terms of pay, rules, or working conditions enter into the RLA's collective bargaining process and negotiate under the auspices of the NMB.

The NMB is the independent Federal agency responsible for administering the RLA. The NMB consists of three members who are appointed by the President for three-year terms and are confirmed by the Senate. Not more than two of the members may be from the same political party. The members select the chairman on a rotating annual basis. The NMB has approximately 52 employees and annual budget of about \$12 million.

1. Direct Negotiations

The collective bargaining process begins with the exchange of Section 6 notices, which detail each side's proposed changes to the existing labor contract. Direct negotiations are conducted between the parties without the participation of the NMB. There is no time limit on how long direct negotiations may last.

2. Mediation

If no agreement is reached through direct negotiations, then either party or the NMB may invoke mediation. If mediation is not invoked, the parties may engage in self-help, such as, unions may strike or management may lockout workers, within 10 days of termination of the direct negotiations. If mediation is invoked the parties enter into mediation with the NMB. During mediation, the NMB controls the schedule and mediation may last as long as the NMB believes a resolution is possible. There is no time limit on the length of mediation and self-help may not be utilized during mediation.

3. Arbitration

If the parties cannot reach agreement through mediation, the NMB may offer binding arbitration. Both sides must accept binding arbitration. If the parties agree to arbitration, an arbitration board is convened and will issue its binding award after investigation.

If the parties do not agree to binding arbitration, then the NMB releases the parties from mediation and notifies the President if it believes the dispute substantially threatens essential transportation in any section of the country. Upon release by the NMB, a 30-day cooling-off period begins before the parties may engage in self-help. During this cooling-off period the parties may continue to negotiate to reach an agreement.

⁷ The process set forth in this memo is for rail and airline labor disputes under 45 U.S.C. § 160. There is a separate, slightly different process for commuter railroads under 45 U.S.C. § 159a.

4. Presidential Emergency Board

If binding arbitration is not agreed to, but the NMB releases the parties and notifies the President in writing that it finds the dispute threatens to substantially interrupt interstate commerce, the President may establish a PEB through executive order. Generally, the President establishes a PEB prior to expiration of the 30-day cooling-off period. The PEB has 30 days to investigate the dispute, hold hearings, and make its recommendations in a report to the President. Generally, the hearings consist of witness statements from both sides with questions from the PEB, but no cross examination. The hearings are usually closed to the press and public. Once the hearings are complete, the PEB may engage the parties in mediation. During the PEB's 30-day investigation and report period, the parties may not engage in self-help.

Once the PEB makes its recommendations, a second 30-day cooling-off period begins, during which the parties may accept the PEB recommendations or negotiate their own agreement. This is the final stage of the process under the RLA. At the end of that 30-day cooling-off period, the parties may engage in self-help.

5. Congressional Action

If no agreement is reached during the final 30-day cooling-off period, Congress may take action to avoid a work stoppage, though this is not required by the RLA. Most rail labor negotiations have resulted in voluntary, peaceful settlements. However, in the 85 years since the RLA's enactment, there have been 14 PEBs where Congress has stepped in to prevent or terminate work stoppages. Congressional measures have included:

- 2 Acts providing additional cooling off periods that led to settlement;⁸
- 5 Acts requiring the parties engage in binding arbitration; and
- 7 Acts imposing terms on the parties, in which 5 were the PEB recommendations and 2 included additional pay increases.

The last PEB was established by President George W. Bush in December 2007 to resolve an Amtrak/rail labor dispute. Amtrak and the labor unions settled without Congressional intervention, implementing an agreement based on the PEB recommendations. Those terms included retroactive pay at Class I levels for fiscal years 2002-2007, wage increases in 2008 and 2009 of 4% and 4.5% respectively, employee contributions of 15% for health benefit plan costs, and no work-rule changes. The additional labor costs to Amtrak of the settlement were estimated to be \$ 435.6 million, with employee wages increasing \$117.4 million in 2009, an annual increased cost that is compounded going forward.⁹

The most recent Congressional action in relation to a PEB took place in 1994 regarding a labor dispute between the Soo Line Railroad Company and UTU. President Clinton established a PEB on August 29, 1994, ending a 47-day strike by UTU that began on July 13, 1994. On

⁸ In some instances, Congress imposed cooling-off periods initially, but subsequently acted to impose an agreement or binding arbitration. Those 5 Acts imposing initial cooling-off periods are not included in this total.

⁹ Letter from Calvin L. Scovel III, Inspector General, U.S. Department of Transportation, to Hon. Patty Murray, Chairman, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Senate Committee on Appropriations (June 17, 2008).

September 28, 1994, the same day the PEB's report was due, Congress introduced legislation to impose a four-month cooling-off period until February 28, 1995. On October 19, 1994, President Clinton signed Public Law No. 103-380, which imposed the extended cooling-off period. No further Congressional action was required because the parties settled.

Prior to the 1994 action, the previous Congressional action took place in 1992, while the country was going through a recession. At the time, PEBs were established for three separate rail labor disputes, but no resolution was reached during the post-PEB report cooling-off period.¹⁰ When the cooling-off period ran out on June 24, 1992, the International Association of Machinists struck against CSX. As a means of forcing Congressional action, Conrail and the other freight railroads imposed a lockout against all labor, effectively shutting down all railroad operations for two days.

On June 26, 1992, the work stoppage ended when Congress passed Public Law 102-306 imposing binding arbitration in all three separate rail labor disputes. The law imposed the labor conditions in effect before the work stoppage for each dispute while arbitration took place and established a binding arbitration process to resolve the disputes. Two of the disputes ended with voluntary agreements (Conrail and Amtrak), while the third was resolved through arbitration (CSX).

¹⁰ The three disputes were between: (1) CSX and the International Association of Machinists; (2) Conrail and the Brotherhood of Maintenance of Way Employees; and (3) Amtrak and 10 unions.