

The Railway Labor Act and Congressional Action

November 18, 2022

The Railway Labor Act (RLA; [45 U.S.C. §§ 151 et seq.](#)) governs disputes between railway carriers and labor unions. Since 2019, negotiations between [labor unions representing railway employees](#) and the National Carriers' Conference Committee, which represents the railway carriers, over employee pay, hours of service, and benefits have been ongoing. In September 2022, following recommendations by the Presidential Emergency Board, the parties reached a tentative agreement, subject to ratification by union members. The members of at least three unions have since voted to reject their contracts with the carriers, jeopardizing the agreement. At present, these unions have announced that their cooling-off period, when they maintain the status quo, is to end on December 9, 2022. A railway strike is possible if the parties do not reach an agreement by the end of this period.

In light of the recent developments in negotiations, Congress may consider various options, including extending the cooling-off period 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 legislative action in resolving past disputes, examines the current dispute, and discusses considerations for Congress.

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, as well as establishes a [National Railroad Adjustment Board \(NRAB\)](#) and a [National Mediation Board \(NMB\)](#). The NRAB, 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.

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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 “prevent[ing] 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 strikes, lockouts, and changes in terms and conditions of employment.

Current Dispute and Presidential Emergency Board Recommendations

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 threatens 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
- 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 it 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 current dispute negotiations, please see CRS Insight IN11966, *Rail Labor Dispute Could Result in Work Stoppages*, by Ben Goldman.

To date, at least [seven of the twelve unions](#) involved in the dispute have voted to ratify new contracts. On October 10, 2022, members of the Brotherhood of Maintenance of Way Employees Division (BMWED), the third largest railway union, rejected ratification of a new five-year contract. On October 23, 2022, the members of a second union, the Brotherhood of Railroad Signalmen (BRS), announced that its members had rejected ratification. The unions initially stated that the current cooling-off period would expire on

[November 19, 2022](#). On November 9, 2022 the [BMWED announced](#) it would also extend its cooling-off period until December 9, 2022 to “provide an opportunity to increasingly educate Members of Congress” and synchronize deadlines with BRS and labor unions that have not yet voted. [On November 14, 2022](#), a third union, the International Brotherhood of Boilermakers (IBB), announced its members had rejected ratification.

Considerations for Congress

[Article I, Section 8, clause 3 of the U.S. Constitution](#) states that the Congress shall have power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]” In 1917, the Supreme Court confirmed that Congress has the authority 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, and given the current circumstances, Congress may consider legislation to extend the current cooling-off period, implement the terms of an unratified agreement or the recommendations of Presidential Emergency Board No. 250, or impose other conditions on the parties. 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](#).

On September 12, 2022, Senator Richard Burr introduced a joint resolution to resolve the current rail labor dispute. S.J.Res. 61 would impose Presidential Emergency Board No. 250’s recommendations with respect to any dispute that was not resolved by mutual, written agreement by September 16, 2022. Burr [described](#) the Presidential Emergency Board’s recommendations as “a fair and appropriate solution to a years-long negotiation process,” and argued that a rail strike would be “catastrophic for America’s transportation system and our already-stressed supply chain.” Representative Sam Graves introduced an identical measure, H. J. Res. 95, in the House on September 14, 2022. Both bills await further consideration.

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