

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is overlaid on the graphic.

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*The Railway Labor Act: Dispute Resolution Procedures and  
Congressional Authority to Intervene*

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# CRS Report for Congress

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## The Railway Labor Act: Dispute Resolution Procedures and Congressional Authority to Intervene

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### Summary

Labor disputes in the railway and airline industries are covered by the Railway Labor Act.<sup>1</sup> The Act sets forth procedures for negotiation, mediation, and arbitration. If the dispute is not settled through these procedures and the National Mediation Board 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 Board shall notify the President of the threat, at which point the President may appoint an Emergency Board to investigate the dispute and report back to him.<sup>2</sup> The Emergency Board’s recommendations are not binding on the parties, and either party may reject them triggering a final 30-day cooling-off period prior to a strike.<sup>3</sup> However, Congress may enact legislation requiring the parties to submit the dispute to another emergency board; to submit to final and binding arbitration; or to accept the emergency board’s recommendations.<sup>4</sup> This report provides an overview of the dispute resolution procedures under the Railway Labor Act, including the President’s authority to appoint an Emergency Board; and discusses Congress’ authority to intervene in railway and airline strikes.

### Dispute Resolution Procedures Under the Railway Labor Act

The Railway Labor Act was enacted in an effort “to avoid any interruption to commerce or to the operation of any carrier engaged therein.”<sup>5</sup> The Act sets forth

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<sup>1</sup> 45 U.S.C. 151 *et seq.*

<sup>2</sup> 45 U.S.C. 160.

<sup>3</sup> The Railway Labor Act 224 (Douglas L. Leslie *et. al.* eds., 1995).

<sup>4</sup> *Id.*

<sup>5</sup> 45 U.S.C. 151a.

mandatory procedures for the resolution of major disputes consisting of conference, mediation, nonmandatory arbitration, and intervention by Presidential Emergency Boards.<sup>6</sup>

Under the Railway Labor Act, the formal bargaining process begins when one party serves upon the other a written notice of proposed changes in agreements affecting rates of pay, rules, or working conditions.<sup>7</sup> Such notice must be given 30 days in advance of the effective date of the proposed change, and within ten days of the receipt of notice, the parties must agree to a time and place for the initial conference between the representatives of the interested parties.<sup>8</sup> The first conference must take place within 30 days of the notice, unless the parties agree otherwise.<sup>9</sup> Throughout the dispute resolution process, the parties are required to maintain the *status quo*.<sup>10</sup>

During the course of the negotiation, either party may request the services of the National Mediation Board (NMB), or the Board “may proffer its services in case any labor emergency is found by it to exist at any time.”<sup>11</sup> The Board “shall use its best efforts, by mediation, to bring them [the parties] to agreement.”<sup>12</sup> Mediation has been described as “a catalytic process through which the disputants, with the aid of an impartial mediator, seek ways to break their bargaining impasse by identifying and isolating a common ground for agreement and settlement.”<sup>13</sup> The NMB has great flexibility in structuring the mediation process, which has been interpreted as giving the Board the authority to do anything “that can fairly be said to be designed to settle a dispute without a strike and does not independently offend other laws.”<sup>14</sup>

If the NMB is not successful in bringing about an amicable settlement through mediation, the Board is obligated to “induce the parties to submit their controversy to arbitration.”<sup>15</sup> However, the parties are not required to enter into arbitration.<sup>16</sup> If either party declines, the Board must notify both parties that its efforts at mediation have failed and for 30 days following such notice “no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.”<sup>17</sup> If the parties accept the proffer of arbitration, the agreement to arbitrate must

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<sup>6</sup> The Railway Labor Act 8. Major disputes are disputes over the formation or modification of collective bargaining agreements. *Id* at 2.

<sup>7</sup> 45 U.S.C. 156.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* See also 45 U.S.C. 155 First; 45 U.S.C. 160.

<sup>11</sup> 45 U.S.C. 155 First.

<sup>12</sup> *Id.*

<sup>13</sup> The Railway Labor Act 215.

<sup>14</sup> *Id.*, quoting *Machinists v. National Mediation Board*, 930 F.2d 45, 48 (U.S. App. DC 1991).

<sup>15</sup> 45 U.S.C. 155 First.

<sup>16</sup> 45 U.S.C. 157 First.

<sup>17</sup> 45 U.S.C. 155 First.

be in writing and must meet the requirements imposed by the Act.<sup>18</sup> Once an agreement is entered into, it may not be revoked by either party, unless both parties agree to revoke and cancel the agreement to arbitrate.<sup>19</sup>

Finally, if efforts to resolve the dispute through mediation and arbitration fail, and the NMB determines that the dispute “threatens to substantially interrupt commerce to a degree such as to deprive any section of the country of essential transportation service,” the Board shall notify the President, who in turn may appoint an Emergency Board to investigate and report on the dispute.<sup>20</sup> The Railway Labor Act is silent as to how the National Mediation Board is to determine what constitutes a substantial threat to commerce, though in the past the NMB has considered “the effect of a strike or shutdown on the state of the economy as a whole; the immediate economic impact on transportation industries, shippers, and travelers; or the effects on military logistics and transportation requirements.”<sup>21</sup> The determination whether any given dispute threatens to deprive any section of the country of essential transportation service is also open to interpretation, and Presidential Emergency Boards have been created under a variety of circumstances.<sup>22</sup>

Congress amended the Railway Labor Act in 1981 to add special provisions for the resolution of labor disputes between a publicly funded and publicly operated carrier providing commuter service and its employees.<sup>23</sup> Included in these provisions are an extended mediation and negotiation timetable, as well as Presidential authority to appoint a second Emergency Board if no settlement is reached within 120 days of the creation of the first Emergency Board.<sup>24</sup>

## Presidential Emergency Boards

Upon notification from the National Mediation Board that the dispute “threatens to substantially interrupt commerce to a degree such as to deprive any section of the country of essential transportation service,” the President has the discretion to appoint an Emergency Board to investigate and report on the dispute.<sup>25</sup> The decision whether to create an Emergency Board rests entirely with the President, and the Railway Labor Act is silent as to what measures may be taken should the President refuse to appoint an

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<sup>18</sup> 45 U.S.C. 158.

<sup>19</sup> *Id.*

<sup>20</sup> 45 U.S.C. 160.

<sup>21</sup> The Railway Labor Act 221.

<sup>22</sup> The Railway Labor Act 220. For a survey of Presidential Emergency Boards created between 1980 and 1998 see CRS Report 97-1056, *Rail and Air Carrier Labor Relations: Presidential and Congressional Intervention 1980 Through 1989*, by Stephen J. Thompson, and CRS Report 97-1018, *Rail and Air Carrier Labor Relations: Presidential and Congressional Intervention Since 1990*, by Stephen J. Thompson.

<sup>23</sup> Northeast Rail Service Act of 1981, Pub. L. 97-35 (Aug. 13, 1981), codified at 45 U.S.C. 159a.

<sup>24</sup> 45 U.S.C. 159a(c)(1); 45 U.S.C. 159a(e).

<sup>25</sup> *Id.*

Emergency Board.<sup>26</sup> If the President chooses to exercise his discretion to appoint an Emergency Board, the Board may be composed of any number of persons the President desires, provided that no member of the board has a pecuniary or other interest in any organization of employees or any carrier.<sup>27</sup>

The Presidential Emergency Board investigates the facts of the dispute and reports to the President within 30 days from the date of its creation.<sup>28</sup> The Railway Labor Act does not specify what must be done during the investigation, though the investigation “generally consists of hearings in which the affected parties testify under oath, along with briefs and submissions.”<sup>29</sup> The Emergency Board’s report usually contains recommendations for settlement of the dispute, but the Board’s recommendations are not binding on the parties.<sup>30</sup> During the initial 30 day period and for 30 days after the report has been issued, “no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.”<sup>31</sup> During the final 30-day cooling-off period, the National Mediation Board continues to mediate the dispute. If no agreement is reached by the end of the 30-day period, the parties may resort to self-help.

## Congressional Intervention in Railway and Airline Labor Disputes

Congress’ authority to intervene in labor disputes that threaten to interrupt interstate commerce was confirmed prior to the enactment of the Railway Labor Act. The Supreme Court in *Wilson v. New, et. al., Receivers of the Missouri, Oklahoma & Gulf Railway Company*, decided in 1917, held that labor disputes in the railway industry are within “the legislative power of Congress to regulate commerce.”<sup>32</sup> In *Wilson*, railway employers challenged an act of Congress establishing an eight-hour work day for employees of carriers engaged in interstate and foreign commerce and prohibiting a decrease in pay for those employees.<sup>33</sup> The Court found that “if acts which, if done, would interrupt, if not destroy, interstate commerce may be by anticipation legislatively prevented, by the same token the power to regulate may be exercised to guard against the cessation of interstate commerce threatened by a failure of employers and employees to agree as to the standard of wages, such standard being an essential prerequisite to the uninterrupted flow of interstate commerce.”<sup>34</sup>

In *Wilson*, the Court also addressed the question of whether Congress’ authority to intervene was limited by the private rights of the carriers or their employees. Considering that the carriers and their employees were engaged in interstate commerce, the Court held

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<sup>26</sup> The Railway Labor Act 221.

<sup>27</sup> 45 U.S.C. 160.

<sup>28</sup> *Id.*

<sup>29</sup> The Railway Labor Act 223.

<sup>30</sup> *Id* at 224.

<sup>31</sup> 45 U.S.C. 160.

<sup>32</sup> 243 U.S. 332, 345 (1917).

<sup>33</sup> Act of September 3, 5, 1916, 39 Stat. 721, c. 436.

<sup>34</sup> 243 U.S. at 348.

that “the obligations arising from the public interest and of the work in which they are engaged and the degree of regulation which may be lawfully exerted by Congress as to that business, it must follow that the exercise of the lawful governmental right is controlling.”<sup>35</sup> The Court also rejected the carriers’ claim that the congressional intervention violated both the Equal Protection and Due Process clauses of the Constitution.<sup>36</sup>

On several occasions, Congress has intervened in labor disputes by enacting legislation to delay or prohibit railway and airline strikes. For example, on August 21, 1986, Congress enacted Public Law 99-385, entitled 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.”<sup>37</sup> This legislation extended the final 30 day cooling-off period imposed under the Railway Labor Act by an additional 60 days to allow more time for the parties to negotiate.<sup>38</sup> In 1992, Congress enacted Public Law 102-306, entitled a “Joint Resolution to provide for a settlement of the railroad labor-management dispute between certain railroads and certain of their employees,” which required Amtrak and Conrail to enter into arbitration with their employees in an effort to resolve various labor disputes.<sup>39</sup> Additionally, Congress has enacted legislation requiring the parties to submit the dispute to another emergency board,<sup>40</sup> or to accept the Emergency Board’s recommendations.<sup>41</sup> Judicial challenges to this legislation have been unsuccessful, with courts generally affirming Congress’ authority to enact such legislation as an exercise of its commerce power.<sup>42</sup>

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<sup>35</sup> *Id* at 353.

<sup>36</sup> *Id* at 354.

<sup>37</sup> *See also* Pub. L. 100-380 (Aug. 4, 1988).

<sup>38</sup> Pub. L. 99-385, Sec. 1.

<sup>39</sup> Pub. L. 102-306 (June 26, 1992). *See also* Pub. L. 100-429 (Sept. 9, 1988).

<sup>40</sup> *See e.g.* Pub. L. 91-541 (December 10, 1970); Pub. L. 102-29 (April 18, 1991).

<sup>41</sup> *See e.g.* Pub. L. 97-262 (Sept. 22, 1982); Pub. L. 99-431 (Sept. 30, 1986).

<sup>42</sup> *See e.g.* *Maine Central Railroad Company v. Brotherhood of Maintenance Way Employees*, 835 F.2d 386 (1<sup>st</sup> Cir. 1987); *Delaware and Hudson Railway Company v. United Transportation Union*, 450 F.2d 603 (DC Cir. 1971).