AN OVERVIEW OF THE RAILWAY LABOR ACT'S NEGOTIATION PROCEDURES

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President Reagan's signing, in August 1988, of a bill imposing an additional cooling-off period against a threatened strike against the Chicago & North Western Railway, marks another attempt by Congress to legislate an end to a specific railroad strike. There have been more than a half-dozen of these laws in the last quarter century. Each time, Congress resolves that it will try this quick fix just this once. Each time, it once more shows that this nation has a low tolerance for railroad strikes. What is strange is that this prohibition on strikes has been limited to railroads alone. The objectives of this report are to provide a general overview of the institutional factors affecting rail labor negotiations and identify issues central to rail labor negotiations in 1988.

RAILWAY LABOR ACT

Railroads and airlines are unique in being covered by their own labor-relations statute, the Railway Labor Act. This law, the oldest of our national labor laws, relates to common-carrier railroad and commercial airline employees. Its purposes are to:

1. avoid interruption to commerce,
2. provide for the freedom of association of employees (the right to join a labor union), and
3. provide for the prompt and orderly settlement of "major" and "minor" disputes.

Major disputes involve contractual issues such as rates of pay, work rules, or working conditions. Minor disputes are grievances arising from the interpretation of existing contract provisions.

Different procedures apply for major and minor disputes. The law does not in itself settle major disputes or contract issues. Rather, "its underlying philosophy is almost total reliance upon collective bargaining for major dispute settlement" (Wilner). In other words, the parties are expected to resolve major contractual issues through collective bargaining, posturing, and strikes or lockouts. The procedures of the Railway Labor Act are invoked only when the parties fail to reach an agreement. Minor disputes are not strikeable. They are settled by the National Railroad Adjustment Board.

The agency administering the Railway Labor Act is the National Mediation Board, an independent agency appointed by the President. The Board has jurisdiction to supervise the election of the bargaining representative (usually a union) of the employees and to oversee the bargaining process. If requested, the Board also helps the parties mediate disputes. Unlike other national labor agencies, the Board does not police a list of unfair labor practices.

The Railway Labor Act has not been substantially changed since 1934. However, there have been changes in bargaining between the unions and the carriers. Notable has been the abandonment of nationwide bargaining in favor of carrier-by-carrier settlements. The demise of nationwide agreements has

reduced the threat of nationwide strikes. Yet, there still is a danger that a strike on one carrier could spread to other railroads which interchange with the struck road since there is no provision in the Railway Labor Act that prohibits secondary boycotts. Thus, if a strike occurs between one railroad and its unions, labor can also legally strike other carriers.[1]

THE RAIL LABOR NEGOTIATING PROCESS

The process which has been followed in railroad collective bargaining has been so formalized that it bears little resemblance to dynamic bargaining. Unlike other labor contracts, rail contracts usually have no expiration date. They continue in effect until someone is dissatisfied and wants to change them. As previously mentioned, labor and railroads are expected to negotiate major contractual issues.

If the parties cannot negotiate a settlement, the party seeking to change the existing contract may post a "Section 6 notice". The Section 6 notice informs the other party in writing of the desired changes in the labor contract. The filing of a Section 6 notice invokes the procedures of the Railway Labor Act. The process typically involves several steps before an agreement is reached between the carrier and labor (see Figure 1).

The Section 6 notice filed by railroads or unions must give the other party at least 30 days written notice of an intended change in the labor contracts. The parties must agree on a place

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[1]Under the National Labor Relations Act, secondary boycotts are illegal for most other industries.

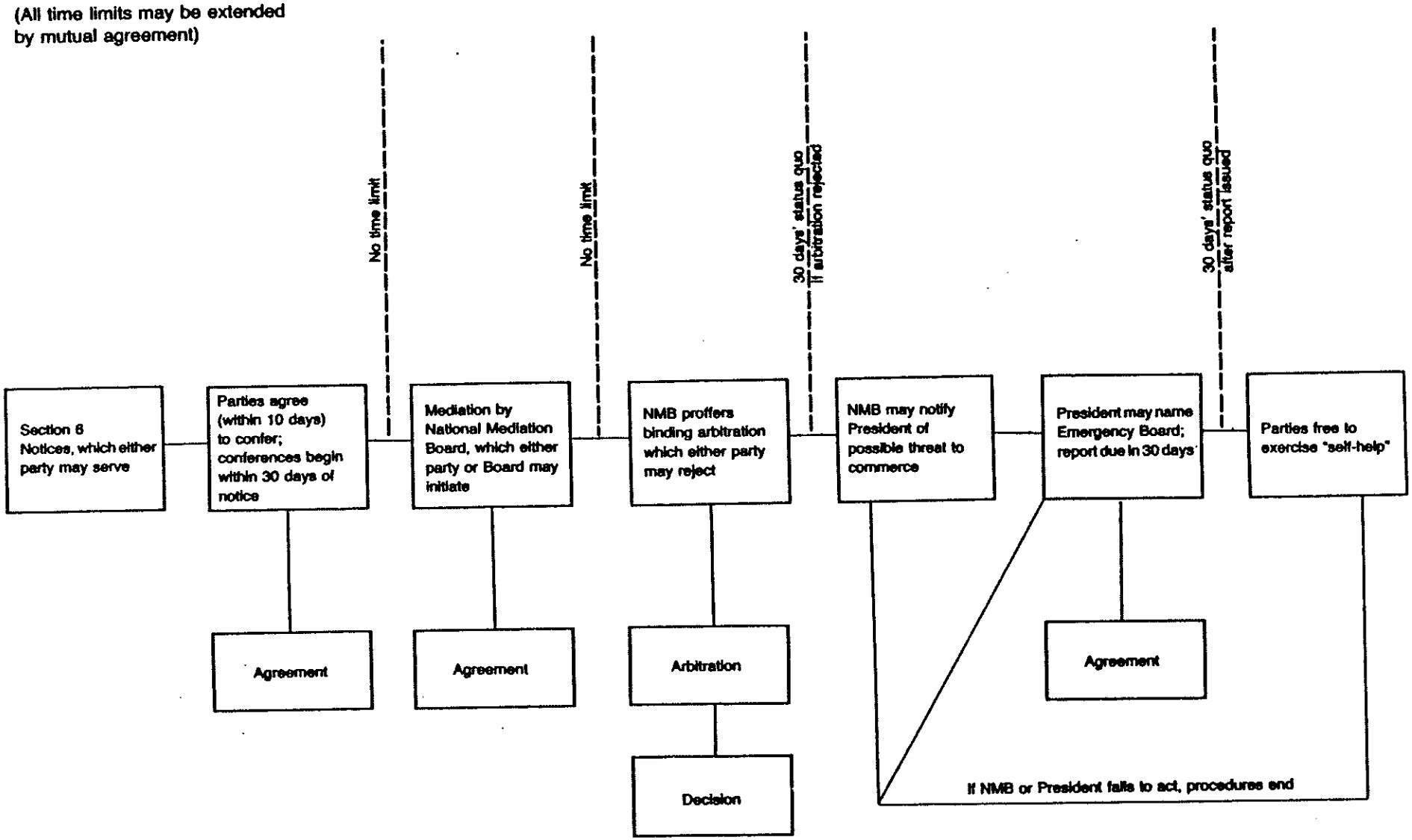

FIGURE 1. Rail Labor Negotiation Process.

SOURCE: Wilner, Frank N. "The Railway Labor Act: Why, What, and For How Much Longer". Transportation Practitioners Journal, 55(3):280.

for the conference within 10 days of receipt of the Section 6 notice, and the conference must begin within the 30 days provided for in the notice. Neither party may change the rules or pay during this period.

There is no time limit as to how long the parties may negotiate. Either party may notify the National Mediation Board (NMB) that they are unable to settle the dispute. In that case, the NMB will try to either mediate the dispute or recommend arbitration. No time limit exists for mediation. If the efforts of a mediator fail to produce an agreement, the final act of the NMB is to proffer arbitration. Generally, arbitration is not accepted. If it is, of course, the matter is ended there. Neither party may change the work rules until 10 days after the NMB has concluded its efforts.

Theoretically, the bargaining attempts would end there and the impasse could lead to a strike. However, the Railway Labor Act provides that the NMB shall notify the President of the United States if it determines that a strike or lockout would "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Almost every strike will deny some part of the country some essential services if the railroad is at all viable. Thus, the emergency provisions of the Railway Labor Act can be triggered by a relatively small railroad dispute.[2]

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[2]The Taft-Hartley Act requires industrial strikes to be enjoined only if the Attorney General is able to make a convincing case that a national emergency would result.

The wording of the statute is so broad that in most cases, the NMB does notify the President. This sets another moratorium ticking. When the emergency provisions (Section 10) of the Act are invoked, the President is asked to create an Emergency Board to look into the dispute. The Emergency Board consists of knowledgeable, neutral individuals. Neither arbitrators nor mediators, the Emergency Board is given the powers of fact-finders. The Emergency Board is to investigate the dispute and, within 30 days, report to the President on the potential effects of the threatened strike and the underlying issues. The parties must maintain the status quo during the 30 days that the Emergency Board has to make its report.

Since the President could also read about the strike and its causes in the daily newspapers, it is a fair assumption that one of the purposes of this section is to extend the cooling off period for another 30 days, during which the parties may be able to work out the issues themselves. Meanwhile, the Emergency Board is supposed to investigate and possibly come up with recommendations. If the Emergency Board's recommendations are ignored and no agreement is made, the parties are free to exercise "self-help". This could include strikes, lockouts, or imposing new rules on the work force.

Oftentimes, an additional ad hoc stage is introduced to the negotiating process. Until recently, unions and railroads bargained on a nationwide basis. That meant that a strike on one railroad would eventually be a strike against all. Reluctant to

see this happen, Congress has enacted back-to-work legislation on a half-dozen occasions since 1963. The first of these peacetime arbitration laws was enacted to end the marathon dispute over firemen on diesel locomotives. Ever since, when faced with a nationwide railroad shutdown, Congress has opted for a special ad hoc law which could either (1) appoint a board of arbitration to decide the dispute, (2) impose a settlement that other unions had agreed to upon an uncompromising union, or (3) come up with a compromise wage package of its own.

The August 1988 resolution imposing a moratorium on the Chicago & North Western strike differs from the previous far-reaching statutory settlements inasmuch as it merely continues the status quo ante (i.e., retains the full crews on the North Western while the parties can decide on a method for resolving their impasse, for another 36 days). Upon expiration of the time deadline on September 9, 1988, it is uncertain whether Congress will impose an agreement or if the parties will be allowed to exercise self-help.

RAIL LABOR ISSUES

Most Class I railroads and rail labor unions began to negotiate new labor agreements in July 1988. The central issue for negotiations is clear: increased productivity versus job protection (Murphy). In addition to individual carrier bargaining, the 1988 round of negotiations differs from negotiations over the past 25 years in one important way. Collective bargaining has generally failed to resolve important issues. As a

result, rail management seems more determined to invoke the procedures of the Railway Labor Act by issuing Section 6 notices than at any time in recent memory.

Railroads contend that the industry's ability to compete depends upon productivity increases. In 1986, the average hourly compensation for truck drivers was 9.95 dollars per hour compared to 24.66 dollars per hour for non-management rail employees (Murphy). Rail management seeks to resolve three issues: (1) the crew consist (crew size) agreement, (2) the basis of pay, and (3) work restrictions.

First, while some trains operate with three-man crews, many continue to operate with four- or even five-man crews. Carriers maintain that in many cases the crew consist can safely be reduced to an engineer, a conductor and a single brakeman. The United Transportation Union (UTU) counters that an engineer, a conductor and at least two brakemen are needed for safety reasons. Perhaps more importantly, the carriers believe that decisions to set crew size are the prerogative of management while the UTU insists that crew consist should be resolved in collective bargaining (see McCabe).

Second, the basis of pay for rail labor is extremely complex to determine. Class I train and engine crews are paid on a dual basis of distance traveled and length of time on duty. The standard work day is eight hours or a run of 108 miles. This sets a minimum flat payment for all runs, even those requiring less than eight hours or 108 miles. Overtime is also paid on the

basis of distance and time. The calculation of pay is complicated by work rules leading to additional compensation for a number of factors unrelated to work. "This includes payment for items such as deadheading, terminal delays, and held-away-from-home terminal." (Tolliver and Dooley).

Carriers would prefer removing the dual classification of pay, basing pay solely on time. The separation of freight from passenger service has enabled Amtrak to be the first railroad to revise its labor agreements to pay its employees on straight time, rather than on some combination of miles and hours. Similar agreements have been signed between railway unions and the state authorities that now operate commuter service.

Third, a number of obscure work rules remain in effect. Management's goal is to enhance productivity by liberalizing work rules and removing craft distinctions. According to Helen Witt, Chairman of the NMB, the "desire on the part of rail unions to perpetuate distinctions and preserve work traditionally done in the past creates serious difficulties in bargaining" (Murphy). Thus, revised work rules will be difficult to achieve.

Rail labor's primary goal in the current round of labor negotiations is to protect workers from further massive work force reductions. The number of rail employees has fallen from 482,789 in 1979 to 275,817 in 1986 (Assn. of American Railroads). An additional 40,000 jobs may be lost if rail management achieves its goals. Labor is most concerned with provisions allowing management to contract out work and with short line sales which

provide no employee protection.

Labor is determined to limit Class I railroads' spinoffs of large segments of its track to regional connections. Since 1980, over 190 short lines operating over 17,500 miles of track have been created (Murphy). The Burlington Northern and the Illinois Central have both used this approach, creating new regional railroads which originate traffic, before turning it over to its connecting parent. Most of these new railroads, such as the Red River Valley & Western in North Dakota, have either no unions or a union agreement more favorable than that of the Class I carrier.

Less straightforward has been the attempt of some railroads, such as Guilford Transportation, to lease their lines to a paper or short line subsidiary to operate the railroad under a much more lenient labor agreement. Recently, the Guilford lease of its lines to Springfield Terminal has been held by a federal court to be an evasion of its duty to bargain under the Railway Labor Act. So far, Burlington Northern's plan to turn over new Seattle-Minneapolis intermodal traffic to its nonoperating Winona Bridge Co. subsidiary has also been enjoined by federal courts.

CONCLUSION

In a day when all forms of transportation have been substantially deregulated, transport labor has been on the defensive and has engaged in concession bargaining. Nevertheless, it appears that the rail industry is gearing up for a massive cost-containment program involving rail labor, similar to that which we have

seen in the airline industry during the last decade. Given their past history, railroads and their labor unions will most likely fail to negotiate new agreements on their own.[3] As a result, railroads will probably issue Section 6 notices, thereby invoking the procedures of the Railway Labor Act. What remains uncertain is whether Congress will allow for rail strikes or if it will once again intervene in the bargaining process by imposing another statutory settlement.

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[3]This pessimistic prediction may not extend to smaller Class I or unionized regional and short line railroads. The Grand Trunk Western (GTW) and two units of the United Transportation Union recently reached an agreement allowing the GTW greater operational flexibility in the makeup and use of train crews. This marks the "first time in recent memory that an agreement has been worked out without legislation, a work stoppage, or a bankruptcy." (Grand Trunk ...)

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