Labor & Employment Law Daily Wrap Up, NAA CORNER—The Railway Labor Act at 100, (Aug 25, 2026)

By Thomas A. Pontolillo; James Cooper, NAA Member (editor)

The panel was generally upbeat about what lies ahead for the Railway Labor Act in its second century.

As the labor and employment arbitration community arrived in Chicago on May 20 for the Academy's 79th Annual Meeting & Education Conference, the Railway Labor Act ("RLA" or "Act") began its 101st year quietly and without fanfare. Two days later, the Academy marked the Act's Centennial Anniversary with a Plenary Session on the RLA's survival and evolution, including what challenges lie ahead for this unique legislation.

The panel was moderated by Academy member, long-time arbitrator and mediator Ira Jaffe, who has served as a member of eight RLA Presidential Emergency Boards, five of which he chaired. Union-side panelists were 47-year rail labor attorney Rich Edelman, long-time Air Line Pilots Association (ALPA) Senior Advisor and Chief Negotiator Arthur Luby, and Transportation Communications Union / International Association of Machinists (TCU/IAM) Executive Coordinator Allison Parker, who serves as Labor Chair of the National Railroad Adjustment Board (NRAB). Management-side panelists were aviation labor attorney Aparna Joshi, leading transportation industry lawyer and nationally known RLA authority Don Munro, and CSX Transportation Labor Relations Vice President Jeff Wall, who has worked in the airline and rail industries for decades.

Historical backdrop. Mr. Edelman summarized the historical backdrop preceding the RLA, describing over half a century of rail industry rife with scabs, Pinkertons, yellow-dog contracts, and company unions. Self-organization on a craft basis by the industry's workers led to titanic clashes. Among the most serious, the Great Strike of 1877 shut down operations across huge portions of the country's rail industry, which – coupled with widespread civil unrest – led to death and destruction of property on a previously unseen scale, and the deployment of federal troops to quell the uprisings.

The 1894 Pullman Company strike and boycott resulted in the first application of the injunction as a means to halt labor disruption. Increasingly stringent federal regulation of the industry during the Progressive Era, along with federal takeover of the railroads during World War I, significantly calmed the waters. However, when the railroads were restored to private operation via the Transportation Act of 1920, the rail industry was soon faced with the 1922 Shopmen's Strike, against which National Guard troops were deployed in numerous states. In the aftermath of the Shopmen's Strike, Edelman explained, cooler heads among labor and management began discussing a federal legislative response to the repeated cycles of unrest. The product of these discussions was submitted to the Congress, which enacted the RLA as submitted, with a legislative history comprised of the testimony of the parties' counsel.

Duty. The Act imposed a duty on "all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." This duty would come to define good faith bargaining.

Adjustment boards. The RLA also mandated the creation of adjustment boards to resolve grievances and disputes over interpretation of agreements, as well as a process for bargaining to change rates of pay, rules, and working conditions, including maintenance of the status quo throughout the entirety of the period the dispute was subject to the Act. A five-member Board of Mediation was created to assist in the resolution of all types of disputes between carriers and their employees, along with a detailed voluntarily arbitration process to handle disputes that were not successfully mediated. This process also provided for judicial enforcement of arbitration awards.

Finally, the President of the United States was empowered to create a board – in his discretion – to investigate and report respecting any unadjusted dispute that, in the judgment of the Board of Mediation, threatened substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service. Only after the exhaustion of all these procedures could a party to a dispute exercise its right to self-help (i.e., a lockout or promulgation of changes by a rail line or "carrier," the industrial term for an employer, or a strike by its employees). However, even then, Congress retained the right to pass legislation to resolve a dispute pursuant to its power to regulate commerce as set forth in Article I, Section 8, Clause 3 of the Constitution.

Arthur Luby noted that ALPA had been founded in 1931 for the express purpose of securing RLA coverage for pilots working in the infant aviation industry. The airlines' primary business at the time was handling mail for the federal government. When the National Industrial Recovery Act was passed in 1933, the industry was initially placed under the National Recovery Administration. Decision 83 created a minimum pilot pay scale when transporting mail. In 1936 the RLA was amended by the addition of Title II, which extended coverage of the Act to carriers by air.

RLA vs. NLRA. As Aparna Joshi detailed, there are vast differences between the Railway Labor Act and the National Labor Relations Act. Employee representation is system-wide under the RLA (which poses significant organizing challenges) rather than on a site/plant basis, as is the case under the NLRA. Arbitration of disputes over the interpretation or application of a collective bargaining agreement is mandatory under the RLA, but is voluntary (i.e., CBA-based) under the NLRA. The NLRB is charged with statutory enforcement, and carrying out federal labor policy. The NMB's primary duties are to mediate disputes between the parties, investigate, and make determinations in representation disputes; there is no such thing as an Unfair Labor Practice under the RLA.

There also are significantly different rights to strike and bargaining paths under the two schemes. Under the NLRA the duration of CBAs is fixed, but under the RLA a CBA never expires; it is merely extended, amended, or succeeded. And the RLA was expressly exempted from coverage of the Taft-Hartley Act, meaning that there is no secondary boycott prohibition among rail and air carriers, nor can any state enact "Right-to-Work" laws that purport to cover employees subject to the RLA.

NMB. A 1934 amendment replaced the Board of Mediation with a three-member National Mediation Board (NMB). In addition to the Board of Mediation duties it inherited, the NMB also was granted statutory authority to make bargaining unit determinations and investigate and resolve representation disputes. All disputes over the application or interpretation of collective bargaining agreements – "minor disputes" in RLA parlance – became subject to mandatory, final and binding arbitration (except insofar as they contained a money award), before the newly-created National Railroad Adjustment Board ("NRAB").

Unlike arbitration under the NLRA and in the public sector, railroad industry arbitration is appellate in nature, and consideration is limited to the record developed during the investigation before the Union submitted the grievance for arbitration. In discipline cases, a hearing or investigation is conducted at the first step of the grievance procedure, and the record of this hearing (transcript and exhibits) is submitted to the arbitrator with no in person testimony permitted. In exchange for giving up the right to strike to enforce its collective bargaining agreements, the railroad labor unions secured NMB administration of the NRAB, including maintenance of rosters of arbitrators (called "referees") and federal funding of the costs of the non-partisan aspects of the arbitration system, including referee pay. As Allison Parker explained, the NRAB is comprised of an equal number of partisan representatives apportioned among four divisions.

PLBs. A 1966 amendment addressed a huge backlog in arbitration cases by placing agreement-based arbitration tribunals known as Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs) on a similar legal footing as the NRAB. As Parker noted, SBAs originated in the late 1940s and were prominent where larger or more stable bargaining relationships existed, because they provide a standing, property-specific tribunal. PLBs are generally used to address case backlogs or to expedite resolution. Today, Parker explained, the NMB not only administers and facilitates the arbitration process, the NMB also oversees a Grievance Mediation program and maintains a publicly accessible online compendium of awards called the Knowledge Store.

Section 9A. Section 9A (45 U.S.C. § 159a) was added in 1981, in preparation for the shedding of commuter rail service by the legacy freight rail carriers that had provided such services for generations. Section 9A created a special procedure for the handling of major disputes involving commuter rail carriers, which broadens the authority to trigger a Presidential Emergency Board ("PEB") to include all parties to the dispute, as well as the Governor of any State through which the service that is the subject of the dispute is operated. Section 9A also provides for a second PEB, whose duty is to select the most reasonable of the parties' final offers for settlement of the dispute and imposes a significant loss of existing benefits if the party whose offer is not selected engages in a work stoppage against the public interest.

Jaffe focused the panel on the RLA's impasse procedures, noting that the NMB's power to hold parties in mediation is judicially unreviewable and pointing to a dispute between Amtrak and nine of its unions, which began in late 1999 and did not reach PEB 242 until December 2007. As Jaffe described, the "slow boat to China" pace of NMB mediation becomes "warp speed" before a PEB. Edelman and Munro shared their perspectives on the most recent national freight dispute – before PEB 250, chaired by Jaffe – which was a perfect storm.

The bargaining was between a coalition of 37 rail carriers and a coalition comprised of all 13 rail unions. There were many new faces on both sides of the table, many of whom had not previously bargained nationally. There were no settlements for the round in the freight railroad industry to which a party could point in support of its position. Bargaining was "super-contentious," in Edelman's words, and Munro noted that the parties were $9 billion apart when they appeared before PEB 250 and had to make their case in limited time with dozens of issues and witnesses. The process was "the most intense thing" Edelman had ever done and, ultimately, the PEB 250 record was comprised of over 100,000 pages. Success was neither easy nor fun, but ultimately, despite endless grousing from all sides of a round table, the forever dispute got resolved. The RLA worked.

Century of success. The panel uniformly shared the opinion that the RLA has enjoyed a century of success in achieving its primary objective – preventing interruptions in service that cause significant economic disruption. The PEB 250 process described above produced a 119-page Report and Recommendations that produced successful resolution of all parties' disputes without an interruption of service … albeit with assistance of Congressional legislation imposing the settlement on four unions whose members had failed to ratify the deal their leaders had negotiated. Luby noted that the last strike in the airline industry was a five-day walkout in June of 2010 by 430 pilots flying for Spirit Airlines, then the 15th largest airline. And the last work stoppage on a Class I freight carrier was more than 30 years ago, in 1992, when the IAM struck CSX Transportation for two days.

Flexible. The panelists also concurred that the RLA is flexible enough to accommodate significant differences in how labor relations are conducted in the two industries. The rail panelists noted that pattern bargaining is a weighty factor in that industry because of the number of craft unions that exist on each carrier. Joshi noted that pattern bargaining also occurs on airlines, but in a more limited fashion because of structural differences among the various types of carriers (e.g., legacy, low-cost, regional, etc.). Wall contrasted several differences between airline and rail: railroads trend towards multi-employer bargaining while airlines tend to bargain singly; each airline tends to have its own unique work rules and culture, while railroads have national health and welfare plans and numerous national work rules; in the airline industry, technology implementation has been at the forefront of airline bargaining in recent years, but not so much on railroads; and airline mergers tend to trigger elimination of duplicate CBAs, but that rarely happens on railroads.

The panel was generally upbeat about what lies ahead for the Railway Labor Act in its second century. Luby and Joshi noted with approval the recent NMB ruling that SpaceX is a carrier by air and, therefore, subject to the RLA. All panelists concurred that wages and benefits in the rail and airline industries are good to excellent, and there continues to be high union density in each industry. This certainly supports Munro's conclusion that the RLA is "the most successful federal law in American history."

About the author. Thomas A. Pontolillo is the President of the National Association of Railroad Referees and participates in the National Academy of Arbitrators' Ohio/Kentucky Salon. James Cooper has served as an arbitrator in many industries and at every level of government.

Companies: National Academy of Arbitrators

MainStory: Arbitration Labor FederalLegislation IndustryNewsTrends UnionsMembers