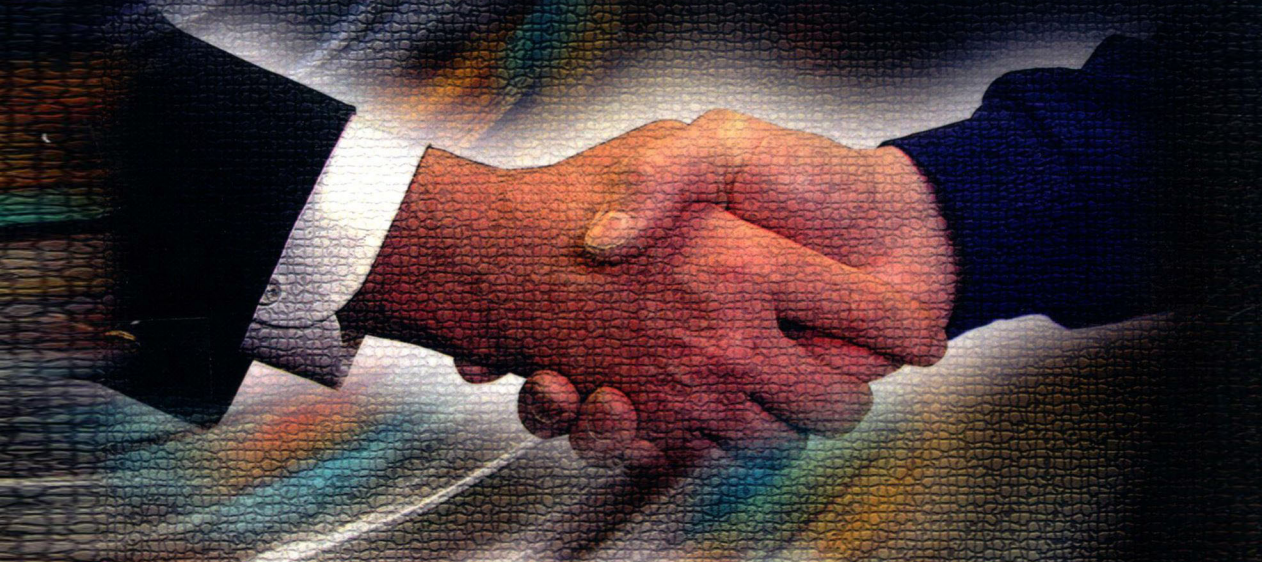
Laws and Legislation

LABOR RELATIONS

Major Laws and a Guide to the National Labor Relations Act



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NOVA

LAWS AND LEGISLATION

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MAJOR LAWS AND A GUIDE TO THE NATIONAL LABOR RELATIONS ACT

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PREFACE

Since 1926, Congress has enacted three major laws that govern labor-management relations for private sector and federal employees. An issue for Congress is the effect of these laws on employers, workers, and the nation's economy. The Bureau of Labor Statistics estimates that, nationwide, 9.2 million employees are represented by unions. In the 112th Congress alone, more than 30 bills have been introduced to amend federal labor relations statutes. The proposals range from making union recognition without a secret ballot election illegal to further modifying runoff election procedures. This legislative activity, and the significant number of employees affected by federal labor relations laws, illustrate the current relevance of labor relations issues to legislators and their constituents. The three major labor relations statutes in the U.S. are the Railway Labor Act, the National Labor Relations Act, and the Federal Service Labor-Management Relations Statute. Each law governs a distinct population of the U.S. workforce. This book provides a brief history and overview of the aims of each of these statutes and discusses key statutory provisions for each statute.

Chapter 1 - Since 1926, Congress has enacted three major laws that govern labor-management relations for private sector and federal employees. An issue for Congress is the effect of these laws on employers, workers, and the nation's economy. The Bureau of Labor Statistics estimates that, nationwide, 9.2 million employees are represented by unions. In the 112th Congress alone, more than 30 bills have been introduced to amend federal labor relations statutes. The proposals range from making union recognition without a secret ballot election illegal to further modifying runoff election procedures. This legislative activity, and the significant number of employees affected by federal labor relations laws, illustrate the current relevance of labor relations issues to legislators and their constituents.

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The Railway Labor Act (RLA) was enacted in 1926, and its coverage extends to railway and airline carriers, unions, and employees of the carriers. The RLA guarantees employees the right to organize and collectively bargain with their employers over conditions of work and protects them against unfair employer and union practices. It lays out specific procedures for selecting employee representatives and provides a dispute resolution system that aims to efficiently resolve labor disputes between parties, with an emphasis on mediation and arbitration. The RLA provides multiple processes for dispute resolution, depending on

whether the dispute is based on a collective bargaining issue or the application of an existing collective bargaining agreement.

The National Labor Relations Act (NLRA) was enacted in 1933. The NLRA's coverage extends to most other private sector businesses that are not covered by the RLA. Like the RLA, the NLRA guarantees employees the right to organize and collectively bargain over conditions of employment and protects them against unfair employer and union activities. However, its dispute resolution system differs from the RLA's in that it is arguably more adversarial in nature; many disputes are resolved through adjudication, rather than through mediation and arbitration.

The Federal Service Labor-Management Relations Statute (FSLMRS) was enacted in 1978, and its coverage extends to most federal employees. The basic framework of the FSLMRS is similar to that of the NLRA; however, employee rights are more restricted under the FSLMRS, given the unique nature of their employer, the federal government. Federal employees have the right to organize and collectively bargain, but they cannot bargain over wages or strike. Additionally, the President has the power to unilaterally exclude an agency or subdivision from coverage under the FSLMRS if he determines that its primary work concerns national security.

This report provides a brief history and overview of the aims of each of these statutes. It also discusses key statutory provisions for each statute.

Congress has enacted three major laws that govern labor-management relations. The first law, the Railway Labor Act (RLA), was enacted in 1926. The RLA applies to railway and airline carriers. In 1935, Congress passed the National Labor Relations Act (NLRA), which applies to private sector employers other than railroad and airline carriers, and in 1978, Congress enacted the Federal Service Labor-Management Relations Statute (FSLMRS), which applies to most federal employees. This report provides an overview of these three labor relations laws by giving a brief history of each law and discussing how each statute operates and is administered.

This report uses specific "terms of art" relevant to these acts. Appendix A defines these "terms of art." Appendix B provides a list of acronyms used in this report. Appendix C contains a table that compares provisions of all three laws.

Chapter 2 - The National Labor Relations Act of 1935 (NLRA) gives private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and other working conditions. An issue before Congress is whether to change the procedures under which a union is certified as the bargaining representative of a union chosen by a majority of workers.

Under current law, the National Labor Relations Board (NLRB) conducts a secret ballot election when a petition is filed requesting one. A petition can be filed by a union, worker, or employer. Workers or a union may request an election if at least 30% of workers have signed authorization cards (i.e., cards authorizing a union to represent them). The NLRA does not require secret ballot elections. An employer may voluntarily recognize a union if a majority of workers have signed authorization cards.

In recent Congresses, legislation has been introduced that, if enacted, would change current union certification procedures. The Employee Free Choice Act would require the NLRB to certify a union if a majority of employees sign authorization cards. The Secret Ballot Protection Act would make it an unfair labor practice for an employer to recognize or bargain with a union without a secret ballot election.

Proponents of both measures sometimes use similar language to support their positions. Employers argue that, under card check certification, workers may be pressured or coerced into signing authorization cards and may only hear the union's point of view. Unions argue that, during an election campaign, employers may pressure or coerce workers into voting against a union. Supporters of secret ballot elections argue that casting a secret ballot is private and confidential. Unions argue that, during an election campaign, employers have greater access to workers. Unions argue that card check certification is less costly than a secret ballot election. Employers maintain that unionization may be more costly to workers, because union members must pay dues and higher union wages may result in fewer union jobs.

Requiring card check certification may increase the level of unionization, while requiring secret ballot elections may decrease it. Research suggests that, where card check recognition is required, unions undertake more union drives and the union success rate is higher. The union success rate is also greater where card check recognition is combined with a neutrality agreement (i.e., an agreement where the employer agrees to remain neutral during a union organizing campaign).

To the extent that requiring secret ballot elections or requiring certification when a majority of employees sign authorization cards would affect the level of unionization, the economic effects may depend on how well labor markets fit the model of perfect competition. Requiring card check certification may improve worker benefits and reduce earnings inequality—if more workers are unionized. Requiring secret ballot elections may increase inequality in compensation—if fewer workers are unionized.

The National Labor Relations Act of 1935 (NLRA), as amended, gives private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and other conditions of employment.[1] The act also requires employers to bargain in good faith with a union chosen by a majority of employees. An issue before Congress is whether to change the procedures under which a union is certified as the bargaining representative of a union chosen by a majority of workers.

In recent Congresses, legislation has been introduced that, if enacted, would change current union certification procedures. This report begins by summarizing legislation introduced in the 112th and 111th Congresses. The report then reviews the rights and responsibilities of workers and employers under the NLRA and the different ways that workers may form or join a union. Next, the report analyzes the potential effects of changes in union certification procedures. Finally, the report considers whether there is an economic rationale for protecting the rights of workers to organize and bargain collectively.

Chapter 3 - This report discusses legislative attempts to amend the National Labor Relations Act ("NLRA") to allow for union certification without an election, based on signed employee authorizations. The Employee Free Choice Act ("EFCA"), introduced in the 111th Congress as H.R. 1409 and S. 560, would have allowed union certification based on signed authorizations, provided a process for the bargaining of an initial agreement, and prescribed new penalties for certain unfair labor practices. This report reviews the current process for selecting a bargaining representative under the NLRA, and discusses the role of the Federal Mediation and Conciliation Service in resolving bargaining disputes under that act. The EFCA has been introduced in the past four Congresses. During the 110th Congress, the measure was passed by a vote of 241-185 in the House. In the Senate, proponents of the EFCA fell nine votes short of the 60 votes needed to limit debate and proceed to final

consideration of the measure. The EFCA is widely expected to be reintroduced in the 112th Congress.

Legislation that would allow a union to become the exclusive bargaining representative of a unit of employees without an election has been introduced in the past four Congresses. The Employee Free Choice Act ("EFCA" or "the act"), introduced in the 111th Congress as H.R. 1409 and S. 560, would have amended the National Labor Relations Act ("NLRA") to allow union certification based on signed employee authorizations, provided a process for the bargaining of an initial agreement, and prescribed new penalties for certain unfair labor practices. Labor officials indicated that the EFCA was "the most important work we'll be doing, because it's a key to succeeding on everything else."

This report reviews the current process for selecting a bargaining representative under the NLRA, and examines how the EFCA would have altered that process. In addition, this report discusses the other changes proposed by the act. Some of these changes had been previously suggested in other past measures. For example, legislation that would have established a process for the bargaining of an initial agreement was first introduced in the 105th Congress.

Chapter 4 - Faced with distressed state budgets and lower revenue, many governors and state legislatures have focused on the collective bargaining rights of public employees as a way to control expenses. Legislation that would limit such rights has reportedly been introduced in at least 22 states. In general, the sponsors of such legislation contend that unionized state and local employees enjoy unsustainable salaries and benefits as a result of collective bargaining.

According to the Bureau of Labor Statistics, 26.8% of all federal employees are members of a union. A slightly higher percentage of state employees—31.1%—are union members. At the local government level, 42.3% of employees are union members. Although all of these employees engage in some form of collective bargaining through their unions, the scope of such bargaining is generally different for federal and state and local workers. In addition, because the collective bargaining rights of state and local employees are defined by state law, other variations in bargaining may exist among these workers. Subjects that are negotiable in one state, for example, may not be negotiable in another state.

This report examines the collective bargaining rights of federal, state, and local workers. The report also discusses the constitutional concerns that may be raised by state legislation that attempts to invalidate existing collective bargaining agreements. In Michigan, the Local Government and School District Fiscal Accountability Act ("Fiscal Accountability Act") was adopted on March 16, 2011. Under the Fiscal Accountability Act, the governor may appoint an emergency manager if he determines that a local government financial emergency exists. The emergency manager would have broad powers to rectify the financial emergency, including the ability to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. If the emergency manager were to reject, modify, or terminate one or more terms and conditions of an existing agreement, constitutional concerns would likely be raised under the Contract Clause of the U.S. Constitution, which prohibits a state from passing any law "impairing the Obligation of Contracts."

Faced with distressed state budgets and lower revenue, many governors and state legislatures have focused on the collective bargaining rights of public employees as a way to control expenses. Legislation that would limit such rights has reportedly been introduced in at least 22 states. In general, the sponsors of such legislation contend that unionized state and local employees enjoy unsustainable salaries and benefits as a result of collective bargaining.

This report examines the collective bargaining rights of federal, state, and local workers, and discusses the constitutional concerns that may be raised by state legislation that attempts to invalidate existing collective bargaining agreements.

Chapter 5 - The Regional Offices of the National Labor Relations Board have found that, more than six decades after its enactment, there is still a lack of basic information about the National Labor Relations Act. Staff members have expressed a need for a simply stated explanation of the Act to which anyone could be referred for guidance. To meet this demand, the basic law under the Act has been set forth in this pamphlet in a nontechnical way so that those who may be affected by it can better understand what their rights and obligations are.

Any effort to state basic principles of law in a simple way is a challenging and unenviable task. This is especially true about labor law, a relatively complex field of law. Anyone reading this booklet must bear in mind several cautions.

First, it must be emphasized that the Office of the General Counsel does not issue advisory opinions and this material cannot be considered as an official statement of law. It represents the view of the Office of the General Counsel as of the date of publication only. It is important to note that the law changes and advances. In fact, it is the duty of the Agency to keep its decisions abreast of changing conditions, yet within the basic statute. Accordingly, with the passage of time no one can rely on these statements as absolute until and unless a check has been made to see whether the law may have been changed substantially or specifically.

Furthermore, these are broad general principles only and countless subprinciples and detailed rules are not included. Only by evaluation of specific fact situations in the light of current principles and with the aid of expert advice would a person be in a position to know definitely where the proposed conduct may fit under the statute. No basic primer or text can constitute legal advice in particular fact situations. This effort to improve basic education about the statute should not be considered as such. Many areas of the statute remain untested. Legal advisers and other experts can find the total body of "Board law" reported in other Agency publications.

One other caution: This material does not deal with questions arising under other labor laws, but only with the National Labor Relations Act. Laws administered by other Government agencies, such as the Labor-Management Reporting and Disclosure Act of 1959, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the Railway Labor Act, the Fair Labor Standards, Walsh-Healey and Davis-Bacon Acts, Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, the Federal Mine Safety and Health Act, and the Veterans' Preference Act, are not treated herein.

Lastly, this material does not reflect the view of the National Labor Relations Board as the adjudicating agency that in the end will decide each case as it comes before it.

It is hoped that with this cautionary note this booklet may be helpful to those in need of a better basic understanding of the National Labor Relations Act.

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Chapter 1

FEDERAL LABOR RELATIONS STATUTES: AN OVERVIEW*

Alexandra Hegji

SUMMARY

Since 1926, Congress has enacted three major laws that govern labor-management relations for private sector and federal employees. An issue for Congress is the effect of these laws on employers, workers, and the nation's economy. The Bureau of Labor Statistics estimates that, nationwide, 9.2 million employees are represented by unions. In the 112th Congress alone, more than 30 bills have been introduced to amend federal labor relations statutes. The proposals range from making union recognition without a secret ballot election illegal to further modifying runoff election procedures. This legislative activity, and the significant number of employees affected by federal labor relations laws, illustrate the current relevance of labor relations issues to legislators and their constituents.

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The Railway Labor Act (RLA) was enacted in 1926, and its coverage extends to railway and airline carriers, unions, and employees of the carriers. The RLA guarantees employees the right to organize and collectively bargain with their employers over conditions of work and protects them against unfair employer and union practices. It lays out specific procedures for selecting employee representatives and provides a dispute resolution system that aims to efficiently resolve labor disputes between parties, with an emphasis on mediation and arbitration. The RLA provides multiple processes for dispute resolution, depending on whether the dispute is based on a collective bargaining issue or the application of an existing collective bargaining agreement.

* This is an edited, reformatted and augmented version of the Congressional Research Service Publication, CRS Report for Congress R42526, dated May 11, 2012.

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The Federal Service Labor-Management Relations Statute (FSLMRS) was enacted in 1978, and its coverage extends to most federal employees. The basic framework of the FSLMRS is similar to that of the NLRA; however, employee rights are more restricted under the FSLMRS, given the unique nature of their employer, the federal government. Federal employees have the right to organize and collectively bargain, but they cannot bargain over wages or strike. Additionally, the President has the power to unilaterally exclude an agency or subdivision from coverage under the FSLMRS if he determines that its primary work concerns national security.

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This report uses specific "terms of art" relevant to these acts. **Appendix A** defines these "terms of art." **Appendix B** provides a list of acronyms used in this report. **Appendix C** contains a table that compares provisions of all three laws.

THE RAILWAY LABOR ACT

Background

By the late 19th Century, the railroad industry had a significant impact on the U.S. economy. It helped connect the coasts, making settlement of the western United States much easier. Farmers were able to ship their goods to cities hundreds of miles away, and consumers were able to purchase products made in factories across the nation.[1] The railroad industry was also a major consumer of U.S. goods. It used over 75% of the steel produced in the United States, a large portion of the United States' extracted coal, and was the nation's primary employer.[2]

As the public began to depend on railroads and their regular availability, railroad workers also began to unionize.[3] Because the nation grew dependent on railroads, labor-management disputes that grew into work stoppages adversely affected the nation's welfare.

Enacted in 1926, the Railway Labor Act (RLA) continued a pattern of federal attempts at regulating labor relations in the industry.[4] It was the product of an agreement between industry and labor that Congress adopted. The act was intended to help maintain labor-management peace within the railway industry and thereby avoid work stoppa[redacted]could carry with them adverse economic and social effects.[5] The act's five major purposes are to

- prevent any interruption to commerce or to the operation of any carrier;
- ensure employees the right to organize or join a labor union;
- ensure railway carriers and employees the right to select bargaining representatives without interference from the other party;
- provide timely settlement of disputes over rates of pay, rules, or working conditions; and
- provide timely settlement of disputes growing out of grievances or over interpretation or application of existing union contracts.[6]

To accomplish these goals, Congress established a system based on collective bargaining between labor and management, relying on mediation facilitated by the newly created National Mediation Board (NMB) and voluntary arbitration if neither collective bargaining nor mediation worked.

Major Amendments

1934 Amendments

The original RLA called for parties to establish by agreement special adjustment boards (SBAs) to resolve disputes over contract interpretation or application concerning changes in rates of pay, rules, or working conditions. These boards could be national, regional, or local in scope and would typically be composed of an equal number of carrier and employee representatives. If an adjustment board was unable to resolve a dispute because of a deadlock, the dispute could be referred to the Board of Mediation.[7] In the 1934 amendments, Congress created the National Railroad Adjustment Board (NRAB), which has jurisdiction over contract interpretation and administration disputes that cannot be resolved through direct negotiations. If the NRAB is deadlocked, it selects a referee to make an award in the dispute.[8] A referee is a neutral person who sits with the NRAB as a member and makes an award in the dispute at issue. Additionally, Congress replaced the Board of Mediation with the NMB, which can resolve disputes between parties concerning changes in rates of pay, rules, working conditions, and any other dispute not referable to NRAB.

Congress also strengthened the RLA's provisions that allow carriers and employees to select representatives freely and without interference from each other. It added language specifically stating that employees have the right to organize and collectively bargain and added a provision requiring that a majority of employees in a craft or class must support a union before it is recognized as their representative. Additionally, the amendments prohibited carriers from denying or questioning an employee's right to organize or join a union and tasked the NMB with investigating representation disputes. The amendments also provided for both civil and criminal means to enforce the RLA's provisions.[9]

Congress explicitly prohibited carriers from unilaterally changing pay rates, rules, and working conditions and added a "status quo" provision, which prohibits changes to pay rates, rules, and working conditions for 30 days after

parties are released from the NMB's services.[10] Finally, the definition of "carrier" was broadened to include companies that perform operations integral to railway transportation but not already covered by the act.[11]

1936 Amendments

In 1936, Congress extended most of the RLA's provisions to commercial airline carriers that operate in interstate or foreign commerce and airlines that transport mail for, or under contract with, the U.S. government.[12] Although the airline industry was relatively new in 1936, Congress acknowledged that it was part of the national transportation system that was vital to the economic well-being of the nation and that it too would need mechanisms to assist in dispute resolution and avoiding work stoppages. While the National Labor Relations Act (NLRA) was enacted in 1935 and covered most private sector employees, labor wanted airline carriers to be included under the RLA, because it believed the RLA's mediation/arbitration dispute resolution mechanisms provided more flexibility for the constantly changing, fledging industry.[13]

Additional Amendments

Between 1951 and 1981, the RLA was the subject of much congressional action. The major changes enacted are discussed below. This is followed by a depiction of the NLRA provisions currently in effect.

1951 Amendments

In 1951, Congress amended the RLA to allow carriers and unions to enter into union security agreements. These agreements require employees to pay union dues equal to the cost of representation as a condition of employment. However, under a union security agreement, employees are not required to become formal members of the union. State right-to-work laws that prohibit or restrict union security agreements are preempted by the RLA.[14]

1966 and 1981 Amendments

In 1966, Congress amended the RLA to provide for Public Law Boards (PLBs) that can be established upon the request of either party. Unlike an SBA, the parties do not need to agree on the creation of a PLB. PLBs are composed of one person selected by the carrier and one person selected by the union. Each selected board member is compensated by the carrier or union who selected them. If these selected board members deadlock on an issue, they designate a neutral third party to decide the dispute. If the selected board members are unable to agree on a neutral party, the NMB designates the neutral party. The neutral party is compensated by the NMB.[15] Finally, in 1981, Congress established emergency procedures for certain publicly funded and operated carriers that provide commuter rail services.[16]

FAA Modernization and Reform Act of 2012

The RLA was most recently amended in 2012 during the 112th Congress as part of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012. Under these

amendments, for the NMB to conduct an election or otherwise certify a union for a craft of unrepresented employees, the NMB must receive, along with an application for certification, authori-zation cards signed by at least 50% of the employees in the craft or class seeking representation. Before this amendment, those parties filing an application for certification were required to include authorization cards signed by 35% of employees in the craft or class seeking representation.[17]

The 2012 amendments also changed the rules for runoff elections. Previously, only the names of the two unions that received the most votes in the first election were on the runoff ballot. If more employees voted not to have a union than voted for one or both of the unions that received the most votes, the runoff ballot did not include the choice of not being represented by a union.[18] Under the 2012 amendments, the runoff ballot has the two choices, including the choice not to be represented, that received the most votes in the initial election.[19]

The 2012 amendments also mandate periodic NMB evaluations and audits.[20]

Overview

The RLA seeks to prevent labor-management disputes that could interrupt railroad and airline service and harm the economy. It grants certain rights to both workers and carriers, seeks to prevent practices that could frustrate a peaceful worker-carrier relationship, and provides mechanisms for workers and carriers to resolve disputes.

To achieve these goals, the RLA regulates the labor-management relation-ship between workers and carriers in the railway and airline industries. It provides parties with a standard process for choosing a union to act as an employee representative in the collective bargaining process and details which individuals can participate in the process. Once a union is selected, the RLA governs which subjects workers and unions can negotiate. The RLA also regulates how workers, carriers, and unions should behave towards each other during the union selection and collective bargaining processes and prohibits certain unfair actions.

The RLA provides for several entities to administer and enforce its provisions. The National Mediation Board (NMB) is the primary agency charged with administration and enforcement of the act and also provides mediation service to parties who cannot reach a resolution in a dispute. The National Railway Adjustment Board (NRAB) is an NMB tribunal that hears and decides (arbitrates) grievances in the railway industry. Additionally, the RLA allows parties to a dispute in the railway industry to establish their own arbitration tribunals, known as Special Boards of Adjustment (SBAs), or a single party to request that the NMB create a Public Law Board (PLB) to arbitrate its dispute. Various System Boards of Adjustment (System Boards), created jointly by labor and management, arbitrate disputes in the airline carrier industry. Additionally, if an unresolved dispute threatens to substantially interrupt commerce, the President can create a Presidential Emergency Board (PEB) to investigate and aid in the resolution of the dispute.

Scope of Coverage

The RLA regulates the collective bargaining rights and duties of carriers and employees in the railway and airline carrier industries. "Collective bargaining" refers to the process of negotiation between these parties regarding working conditions. Employers are referred to as "carriers" in the RLA. The term "carrier" is used throughout this discussion for consistency with the act. The preliminary sections of the act define "carrier" and "employee," and those definitions are used to determine who is covered by the act and its accompanying regulations.

Carrier Defined

Under the RLA, a carrier is defined as:

> any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier" [21]

In addition to railroads, later adopted provisions cover airline carriers. The RLA also applies to any company that is directly or indirectly controlled by, or under common control with, a railroad or airline carrier that falls under the coverage of the act.

The RLA specifically excludes "trucking service" and most "street, interurban, or suburban electric railways" from its scope. However, if a trucking company almost exclusively performs services for a rail carrier, the trucking exemption may not apply.[22]

Employee Defined

The RLA defines an employee as any "person in the service of a carrier ... who performs any work defined as that of an employee or subordinate official."[23] Temporary, probationary and furloughed employees generally are within the RLA's definition of "employee."[24]

Rights and Duties under the Law

The act both mandates and prohibits certain actions of all parties involved in a labor-management dispute. The act grants employees the right to organize and collectively bargain. It also sets forth the procedures and standards to be applied in the selection of a union as an employee representative and the subsequent relations between the union, the carrier, and the employees.

Employees can select a union that will represent their craft or class's interests in bargaining with carriers over working conditions. A craft or class is a group of employees who are or wish to be represented by a union. A union can be recognized as a representative through either a secret ballot election or voluntary carrier recognition.

Certain conduct is prohibited in the carrier-union-employee relationship. Carriers and unions cannot interfere with employees' right to organize and select a union representative.