



## **CURRENT STATUS OF BARGAINING WITH THE NATIONAL CARRIERS' CONFERENCE COMMITTEE**

Railway Labor Act (RLA) Collective Bargaining Agreements (CBA) do not expire, they continue until amended. Most agreements contain “moratorium clauses” that bar service of notices to begin the next round of bargaining for a period of time after amendment of the agreement. The last moratorium period has ended, and the rail unions and railroads are currently negotiating over proposed changes to their CBAs.

1. The current round of bargaining began in early November of 2019, with the service of notices for changes in the CBA's under Section 6 of the RLA (45 U.S.C. §156).
2. Most of the rail carriers are in a bargaining coalition represented by the National Carriers Conference Committee (NCCC).
3. The Brotherhood of Maintenance of Way Employees Division/IBT (BMWED) and International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division (SMART-MD) are in a bargaining coalition.
  - Other rail unions are in a different coalition.
4. Bargaining between the BMWED/SMART-MD and the NCCC began in early 2020. Because of the pandemic, the bargaining to date has been by video conference. The parties held a number of negotiation sessions by video during 2020 through June of 2021.
  - During the pendency of negotiations, the rail carriers may not alter rates of pay, rules or working conditions unless a party has terminated negotiations and ten days have passed without (a) either party invoking mediation, or (b) the National Mediation Board proffering mediation. If mediation is invoked or proffered, the rail carrier may not alter rates of pay, rules or working conditions until completion of mediation under Section 5 of the RLA (45 U.S.C. §155). This period is often referred to as the “status quo” period.
  - In addition to the Section 6 status quo, courts have held that the duty of the parties under Section 2 First (45 U.S.C. §152 First) to “exert every reasonable effort” to make agreements, bars both parties from self-help and unilateral action after service of a Section 6 Notice.
5. In June of 2021, BMWED and SMART MD made a comprehensive settlement proposal to the NCCC. The carriers have discussed, and made presentations, on a number of issues and identified certain subjects they would like to address in an agreement, but they declined to provide a comprehensive counter-proposal.

6. Later in June of 2021, BMWED and SMART MD invoked mediation with the National Mediation Board (NMB or Board). The NMB opened mediation dockets for BMWED and SMART MD and the carriers on June 22, 2021.
  - The Board mediates (with the parties required to maintain the status quo) until there is an agreement, or the NMB determines that mediation has been “unsuccessful.”
7. The first mediation session was held on July 27, 2021.

### **WHAT HAPPENS NEXT?**

- There is no set duration for mediation. The period may be brief if the parties reach agreement or if the Board determines that further mediation will prove futile. Mediation may continue over an extended period of time if the Board determines that further mediation may result in an agreement. The decision to cease mediation is at the discretion of the NMB.
- If the NMB determines that mediation has been unsuccessful, it must proffer arbitration under Section 7 (45 U.S.C. §157) to resolve the dispute. Such arbitration is a binding “interest arbitration” to resolve all issues in dispute.
- Acceptance of arbitration is voluntary; if either party declines arbitration, the parties are required to maintain the status quo for another thirty days before they can resort to “self-help” (strikes, etc. by the union(s); lockouts, unilateral implementation of new terms by the carrier(s)).
- In the event that mediation is unsuccessful and arbitration has been rejected by either party, the NMB may determine that the exercise of self-help would “threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service.” In that event, the Board is to notify the President who may choose to create a Presidential Emergency Board (PEB) to investigate the dispute and make recommendations for its resolution (45 U.S.C. §§155, 160).
- The PEB shall issue its report to the President within thirty days of its creation. After creation of a PEB, and for thirty days after its report to the President, the parties are required to continue to maintain the status quo. (45 U.S.C. §160).
- After issuance of a PEB report:
  - The parties may accept the report and make an agreement based on the report;
  - The parties may accept some recommendations and negotiate different terms for others; **OR**
  - One party or both may reject the report, in which case, the right to exercise self-help begins thirty days after the report is issued.
- Congressional action
  - Although not provided-for in the RLA, if a dispute remains unresolved after issuance of a PEB report, Congress may step in and enact a statutory resolution. This has happened a number of times. Congressional enactment typically applies the PEB report, or substantially follows the report; but Congress is not bound by the report and may enact whatever it deems appropriate.
- The authority of Congress to impose a resolution has been upheld by the U.S. Supreme Court.