

President Biden Calls on Congress to Avoid Mass Railroad Strike

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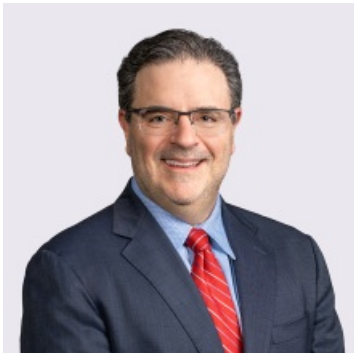
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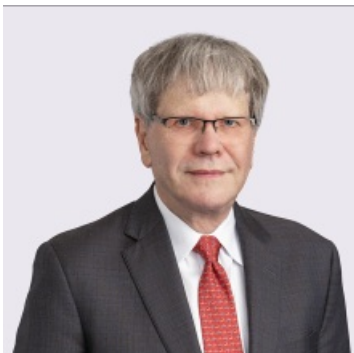


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President Joe Biden has asked Congress to step in and enact legislation in the hopes of preventing a nationwide railway strike.

The move comes after four of 12 national railroad labor unions rejected a proposed bargaining agreement with the freight rail carriers, despite the president's September involvement to broker a deal between the parties.

Congress will consider passing legislation, pursuant to the Railway Labor Act (RLA), to force a deal before the upcoming strike deadline.

Background

Beginning November 2019, 12 unions and the railway carriers began negotiations wage increases, additional paid days off, and improved health care benefits, among other issues.

After months of unsuccessful negotiations, President Biden issued an Executive Order in July 2022 establishing a Presidential Emergency Board (PEB), which issued recommendations for the agreement. See [Report to the President by Emergency Board No. 250](#).

On September 15, 2022, the parties reached a tentative agreement, subject to ratification by each union's membership. The agreement included generous wage increases, but it did not fully address workers' wish for paid sick days and emergency days off.

Over the course of the last three months, however, workers in only eight of the unions voted to ratify the agreement, with four rejecting it. Since a quarter of the unions failed to ratify the deal, rail workers in all 12 of the unions would strike or observe picket lines, effectively shutting down most of the national rail system. Rail moves 40 percent of long-distance freight in the United States, and any such strike would cause severe economic concerns across the country.

To avert a strike, Congress will look to the RLA, which allows it to enact legislation implementing the terms of the last agreement.

The Railway Labor Act

A key purpose of the RLA is to prevent strikes. The RLA, indeed, states that its objective is to avoid "any interruption to commerce or to the operation of any carrier engaged therein" and provide "for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions." 45 U.S.C § 151a.

The RLA also provides dispute resolution processes and establishes the National Railroad Adjustment Board and the National Mediation Board (NMB) to handle disputes between rail unions and carriers.

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If the NMB determines that the labor dispute could “substantially threaten to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service,” the NMB notifies the president, who may then issue an executive order to create the PEB to investigate and make a report on the dispute. The PEB then has 30 days to issue its recommendations to the president and the parties remain in a “cooling off” period. 45 U.S.C § 160.

The parties are in the cooling-off period, which will expire as early as December 9, 2022. The unions have agreed on a strike date of December 9, 2022.

Importantly, the RLA also gives Congress the authority to intervene in rail matters affecting interstate commerce by enacting legislation to impose the contract mediated between the parties or create an alternative agreement. This move would require a joint resolution by Congress and the president’s signature. As all other dispute resolution processes under the RLA have been exhausted, Congressional leaders have indicated they will vote on whether to impose the agreement or risk a strike.

Labor and Political Developments

While probably no one really wants a rail strike, the considerations involved are more complex than they might first appear. The rail carriers believe they **offered** significant economic improvement and employees can use vacation time for necessary sick leave and other protections. They also point to the importance of the carriers’ maintaining functional schedules, which can be disrupted by too many last-minute callouts.

The unions complain that workers are allegedly held to “draconian” attendance standards and their requests for more leeway for time off due to unexpected circumstances should be granted. It is an emotional issue, one which has support among much of the rank and file.

Yet, railroads (like airlines) are held to a different standard than most businesses since much of what they do is closely tied to interstate commerce and their service spans many states.

Further, President Biden campaigned as a pro-union president and has sought to deliver on his pro-union promises. Some Democratic-leaning senators (*e.g.*, Bernie Sanders) and normally pro-business Republican senators (*e.g.*, Marc Rubio) have argued that workers and the rail carriers should work out their differences in collective bargaining (presumably, including strikes).

However, the consequences of such a strike are too severe to be endured in an economy still trying to right itself coming out of the COVID-19 pandemic and managing worldwide energy shocks this close to major holidays. On November 29, the White House announced it will seek [Congressional action](#) and key leaders in both houses (Charles Schumer and Mitch McConnell in the Senate, and Nancy Pelosi and, more ambiguously, Kevin McCarthy in the House) indicated they felt a bill to impose the last contract as proposed would pass. The rail carriers welcomed the news. Although eight of the unions had already ratified this same deal, some workers and unions complained bitterly.

In a move that could mitigate union contentions, a [separate piece of legislation](#) was announced that would increase paid sick leave — a key issue for rail workers throughout negotiations. If passed, it would add seven paid sick days annually, with the details for

implementation to be negotiated between the parties within 30 days from the date the legislation is enacted, or if negotiations fail, requires binding arbitration within the 30 days thereafter. This measure goes beyond the terms of the tentative agreement.

However, by putting the paid leave provision in a separate bill, Congressional leaders have made it likely that the main bill imposing the tentative agreements will pass (on November 30, 2022, the House passed the main bill on a 290-137 vote, while the paid leave bill passed more narrowly, by a 221-207 vote).

Under the RLA, passage of the main bill by both the Senate and the House and its signature by President Biden will eliminate the risk of a rail strike.

Jackson Lewis attorneys will continue to monitor the status of negotiations and contractual action.

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