

## **BARGAINING UNDER THE RAILWAY LABOR ACT**

### **Compiled by the Independent Pilots Association**

The following is an overview – in a Q&A format – of the statutory process that governs contract negotiations in the airline industry, specifically directed at the current round of talks between the Independent Pilots Association and United Parcel Service.

#### **What is the Railway Labor Act?**

The Railway Labor Act of 1926 was the first major piece of labor legislation passed by Congress. Rather than applying to U.S. industry as a whole, the RLA applied to what was then the most critical piece of transportation infrastructure in the country – the railroads. The RLA was amended in 1936 to cover the emerging airline industry. At UPS, the mechanics, dispatchers, and pilots are the labor groups that are covered by the RLA.

#### **What did Congress say was the primary purpose of the RLA?**

Railroad management wanted to keep the trains moving by putting an end to “wildcat” strikes. Railroad workers wanted to make sure they had an opportunity to organize, be recognized as the exclusive bargaining agent in dealing with a company, negotiate new agreements and enforce existing ones. Both sides “won” with the passage of the RLA. Workers won the right to form unions, negotiate with the railroads and to have a grievance system imposed on the companies. The railroads won the right to keep commerce from being disrupted without going through a lengthy and complicated process.

#### **Is the RLA the source of the “work now, grieve later” rule?**

Yes. Congress decided that keeping commerce moving was vital to the public interest. As a result, Congress mandated that when disputes arise in the workplace, transportation workers covered by the RLA must “work now (i.e. transport the goods) and grieve later.” There are a few exceptions to this. Workers are not required to perform tasks that they reasonably believe to be unsafe. Workers are also not required to perform when the request is “clearly” a violation of the contract. (The courts have interpreted this to mean that if the company can make a reasonable claim that the contract justifies their request – regardless of whether they are right or wrong – then the employee should err on the side of performing the work, and grieving the incident later.)

### **What is the National Mediation Board?**

The National Mediation Board is the federal agency created by the RLA to administer certain functions under the Act. The Board is primarily responsible for: (1) conducting union representational elections, and (2) supervising the mediation of contract negotiations. The Board is composed of three members appointed by the President. The law requires that at least one of the three members shall be from a political party other than that of the setting President. Currently, two Republicans and one Democratic comprise the NMB.

### **Who are the “mediators?”**

The three presidential appointees who run the NMB employ a professional staff to assist them. Mediators are the staff members tasked by the Board with supervising the mediation of contract negotiations.

### **When do collective bargaining agreements expire under the RLA?**

Under the RLA, agreements do not have expiration dates; instead they have amendable dates which are indicated within the agreement. IPA’s contract became amendable December 31, 2003. Until a mutually negotiated change is accepted by both parties to the agreement, the provisions of the original agreement remain in full force. This is commonly referred to as "status quo." Both the union and the company have a legal obligation to maintain the status quo until the process of the RLA has been fully exhausted.

### **How do parties initiate negotiations under the RLA?**

The parties exchange notices of intent to change or amend the existing contract. These notices are referred to as "Section 6" notices. IPA and UPS have complied with this section by entering into a Letter of Agreement that provided for pre-amendable date negotiations and now post-amendable date negotiations.

### **What are "direct negotiations?"**

Direct negotiation is the first step in contract negotiations under the RLA, during which the parties meet without the assistance of a NMB mediator. IPA has been in direct negotiations with UPS since October 2002 in the form of Interest Based Bargaining. Under our Letter of Agreement, these direct negotiations will continue until July 1, 2004. After that date, we will enter into mediation unless both IPA and UPS agree to extend the direct negotiations.

**What is Interest Based Bargaining (IBB) and how does it relate to direct negotiations versus mediated talks?**

IBB is simply a method of bargaining that is voluntary and offered by the NMB upon the request of the parties. IBB is a problem-solving method of negotiating which focuses on the common interests of the parties and finding mutually acceptable solutions to issues. A hallmark of IBB is a free flow of information exchange between the parties. A “facilitator” is appointed by the NMB to assist the parties in bargaining utilizing the IBB method. These services are made available to the parties based upon the NMB's resources and its judgment regarding the needs of the parties in each situation.

**Will IPA and UPS continue with IBB when the negotiations move into mediation?**

Maybe. If both sides request the continued use of IBB and the NMB agrees, then IBB could continue to be utilized for a portion, or all of, the mediated talks.

**What happens if the parties cannot reach an agreement in direct negotiations?**

If either party believes an agreement cannot be reached in direct negotiations that party can apply for mediation with the NMB. Upon application, the NMB will docket the application and assign a mediator to the case.

**Can the parties file a joint mediation application?**

Yes, parties may file jointly with the NMB for mediation services. If the parties jointly file, the NMB almost always immediately appoints a mediator. In our case, the LOA requires a joint application on July 1, 2004, which has been accepted.

**What happens after the application is received by the NMB?**

The application is first reviewed to ensure that it is completed properly, and if so, the case is then docketed.

**How are mediators assigned to cases?**

When an application for mediation is received, the Chief of Staff and Senior Mediators consult concerning case assignment. They consider a variety of factors, including individual work loads, mediator availability, schedules, desires of the parties, the history of a given mediator with the parties, mediator background, complexity of the case, and other factors.

**What kind of background or experience do the NMB mediators have?**

NMB mediators typically come from either labor or management backgrounds and have extensive labor relations experience in either the rail or airline industries.

**During the mediation process, what is the role of the mediator?**

The role of the mediator is to assist the parties with productive dialog on their issues. The mediator can and will use a variety of techniques to ensure this occurs.

**Can the NMB determine where the parties will meet when they are in mediation?**

The courts have held that the NMB has the authority to establish where the parties will meet while in mediation. Normally, however, the meeting site is mutually agreed upon among the parties and the mediator.

**Can the NMB determine when and/or how often the parties will meet when they are in mediation?**

Again, meetings are normally established by mutual agreement among the parties and the mediator, but during mediation the NMB does have the authority to dictate when the parties will meet, for how long they will meet, and when meetings will be recessed.

**Does the NMB ever recess a case during mediation?**

The NMB may recess a case for a variety of reasons. It might simply mean that either the parties or the mediator is not available for a period of time. It could also mean that the parties need time to think about their positions. Calling a recess is also a technique used by the NMB to put pressure on one, or both, parties to bring their proposals within a more reasonable range.

**Instead of recessing a case, why doesn't the Board release the parties from mediation?**

The RLA was designed to avoid strikes in the transportation industry that would substantially impact interstate commerce. In a typical year, the NMB mediates nearly 100 contract disputes in the rail and airline industries. If the NMB routinely released the parties from these disputes after only a few weeks or months of mediation, the public would be faced with 5 or 6 strike deadlines a month. This would be highly disruptive to the transportation system and contrary to the stated purpose of the RLA.

**How long does mediation last?**

There is no time limit for the mediation process. It can take just a few meetings, or several months, depending upon the complexity of the negotiations and many other factors unique to each contract negotiation. The NMB has the authority to decide when, and if, to end mediation. Under the RLA, the NMB ceases mediation efforts when it concludes that all reasonable efforts to reach a voluntary agreement through mediation have failed.

### **What is a "proffer of arbitration"?**

When the NMB believes that further mediation efforts will not result in an agreement, it issues a proffer of arbitration, which is an offer to the parties to arbitrate any remaining issues.

### **Why doesn't the NMB make a proffer of arbitration when one of the parties asks for it?**

Under the RLA, the NMB is responsible for making its best efforts to help the parties reach an agreement without resorting to self-help (e.g, lockout, strike). While it will listen to requests from the parties for a release, it is the NMB's responsibility to keep parties in mediation until it has expended all reasonable efforts to reach an agreement.

### **What happens if either party rejects the proffer of arbitration?**

If either party rejects the proffer of arbitration, the NMB releases the parties from mediation and they enter a 30-day "cooling off," or count down period.

### **What happens during the cooling off period?**

During the 30-day cooling off period the NMB will normally call the parties back to the table for further discussions. While these talks can be called at any time during the 30-day time frame they are generally called at or near the end of the countdown period. These meetings are often referred to as "super mediation."

### **What if no agreement is reached during the 30-day cooling off period?**

If no agreement is reached by the end of the 30-day cooling off period, the parties are free to exercise "self-help." This means that the carrier is free to impose its last offer, temporarily cease operations or engage in other self-help activity (e.g., hiring permanent replacements). The union is free to strike or engage in other self-help activity.

### **What is a "Presidential Emergency Board?"**

During the 30-day cooling off period, the NMB makes a determination regarding the impact of a strike. Pursuant to Section 160 of the RLA, the NMB "notifies" the President that in its "judgment" the dispute between a carrier and its employees cannot be adjusted and "threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Once the President receives such notification, he may, "in his discretion, create a board to investigate and report on such dispute." The NMB submits a recommended list of potential neutrals to the President. The PEB usually has 30-days to develop a proposed agreement and present that agreement to the parties for consideration. After the PEB delivers its proposed agreement, there is a further 30-day cooling off period.

**What happens if either party rejects the PEB's proposed agreement?**

If either party rejects the PEB's proposal, the parties may, after the second 30-day cooling off period, engage in self-help.

**Is there any circumstance in which the parties are constrained from engaging in self-help after rejecting a PEB's proposal?**

Yes. It is possible for Congress to intervene and legislatively mandate a settlement. If this is done, Congress most typically would simply take the recommendations of the PEB and write them into law. This would mean that a contract would be legislated by Congress and no strike or no membership ratification would be allowed.