

Presidential Emergency Boards (PEBS)

OVERVIEW

Section 159A (Section 9A) of the Railway Labor Act (RLA) provides special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. Section 160 (Section 10) of the RLA covers all other railroads and airlines.

When the National Mediation Board determines that a collective-bargaining dispute cannot be resolved in mediation, the agency proffers Interest Arbitration to the parties. Either labor or management may refuse the proffer and, after a 30-day cooling-off period, engage in a strike, implement new contract terms, or engage in other types of economic self help, unless a Presidential Emergency Board (PEB) is established.

If the NMB determines, pursuant to Section 160 of the RLA, that a dispute threatens substantially to interrupt interstate commerce to a degree that will deprive any section of the country of essential transportation service, the NMB notifies the President. The President may, at his discretion, establish a PEB to investigate and report respecting such dispute.

Status-quo conditions must be maintained throughout the period that the PEB is impaneled and for 30 days following the PEB report to the President. If no agreement is reached, and there is no intervention by Congress, the parties are free to engage in self-help 30 days after the PEB report to the President.

Apart from the emergency board procedures provided by Section 160 of the RLA, Section 9a provides special, multi-step emergency procedures for unresolved disputes affecting employees on publicly funded and operated commuter railroads. If the Mediation procedures are exhausted, the parties to the dispute or the Governor of any state where the railroad operates may request that the President establish a PEB. The President is required to establish such a board if requested. If no settlement is reached within 60 days following the creation of the PEB, the NMB is required to conduct a public hearing on the dispute. If there is no settlement within 120 days after the creation of the PEB, any party or the Governor of any affected state, may request a second, final-offer PEB. No Self-Help is permitted pending the exhaustion of these emergency procedures.

PEB HIGHLIGHTS

Three PEBs were established during fiscal year 2014. All three PEBs involved the special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. PEBs 244 and 245 were established under Section 9(a) to resolve a dispute between the Long Island Railroad (LIRR) and certain of its employees. PEB 246 was also established under Section 9(a) to resolve a dispute involving the Southeastern Pennsylvania Transportation Authority (SEPTA) and certain of its employees.

Presidential Emergency Board 244. In May 2010, pursuant to Section 6 of the RLA, the LIRR served on the Organizations' formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations. Applications were filed with the NMB by the BRS, IRSA, IAM, NCFQ, and IBEW in September and October 2010, by TCU and UTU in August and September 2011, and by SMART in March 2013.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On October 18, 2013, the NMB, in accordance with Section 5, First, of the RLA, urged the LIRR and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On October 18, 21, and 22, 2013, the Organizations individually declined the NMB's proffer of arbitration, and on October 22, 2013, the LIRR also declined the NMB's proffer of arbitration.

PEB HIGHLIGHTS (CONTINUED)

On October 22, 2013, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Standard Time, on Friday, November 22, 2013.

Following termination of mediation services, on November 18, 2013, in accordance with Section 9a of the RLA, the LIRR requested that President Obama establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. Thereafter, on November 21, 2013, the President issued an Executive Order. Effective 12:01a.m., Eastern Standard Time, November 22, 2013, the Executive Order created Presidential Emergency Board 244 to investigate and report concerning the dispute between the LIRR and certain of its employees represented by the Organizations. The President appointed Ira F. Jaffe, as Chairman of the Board, and Roberta Golick and Arnold M. Zack as Members. The Board submitted its Report to the President on December 21, 2013.

Presidential Emergency Board 245. When the recommendations of PEB 244 did not result in a prompt resolution of the disputes, the NMB conducted a public hearing on January 15, 2014, at which the Organizations stated their willingness to accept the recommendations of PEB 244 and LIRR discussed its reasons for not accepting the recommendations of PEB 244. The dispute remained unresolved.

On March 5, 2014, LIRR requested that President Obama create a second Emergency Board pursuant to Section 9a(e) of the RLA regarding its disputes with the Organizations. Thereafter, on March 20, 2014, the President issued an Executive Order establishing, effective 12:01 a.m., Eastern Daylight Time, March 22, 2014, Presidential Emergency Board 245 to recommend adoption of a final offer from those submitted by the LIRR and the Organizations. The President appointed Joshua M. Javits, as Chairman of the Board, and M. David Vaughn and Elizabeth C. Wesman as Members. The Board submitted its Report to the President on May 20, 2014.

¹Brotherhood of Railroad Signalmen ("BRS") represents Signal and Communication Workers; Independent Railway Supervisors Association International ("IRSA") represents Gang Foremen; International Association of Machinists & Aerospace Workers ("IAMAW") represents Machinists; International Brotherhood of Electrical Workers ("IBEW") represents Electrical Workers; National Conference of Firemen & Oilers/Service Employees International Union ("NCFO") represents Laborers; Transportation Communications International Union ("TCU") represents Clerks, Dispatchers, Block Operators, and "Exception 5" Employees; and International Association of Sheet Metal, Air, Rail, and Transportation Workers ("SMART") represents Trainmen, Maintenance of Way Employees, Maintenance of Way Supervisors, Carmen, Special Service Attendants, and Sheet Metal Workers.

Presidential Emergency Board 246. On February 2, 2009 and July 23, 2009, pursuant to Section 6 of the RLA, the International Brotherhood of Electrical Workers (IBEW) and the Brotherhood of Locomotive Engineers and Trainmen (BLET), respectively, served on SEPTA formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations. Applications for mediation were filed with the NMB by BLET on April 9, 2010 and by IBEW on June 21, 2010.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On May 1, 2014, the NMB, in accordance with Section 5, First, of the RLA, urged SEPTA and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On May 2 and 6, 2014, BLET and IBEW, respectively, accepted the NMB's proffer of arbitration, and on May 8, 2014, SEPTA declined the NMB's proffer of arbitration.

On May 14, 2014, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Saturday, June 14, 2014. Absent the establishment of an Emergency Board, BLET and IBEW commenced a strike on June 14, 2014.

On June 14, 2014, in accordance with Section 9a of the RLA, the Governor of Pennsylvania requested that President Obama establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. On June 14, 2014, the President issued an Executive Order creating Emergency Board 246, effective 12:01 a.m. Eastern Daylight Time, June 15, 2014 to investigate the dispute between SEPTA and certain of its employees represented by the BLET and IBEW. BLET and IBEW ceased striking when the Emergency Board became effective. The President appointed Richard R. Kasher, as Chairman of the Board, and Ann S. Kenis and Bonnie Siber Weinstock as Members. The Board submitted its Report to the President on July 14, 2014.

Forecast for FY 2015, FY 2016, and Beyond. The NMB cannot predict precisely the number of PEBs that may be created during a given fiscal year. Estimates are based, among other factors, upon prior experience and knowledge of the contentiousness of the parties in the bargaining process and mediation, the number of cases, and the degree of impact of any dispute. For example, the release of the Massachusetts Bay Commuter Railroad (MBCR) parties created a high probability of 2 PEBs during FY 2011, for which the agency appropriately prepared. In the end, the parties reached agreements during the cooling off period, with no PEB being created. In FY 2012, there was a PEB involving NCCC and multiple unions. Activity leading up to a release and the creation of a PEB for the LIRR and multiple unions occurred in FY 2013, but the PEB was established in FY 2014. As discussed above, a second PEB was established for the LIRR in FY 2014 under the special commuter rail provisions of Section 9(a). In addition, a PEB was also established for SEPTA under Section 9(a).