THE NMB'S FEDERAL TAX ON RAIL WORKERS

At the behest of the railroad industry, Bush appointees to the National Mediation Board (NMB) are poised to use the thin bureaucratic smokescreen of new "filing fees" to suppress rail workers from speaking out on critical issues of working conditions, safety, and pay. Transportation labor strongly condemns this egregious and misguided effort to silence workers.

For the first time in its history, the NMB is proposing unnecessary and unfair filing fees on Section 3 arbitration services for rail workers that are nothing more than a federal tax on an employee's right to speak out on critical workplace issues. The proposal is contrary to the Railway Labor Act (RLA), would unfairly tilt the balance of labor relations in favor of the railroads and would jeopardize the neutrality of the NMB. The NMB must withdraw this proposal and allow the parties – labor and management – to work cooperatively to address any problems with the current arbitration process.

In the rail industry, workers are prohibited from striking over so-called "minor disputes" – those disputes that go to the interpretation or application of a collective bargaining agreement. Instead, these disputes are subject to mandatory arbitration. In exchange for the loss of the right to strike in these instances, Congress provided for government-paid arbitration. The original 1926 RLA did not require contract interpretation disputes to be arbitrated, and unions frequently resorted to strikes over these unresolved issues. As part of the 1934 amendments to the RLA, rail labor gave up this right and agreed to binding arbitration in return for government-paid arbitration services.

The Supreme Court subsequently affirmed that workers do not have the right to strike over minor disputes, citing the purpose and legislative history of the 1934 amendments to the RLA. For the government to now renege on its promise to pay for mandated arbitration would not only violate the Act, but would upset the careful balance that the RLA represents.

Under the proposal, the fees for a claim, from initial docketing through arbitration, would be a minimum of $75 and as high as $350. It must be remembered that these fees would mostly, if not exclusively, fall on workers. Rail companies can take actions that are contrary to the collective bargaining agreement without going through any arbitration process. If workers object, their only recourse is to file a claim and eventually arbitrate.

The NMB tax will unfairly discourage many meritorious claims. Some of the individual claims under Section 3 may be for small amounts – maybe less than the filing fee. But in the aggregate, if these claims are not brought, the carrier will reap a significant cost savings. Thus, the filing fees will actually encourage carriers to violate their collective bargaining agreements, knowing that individual workers will have a disincentive to file a claim. Moreover, the result of this fee scheme will be greater caseload backlog as the rail companies may force cases to arbitration that would have otherwise been settled.

Transportation Trades Department, AFL-CIO

If the NMB moves ahead with this proposal over transportation labor's objections, the agency's credibility and neutrality will be called into question and its ability to carry out its other functions, such as contract mediation and representation cases, will also be jeopardized. Furthermore, if resolution of contract interpretation disputes is thwarted, contract negotiations will be that much more difficult and contentious.

To date, over 125 Members of the House and Senate have spoken out against these fees including the Chair and Ranking Member of the House Rail Subcommittee, the Ranking Member of the full House Transportation and Infrastructure Committee, and the Chair and Ranking Member of the Senate appropriations Subcommittee that funds the agency. In January, the NMB, pursuant to a Congressional requirement, held a hearing on this proposal to examine the negative impact of imposing fees on Section 3 arbitration services. The hearing clearly demonstrated the wide and universal opposition this proposal has generated in rail labor. It is also significant that the association representing professional railroad arbitrators formally spoke out against the NMB's proposal.

Previous efforts to address problems with the Section 3 process have been made on a consensus basis. Given the inherent problems created by the NMB's unilateral action in an area in which it has no legal authority, the NMB must not proceed with this rule and allow the parties to resolve differences without interference. If the Board does issue a final rule, transportation labor will urge Congress to reverse this tax on rail workers that is both unfair and threatens to jeopardize labor-management relations in the industry. Given all the safety and security challenges facing our nation's railroads, it is both dangerous and illogical to silence rail workers.

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