

Rail Facts: What happens if mediation fails in national bargaining

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BNSF and the other large U.S. railroads began the latest bargaining round with three labor union coalitions (representing about 145,000 railroad employees) in early 2015. Now in the third year of labor negotiations, the parties have been in mediation since at least the beginning of this year.

The transition from mediation to a PEB

The negotiations process, required by law, can be very slow and protracted. The parties are currently in mediation after being unable to reach a voluntary agreement in direct bargaining. If mediation fails, the process could extend for many months before the National Mediation Board (NMB) releases the parties and a Presidential Emergency Board (PEB) is formed by the President.

At that point, the parties would eventually have their cases heard by a PEB appointed by President Trump. The timeline under the Railway Labor Act ends once the PEB reaches a conclusion and releases its recommendation. That panel's findings are not binding, and the parties can agree to them, or seek self-help. Congress can step in at that point to enact the PEB recommendation or a solution of their own to avoid a rail service interruption that would be harmful to the U.S. economy.

There are several factors adding delay that could be significant before a PEB could be established, including:

- The NMB isn't fully staffed. Currently, the NMB doesn't have the required number of majority Republican members as required by law, and new members have yet to be nominated. The process of nominations to fill vacant positions has not been moving quickly, and those nominations still require Senate confirmation before the appointments take effect.
- A lack of pattern settlement reached with one or more unions. In the last round, we did have a pattern settlement, which helped expedite the conclusion of the round. the family health care benefits they receive. By contrast, railroad workers pay only 21 percent of total costs on average for their family health care benefits.

BNSF believes that a voluntary deal is always best, but the mediation process is difficult to predict. If mediation is not successful initially, there could potentially be a long delay before the bargaining round is settled. Unfortunately, there is precedent on both airline and railroad negotiations (Amtrak most recently) where the NMB took many months, or even years, to release the parties from mediation.

Bargaining round perspectives

Our employees have demanding jobs that require technical skills and should be well-compensated. As such, railroad employees are already very highly compensated (in the top 7 percent of all industries), and have enjoyed wage increases that have exceeded inflation by more than 50 percent. In fact, over the past 11 years of wage increases, wages for rail union-represented employees have increased 41.9 percent. And railroad employees' health benefits currently exceed almost all survey benchmarks and place in the platinum level under the Affordable Care Act (ACA) – an exceptionally rich level of benefits slated for taxation in the future under ACA to help eliminate such rich plans. Union employees now pay about 20 percent of their overall health costs (with plan costs rising over 30 percent in the last two years) where the national trend is more in line with a 30/70 employee/employer split.

The railroads are not seeking concessionary labor agreements in this round. The railroads have proposed paying wage increases that are in line with inflation, matching market-level healthcare benefits and making minor changes in a few archaic work rules that limit our ability to safely and efficiently serve the needs of our customers. If we can do this, we will help position the rail industry to be able to compete and grow its business.

As a backdrop, our industry is currently facing a challenging environment, with fundamental shifts in several sectors, including our coal, crude oil and international intermodal business. At BNSF, while 2017 volumes are up slightly over 2016, they are still well below their peak in 2006. Like many other railroads, BNSF has seen no net volume growth over the past decade.

In addition, transformative technologies are forthcoming that will challenge our industry further, including autonomous trucks and truck platooning. Similarly, 3-D printing technology could potentially localize more manufacturing and reduce the need for long-haul moves of goods and parts. We must transform and adapt the way we operate to remain competitive. History points to many other industries -- including steel and auto manufacturers as well as airlines -- that were slow to react to transformative changes and subsequently faced bankruptcies, drastic restructuring and job declines.

The negotiation will be resolved eventually, one way or another. It can be resolved in mediation, if parties agree, or it will eventually be heard by a PEB. That process could be further delayed waiting for the administration to fill the Republican vacancies on the NMB. If it does come down to a PEB, past experience shows that railroad and airline employees have had to wait many months for a PEB when mediation doesn't produce an agreement.

We remain hopeful that further delay and an uncertain outcome can be avoided by reaching a fair and voluntary agreement. Doing so would be a good thing when it comes to providing and creating well-paid jobs in an industry that is essential to the transportation needs of our country.

For more information on health care costs and the rail industry, go to raillaborfacts.org.

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