

STATEMENT OF JOHN H. RILEY  
FEDERAL RAILROAD ADMINISTRATOR  
BEFORE THE  
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM  
OF THE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE

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Mr. Chairman. This hearing was called to inquire into a labor dispute between the Maine Central Railroad (and its subsidiary, the Portland Terminal Company) and the Brotherhood of Maintenance of Way Employees (BMWE). Resolution of that dispute is important to employees, the carrier and shippers served by Maine Central. However, the fact that a dispute involving approximately 100 active employees of the Maine Central is now before this Subcommittee, after precipitating a national rail strike, is itself evidence that something has gone seriously wrong with the dispute resolution mechanisms under the Railway Labor Act of 1926.

In suggesting that something is amiss, I do not refer to the underlying dispute or its handling by labor, management, or those who have so diligently provided mediation and conciliation services. The problem is more fundamental: the rules of collective bargaining and dispute resolution have been redefined in midstream, without the involvement of the Congress. In litigation growing out of this dispute, for the first time in 60 years, four courts of appeals have read federal statutory law to deprive federal trial courts of authority to enjoin secondary picketing in the railroad industry.

This literally allows a strike on a small regional railroad involving a relative handful of employees to shut down the Nation's rail system. That our concern is not academic was demonstrated when, in May of this year, Maine Central employees set up their picket lines on Conrail and other neutral carriers, necessitating the establishment of a Presidential Emergency Board. This development upsets the regular procedures of the Railway Labor Act, threatens the vitality of local and regional railroads, ensures that innocent parties will suffer, and affords rail labor rights that other organized employees in this Nation do not enjoy.

Railway Labor Act of 1926. You will note that the President and the Congress have been drawn into this local dispute. That is a departure from the way in which the Railway Labor Act was intended to work. That Act was designed to promote peaceful settlement of all disputes between carriers and their employees by conference, mediation, and voluntary arbitration. Only where a dispute threatened to "deprive any section of the country of essential transportation services" was the Executive to become involved, and then the Executive's role was limited to creation of an Emergency Board. On its face, the Act did not even define a Congressional role. Over the years a few exceptions had to be made for major, intractable disputes of national scale; but the rules remained unchanged.

The ability of labor to engage in unrestricted secondary picketing under recent appellate court decisions changes the rules, and changes them in a way that will seriously disadvantage both consumers and shippers and uninvolved carriers. Unrestricted secondary picketing creates an institutional incentive to disfavor dispute resolution by the normal processes of the Act, and instead opt for resolution through the political process. This threatens to bring the

President into scores of local disputes, thereby diluting further the moral force intended to accompany the recommendations of the emergency boards. So, too, the committees of Congress will find themselves sitting as supermediators to resolve the underlying disputes by legislation. This is the institutional meaning of the recent secondary picketing cases.

Smaller railroads. The newfound availability of secondary picketing comes at a particularly inopportune time. In the aftermath of deregulation this country is benefitting from a wide diversity of railroads serving the needs of shippers and consumers, from new short lines organized by shippers to large transportation companies such as CSX. In this environment of differing demographics and regional submarkets, railroads will need to adapt operating practices and work rules to meet the varying needs of their shipping communities, as well as the practical requirements of their varied scales of operation. If, through secondary activity, a local or regional dispute can be turned into a national issue, all carriers will inevitably be driven back into national handling, where the parameters of agreement are inevitably defined by the needs of the largest carriers. Small carriers - and their shippers - will inevitably suffer as flexibility for regional negotiation diminishes.

Unfair impacts. Although I fully understand why a labor organization must employ all of the lawful tools at its disposal, secondary picketing is, nevertheless, fundamentally unfair. The policies that caused the Congress to enact the Taft-Hartley Act in 1947 and that may have prompted the courts in earlier cases to enjoin unrestricted secondary activity remain sound today. Secondary picketing against neutrals inflicts serious and indiscriminate harm on uninvolved carriers, shippers and consumers. The innocent party, non-affiliated, non-aligned, is always the loser.

Other industries. If we can reasonably conclude that secondary picketing upsets the processes of the Railway Labor Act, unfairly affects innocent bystanders, and threatens the healthy diversity of contemporary railroading, there is little one can say in its favor. Section 8(b)(4) of the National Labor Relations Act makes secondary activity directed against neutral employers an unfair labor practice. Rail labor deserves to play on a level playing field, enjoying the basic right to self-help enjoyed in other industries. That also implies, however, that employees in the single industry most critical to the free flow of interstate commerce should have no greater rights to disrupt the national economy than other workers.

A new dimension has been added to labor-management relations in the railroad industry, and the secondary boycott issue merits attention in its own right, above and beyond the particulars of this or any other labor-management dispute.

Let me now add two specific comments on the legislative proposal before the Committee this morning.

First, the Administration believes it is inappropriate to mandate the involvement of any Cabinet Officer as a fact-finder or arbitrator in a private labor-management dispute. As a consequence, the Administration opposes the statutory mandate to the Secretary of Labor set forth in Section 2 of the Joint Resolution.

Second, while the Department of Transportation would not oppose the imposition of a short statutory "cooling-off" period should the Committee choose to pursue that option, the cooling-off period should not extend more than a few days beyond the date on which Congress reconvenes in September. This would ensure that Congress will have adequate time to weigh the options for any further legislation that might prove necessary before adjournment.