At Age 65, Retire the Railway Labor Act

Morgan O. Reynolds and D. Eric Schansberg

Jazz, bootleg booze, flappers, gangsters, Babe Ruth, and H.L. Mencken—it was 1926. Calvin Coolidge was in the White House. Overwhelming majorities in both houses passed the Railway Labor Act (69-13 Senate and 381-13 House) and the president signed the act in May. Those people and their era retired long ago, but their offspring, the RLA, is very much alive. A reverse Sherman Act, it basically mandated collective bargaining for all interstate railroads and set up federal machinery to intervene in labor disputes.

And it worked. Sixty-five years later, the railroads have the most unionized workforce in U.S. industry (the U.S. Postal Service is second), the most overpaid workers, the most outlandish work rules, the lowest rate of return on capital, and the fewest degrees of freedom for management in labor squabbles. Despite extensive deregulation of railroad prices and services since 1980, our economy continues to haul around the burden of an outmoded Railway Labor Act. How did it happen, how serious is it, and what can be done about it?

Once I Built a Railroad

Once upon a time, the railroads were special. America's first giant enterprises, the leading edge of a mighty wave of industrialization, led by flamboyant entrepreneurs, they built far-flung ribbons of steel to provide a revolutionary means to ship raw materials and finished goods quickly and cheaply throughout the country. Perhaps overly visible, they became cheap targets of public agitation. Seen as privileged, abusive, yet indispensable, they were reviled as monopolists "charging what the traffic would bear." Given the governmental itch to intervene, it was music to many congressional ears.

World War I proved decisive in government's dalliances with rail labor. Under cover of "national emergency," federal officials seized the railroads, pushed employment to an all-time high of over 2 million employees by 1920 (5.4 percent of the work force), made resistance to rail unions a federal offense, doubled union membership on the railroads, kept prices down during a wartime inflation, ran up red ink exceeding $1.2 billion, and then almost returned the wreckage to private ownership.

As historians have pointed out, the return to "private hands" stopped just short of nationalization. The Transportation Act of 1920 gave the Interstate Commerce Commission complete control over pricing, issuance of securities, expenditure of proceeds, consolidations, and the construction, use, and abandonment of facilities. The act set up a Railway Labor Board to mediate disputes. Its "recapture" provision required a portion of a company's earnings in excess of an allowable "fair return" to be diverted to railroads with relatively low earnings. Except for the most routine administration, almost everything owners might do was subject to federal regulation or dictation. Holders of railroad stocks and bonds hardly differed from holders of U.S. government securities, as economic historian Robert Higgs points out, and railroad workers resembled governmental employees.

The model seemed to be regulation of the rail-

Morgan O. Reynolds is a professor of economics at Texas A&M University, where D. Eric Schansberg is a graduate student.

roads as public utilities, with appropriate rents to be spread around. A fly in the ointment was the rail labor disputes that periodically erupted—visible, violent, and politically unpopular. The commerce clause of the U.S. Constitution had long restricted the national government's ability to intervene in most economic affairs, but Congress had unchallenged power to regulate interstate transportation. A sequence of federal laws had regulated rail labor relations beginning in 1888. State legislatures also had intervened in the form of so-called "full crew laws" and other regulations beginning in the 1880s.

The Railway Shopcraft strike of 1922 was instrumental in passage of the act. It involved 400,000 strikers, 1,500 cases of violent assault to kill, 51 cases of dynamiting and burning railroad bridges, 65 reported kidnappings, many other incidents of destruction, and hundreds of federal labor injunctions. The operating brotherhoods refused to join the strike, and the shopcraft unions suffered a major defeat. Some railroads subsequently installed company unions with the willing cooperation of employees. Ironically, this failed strike led to the first durable federal help for labor cartels in private employment.

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Coolidge wanted the railroads and the unions to join hands and recommend legislation that might facilitate more harmonious labor-management relations and reduce the threat of widespread railroad shutdowns. The railroads found strikes especially painful because of high fixed costs, an instantly perishable service, and growing traffic losses to trucks, especially less-than-carload business. After some false starts, conferees agreed on the so-called Watson-Parker bill, which became the RLA, duly signed into law by Coolidge on May 20, 1922. It pushed Title III of the Transportation Act and the Erdman and Newlands Acts onto the dust heap of federal rail labor legislation. The only significant opponent was the National Association of Manufacturers, which feared upward pressure on freight rates.

The president of the Pennsylvania Railroad, the leader in the industry, called the RLA "machinery for peace." A more accurate label would have been the appeasement of the trade unionists. The U.S. Supreme Court, in a 1930 case (281 U.S. 548), upheld the act's constitutionality when it ruled that an interstate carrier's promotion of a company union violated the RLA's prohibition against interference with the right of employees to choose their own bargaining representatives. The RLA and this case also established the legal precedent used to extend federally supported cartelization of labor far beyond the railroads and interstate commerce through the 1935 National Labor Relations Act.

The Railway Labor Act continued to expand. In June 1934 Congress amended the RLA to bestow additional privileges on the rail unions, for example, a list of proscribed unfair employer practices. Carriers' strenuous objections demonstrated once again that "pragmatism" is impractical over the long haul. In 1936 strong lobbying by the fledgling Airline Pilots Association (ALPA) brought the airline industry under RLA regulation, a mismatch from the start.

In 1926, of course, railroad managers did not vigorously oppose the RLA because they believed that the Interstate Commerce Commission would fix "just and reasonable" rates based on costs—higher because of rail unions—and would conveniently pass them on to shippers. But the transfer of wage, price, and service determinations from the marketplace to the political process did not prove so agreeable. Among other failures, management failed to foresee the government's pouring of pavement and the Corps of Engineers' busywork on the Mississippi River network—competition that undercut the implicit guarantee of a public utility return on investment for the railroads. By the 1960s the railroads were in desperate financial shape. Rail service and capital stock were in poor and deteriorating condition, and bankruptcies began to litter the landscape. After decades of regulation and billions of dollars of taxpayer subsidies had exposed how little government knew about the railroad business, Congress faced three unpleasant options: allow rail service to expire under the dead hand of the ICC, nationalize the railroads, or move toward free enterprise.

Wonder of wonders, Congress did the right thing. The Staggers Rail Act, passed in 1980 partly owing to political pressure by shippers who wanted no part of a totally socialist rail system, liberalized government's control over rail prices and services. Deregulation triggered a dramatic reversal in the industry. Although still hobbled by regulation in nonlabor matters, at least a serious threat of reregulation led by so-called captive shippers was deflected in 1987. The main obstacle to a new burst of rail improvements remains labor regulation.

Now It Is Done

Written sixty-five years ago for a heavily regulated industry, the Railway Labor Act's deficiencies now stand in sharp relief. The railroads still groan under the most complete form of government control over private-sector labor relations in U.S. peacetime history. Management is compelled to "bargain in good faith" with union officials. The National Mediation Board determines labor representation, and it has consistently defined bargaining units to crush independent local unions. Cooperative or nonadversarial employee associations (so-called company unions) are prohibited. Rail employees have no method to decertify union representatives such as that provided by the National Labor Relations Act. Rail labor decisions are effectively unreviewable by the courts. Union dues are compulsory—an RLA provision makes failure to pay assessments to union officials grounds for termination—and state legislatures cannot outlaw such coercion because the RLA has no equivalent to the 14(b) clause of the Taft-Hartley Act. Union contracts never expire. In the event of bargaining deadlocks such as the one in 1991, the president and Congress intervene on the pretext of "national emergency," and their appointees arbitrate or dictate terms after long and costly delays. The rail unions can use secondary picketing, legal only in the rail and airline industries, to shut down or cripple other enterprises nationwide that are not direct parties to a labor dispute. In other words, the rail unions can always credibly threaten to convert a local dispute into a nationwide strike. The Railroad Unemployment Insurance System also pays company-funded benefits to striking rail workers.

To say that the rail unions have enjoyed a special relationship with Congress is an understatement; perhaps special-interest politics of the pure textbook variety would be more accurate. Under the RLA, Congress granted the rail unions, the oldest continuously organized cartels in America, enormous amounts of weaponry and monopoly power. To protect them from the consequences of their own excesses, however, the White House and Congress micro-manage labor altercations. Since 1963 Congress has dictated terms in sixteen rail disputes and was trying to resolve another as this article was written. Other federal "experiments" include the Railroad Retirement System, passed in 1934, which now supports a staggering three dependents for every rail employee and costs the railroads nearly $20,000 per employee annually. Another is a unique, tort-based 1908 Federal Employers' Liability Act that compensates rail worker injuries in a litigious and Kafkaesque fashion.

The operation of our railroad "strike-threat system" can be illustrated by the experience of Guilford Transportation Industries, Inc. In March 1986 David Fink, chairman of Guilford's northeastern regional rail unit, rejected track workers' demands for job guarantees and triggered a strike against the company. Fink put supervisors and nonunion employees to work running trains with small crews and without rigid work rules, job guarantees, or arbitrary pay. He cut labor costs in half. Spurred by the spread of secondary picketing to Conrail and other railroads, President Reagan appointed an emergency board. The board forced Guilford to take back some striking workers, and Congress approved a resolution ordering both sides to accept the recommendations of the special presidential panel and to submit any unresolved issues to arbitration. The U.S. Supreme Court ruled in 1987 that federal courts cannot enjoin rail unions from secondary picketing. In 1988 the Court refused to hear Guilford's challenge to the 1986 legislation that forced it to settle its dispute with the Brotherhood of Maintenance of Way Employees.

After this failure, Guilford tried another way to get around its excess union baggage. The company had a favorable contract with the United Transportation Union in its Springfield Terminal Company.

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Therefore, in 1987 it decided to lease employees to its three regional railroads, the Boston & Maine, Maine Central, and Delaware & Hudson. Today it has reduced the size of train crews, and employees may work up to 50 percent of each day outside of their craft, an important gain in flexibility: repairing a diesel locomotive no longer requires ten crafts. Some of the company's litigation and arbitration with the unions will come to a conclusion this year.

Brother Can You Spare a Dime?

Traditionally the rail unions were organized along craft lines, broadly divided into operating brotherhoods such as the Locomotive Engineers and nonoperating brotherhoods (those not directly involved in moving trains) such as the Maintenance of Way Employees. Employment on the major railroads has declined drastically to today's 220,000, one-ninth of employment in 1920, as new technology and substitutions in production and consumption made brakemen, firemen, and conductors obsolete. Since 1980, rail employment has fallen by 50 percent as the result of rail mergers, a few reductions in work rules, automation, line abandonments, and liberalized rail regulation. A wave of union mergers has occurred that reduced the number of "standard" rail unions to eleven. One of them, the United Transportation Union, is vulnerable to expiration because it represents train crew members who have little or nothing to do and are the chief target of industry cost-cutting efforts. Even some other rail unions and workers realize that UTU practices endanger non-UTU rail jobs. The UTU had taken to "raiding" (competing for) members of other rail unions and to offering railroads more sensible contracts, but recently the UTU rejoined the AFL-CIO and promised to "behave."

Over 90 percent of nonsupervisory rail personnel are union members. Despite the highest union density in America, there have only been five national rail strikes with a total of ten lost work days in the industry since the end of World War II. An emasculated management can barely imagine winning a strike. They are faced with the choice of surrender or the delay, politicking, and irrationality of federally imposed solutions.

The rail unions hardly merit such privileged federal treatment. Pampered aristocrats of labor, they have an unparalleled record of sordid exclusion and racial discrimination. Their average wages are in the top one percent of wage earners nationwide. In 1987 the average compensation of rail operating employees was $44,275 plus fringe benefit costs of $20,555 versus Teamster wages of $30,489 and fringe benefits of $14,659. In 1989 railroad workers earned an average salary of $49,809. Some railroad secretarys make $45,000 per year.

Are these high wages market premiums for the scarce skills required by railroads and compensation for unpleasant working conditions? No, according to a statistical analysis by University of Pennsylvania economists William Carter, Michael Wachter, and Peter Linneman. If union rail wages are compared with those of statistically similar nonunion railroad workers, union wages are only 10 to 20 percent higher, not a very impressive result. This comparison is inconclusive because there are few nonunion rail employees in the data and sampling variation makes the results unstable. More important, there is reason to suspect that nonunion rail employees are overpaid too.

If we compare union rail wages with wages paid to otherwise identical workers in expanding employment sectors (an "opportunity wage index"), the union rail workers' wage premium is an estimated 50.1 percent, exceeded only by the 51.8 percent in mining, and rivaled by a construction union premium of 46.3 percent and auto manufacturing's 46.7 percent. Since risk and unpleasantness are greater in mining than in rail employment and rail workers enjoy the best fringe benefits in U.S. industry, we may conclude that union rail workers are the most overpaid in America. In addition, a hidden cost of union wage contracts is that they prevent the railroads from metering rewards to individual productivity.

Even more costly to the carriers and shippers than overpaid workers is the forced overuse of labor. The rail unions deserve the labor equivalent of an Oscar for best sustained performance in reducing industrial efficiency. Restrictive work practices are legendary, from firemen on diesel locomotives to train-limit laws. During the 1980s the railroads made minor progress against these practices, but they still have a long way to go. Some crews receive an extra day's pay every time they turn a locomotive around (yard and line haul crews have rigid separations of duties despite identical skills). Carriers are forced to employ three- to five-person crews, while nonunion carriers (Florida East Coast Railway and regional and short-line carriers) use two people. Crew members receive a full day's pay after a train moves 108 miles, even if the trip requires only a few hours. (The current three-member board appointed by Congress may impose a 130-mile rule by 1995.) Some union members have guaranteed lifetime incomes and must only work a few days per month. Some engineers receive "lonesome pay" for giving up the full-time company of a fireman. Until 1987, some Burlington Northern crews received "hazardous pay" for traveling through Indian territory in Montana. Management studies show that work forces could be cut in half, and according to some estimates, labor restrictions cost the industry some $4 billion a year. Despite union concessions on work rules, shippers continue to complain about the carriers' inability to achieve efficient and economical labor contracts. Overall, the RLA and its government-backed unions combine to double labor costs and therefore drive up freight rates from 20 to 25 percent, a very serious handicap in the competition with trucks and barges.

Freer to compete on price and service since 1980, the railroads have halted their erosion in real revenues and market share and have reduced their expenses. Market forces have reduced real prices on most rail services. If the industry were treated as a single firm, the industry's revenues of $9.7 billion in 1958 would have placed it first over GM's $9.5 billion; today the industry would only rank tenth with one-quarter of GM's revenues. Railroads remain last in most industrial rankings of profitability and rate of return on investment, but cost cutting and productivity gains have replaced red with black ink, no matter how modest. Price-earnings ratios for railroads are about two-thirds of the market averages, although the Dow Jones rail industry group has matched average market appreciation since 1982. Shakeouts and consolidations have driven the number of major railroads from 71 in 1970 to 13 in 1990.

The Florida East Coast Railway, a line long known as "America's most efficient railroad," highlights the woeful labor inefficiencies of the major carriers. Its primary operation is transporting freight from Jacksonville to Miami. When Edward Ball took over the operation in 1961, the unions required the use of three five-man crews—each receiving a day's pay for each 100 miles traveled on the 366-mile trip. Ball failed to see the sense of this scheme and decided to try to change it. Union officials could not see the sense in any change and called a strike in 1963. The violence and vandalism that continued for eleven years demonstrated to other carriers the cost of defying the unions. The railway won, however. The company used two-man crews who were "cross-trained" and paid them a day's pay for eight hours' work rather than for 100 miles traveled. During the 1970s, the railroad's labor costs were 40 percent of total costs compared with 64 percent for all class I railroads, and Florida East Coast Railway earned the highest return of any class I railroad. In addition, the railway consistently won safety awards that fended off another pretext for government control and continues to retain customers while other railroads lose out to trucks.

The short-line and regional carriers also show how efficiently railroads can be run. Major carriers have abandoned thousands of miles of track since deregulation, but they have leased or sold some of it to over 200 short-line railroads that have formed since 1980 to provide rail service to small communities. Short lines transship cars to class I carriers and have two significant advantages over the "bigs": marketing and labor costs. Short lines are close to shippers in the community and offer personalized services such as a daily switch of freight cars on a factory siding. They show how cost-effective and competitive rail service can be.

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Are the growing numbers of nonunion rail employees happy? A 1987 ICC survey found that hourly wages on short-line and regional railroads were 10 to 33 percent lower than those of class I railroads (not surprising in view of exorbitant union pay schemes) and that work rules were few or none. Most of the nonunion rail employees felt that managers appreciated their work, rewarded them for performance, and treated them fairly. Without stringent work rules, jobs were more interesting. Despite pay below union rates, nonunion carriers pay more than most firms in local communities. Surveys generally find that workers in all nonunion companies, not just rail, believe that they have more influence with managers, better working conditions, and higher morale. Evidently nonunion carriers have satisfied employees.

The growth of short-line employment has attracted the attention of the brotherhoods, but they have so far failed to organize short lines. ICC rules currently exempt short-line buyers from the labor regulations that apply to large carriers. Thus far, the rail unions have challenged this policy in the courts and with proposed legislation—to no avail.

Sugar in the Tay

The announced purposes of the RLA were to encourage "industrial peace" and to assure employees representatives of their own choosing if they wanted such third-party representation. It was passed with little fanfare at a time when railroads were all but nationalized and faced less competition. Today, railroads have more freedom to operate as other businesses, although they are still hampered by edicts from 81 state and federal agencies. Railroads are in keen competition with other purveyors of transportation services, but no basic change has occurred in the framework of their unique labor regulations.

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The railroads are "special" no longer, and the case for repeal of the special-privilege RLA is compelling, if not politically attractive. The *Wall Street Journal,* labor scholars such as Herbert Northrup, and many others have called for repeal of RLA. Brookings Institution scholars Clifford Winston and others urge that short lines continue to be allowed to use labor efficiently and without federal restriction. DOT Secretary Samuel Skinner's statement of national transportation policy recently declared support for the "repeal of Federal statutes that impose undue costs on railroads" and bringing "Federal treatment of railroads into conformity with treatment of other industries."

Scrapping the RLA would shunt rail labor issues onto the National Labor Relations Act that regulates labor relations in the rest of private employment. The NRLA is another product of the 1930s and therefore is hardly a free-enterprise fairyland (both the RLA and the NLRA should be repealed in favor of the common law), but it is less stacked in favor of union power. The NRLA, for example, specifies unfair union practices as well as unfair employer practices. Rail and airline unions under the RLA have the right to secondary picketing, explicitly denied all other unions. The RLA's National Mediation Board continues to deny rail employees representation of their own choosing in a manner worse than the NLRB. The NMB remains extraordinarily free from court review. By appointing emergency boards and legislating when disputes obviously are not emergencies, the president and Congress continue to discourage the railroads and unions from settling their own differences. In view of the dismal results of union strikes during the 1980s, the rail unions might learn some unpleasant truths if the president and Congress would abstain from intervention.

Failing outright repeal, Congress could amend the RLA to eliminate or to reduce its most harmful features. It should explicitly ban secondary picketing and boycotts, add unfair union practices on a par with the NRLA, allow the NLRB rather than the NMB to determine employee representation, prohibit or impede presidential and congressional intervention in disputes, add a statement of government neutrality to the act, and require railroad boards to be financed by the parties rather than taxpayers. But these suggestions merely return us to the real solution: drive a spike through the RLA. John Henry, where are you?

Selected Readings

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