Unconventional Labor Talks Begin - Railway Age

As baseball is a straightforward game—hit the ball, catch the ball, throw the ball—negotiating wage, benefits and work rules agreements between railroads and their dozen craft-differentiated labor unions is equally uncomplicated. The sides exchange demands for amending existing agreements, collectively bargain, reach a tentative settlement and send it to union members for ratification. Next round, please.

If only it were so simple. And here we go with a new round of contract talks—one looking so unconventional that stakeholders may wonder what to expect.

Historically, the National Carriers Conference Committee (NCCC) has represented Class I's and scores of unionized regionals and short lines at the bargaining table. As in years past, and as a prelude to direct bargaining, the NCCC on Nov. 1 began exchanging with rail unions desired contract amendments—Section 6 notices named for the applicable provision of the Railway Labor Act (RLA) that governs railroad labor relations.

Such is known as National Handling, which for generations has produced standardized-by-craft national master agreements. There is good reason. For a network industry such as railroads, seamless interconnectivity is essential to the uninterrupted flow of interstate commerce that is best not disrupted by work stoppages that would be more likely were there a myriad of labor agreements with differing amendment dates and dissimilar, within crafts, wage rates and benefits. But National Handling is not now occurring.

Months ahead of the Nov. 1 exchange of Section 6 notices between the NCCC and rail unions, informal contract talks—not preceded by Section 6 notices and thus outside provisions of the RLA—commenced between individual railroads and their unions, resulting in tentative and sometimes member-ratified agreements. Notably and optimistically, where these informal negotiations have been ratified, a pattern is emerging—patterns that set precedent and pressure on all others to settle similarly.

Where these informally arrived at agreements have been reached and ratified—and many have been on BNSF, CSX and Norfolk Southern—members of those craft unions already have in force an amended five-year agreement.

In fact, should every railroad separately reach member-ratified agreements with their unions, there may be no National Handling this round—but that is unlikely and why the NCCC has exchanged Section 6 notices with the unions.

Significantly, as individual railroad bargaining has been outside the RLA process, there may be no strikes, promulgation by carriers of desired contract amendments or lockouts where those talks fail. Such actions must await conclusion of all RLA procedures, including serving of Section 6 notices, indefinite mediation by the National Mediation Board (NMB) and a Presidential Emergency Board investigation and its non-binding recommendations.

Enter now the pattern established through informal bargaining. There is no material difference in any of the ratified agreements. Each provides an 18.8% wage increase over five years, enhances

vacation entitlements and healthcare benefits, and contains no offsetting increase in employee healthcare contributions.

Where ratified agreements are not reached through the informal process, those railroads either will serve Section 6 notices individually, mirroring the pattern, or place themselves under the NCCC National Handling umbrella where the NCCC's Section 6 notices provide nothing better than the existing pattern.

Should outlier unions reject carrier or NCCC Section 6 notices, they face being held in indefinite mediation by the pattern-respecting NMB until they signal readiness to accept the pattern. If released and they do not accept the pattern, leading to a threatened strike, they almost assuredly will find Congress prepared to set settlement terms mirroring the pattern. Labor-friendly lawmakers consistently over the decades have voted in favor of keeping interstate commerce flowing.

Additionally, no railroad sought a contract amendment seeking one-person crews, even though federal courts have ruled that crew consist be negotiated railroad-by-railroad and not through National Handling. A Federal Railroad Administration (FRA) rule mandating two-person crews is currently being challenged by railroads in federal court as not properly relating to safety. In the past, the FRA ruled that crew consist should be the subject of collective bargaining and not an FRA safety rule.

For shippers, the takeaway is no imminent threat of a rail work stoppage well into 2025 at the earliest.

Wilner's books, "Understanding the Railway Labor Act," and "Railroads & Economic Regulation," are available from Simmons-Boardman Books at https://www.railwayeducationalbureau.com/, 800-228-9670.