

II. National Labor College Student Workshop: Research by the Rank-and-File

Coalition Bargaining: A Successful Bargaining Strategy for Rail Labor

FLOYD MASON

International Brotherhood of Railroad Signalmen

Coalition Bargaining: A Successful Bargaining Strategy for Rail Labor

The employees of the railroad industry are represented for collective bargaining purposes by 12 craft unions¹ that bargain with the industry through a unique national process. These labor organizations have from 1986 to date negotiated with a formally structured and unified rail industry through combinations of efforts structured individually, in loosely formed coalitions, and most recently in a formal coordinated structure. Because rail labor has negotiated against a consistently coordinated industry, it has been disadvantaged. The rail industry's information is centralized, and the industry speaks with a single spokesperson. In contrast, rail labor's information is divided among the 12 separate craft unions and speaks through separate voices. It is my hypothesis that rail labor benefits when effort is coordinated and that centralizing factual bargaining information will improve the position of rail labor in its charge to bargain with a centrally coordinated national rail industry. Moreover, better information can save time and help resolve conflict, and so benefit both sides and the nation as a whole. Coalition bargaining presents challenges. Some of those challenges were overcome in the national bargaining round that ended in 2007 for rail labor organizations participating as the Rail Labor Bargaining Coalition (RLBC).

This study compiles into one document much of the factual bargaining record of rail labor, particularly the data related to the RLBC and its approach to resolving its member organizations' national bargaining issues. The document can serve two purposes: to provide a central reference point for the bargaining facts related to this most recent national rail bargaining round focused on the RLBC and its seven rail labor organization members,² and to capture as a historical record the improvements and sacrifices accomplished through an approach formalized in the formation of a unique and successful coalition body.

Background of Coalition Bargaining

Through years of bargaining history and at least one court decision (*General Committee of Adjust v Burlington No Santa Fe* 2002), national bargaining in the rail industry is conducted with those carriers that choose to join the National Carriers Conference Committee (NCCC) and to be represented by their spokesman and representative body, the chair of the National Railway Labor Conference (NRLC). Since at least 1982 each of the Class I carriers, which today include Class I carriers and a varying number of smaller regional and terminal railroads, come together under the collective banner of the NCCC and are represented by an independent body of full-time permanent employees that work for the NRLC.

In 1982, 76 railroad carriers were part of national handling. In 2007 that number was 14. In the last bargaining round there were the five Class I carriers (listed in Table 1), their subsidiaries, and nine regional or

Author's address: 2511 Smith Harbour Drive, Denver, NC 28037

terminal railroads (Allen 2004). In the bargaining rounds since 1982, the vast majority of the rail industry has been represented by the NRLC, the differing numbers owing mainly to railroad mergers.

TABLE 1
U.S. Class I Carriers

| | |
|---------------------------------------|------------------------|
| CSX Transportation | Major eastern railroad |
| Norfolk Southern Railway | Major eastern railroad |
| Burlington Northern/Santa Fe Railroad | Major western railroad |
| Union Pacific | Major western railroad |
| Kansas City Southern | Midwestern railroad |

In contrast, the number of rail unions has been relatively constant for recent rounds. There are 12 craft unions in the rail industry today. The number of bargaining unions has not changed since 1991. The Brotherhood of Locomotive Engineers and the Brotherhood of Maintenance of Way Employees, for example, have affiliated with the Teamsters, but each division is still responsible for collective bargaining agreements for its members.

What has varied in recent rounds is the manner and combination of unions as bargaining units that negotiate with the nation's rail carriers at the national level. Typically, each rail union negotiates separately with the NRLC, and if agreements are not reached, a Presidential Emergency Board (PEB) is appointed to resolve disputes without a strike. To deal with these disputes efficiently, the National Mediation Board—the independent government agency responsible for labor–management relations in the airline and rail industries—would assign multiple craft unions and the rail industry to a single PEB. For example, PEB 211, which led to the conclusion of the 1986 round, was assigned to resolve the collective bargaining differences of six rail unions with the NCCC. The NCCC represented the rail industry; the six unions were the Brotherhood of Railway Carmen (BRC), the International Association of Machinists (IAM), the International Brotherhood of Electrical Workers (IBEW), the International Brotherhood of Firemen and Oilers (IBFO), the Brotherhood of Maintenance of Way Employees (BMWE), and the Brotherhood of Railroad Signalmen (BRS). The PEB made recommendations to resolve the collective bargaining issues for each separate union and the industry (National Mediation Board 2008). In 1991, 11 rail unions were part of PEB 219.³

In these emergency board proceedings, the carriers made their arguments through their bargaining coalition, the NCCC, and the unions all made their arguments separately. In the hearing for PEB 219, each rail union represented thousands of employees and multiple collective bargaining agreements, yet received as little as 10 minutes to make its case in order to accommodate the large number of issues and parties. PEB 219 included a number of concessionary terms for rail labor, particularly train and engine service and maintenance-of-way employees (Harris 1990). It was this point in time that rail labor began to experiment with combinations that would eventually lead to stronger coalitions.

In 1996, the BRS promoted and joined an informal coalition of shop craft unions that included the BRS, the IBEW, the IAM, and the Sheet Metal Workers International Association. The informal coalition remained together until near the end of the bargaining process, when the BRS left the coalition to pursue its own interests and to avoid some conflict with the IBEW over jurisdiction of work. An important factor here was the effort by the NCCC to call for separate discussions for the respective coalition members, leading to an eventual separation of interests. In the round that ended in the 2003 national agreements, the BRS again negotiated, and was successful in reaching agreement, independently. Shopcraft unions worked together as an informal coalition, but without the IAM. The IAM failed to reach agreement in the 2003 round, and an emergency board was not appointed. The failure of one craft to reach agreement in the round that ended in 2003 would lead to complications in the round that ended in 2007. Pattern bargaining is well established in the rail industry, causing complications when agreement is not reached by all parties in the same period.

This independent bargaining by rail unions, the grouping of unions at PEB hearings, and the occasional grouping of some unions in informal coalitions led to mixed results. The round of bargaining that

led to the 2007 national agreements was to see a new and more formal approach to bargaining. In late 2004, nine of the 12 major rail unions began the formation of the Rail Labor Bargaining Coalition.

Bargaining History: The Struggle of Labor and Management

The year 1982 may have been a turning point in industrial relations. At least this was the hypothesis posed soon afterward by Harry C. Katz (1984) of MIT. He looked for a transition from adversarial bargaining to one of “labor–management cooperation.” The rail industry, however, had not progressed to the ideals envisioned by Professor Katz.

Katz drew three conclusions in his study: 1) innovative bargaining did not occur everywhere, 2) wage and work rule concessions were a common feature, and 3) “in a few cases the scope of innovative bargaining . . . involves enhanced participation.” Time has shown only conclusion 2 to stand the test of time, at least for national handling in the rail industry.

This period was the era of Frank Lorenzo and Continental Airlines. The Airline Pilots Association struck Continental October 1, 1983, one week after Continental filed for bankruptcy under Chapter 11 and cut pay scales for union workers in half. This was a bargaining climate that pilots termed “do or die” in their effort to prevent the Lorenzo style of bargaining from becoming the norm nationwide (*Business Week* 1984).

Terms like “backloading” (adding wage increases to the end of a contract) and “lump sums” became part of the dialogue that remains today. “Lump sum payments are not averaged into the hourly wage. In this way they give employers a lower bargaining ‘platform’ for the next contract and over the years, help depress wages in general,” explained a labor publication defining the new terms (*Labor Notes* 1986:1).

The economic recovery that followed in the mid-1980s continued to leave labor out. “Despite an expanding economy, labor-management settlements continued to be low in 1984. Negotiators grappled with pressures to reduce or eliminate labor cost increases in the face of growing import competition, the spreading effects of domestic deregulation in transportation, and structural changes in other industries” (Ruben 1985). This was the beginning of deregulation, especially for transportation, and of the end of cost-of-living increases for many in major private industries. In this climate, bargaining had begun for 350,000 railroad workers.

This new era of real deregulation and perceived labor–management cooperation was highlighted by unilateral wage cuts by Pan Am and Eastern. “Pan Am’s negotiator can anger 28 people by just walking into the room” (Arnold and Dubin 1985).

This was also the beginning of the two-tier wage settlement. In 1985, 700,000 workers found two-tier wage concession clauses in their contracts. In a two-tier wage structure, new employees receive a lower wage than current workers. This was at a time when executive pay for major U.S. corporations rose 9%, to \$679,000, and CEO pay averaged \$1.2 million (Moody 1986). Union membership was at 21.5%, and health care cost containment and subcontracting had entered the fray as increased deductibles (Tarpinian 1986).

Negotiators were faced with saving jobs through small wage increases, wage decreases, freezes, and lump sums (LaCombe and Borum 1987). The unions in the United States were faced with survival, and improvements had become secondary.

In the years between the 1980s and 2004, when the current bargaining round began, labor within rail became less fragmented. In 1966, rail labor was represented by 45 different and distinct labor unions. By 1986, consolidation had cut the number to less than half that. By 2004 there were 12 major rail labor unions. Bargaining with an organized and coordinated alliance of rail carriers is disadvantaged by union fragmentation, but less so by 12 than by dozens (Shils 1964).

Details of the major U.S. rail unions are depicted in Table 2. Both the number of rail unions and the number of represented members have declined significantly from 45 unions in 1966 to 12 unions by 2004. The decline in membership was also dramatic, from 350,000 rail members to less than 150,000 by 2004 (Table 2). The decline in membership, however, seemed to have reached a low point and is trending back up as far as signalmen are concerned. While the number of unions is not likely to increase, recent hiring for BRS and the industry outlook overall seems to bode well for rail union members (AAR Outlook, Table 3).

TABLE 2
Major U.S. Rail Unions

| Union | Union affiliation | Represented workers | Membership |
|--|--------------------------|--|------------|
| ATDA* (American Train Dispatchers Association) | Independent, AFL-CIO | Train dispatchers and operators | 1,445 |
| BLE* (Brotherhood of Locomotive Engineers) | Teamsters, Change to Win | Engineers | 24,882 |
| BMWE* (Brotherhood of Maintenance of Way Employees) | Teamsters, Change to Win | Track, building, and structure employees | 26,831 |
| BRS* (Brotherhood of Railroad Signalmen) | Independent, AFL-CIO | “Signalmen” who install train control, highway protection systems, and communication | 6,531 |
| IAM (International Association of Machinists) | Independent, AFL-CIO | Locomotive and car mechanics and machinists | 7,282 |
| IBB* (International Brotherhood of Boilermakers and Blacksmiths) | Independent, AFL-CIO | Shopcraft employees involved in car repair | 521 |
| IBEW (International Brotherhood of Electrical Workers) | Independent, AFL-CIO | Electricians in shopcraft and communication | 5,320 |
| NCFO* (National Conference of Firemen and Oilers) | SEIU, Change to Win | Laborers in the shopcrafts | 2,541 |
| SMWIA* (Sheet Metal Workers International Union) | Independent, AFL-CIO | Shopcraft employees | 1,243 |
| TCU (Transportation Communication Union) | IAM, AFL-CIO | Clerks, carmen (BRC), communication | 25,220 |
| TWU (Transport Workers Union of America) | Independent, AFL-CIO | Carmen and shopcraft employees | 1,225 |
| UTU (United Transportation Union) | Independent, AFL-CIO | Conductors, yardmasters, and yard service employees | 44,342 |

Based on Cooperating Rail Labor Employees data, December 2003.

*RLBC member organization.

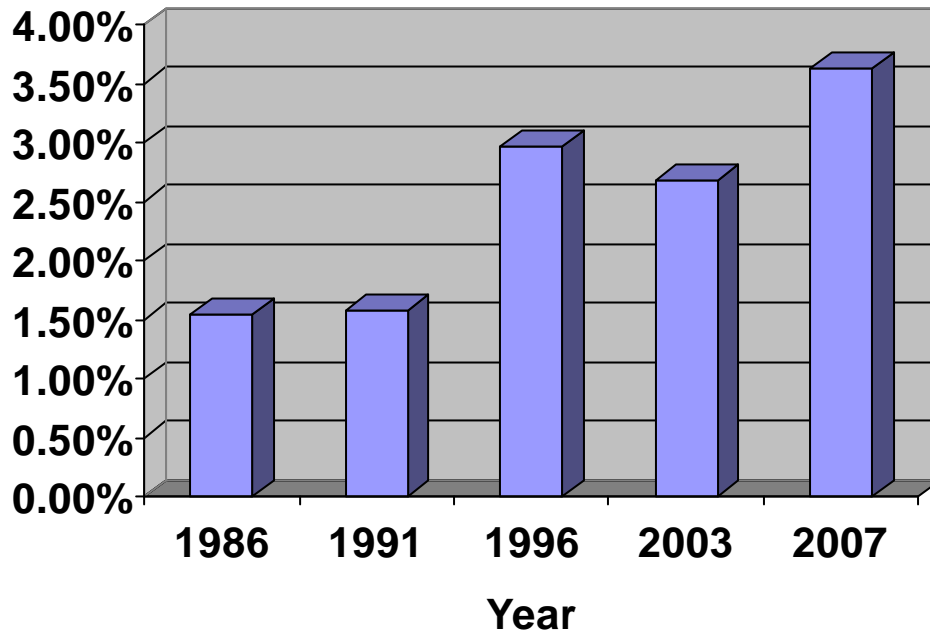
TABLE 3
Value of Collective Bargaining Agreements, 1986 to 2007

| Year | General wage increase (%) | Lump sum | Cost-of-living adjustment | Health and welfare | Term (months) |
|------|---------------------------|----------|--|--|---------------|
| 1986 | 6.20 | \$1,656 | Consumer Price Index 4% cap | Joint cost containment | 48 |
| 1991 | 10.30 | \$2,000 | Consumer Price Index 3% cap, offset for health and welfare | Managed care | 78 |
| 1996 | 14.80 | \$400 | Not during term | Coverage for dental and eye care added | 60 |
| 2003 | 13.40 | \$0 | Not during term | Cash cost-sharing \$1,975 | 60 |
| 2007 | 18.10 | \$0 | Not during term or after | \$3,297 | 60 |

Source: BRS National Agreements 1986 to 2007.

Rail unions participated in PEB 219 and worked together on their joint wage proposals. In 1996 there was an informal coalition of shopcraft employees that included BRS. In 2003, BRS negotiated separately from other rail unions. The 2007 agreement was reached through the RLBC coalition. An illustration of wages is presented in Figure 1.

FIGURE 1
Average General Wage Increase



Source: Author's calculations, based on BRS National Agreements from 1986 to 2007.

Coalition Bargaining: Through the Rail Labor Bargaining Coalition

There were three important challenges to the concept of a rail union coalition: 1) finding the means to keep the rail unions together through the complete bargaining process, 2) addressing in a national forum collective bargaining issues that were “local” in nature, and 3) addressing the issues that were “national” in nature in concert with rail labor organizations that were bargaining independently from the RLBC.

There was some limited success of informal bargaining coalitions based on the experience of the BRS and other rail labor unions in 2004. As such, rail labor in 2004 began to debate the benefits and/or requirements of local vs. national handling and, importantly, the pros and cons of forming a coalition.

Establishing a Formal Coalition

Faced with the real effects of pattern bargaining in the rail industry and the fractured nature of rail labor in contrast to the relative cohesive structure of rail carriers the BRS and other labor organizations involved in national bargaining began discussions prior to the expiration of the moratorium⁴ on November 1, 2004. The unions in attendance were the organizations later identified as RLBC members (ATDA, BLE, BMW, BRS, IBB, NCFO, and SMWIA) as well as the IBEW and the IAM. There were also discussions with the UTU and the TCU, although they did not participate formally. Discussed among these unions were issues related to national handling and local handling as they related to each organization's specific needs, the potential for more influence to affect a higher general wage increase, the safety in numbers required to defend

against pressure aimed at reducing health care benefits or increasing the share of the cost, and, importantly, how a coalition, if formed, would be structured.

There was discussion about the informal model used by some organizations, including those in attendance, but the consensus was that pressure by an organized management to divide the organizations would continue to be a problem. In past informal coalition arrangements, the NCCC had successfully separated unions by holding separate talks, prompted by a willingness to address a issue of specific interest to the individual union. If a union is faced with an issue that its members want addressed, and that issue does not apply to other unions in the informal coalition, it is difficult, if not unlikely, that an organization faced with the potential to resolve such a problem would resist in solidarity with unions not responsible for its unique membership problem.

Rail labor, in an unprecedented fashion, began discussions September 21, 2004, a date prior to expiration of the moratorium; these talks continued until the date of signing of a coalition agreement on November 22, 2004. This date followed what was also an unprecedented serving of formal Section 6 notices by national rail carriers⁵ on the various national rail unions. These discussions by rail labor leaders led to the development of a formal structure, memorialized by a written agreement under the heading National Bargaining Coalition Agreement. The executing group called their collective body the Rail Labor Bargaining Coalition. The structure of the group was similar to and indeed modeled after the coalition of rail carriers, the NCCC.

The coalition agreement document included the IAM in its preamble and the IBEW and the IAM on its signature page. These unions expressed interest and were part of the discussions that developed the strategy; however, the executed agreement did not bear the signatures of these organizations. Both the IBEW and the IAM later bargained in the 2004 round⁶ (that led to the 2007 agreements) with a coalition headed by the TCU, which had become an affiliate member of the IAM.⁷ The principles spelled out by the RLBC members in their coalition document were as follows:

- For many years, rail labor conducted national bargaining with the nation's Class I rail carriers via coordinated union coalitions. Using this method, the unions were able to achieve very beneficial changes in rates of pay, rules, and standard working conditions for the employees they represent.
- In recent years, the organizations have strayed from that concept and have bargained for national agreements on an individual-organization basis, without coordination among the organizations; this has resulted in the frustration of bargaining goals, extended negotiations, and overlong mediation⁸ efforts, to the detriment of employees in all crafts.
- It has become very evident that settlements of national wage and rules bargaining disputes will be reached more expeditiously and successfully if the organizations coordinate their bargaining efforts.
- Coordinated handling of national bargaining issues can best be accomplished by creating a formal entity to which participating organizations grant their powers of attorney and pledge their cooperation and, where necessary, financial commitment.

As an advocate of a revised bargaining strategy, I can recall urging BRS president W. Dan Pickett to sign the RLBC document. Incidentally, committing in writing to pledge support to a rail labor coalition, with the concept being untested since at least 1991, in the form of a formal document takes a measure of courage. All of labor is familiar with the benefit of solidarity; however, committing to it in writing backed by a pledge of action and finance is quite another matter. One of the real concerns was how the group would decide when agreement was reached.

The coalition agreement contained express language dealing with the consensus reached on issues of membership rights, voting procedures, financial support, professional assistance, and power of attorney. The power of attorney issue addressed the strongest point in the rail carriers' coalition, and it addressed the greatest weakness that rail labor had experienced in the formation of informal coalitions. The language

addressed concerns each organization had with respect to participation in the bargaining process. The provisions entitled representatives from member organizations to participate. Similar to the coalition of rail carriers (the NCCC), the rail unions would have a member or members present but would speak in a single voice through the selection of a spokesperson. As it worked out the organizations could not come to consensus on a spokesperson for the bargaining sessions and instead agreed to hire Roland P. Wilder, an attorney who was familiar with RLA bargaining procedures and who had in the past led a coalition of rail unions in talks with Metro-North, a commuter carrier engaged in local RLA handling.

The RLBC, however, did elect a chairman, George Francisco, president of the NCFO and a long-time member of the Transportation Trades Department Rail Division (TTD/RD), the lobbying and regulatory advocate for rail labor. The NCFO is affiliated with the SEIU, an organization that withdrew from the AFL-CIO to join the Change to Win Coalition. In fact, two other RLBC members, the BMWE and the BLE, are affiliated with the IBT, also non AFL-CIO affiliates. The NCFO, however, made a special effort to retain membership in the TTD/RD. The BMWE and the BLE are members of the Rail Division of the Teamsters and as such do not participate with other TTD/RD members regularly on the many other issues that face rail labor. This, in my opinion, is another source of division but outside the scope of this paper. The important point here is that the RLBC brought together in a formal structure rail labor organizations, both AFL-CIO and non-AFL-CIO, for the collective purposes of the coalition. It also must be said that the IBT was very supportive and that their mobilization and communication efforts were important attributes of the coalition rail unions.

Special provisions were negotiated into the coalition agreement to specify how agreements would be ratified, how an organization could withdraw from the RLBC, and how the coalition would respond if agreement was not reached and a Presidential Emergency Board⁹ was appointed. Interestingly, a prolonged difference between rail labor organizations about how to exercise authority as individual unions when acting collectively was resolved by language modeled after the functioning of the U.S. Congress. The long-standing difference was whether each organization should have one vote,¹⁰ a circumstance that would benefit a smaller organization like the BRS, or whether each organization would cast a vote weighted based on the size of its respective membership, which would benefit an organization like the BLE. The concept adopted paralleled the process used by the U.S. Congress: a vote based on each organization (paralleling the Senate) and a vote based on membership size (paralleling the House of Representatives), would decide the question of whether to submit an agreement for ratification by each organization's respective members. This process was later tested and was stated in the coalition agreement as follows:

No tentative agreement negotiated by the Coalition shall be submitted to the respective memberships of the Coalition's affiliates for ratification until the decision to initiate the ratification process is approved by a two-thirds majority of the Coalition's affiliated organizations on both a one-vote-per-organization basis and an overall membership basis.¹¹

The language in the agreement allowed withdrawal from the coalition only with "the express written consent of every affiliate of the Coalition." The obvious obstacle here was overcome, ironically by the fraternal nature of the affiliate unions. The language may have required written permission to withdraw, but the consensus was that if an organization really wanted out, other member unions would not interfere. This language, however, may have provided the necessary glue to hold together the coalition while it completed its task. Whether it was this term or not, the RLBC stayed together during some rough times.

National vs. Local Handling

Under the terms of the Railway Labor Act (RLA), the law that governs collective bargaining in the rail and airline industry, either labor or management may serve a notice, termed a Section 6 notice (named for the section of the statute), formally requesting to change the wages, rules, and working conditions of the represented employees. This may be done by either party or by both. Typically, labor serves the Section 6 notice first and management responds with a counterproposal.

In the years since 1982 it has become customary for the rail industry (but not the airline industry) to resolve certain collective bargaining differences (wages, benefits, and health care) in a forum termed "national

handling.” National handling is typically carried out at the offices of the National Railway Labor Conference (NRLC), which serves as the bargaining representative for those rail carriers that choose to belong to the formal coalition of railroads called the National Carriers Conference Committee (NCCC). Rail carriers, regardless of size, may participate as “national carriers” by joining the NCCC and giving a power of attorney¹² over to the NCCC and paying a member fee. This national bargaining arrangement has evolved as a practice for handling “national issues” between the parties; however, it is not expressly provided for in the RLA or acknowledged as a legal requirement by labor. As such, the airline industry, also covered by the RLA, bargains carrier by carrier with its unions. Also, some rail carriers, but typically not Class I carriers since 1991, bargain locally (engage in “local handling”). This practice of national vs. local handling was addressed by at least one court decision (US Court of Appeals, DC Circuit 7-19-2002) and remains a matter of debate between the parties as to its requirement. The rail carriers assert that they decide national handling, and the rail unions contend that labor may require bargaining with its “general committees,” the railroad union intermediate body given bargaining authority to bargain through union constitutions. It is clear that the parties may agree to national or local handling, but the requirement is not a matter of law or well-established legal precedent.

Collective bargaining issues involve a wide range of matters, ranging from issues that are clearly local, such as the handling of seniority on a particular roster defined by the terms of a specific collective bargaining agreement, to the terms contained in the rail employees national health care plan, a benefit applied to all employees covered by the plan. The parties must address issues of both local and national nature, and they must do so under the provisions of the RLA.

If negotiations are conducted locally, all issues, both national and local, may be addressed by direct negotiation of local issues and standing-by for national issues. Using this arrangement, two parties, such as the Bessemer and Lake Erie Railway and the BRS, could negotiate and agree to the application of rules that would apply locally and yet stand-by for wage rate changes based on the application of the national BRS agreement (or alternatively accept negotiated rate changes and periods previously negotiated). An example of local terms could be an agreement to establish a minimum four-hour call-out rule for maintenance employees¹³ and a rule that requires construction employees to work over a seniority district that covers an assigned section of the railroad’s property in exchange for a fixed amount of travel pay. General wage increases and health care plan changes are typically negotiated nationally.

If the agreement is subject to national bargaining and only matters of wages, benefits, or health care are subject to revision, the process works well for both sides. Many times work rule changes are not needed or desired, and both parties are satisfied to address only the issues well suited for national handling.

A conflict may arise, however, if either party wants to address a local issue at the national level or vice versa. An example would be a national carrier’s desire to address subcontracting of work or other rules in specific agreements that affect assigned hours of work or assignment of workdays. These issues are considered work rule issues and are typically contained in individual collective bargaining agreements, therefore handled locally. Another example would be a general committee’s desire to adjust wage rates for a craft that is part of a railroad carrier’s workforce subject to a specific collective bargaining agreement. The latter is an example of a matter better handled nationally.

The answer is for the parties to agree to a forum to resolve local issues involving those affected concurrent with the handling of national issues but in a separate forum. As indicated by the court decision cited above, the best answer to this question of forcing a type of handling on the other party is determined case by case, looking to the practice of the parties and to other factors. National carriers, despite their actions, have no clear authority to compel that local issues be waived by labor. Furthermore, the experience, based on the last round of bargaining, is that absent an agreement to handle local issues in a process agreed to by the parties, those issues, along with any national issues, will become a formal part of the mediation process.

Bargaining Authority

Because the theme of this paper is the method to establish and execute a rail labor coalition, there is insufficient space to address all of the bargaining issues faced by the seven RLBC members, so the context will be the bargaining facts associated with resolving issues between the BRS and the NCCC within the RLBC structure. (See Appendixes 0 and 11 online; a web link is provided at the end of the paper.)

It is important to note that the BRS started the RLBC process with eyes wide open to the conflict over local vs. national handling. Consistent with the effort of myself and BRS president W. Dan Pickett, the RLBC coalition agreement contained language limiting the authority of the bargaining coalition to national issues. Moreover, at its internal meeting to approve the Section 6 notices by its general committees, the BRS expressly requested bargaining authority limited to national issues, thereby preserving the authority to resolve local issues with the general committees.

The BRS constitution, like other rail union constitutions, confers bargaining authority over individual carriers to the union's general committees. The strategy behind the formation of the rail coalition is that bargaining authority for issues that as a matter of practice are handled at the national level are best handled nationally, provided the means to address local issues is not waived or excluded from the process. To that end, BRS president Pickett granted general committees authority to participate in the national bargaining process, with the understanding that local issues would be addressed by the committees under the direction of the international vice president. The RLBC was given power to resolve national issues. This point cannot be overemphasized; to make it clear, the coalition agreement contains the following language in its last section:

Encouragement of On-Property Coalitions. Each affiliate shall encourage its subordinate bodies [BRS General Committees] to form and participate in similar bargaining coalitions to coordinate bargaining over local issues on the properties of all rail carriers participating in national handling. This Agreement does not affect the rights of affiliates to serve Section 6 notices upon carriers for local issues (National Bargaining Coalition Agreement 2004).

The BRS intentionally had not gained power of attorney (bargaining authority) to handle local issues on behalf of General Committees. As such, the BRS position was that the authority to negotiate local issues remained vested in the General Committees as bargaining representatives defined by the BRS Constitution.

NCCC vs. BRS: The Test Is in the Courts

The NCCC refused to respond or to meet further following the session where BRS local issues were presented, and each of the five Class I carriers and the Consolidated Rail Corporation (6 carriers total) filed a lawsuit against only the BRS in the U.S. District Court in the District of Columbia on March 20, 2006. (For discussion of the bargaining issues see Appendix 0 online; a web link is provided at the end of the paper.) The BRS through the RLBC answered and counterclaimed on May 16, 2006. This was an important test of whether rail labor would stand behind a single member when attacked, and it did. All RLBC members supported BRS with both time and finances against the litigation by national rail carriers.

The entire coalition met with NCCC in the interim on April 11 and 12, 2006. The NCCC sought a declaratory judgment "with respect to Defendant's [BRS's] obligation to bargain with Plaintiffs' authorized multi-employer collective bargaining representative on a national basis." The six railroads also sought injunctive relief with respect to BRS's "insistence that Plaintiff [the seven NCCC member railroads] bargained with it [BRS] on less than a craft-wide basis." The railroads argued Section 2 First of the RLA.¹⁴

The BRS through its RLBC counsel denied the substantive allegations and offered as affirmative defense that the claim failed to state a cause of action, that declaratory relief should be denied on prudential grounds, that the Norris-LaGuardia Act deprives the court of jurisdiction, and that the injunctive relief was barred by the doctrine of unclean hands.¹⁵ The carriers responded, and the matter lay in the courts.

The lawsuit was ultimately withdrawn under terms eventually agreed to by the carriers and the unions. The final side letter of the agreement reached commits the parties to withdraw their respective claims and counterclaims.

Coordination with Non-RLBC Member Unions

The seven rail unions that were party to the RLBC made up around half of the membership engaged in national handling of Section 6 notices. The remaining members were represented by the United Transportation Union (UTU), a large union representing train and engine service employees, and the Transportation Communication Union (TCU), and in coalition with TCU were rail employees represented by

IAM (with which TCU is affiliated) and rail employees represented by the International Brotherhood of Electrical Workers. The UTU president, Paul Thompson, and the TCU president, Bob Scardelletti, kept open communication with RLBC members. The RLBC had initially invited these unions to join the RLBC coalition and later expressed the desire to inform the other organizations about progress, or lack thereof, and to share with the non-RLBC members information related to specific bargaining proposals in an effort to discourage NCCC's potential to divide or play one union against another.

It is famous within the rail industry that the BLE and the UTU at times do not agree. In the 2004 bargaining round, communication was kept open, and particular credit should be given to presidents Don Haus of the BLE and Paul Thompson of the UTU for setting aside differences while the national bargaining process continued. In addition, rail labor benefited by the involvement of Scardelletti in his role as Cooperating Rail Labor Employees (CRLO) chairman. The CRLO is the coordinating body for rail labor with respect to health and welfare and other benefit plans. The participation of RLBC members in the CRLO and the willingness of the TCU to share information about their coalition's effort, and vice versa, had a positive effect on the RLBC and on rail labor as a whole. (Resolution of bargaining issues is discussed in Appendix 11 online; a web link is provided at the end of the paper.)

Conclusion

The completion of the bargaining round by a united coalition, successfully overcoming harsh bargaining tactics and a court challenge, supports the contention that a formal bargaining coalition like RLBC has advantages. The examination of average wage increases for the BRS in periods with and without the benefit of a bargaining coalition further supports this contention.

This paper documents the development and execution of a strategy that employed a formal coalition bargaining structure suitable for use by railroad unions. The return to retroactive pay increases and placing reasonable limits on health care cost increases stand out as successes. This examination of a coalition strategy was developed and implemented during the course of an actual collective bargaining process. The process included developing and exchanging Section 6 notices, based on a limited authority granted to the International. This strategy gives direction about how local issues may be handled in the context of coordinated national multiemployer bargaining.

If rail unions choose to coalesce into structured bargaining units, they can function with solidarity and continue to exercise their duty to represent their respective members while addressing craft-specific or less-than-craft-wide specific issues. Rail carriers operating as a multiemployer bargaining unit can be brought, albeit reluctantly, to terms of agreement that can be ratified by the coalition member unions. The BRS agreement was ratified by a strong margin, and all RLBC member unions similarly ratified their respective agreements in 2007.

The effort of the RLBC member unions to establish a formal coalition is an important step in restoring an intended balance between labor and management in railway labor act bargaining.

Appendixes

The 12 appendixes listed here are available at <http://www.scribd.com/doc/26751687>.

| | |
|------------|--|
| Appendix 0 | The Bargaining Issues |
| Appendix 1 | Publications—RLBC |
| Appendix 2 | National Bargaining Coalition Agreement—RLBC |
| Appendix 3 | Carrier Section 6 Notice, November 1, 2004 |
| Appendix 4 | RLBC Section 6 Notice, December 1, 2004 |
| Appendix 5 | Mediation Application—Bargaining Dispute Between NCCC and BRS, March 16, 2005 |
| Appendix 6 | Case CA-6876—RLBC Response to NMB Request for Comments to NCCC's Application for Mediation Services, April 4, 2005 |
| Appendix 7 | Examples of Local-Issue Section 6 Notices |
| Appendix 8 | Local Issues Lawsuit—Filed by the NCCC against the BRS, March 20, 2006 |

| | |
|-------------|--|
| Appendix 9 | Beginning of Ratification and Tentative Agreement Reached between the NCCC and the BRS through RLBC, February 28, 2007 |
| Appendix 10 | National Signalmen's Agreement—July 1, 2007, Reached through the RLBC |
| Appendix 11 | Resolution of the Bargaining Issues |
| Appendix 12 | Methodology |

Notes

¹ The 12 craft unions are identified in Table 2.

² The seven RLBC members are identified in the background section.

³ The 12 craft unions are listed in Table 2. There are 11 rail craft unions responsible for representing employees throughout the U.S. rail industry; Transport Workers Union of America (TWU) is included in the 12 because it has a significant presence in the northeast and is active in rail labor.

⁴ The moratorium is the period during which neither side may serve Section 6 notices to formally start the RLA bargaining process.

⁵ At no time in the recollection of current rail leaders had national carriers first served Section 6 notices on rail labor. Typically rail labor organizations serve notice on the carriers. Speculation on this change centered on the favorability of the bargaining climate for rail carriers (i.e., the belief that the Bush Administration could mean favorable handling of the national bargaining process by the NMB, through its administration appointments.

⁶ A bargaining round is typically named for the year that bargaining begins following the serving of a Section 6 notice.

⁷ The TCU had the larger number of rail members, and its president, Bob Scardelletti, had greater national handling experience. The IAM and IBEW are larger unions, but with fewer rail members.

⁸ Mediation under the RLA is a formal process for which either side may apply and that is administered by the NMB. There is no time limit for completion of the mediation process, and bargaining can be delayed for eight years, as in the example of Amtrak and its rail unions.

⁹ Under the terms of the RLA the president of the United States may, and customarily does, appoint a Presidential Emergency Board to resolve collective bargaining issues that are determined to be at impasse after mediation efforts by the NMB have failed. A PEB requires a formal hearing process and continues to prohibit the parties from exercising self-help until the PEB process is concluded, recommendations are issued, and a subsequent 30-day cooling off period is observed.

¹⁰ Many years ago I drafted a set of bylaws for what was then the newly formed TTD/RD. The former rail labor body known as the Rail Labor Executives Association (RLEA) had ceased to function based on the burden of legal and building-related expenses.

¹¹ Credit for the idea for this concept goes to Mike Wholly, the attorney who drafted the Coalition Agreement; he is an attorney specializing in RLA law and a designated RLA attorney for the IBEW.

¹² In this context the power of attorney is bargaining authority to negotiate and sign collective bargaining agreements.

¹³ Local agreements made on the Bessemer and Union Railroads with BRS.

¹⁴ Section 2 first places the obligation on both parties to make every effort to make and maintain agreements.

¹⁵ The "doctrine of unclean hands" provides that a party that has acted unethically with respect to the complaint may not seek relief.

References

Allen, R. 2004. National Carriers Conference Committee Section 6 Notice.

Arnold, B., and Reggi Dudin. 1985. "Eastern and Pan Am: Two Model Contracts Fly into Trouble." *Business Week*.

Business Week. 1984. "Continental Is Coming Out a Winner." January 30, p. 21.

- General Committee of Adjustment v Burlington No Santa Fe*. 2002, July 19. <<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=dc&navby=docket&no=017068>>. [July 24, 2008].
- Harris, R. 1990. Report to the President by Emergency Board No. 219. <<http://kas.cuadra.com/starweb1/nmbks/servlet.starweb1>>. [January 9, 2007].
- Katz, H. 1984. "Collective Bargaining in 1982: A Turning Point in Industrial Relations?" *Compensation Review* (1st quarter) pp. 38–49.
- Labor Notes*. 1986. "Who Says Concessions Are a Thing of the Past?" June, p. 1.
- LaCombe J., and J. Borum. 1987. "Major Labor Contracts in 1986 Provided Record Low Wage Adjustments." *Monthly Labor Review* (May), pp. 10–12.
- Moody, K. 1986. "Newswatch." *Labor Notes*, June, p. 6.
- National Bargaining Coalition Agreement. November 22, 2004.
- National Mediation Board. 2008. *Presidential Emergency Boards*. <<http://www.nmb.gov/mediation/peblist.html>>. [September 23, 2008].
- Ruben, G. 1985. "Modest Labor–Management Bargains Continue in 1984 Despite the Recovery." *Current Wage Developments* 7/4.
- Shils, E. 1964. "Transportation's Labor Crisis." *Harvard Business Review*, (May–June), p. 85.
- Tarpinian, G. 1986. "Bargaining Trends." *Economic Notes Labor Research Association* (April/May), pp. 1–5.