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Chapter 5. Judicial Protection of Employee RLA Rights

This chapter is current through February 28, 2021.

5.I. Statutory Framework

The Railway Labor Act (RLA) protects employees' right of self-organization in three distinct contexts: (1) while employees are initially seeking either to organize, or to replace or displace an incumbent representative; (2) during the ongoing relationship among a carrier, the employees, and their representative; and (3) during periods of self-help. This chapter focuses on the first two contexts while also touching on the ways in which the Act's prohibitions on carrier interference affect employees' right to self-help, a topic addressed more fully in Chapter 8.

5.I.A. 1926 Act—Section 2, Third

As enacted in 1926, the RLA contained a single provision protecting the right of self-organization: Section 2, Third. This provision safeguarded the right of the "respective parties" to designate representatives in the manner provided "in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."[1]

In *Texas & New Orleans Railroad v. Brotherhood of Railway Clerks*,[2] the Supreme Court held that Section 2, Third, was constitutional, and that it imposed legal obligations enforceable in the courts. A national rail union that had been recognized by the carrier as the representative of its clerical employees sought to enjoin the carrier from interfering with the employees' choice of representative and from treating with another, newly created organization. The lower courts found that the latter organization had been established with the assistance of the carrier to enable the carrier to conclude a more favorable wage agreement than was being demanded by the national union. The Supreme Court upheld an injunction and a contempt order against the carrier, requiring it to cease interfering with the employees' free choice of representative, to "disestablish" the new organization, and to reinstate officers of the national union and other employees who had been discharged because of their activities on behalf of the national union.[3] In doing so, the Court made the following observation:

> Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme. All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the act, must depend for success on the uncoerced action of each party through its own representatives to the end that agreements satisfactory to both may be reached and the peace essential to the uninterrupted service of the instrumentalities of interstate commerce may be maintained.[4]

The Supreme Court further observed:

> "Interference" with freedom of action and "coercion" refer to well-understood concepts of the law. The meaning of the word "influence" in this clause may be gathered from the context. *Noscitur a sociis*. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. "Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization."[5]

5.I.B. 1934 Amendments

5.I.B.1. Statement Of Purpose

In 1934, Congress amended the Act, in part to strengthen employees' right to organize without carrier interference[6] and in part to "strengthen the position of the labor organizations *vis-a-vis* the carriers, to the end of furthering the success of the basic congressional policy of self-adjustment of the industry's labor problems between carrier organizations and effective labor organizations."[7]

The 1934 amendments added to the Act a statement of purposes, including the following: "(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization," and "(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes" of the Act.[8] In furtherance of these purposes, Congress modified and expanded Section 2, Third, and added Section 2, Fourth, Fifth, Eighth, Ninth, and Tenth to the Act.

5.I.B.2. Section 2, Third

As modified by the 1934 amendments, Section 2, Third, continues to prohibit "interference, influence or coercion by either party over the designation of representatives by the other."[9] It specifies that "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives."[10] In addition, whereas the original Section 2, Third, protected organizations and employers, the new provision granted a right to the carrier's employees, namely, the right to designate, without "interference, influence, or coercion" by the carrier, representatives "who or which are not employees of the carrier."[11]

5.I.B.3. Section 2, Fourth

Congress added Section 2, Fourth, to the Act by the 1934 amendments. The section elaborates employees' rights by stating that employers may not interfere with employees' right to organize or to remain unorganized, with employees' right to bargain collectively through representatives of their own choosing, or with the right of a majority of any craft or class to select the representative of that craft or class.

Section 2, Fourth, prohibits a carrier or its officers or agents from denying or in any way questioning the right of its employees to join, organize, or assist the labor organization of their choice. The section also prohibits a carrier from using its funds to maintain, assist, or contribute to a "labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor."[12] This paragraph further provides that it is unlawful for a carrier "to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization."[13] A proviso states that the Act does not prohibit a carrier from permitting an employee or local representatives of employees from conferring with management during working hours or from furnishing free transportation to employees "while engaged in the business of a labor organization."[14]

5.I.B.4. Section 2, Fifth

Section 2, Fifth, of the Act, another feature of the 1934 amendments, prohibits a carrier from requiring prospective employees "to sign any contract or agreement promising to join or not to join a labor organization."[15]