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Rail Strike Threat Bares PSR Flaws

News reports assured Americans that we had dodged an economic disaster when the Biden administration announced the tentative settlement of a threatened nationwide strike by rail workers, but the threat remains until union rank-and-file members vote to okay the new five-year contract.

If the strike of 100,000 rail workers had materialized, it would have cost the economy $2 billion, according to the Association of American Railroads. Others had predicted that such a strike would do much worse damage.

In fact, the economic damage already done to the country in the run-up to the strike deadline has yet to be fully calculated.

Among other actions, Amtrak cancelled its long-distance rail passenger service outside of major East and West Coast corridors and mass transit agencies across the U.S. prepared for potential disruption by cutting back schedules or stopping service.

In addition, freight rail service cutbacks had already begun on many lines as the railroads began restricting service in anticipation of the strike.

In the last week before the strike deadline, White House staff scrambled to secure water and trucking transportation alternatives to make up for the pending loss of most rail capacity

Unfortunately, they didn't grasp that this initiative was a forlorn hope because it would require 460,000 more trucks each day than currently exist, as American Trucking Associations informed them, along with reminding the White House that the industry is currently short about 80,000 drivers required to meet current needs, much less step in to help make up for the loss of rail service.

The Sept. 15 deadline for reaching an agreement had been set by Biden-appointed mediators after the president ordered a "cooling off" period. The original deadline for that period had been Nov. 15, but the Biden mediators changed it to September, which they did without explanation and without precedent in the long history of rail union and management negotiations.

The contract agreement was arrived at the last minute after Labor Secretary Marty Walsh intervened to lead the negotiations. Of the 12 railroad unions involved, the last holdouts were the two that represent engineers and conductors.

Few details were released about the agreements, and union members will need to vote on the terms. (The membership of one of the 12 unions, the International Association of Machinists, earlier voted to reject a tentative contract, which means it will have to be renegotiated.)

In the immediate aftermath of the tentative agreement, some union members told reporters they are dubious about the terms of the new contract until they can learn more about the details.

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What mystified and confused some in the news media was that the crux of the dispute had nothing to do with pay. Those terms already had been worked out much earlier without much trouble.

The main disagreement was over how to deal with the horrendous working conditions that had arisen directly from the extreme cost-cutting operations model called Precision Scheduled Railroading (PSR), which called for slashing railroad workforces to point where remaining staff were overworked and eventually left their jobs in droves.

PSR had been imposed on major railroads by Wall Street hedge fund managers to drive up their stock prices, eventually to the point when they could sell off their stock at a big profit.

After embracing the PSR model, major railroads fired more than 45,000 operating personnel, as well as mothballing equipment, closing rail yards, cutting service and pulling back from investing in lower profit lines of business, such as intermodal freight and spur line services.

When the Covid 19 pandemic hit, they laid off even more employees and didn't start trying to replace them until after rail service cratered, contributing to the supply chain crisis.

Congress and the Surface Transportation Board held hearings earlier this year where railroad executives sought to blame the pandemic cutbacks for poor service that has continued to deteriorate.

However, it was learned that in fact the railroads had failed to start adding back staff even though rail demand rebounded at the end of 2020, well before the end of the first full year of the pandemic.

Testimony revealed that these workers had been burned out by the extra demands on their time that forced them to miss family events like their children's birthdays and holidays. Many who were making six-figure salaries and enjoyed decades of experience simply walked away from their jobs because they couldn't take it anymore.

In response to mounting concerns over service, the railroads initiated a big recruiting and training campaign for operating personnel.

Because it takes six months to train an engineer, this was too late to do any immediate good. Later reports surfaced that some of the new recruits were walking away from training sessions after learning how terrible current working conditions are.

One immediate issue that caused the most outrage among working conductors and engineers is an attendance point system adopted by major railroads. Employees receive a number of daily points for coming into work. Points can be deducted for not coming into work, calling in sick or failing to answer the phone when they are off work because they are considered on call all of the time.

The discipline imposed for loss of points can be severe and can even lead to termination. It was these attendance points policies that turned out to be a major sticking point in the negotiations for the two operating unions and rail management, which didn't want to give them up.

While we don't know yet whether the rail union members will approve the tentative pact, we do know that the misery has yet to end for rail shippers, who continue to suffer from lack of available service, poor service when it is available, as well as from blatantly exploitative demurrage and accessorial fee practices the railroads have failed to justify to the STB.

But the railroads don't seem to have any respect for the STB's enforcement capabilities. The railroads' arrogant failure to follow the board's service directives or to submit required data, angered board members, who have threatened to fine rail lines for their management's disrespectful behavior.

New reform legislation would grant additional authority to the STB intended to allow it to rein in the railroads' worst practices, but it is not known when – if ever -- it will be passed. So far, only a handful of Democrat members support the bill.

PSR seems to have claimed at least one high level casualty after it was announced that CSX CEO Jim Foote was being replaced. Earlier this year he shocked those watching an STB hearing when he angrily upbraided a board member. In May at a shippers meeting, Foote delivered an emotional speech sympathizing with rail worker suffering, while the labor negotiations were still ongoing.

Foote became CEO of CSX immediately following the death of E. Hunter Harrison, the inventor of PSR, at the end of 2017. Foote's replacement is Joseph R. Hinrichs, who formerly served as president of Ford Motor Co.'s automotive business.

Joint Employer Issued by NLRB

The National Labor Relations Board proposed a new rule to reinstate the Obama-era board's joint employer standard, which could open up staffing firm clients and franchise operations like McDonalds to union organizing campaigns.

The joint employment framework determines whether more than one entity controls the wages and working conditions of employees. If that is found to be the case, for example, a franchisor like McDonalds can have to negotiate with a union instead of the union targeting individual franchises.

The proposed rule says, 'two or more employers of the same particular employees are joint employers of those employees if the employers share or codetermine those matters governing employees' essential terms and conditions of employment."

The proposal also states that essential terms and conditions of employment "generally include, but are not limited to: wages, benefits, and other compensation, hours of work and scheduling; hiring and discharge; discipline; workplace health and safety; supervision; assignment; and work rules and directions governing the manner, means, or methods of work performance."

The rule holds that exercising or merely reserving/possessing the right to directly or indirectly control workers' essential terms and conditions of employment is sufficient to establish a joint employer relationship, note attorneys with the law firm of Sheppard Mullin Richter & Hampton.

"When ultimately adopted, the new rules requiring only the right to control employees and broadening the list of essential terms and conditions of employment will present a major issue for temporary staffing companies, companies that contract out labor and franchised businesses, among others," they say.

Attorneys for the Proskauer Rose law firm, add it could expand the threat of labor litigation for employers that use outside organizations to handle certain aspects of their employees' working conditions, such as payroll companies.

CARB Launches Truck Program

The California Air Resources Board launched a pilot program designed to help small trucking fleets make the transition to zero-emission technologies.

The Innovative Small e-Fleet pilot will focus on privately-owned and nonprofit trucking fleets with 20 or fewer trucks and less than $15 million in annual revenue. The pilot will provide $25 million to implement a range of innovative solutions to help small fleets make the transition to zero-emissions, CARB says.

Services will include flexible financing, short-term rentals and full-service leases, such as all-inclusive truck-as-a-service options with enhanced incentives and fueling support.

The pilot comes within the board's larger Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP). That program provides point-of-sale vouchers for the purchase of zero-emission trucks and buses.

"Small fleets and owner-operators have often faced multiple barriers to zero-emission truck adoption, such as high upfront costs, limited financing, and complex planning for charging," CARB says. The announcement was written too early to note that the AB 5 state law that recently went into effect for truckers thanks to a U.S. Supreme Court decision virtually wipes out owner-operators in the state.

CARB adds that by dedicating this set-aside funding for small fleets, HVIP can position itself to better understand the specific needs of this traditionally underserved group and support their transition to zero-emission ahead of the upcoming Advanced Clean Fleets rule.

Small fleets will work with a CARB- and HVIP administrator-approved provider to request a voucher. Dealers and their financing partners, leasing and rental companies, or truck-as-a-service providers can serve as providers under the program.

PRISM Expands To Lathrop, CA

PRISM Logistics expanded its operations to include a new warehouse and distribution facility in Lathrop, CA, which joins the company's four other facilities located in nearby Stockton, all of which are in northern California.

"We've been staffing up and training on our Stockton campus to support our growth plan for fast-growing consumer goods customers," commented PRISM Logistics President Jeremy Van Puffelen. "And I'm proud of our team, who have hit the ground running in Lathrop. The Lathrop operation plays an important role in our vision for the future."

The Lathrop facility adds 750,000 square feet of operating capacity to the company's system. PRISM now operates 2,300,000 square feet of warehousing capacity strategically located throughout Northern California in Lathrop, Stockton, Hayward and Sacramento.

In addition to its direct line rail service by the Union Pacific railroad, Lathrop provides a central location along Interstate 5 and near to Interstates 580 and 205, essential for distribution service that can reach major markets of Northern California, including San Francisco Bay Area, Sacramento, and Central Valley, as well as the rest of the West Coast.

The location of Lathrop and the other company facilities enables drivers to make efficient drayage and deliveries to/from the busy Port of Oakland.

One third of the Lathrop facility also offers temperature-controlled storage capacity for the company's food and beverage client base.

In addition to warehousing, PRISM offers a full range of other value-added third-party logistics services. The company also is a member of the American Chain of Warehouses Inc.

Warehouses Set Leasing Record

A record 37 signings for 1 million sq. ft. or more warehouses were among the top 100 industrial leasing transactions in the first half of 2022 – up from 24 at the same time last year, CBRE reports.

The global icommercial real estate services giant also said that the first 50 of the top 100 had an average size of 931,860 sq. ft., compared with 800,149 in the first half of 2021.

Just 15 of the top 100 leases were renewals, which CBRE points out is a sign that tenants generally are deciding to expand their spaces.

Traditional retailers/wholesalers were most active, accounting for 40 of the top 100, followed by third-party logistics operators with 30 – seven of which were for 1 million sq. ft. or more, compared with none of these in the first half of 2021.

CBRE noted that ecommerce companies took 12 of the top 100, down from 27 for last year's first half.

Atlanta led all markets with 12 of the top 100, five of which were for 1 million sq. ft. or more, followed by Chicago with 11 of the top 100. Savannah was the top emerging market with seven of the top 100, up from just two a year ago.

Continued demand for mega distribution centers is expected in the second half of 2022, CBRE adds. It says a large increase in construction from a year ago will fuel more leasing activity, particularly in markets with the highest rates of speculative development, like Dallas-Fort Worth, Atlanta, Chicago, Phoenix and Indianapolis.

Overall U.S. industrial fundamentals remained solid in the first half of the year, with a record low vacancy rate and record high rent growth. Leasing activity for all size ranges totaled 454 million sq. ft., down by 5.4% from a year ago but 44% higher than in the first half of 2020.

The slight year-over-year decline is seen resulting from a 21.1% drop in demand for light-industrial space (under 25,000 sq. ft.), CBRE says. Leases for 700,000 sq. ft. or more increased by 24.6%.

Data Underscore IRE Strength

Commercial real estate is maintaining nearly full capacity and rent levels in the face of current economic turmoil, says the international real estate firm Colliers in its report, “An Inside Look at the Top 25 U.S. Industrial & Logistics Markets.”

“As consumer sentiment begins to shift and economic uncertainty looms, the U.S. industrial market continues to be a bright spot in the commercial real estate landscape,” according to Colliers. “Moreover, momentum has yet to wane in the industrial sector since the beginning of the global pandemic early in 2020.”

(The company notes that for the 25 markets covered in its report, the composition by geography is heavily weighted toward the Midwest, where 35.3% of the markets it follows is most heavily concentrated. The South comes in second with 26.3% of all industrial inventory.)

None of the markets in this report had a vacancy rate that exceeded 8%, although Memphis came close at 7.3%. Robust absorption levels resulted in five markets posting vacancies lower than 3% -- Greater Los Angeles, Columbus, the New York City Metro, St. Louis and Philadelphia.

It shouldn’t be surprisingly the top area on Colliers’ list turns out to be the Ports of Los Angeles and Long Beach, observes Amanda Ortiz, the company’s head of industrial research, when she spoke July 26 at the Third Annual GlobeSt. Women of Influence Conference.

“The surge of industrial fundamentals is driven by the Ports of Los Angeles and Long Beach, responsible for roughly 40% of all inbound containers into the U.S.,” Ortiz said.

She added that that the ports are continuing to work through the congestion of cargo ships waiting out to sea, something that can be easily viewed from much of the Southern California coastline. “While Midwest markets boast numerous logistics advantages, the proximity to overwhelmed U.S. ports is what’s driving rental growth.”

Colliers found that year-to-date new supply in the U.S. totaled 96.9 million sq. ft. It says record levels of product under construction will boost supply even further by yearend, as more than 581 million sq. ft. of industrial product were under construction at the end of the first quarter.

Four markets posted new supply greater than five million square feet: Atlanta, Dallas-Fort Worth, Phoenix and Greater Los Angeles. All of those markets had more than 30 million square feet under construction at the end of the quarter.

Overall occupancy gains in the U.S. totaled 108.8 million sq. ft., just 3% below last quarter’s record. With high demand for industrial space, not a single market included in the report posted negative absorption during the first quarter.

The top five markets for overall year-over-year increases were Portland, the San Francisco Bay area, Houston, Milwaukee and Minneapolis. Just four markets posted occupancy gains greater than five million sq. ft., indicating that demand is spread throughout the U.S. market and not heavily concentrated in just one area.

Year-to-date net absorption for the overall industrial market was just 3.0% below 2021’s total and totaled 108.8 million sq. ft.. The 25 industrial markets included in this report accounted for more than 70% of overall occupancy gains in the U.S.

Just six markets outside of the top 25 recorded positive absorption greater than two million sq. ft. – Reno/Sparks, Savannah, Las Vegas, Salt Lake City, Baltimore and San Diego.

Average U.S. asking rents for industrial properties increased for four consecutive years and measured $7.98 per square foot at the end of the first quarter – a 10.1% increase year-over-year and a 1.0% increase over the previous quarter, Colliers noted.

“With vacancies in many parts of the country experiencing record lows, limited space availability combined with increased labor and construction costs has pushed rents increasingly higher.