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# LEGAL ALERT

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## Supreme Court Bypasses Constitutional Question In Arbitration Ruling

The U.S. Supreme Court today issued a unanimous decision holding that a panel of the National Railroad Adjustment Board (NRAB) violated the Railway Labor Act (RLA) when it refused to hear five grievance cases on the ground that the railroad and the union had not presented sufficient evidence to show that they had completed the required “conferencing” before arbitration.

Observers had hoped this case would resolve a split among the Courts of Appeals about whether RLA arbitration awards may be appealed on constitutional due process grounds in addition to the limited grounds available under the RLA. However, the Supreme Court declined to resolve that constitutional issue.

Instead, the Court affirmed the decision of the U. S. Court of Appeals for the Seventh Circuit on narrow statutory grounds: the NRAB did not have authority under the RLA to refuse to hear the grievance cases because the parties had not “conferenced.” The NRAB panel’s decisions dismissing the five grievances were set aside, and these cases will now proceed to arbitration. *Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment, Central Division*.

### Compulsory Arbitration Under The Railway Labor Act

Unionized employees in the airline and railroad industry are subject to the RLA, rather than the National Labor Relations Act, which covers the majority of private employers. Employees covered by the RLA must first attempt to resolve their grievances through internal processes established in the collective bargaining agreement between the rail carrier and the union. These processes involve internal investigations, hearings and appeals that are referred to as “on-property” proceedings. If one of the parties is dissatisfied with the result, the dispute is submitted to a conference. If the parties cannot resolve their dispute in conference, the matter may be submitted to arbitration before a Division of the NRAB (also referred to as the Board).

The Board has been described as “private in fact [but] public in name and function.” The Board itself does not hear disputes or promulgate rules for the railroad industry. The four Divisions of the Board, which are comprised of various panels, arbitrate disputes as appellate tribunals by reviewing the record developed during the “on-property” proceedings.



### The Underlying Dispute

The facts of the underlying dispute are somewhat unusual. Five locomotive engineers of Union Pacific were disciplined or discharged in 2001 and 2002. Their separate cases went through “on-property” proceedings but could not be resolved, and were docketed for arbitration in 2002 and 2003. The actual arbitration proceedings did not occur until 2005.

Neither the union nor the railroad included evidence of the required pre-arbitration conference in any of the 2002/2003 records of the “on-property” proceedings. When the cases came up for arbitration in 2005, Union Pacific objected that the union had not made the required showing that the conferences had occurred and that the Board therefore could not hear the dispute. Although the Board allowed the union to submit documentation that the conferencing had occurred, the Board later refused to consider the late-submitted

evidence. The panel dismissed all five cases, holding that with no evidence that conferencing had occurred in the “on-property record,” it lacked jurisdiction to arbitrate the disputes.

The union sued in federal district court, complaining that the panel had refused to decide the parties’ grievances on the merits as required by the RLA. The district court affirmed the dismissals. On appeal, the Seventh Circuit reversed, holding that the Board violated due process by creating a new rule – without statutory authority – that required evidence of conferencing to appear in the on-property record, and then used this rule to bar the union’s access to arbitration. The Seventh Circuit’s decision would thus allow the grievances to be heard on the merits.

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## Holding

The Supreme Court upheld the Seventh Circuit's decision, but on narrower grounds. In enacting the RLA, Congress gave the NRAB jurisdiction to hear "all disputes between carriers and their employees 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'" Administrative agencies, like courts, may not exceed the scope of the jurisdiction given to them, and likewise may not refuse to exercise the jurisdiction they do have.

Although the NRAB is authorized to issue "claim-processing rules," Congress did not give the NRAB authority under the RLA to decide the scope of its own jurisdiction to hear disputes. Thus, the NRAB panel could not dismiss the union grievances for "lack of jurisdiction" merely because the union had not submitted proof of conferencing in the on-property record. The "jurisdictional rule" the panel relied upon to dismiss the grievances did not really exist.

Because this statutory ground under the RLA was sufficient to resolve the case before it, the Court refused to decide the larger constitutional issue of whether arbitration awards under the RLA may be set aside for due process reasons. The geographic split among the Courts of Appeal will persist for the foreseeable future, with due process appeals of RLA arbitration awards available in some areas of the country but not others.

## Larger Implications for Employers and Arbitration Generally

Although this particular case affects only a narrow segment of the American workforce –employees subject to the jurisdiction of the NRAB – the Court's decision is part of a larger ongoing debate about the role of arbitration in the context of employment, civil rights and consumer disputes.

Later this Term the Supreme Court will decide two other arbitration cases, *Stolt-Nielsen SA v. AnimalFeeds International Corp.* and *Granite Rock Co. v. International Brotherhood of Teamsters*, which respectively will determine whether arbitration is permissible on a class-wide basis if the arbitration agreement is silent, and whether an arbitrator or a court decides disputes about whether the parties agreed to arbitrate in the first place. Stay tuned for future Legal Alerts on these cases as they are decided.

Meanwhile, Congress could dramatically change the legal landscape for a much larger segment of the American population by outlawing pre-dispute agreements to arbitrate employment, civil rights and consumer disputes. Reintroduced in early 2009, the Arbitration Fairness Act of 2009 bill would amend the Federal Arbitration Act to eliminate all pre-dispute arbitration agreements in those areas. Arbitration agreements between employers and labor unions contained in collective bargaining agreements would not be affected. If passed, the Arbitration Fairness Act would shift multitudes of disputes currently resolved by private arbitration back into the civil courts, with unknown effects on the already-burdened judiciary. This bill remains in committee as of this writing.

For more information, visit our website at [www.laborlawyers.com](http://www.laborlawyers.com) or contact your regular Fisher & Phillips attorney.

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