

# George Mason University School of Law



## Law and Economics Working Papers Series Working Paper No. 00-40

Racism, Railroad Unions, and Labor Regulations

David E. Bernstein

This paper can be downloaded without charge from the Social Science Research Network  
Electronic Paper Collection:

[http://papers.ssrn.com/paper.taf?abstract\\_id=249309](http://papers.ssrn.com/paper.taf?abstract_id=249309)

## **Racism, Railroad Unions, and Labor Regulations\***

by David E. Bernstein

Associate Professor

George Mason University School of Law

3401 N. Fairfax Drive

Arlington, VA 22003

(703) 993-8089

\*This paper is based on Chapter 3 of Professor Bernstein's book, "Only One Place of Redress: African-Americans, Labor Regulations and the Courts from Reconstruction to the New Deal," forthcoming from Duke University Press.

Until recently, labor historians mostly ignored or whitewashed the role of racism the American labor movement. Influenced by Marxist interest group theory that attributes nearly all societal conflict to economic “class” conflict, these scholars assumed that labor conflicts involved oppressed “workers” with a common interest on one side, and powerful “employers” or “capitalists” on the other. If labor unions treated blacks, Latinos, and Chinese poorly it was due to the manipulation of capitalists who sought to divide the working class, not because of white workers’ own endogenous racism.

Modern labor historians are less enamored of the cruder forms of Marxism, and much more willing to recognize that racism suffused, and to some extent even motivated, organized labor from the post-Civil War period through at least the late 1930s. However, these labor historians ignore the significant role “progressive” labor laws played in giving racist labor unions the power to exclude African-Americans and other minorities.

For example, several recent articles and theses have discussed how the American Railroad Brotherhoods attempted to exclude African-Americans from their members’ occupations (Arnesen 1994; Sundstrom 1990; Taillon 1997). These works fail to note that government labor laws granting these unions monopoly power were crucial to the ultimate exclusion of African-Americans from many railroad occupations.

#### I. Origins of the Conflicts Between African-Americans and Railroad Unions

From the late 19th century through the New Deal era, tens of thousands of African-Americans found relatively remunerative work on American railroads. Most of these workers were unskilled laborers, but African-Americans were also well-represented in semi-skilled positions, such as fireman and trainman, particularly in the South.

The opportunities semi-skilled African-American workers found on the railroad were

perpetually endangered by the racist policies of the railroad unions. Railroad industry in train and engine service, the so-called operating unions, launched collective bargaining in the 1880s, and developed into some of the strongest unions in the United States. The shop crafts and other nonoperating unions developed more slowly, but gradually gained power.

Almost all of the major railroad unions banned African-Americans from membership by constitutional provision. African-Americans were also banned from other unions that had large memberships among railroad workers, including the Boilermakers, the International Association of Machinists, and the Blacksmiths. White workers understood that excluding African-Americans undermined labor solidarity and made it much more difficult for their unions to successfully negotiate with railroad management. One Texas fireman declared that “we would rather be absolute slaves of capital, than to take the negro into our lodges as a [sic] equal and brother” (Arnesen 1994).

The brotherhoods were initially successful in excluding African-Americans from jobs where few African-Americans were entrenched; railroad management did not want to risk racially-motivated strikes if no ready reserve of African-American workers existed to replace striking whites. For example, because African-Americans had never acquired many jobs as conductors or engineers, it was not difficult to exclude them from those jobs (Sundstrom 1990). In the North and West, firemen and brakemen were initially overwhelmingly white. The entrenched white workers insisted on stringent color line, and railroad managers usually capitulated (Harris 1982, 41; Arnesen 1994, 1608).

The Trainmen’s and Firemen’s Brotherhoods had far more difficulty excluding African-Americans from their crafts in the South, because many African-Americans had entered those occupations at a time when the jobs were hot and dirty and therefore considered “Negro work.”

As technological improvements made these jobs easier, they became attractive stepping stones to conductors' and engineers' positions, and therefore increasingly appealed to white workers (Spero & Harris 1931, 284).

Despite union pressure, railroads had incentives to hire African-American workers. African-American firemen and trainmen earned about ten to twenty percent less than whites (though railroad representatives insisted that this was due to productivity differences). Moreover, white engineers preferred to work with African-American firemen; African-American firemen were more willing than whites to serve as the engineers' valets, and the engineers wanted new engineering jobs to be reserved for unemployed engineers, not for white firemen seeking promotion (Arnesen 1994, 1621-22; Sundstrom 1990, 429).

Beginning in the 1890s, the Firemen, along with the Brotherhood of Railroad Trainmen, launched public, organized efforts to exclude African-Americans from their occupations nationwide (Marshall 1968, 135-36). One way the unions attempted to achieve their exclusionary goal was by engaging in strikes for a whites-only hiring policy. Such strikes often involved violence against African-American railroad workers (Hill 1977, 15; Matthews 1974, 617-21). In general, these "race strikes" were unsuccessful (Arnesen 1994, 1631; Matthews 1974).

## II. Early Discriminatory Railroad Legislation

When the unions found they could not exclude African-Americans through the collective bargaining process, they began to consider ways the government could aid them. "Full crew" laws proved useful. These laws provided that a train crew must consist of an engineer, a fireman, a conductor, a brakeman, and a flagman. Full crew laws were ostensibly passed for safety reasons, but enjoyed much of their popularity because they served the interests of the railroad unions. Not only did full-crew laws force railroads to hire unnecessary workers, but railroad unions sought to

ensure that the laws encouraged the railroads to hire union members.

For example, full crew laws led to discrimination against African-Americans in both the North and South who had gradually acquired positions as brakemen while remaining officially classified as porters. At the behest of the Trainmen's union, state railroad officials decided that the many African-American porters who did brakemen's work were not brakemen for the purposes of the statutes. The porters therefore had to be replaced by white brakemen--generally union members--in order to comply with the law (Northrup 1971, 52).

Despite these and other efforts by railroad unions to exclude African-Americans, approximately 104,000 African-Americans worked in the railroad industry in 1910. While most worked as unskilled laborers or porters, African-Americans also held approximately one-third of southern railroad fireman and brakeman jobs (Sundstrom 1990, 427). Approximately five thousand African-Americans were employed as firemen, and about the same number worked as brakemen (Greene & Woodson 1930, 102-103). A substantial number of African-Americans worked as switchmen. These were among the highest paid positions available to African-Americans in the South. Overall, there was no fundamental change in African-Americans' relatively favorable position on the railroads until World War I brought massive federal intervention in the railroad labor market.

### III. World War I and Federal Intervention in the Railroad Labor Market

During World War I, labor shortages induced skilled African-Americans to leave the Southern railroads for more lucrative employment in the North. The traditional pay differential between whites and African-Americans, which normally allowed African-Americans to compete successfully with exclusionary white unions for employment, instead encouraged African-Americans to seek greener pastures. In response, the Federal Government, which had taken over

the railroads during the war, ordered that African-American workers be paid the same wages as whites for the jobs of fireman, switchman, and trainman.

Immediately after the war ended, railroad unions renewed their efforts to force African-Americans out of the industry. They were aided in that effort both by the fact that government control of the industry had greatly increased unionization and union power, and by the equal pay order, which in the postwar period reduced the railroads' incentive to employ African-Americans.

The Federal Government also intervened directly in the labor market to the detriment of African-American workers at the behest of unions. For example, labor unions agitated against the employment of African-American workers on a northern railroad line where they had not been employed previously, threatening a walkout and strike. In response, the Director of Operations for the Federal Railroad Administration issued a directive instructing regional managers African-American "firemen, hostlers, switchmen, brakemen, etc.," should not be employed "beyond the practice heretofore existing," nor should they be employed on "any line or in any service upon any line or in any service where they have not heretofore been employed, or to take the places of white men" (Finney 1967, 185). The directive was rescinded after protests from the NAACP and National Urban League, but the Railroad Administration remained hostile to African-Americans (Finney 1967, 189-90).

Basking in their new-found power, the Brotherhood of Railway Trainmen took matters into its own hands, and engaged in a series of racially-motivated strikes. When those strikes failed, the white trainmen turned to terrorism, killing several African-American trainmen, while kidnaping, beating, and threatening others (Spero & Harris 1931, 296-98). Finally, in order to pacify the Trainmen's union, which threatened to disrupt all of the Southern lines, the Federal Railroad Administration agreed in 1919 to new regulations benefitting white trainmen at the

expense of African-Americans. One rule provided that “Negroes are not to be used as conductors, flagmen, baggagemen, or yard conductors” (Spero & Harris 1931, 292). A federal railroad official acknowledged that union blackmail had worked. He told a delegation of African-American protestors that sacrificing the interests of African-American workers was necessary because “it was better to inconvenience a few men than tie up the entire South for an indefinite length of time” (Spero & Harris 1931, 299-300).

Government domination of the railroads, including federally-imposed labor rules, ended soon after the war. While this control had solidified the power of operating craft unions, African-Americans managed to hold their own in railroad employment. Approximately 136,000 African-Americans still worked in the railroad industry in 1924, many of them in relatively high-paying positions. While African-Americans still could not get jobs as conductors and engineers, as of 1920 African-Americans constituted twenty-seven percent of the firemen, twenty-seven percent of the brakemen, and twelve percent of the switchmen in the Southern states (Spero & Harris 1931, 284). African-American workers formed their own unions, such as the Association of Colored Railway Trainmen, which spent much of their energy trying to defend their members from the machinations of whites-only unions (Grossman 1989, 214-15).

#### IV. The Labor Injunction: Anathema to Unions, a Blessing for African-Americans

Several hundred thousand railroad jobs were eliminated as the railroads mechanized in the early 1920s, increasing competition for the remaining jobs. The unions responded by intensifying their campaign against African-American workers, with limited success. Unskilled African-American workers suffered disproportionately from mechanization, but the employment situation stabilized by 1922 (Northrup 1971, 50-51).

For the next several years, railroad unions, particularly the non-operating unions,



weakened dramatically, in part due to the loss of the federal support they received in the late 1910s, in part as a result of the general decline of organized labor during the 1920s, and in part due to the increasingly aggressive use of injunctions issued by federal judges against strikes. Injunctions were used more widely against railroad unions than any other segment of organized labor (Forbath 1989, 1152). African-Americans took advantage of the weakening of the unions and began to enter many of the nonoperating or shop craft railroad skilled and semi-skilled occupations—such as blacksmith, electrician, carman, and machinist—during the 1920s, after serving as strikebreakers against weakened unions. By the end of the decade, African-Americans had doubled their share of jobs in the railroad shops, with particularly large gains in skilled positions (Spero & Harris 1931, 287-90; Northrup 1971, 78-79; Risher 1971, 1).

Courts often issued injunctions to enforce “yellow dog” contracts, in which employees agreed not to join a union. Because the workers had agreed not to join a union, their participation in union-organized strikes could be enjoined as a violation of their contracts. Courts also enjoined labor unions from attempting to organize workers covered by yellow dog contracts, because such activity amounted to unlawful inducement of breach of contract. The yellow dog/labor injunction combination, anathema to organized labor and its sympathizers, played a key role in helping to maintain African-American employment on the railroads.

#### V. The Railway Labor Act and the Downfall of African-American Railroad Workers

Despite setbacks in the early 1920s, several major discriminatory railroad unions, particularly the operating unions, retained some of the monopoly power granted them by federal control over the railroads during and after World War I. The great blow to African-American railroad labor, however, was the Railway Labor Act of 1926, and, even more significant, the amendments to that Act passed in 1934.

The Act guaranteed the right of workers to choose their bargaining representatives, which in effect means that it granted power to the government to force employers to negotiate with certified union representatives. White unionists understood that the Act would help them tremendously in their quest to exclude African-American workers from the railroads. As Richard Epstein notes, the Act “did not transform racial attitudes, but it did change the balance of power” by giving whites “control over the choices of both African-American workers and the railroads” (Epstein 1992, 122). The Act gave unions the power to negotiate agreements with several railroads that substantially limited the number of jobs available to African-Americans. T. Arnold Hill of the National Urban League concluded in 1934, “During recent years considerable new Federal legislation has been enacted to improve the railroads and to promote the welfare of employees working on them. Concurrently with this legislation, the condition of Negroes engaged in train and yard service has grown steadily worse” (Hill 1934, 347)

The Act’s negative effects on African-American workers were exacerbated in 1934, when Congress amended the Act to provide: “The majority of any craft or class of employees shall have the right to determine who shall be the representative of the class or craft . . . .” In other words, the union chosen by the majority of workers in a particular category defined by government regulations would now have the exclusive right to negotiate on behalf of all workers in that category.

Moreover, the 1934 amendments outlawed yellow dog contracts. The amendments also banned the formation of company-financed unions, which, at least as compared to railroad unions organized by white workers, had treated African-American workers fairly (Williams 1981, 31).

The 1934 amendments, along with the Norris-LaGuardia Act of 1932, which banned most federal court injunctions in labor disputes, and state “little Norris-LaGuardias,” which banned

state court injunctions, gave tremendous power to exclusionary railroad unions. The unions immediately tried take advantage of the amendments “to gain a favored position for white workers” (Note 1953, 517). The National Mediation Board (NMB) and the National Railroad Adjustment Board (NRAB), both established by the 1934 amendments, abetted the unions’ discriminatory actions.

The NRAB had jurisdiction over disputes arising out of the interpretation of collective bargaining agreements in the railway industry. The NRAB was composed of thirty-six members, half chosen by the unions, and half by the railroads. National unions were eligible to participate in selecting the union representatives, but African-American unions were not permitted to participate (Northrup 1971, 66).

Dominance of the NRAB by the Railroad Brotherhoods led the Board to promulgate rules that benefitted white workers at the expense of African-Americans. For example, in 1942 the First Division of the NRAB ruled that railroads could not use porter-brakemen as brakemen (*Brotherhood of Railroad Trainmen* 1942). In practice, this decision required the railroads to replace African-American porters who served as porter-brakemen with white brakemen.

The NMB, meanwhile, determined based on a poll of workers which union would act as sole bargaining agent of any class or craft. NMB policy made collective bargaining “a mockery for the black minority on the roads” (Northrup 1971, 55). The election process almost always led to the designation of the discriminatory white firemen’s and trainmen’s unions as the sole bargaining agent for African-Americans in those jobs. Even on the rare occasions when most of the voters in a railroad union election were African-American, white unions managed to win the elections through fraud; African-American workers protested to the NMB to no avail (Northrup 1971, at 55). The lack of redress logically resulted from the fact that many members of the NMB

believed that the certification process should be limited to whites (Northrup 1971, 55-60).

Because African-Americans were not accepted for membership in most railroad union locals, and at best were relegated to a subordinate status, they attempted to form their own unions (Hill 1937, 56; Northrup 1971, 66). The NMB frustrated such attempts by ruling that these alternative unions could not represent African-American employees because the official unions already represented them. The NMB thus bestowed de facto monopoly representation powers upon white labor unions that refused to extend equal membership rights to African-Americans.

African-Americans often were not able to get copies of the contracts in force on their roads, though the contracts were routinely distributed to white workers. The NMB, which was supposed to keep a copy of all union contracts, was not eager to help African-Americans who believed that a contract was being violated to their detriment (Elimination of Negro Firemen 1944, 35). The Firemen's Brotherhood refused to handle grievances filed by African-Americans if the complaint conflicted with the perceived interests of white firemen. This is not surprising, given that in 1937 union reaffirmed its intent to eliminate African-American firemen from the profession (Brotherhood of Locomotive Firemen 1937, 584-85).

The Firemen's union negotiated a series of discriminatory agreements with the railroads that severely reduced the employment of African-American firemen in the late 1930s and early 1940s. By 1940, the number of African-American firemen and brakemen had declined by almost 2/3 from the 1920 level (Houston 1949, 269). This "progress" did not satisfy the brotherhoods; their goal remained the *elimination* of African-American competition nationwide. For example, in 1940 the Firemen's brotherhood demanded that all future firemen hired by the Southeastern carriers be "promotable," meaning white (*Brotherhood of Locomotive Firemen* 1947).

When some carriers resisted, the Brotherhood called in the NMB. With the NMB's

encouragement, the Firemen's union in 1941 signed a contract with the Southeastern carriers that contained a clause stipulating that the carriers would hire only "promotables" and reduce the number of non-promotables on each line to fifty percent. The agreement was eventually amended to state that "non-promotable" meant "colored." Similar agreements were devised by the Brakemen's union (Henderson 1976, 181).

Sometimes, unions forced employers to go beyond the letter of the contracts and engage in wholesale displacement of African-American railroad workers already employed. This period was also marked by many secret agreements designed to undermine African-Americans. In one case, the Firemen's union agreed with the Gulf, Mobile and Ohio Railroad to forego higher wages for its members in return for more jobs on new stokerized engines at the expense of senior African-American firemen (Henderson 1976, 178).

The National Mediation Board approved the discriminatory agreements made by the unions and railroads. As Malcolm Ross, a director of the Fair Employment Practice Committee during World War II, noted, in doing so the NMB "was no more legally responsible for the antiracial act than an Elkton Maryland marrying parson is for joining in holy wedlock an overstimulated Princeton sophomore and a blonde he has just picked up" (Ross 1948, 130). The NMB's job was to accept any agreement the designated union negotiated with the railroads.

#### VI. The Long-term Effects of The RLA: Caste in *Steele*

In 1944, in *Steele v. Louisville & Nashville Railroad* (Steele 1944), the Supreme Court unanimously held that railroad unions, having been granted monopolies by the Railway Labor Act must represent all workers fairly, including African-Americans. One contemporary authority celebrated the *Steele* decision as "*Dred Scott* in reverse" (Ross 1948). In fact, however, the ruling (and its extension a few years later by the Supreme Court to prohibit unions from attempting

to dislodge African-American workers in a different bargaining class (*Howard* 1953)) did not effectively reduce discrimination in railroad employment. *Steele* did not require unions to admit African-American members, and did nothing to reduce monopoly powers the Railway Labor Act conferred on unions. Most railroad unions, meanwhile, remained recalcitrantly racist. While *Steele* held that the railroad unions had a duty of fair representation, “many opportunities remain[ed] for ostensibly neutral rules to impose disproportionate losses on black workers” in such a manner that the possibility of redress through the courts was remote (Epstein 1992, at 124).

Moreover, the promise *Steele* did hold for African-Americans was not realized, because it was not vigorously enforced by the relevant government agencies, and resources for private parties to bring cases were lacking (Risher 1971, 149; Williams 1981, 31). Indeed, the discriminatory agreement that led to the *Steele* case remained in force until 1951. By the time *Steele* began to give African-American railroad workers some leverage against discrimination in the 1950s, the bulk of African-Americans’ jobs on the railroads had been lost (Hill 1982, 20). For example, the percentage of African-American firemen in the South declined to only 7% in 1960 (Northrup 1971, 53). By the time railroad unions revoked their color bars in the 1960s, overall railroad employment had declined dramatically, and few railroads were doing much new hiring (Northrup 1971, xc).

To be sure, not all African-American railroad workers were harmed by the Railway Labor Act. Some deft political maneuvering in 1934 by A. Philip Randolph of the Brotherhood of Sleeping Car Porters assured that, despite the indifference or hostility of the other railway unions, the almost entirely African-American Porters’ union was recognized as the “duly authorized representative of the sleeping car porters” (Berman 1935, 217). This recognition rescued the Brotherhood from near-extinction, and guaranteed that its members received the advantages union

members gained from the Act.

Overall, though, labor economist Herbert Northrup concluded in 1944 that “[i]n no other industry has collective bargaining had such disastrous results for Negroes” (Northrup 1971, 93-94). In a 1971 introduction to a reprint of his earlier work, Northrup added that if equal opportunity was to finally come to railroad employment, it would arrive at least thirty years too late (Northrup 1971, xc).

It should be stressed, however, that ubiquitous collective bargaining on the railroads did not happen spontaneously. The Federal Government encouraged, and indeed commanded it. More precisely, then, in no other industry did the establishment of government intervention in the labor market have such disastrous results for African-Americans.

## References

1

Arnesen, Eric. 1994. "Like Banquo's Ghost, It Will Not Down": The Race Question and the American Railroad Brotherhoods, 1880-1920. *American Historical Review* 99 (December):1601-33.

Berman, Edward. 1935. The Pullman Porters Win. *The Nation* 141 (Aug. 21):217-218.

Brotherhood of Locomotive Firemen and Enginemen. 1937. *Proceedings of the Thirty-Third Convention*.

*Brotherhood of Locomotive Firemen v. Tunstall*, 163 F.2d 289 (4th Cir. 1947).

*Brotherhood of Railroad Trainmen v. A.T. & Santa Fe Railway.*, N.R.A.B. Award No. 6640 (1st Div. 1942).

*The Elimination of Negro Firemen on American Railways--A Study of the Evidence Adduced at the Hearing before the President's Committee on Fair Employment Practices*. 1944. *Lawyers Guild Review* 4 (March-April):32-37.

Epstein, Richard A. 1992. *Forbidden Grounds: The Case Against Employment Discrimination Laws*. Cambridge, MA: Harvard University Press.

Finney, Jr., John D. 1967. *A Study of Negro Labor During and After World War I*. Ph.D. dissertation, Georgetown University.

Forbath, William E. 1989. *The Shaping of the American Labor Movement*, *Harvard Law Review* 102:1109-1256.



Greene, Lorenzo & Woodson, Carter G. 1970. *The Negro Wage Earner*. New York: AMS Press 1970 (1930).

Grossman, James R. 1989. *Land of Hope: Chicago, Black Southerners, and the Great Migration*. Chicago: University of Chicago Press 1989.

Harris, William H. 1982. *The Harder We Run: Black Workers Since the Civil War*. New York: Oxford University Press.

Henderson, Alexa B. 1976. FEPC and the Southern Railway Case: An Investigation into the Discriminatory Practices of Railroads During World War II. *Journal of Negro History* 61:173-87.

Hill, Herbert. 1982. The AFL-CIO and the Black Worker: Twenty-Five Years After the Merger, *Journal of Intergroup Relations* 10:5-20

Hill, Herbert. 1977. *Black Labor and the American Legal System*. Washington: Bureau of National Affairs.

Hill, T. Arnold. 1934. Railway Employees Rally to Save Their Jobs. *Opportunity* 12:346-47.

Hill, T. Arnold. 1937. The Negro and Economic Reconstruction. Washington, DC: The Associates in Negro Folk Education.

Houston, Charles H. 1949. Foul Employment Practice on the Rails. *The Crisis* 56 (October):269-70.

Howard v. St. Louis-S.F. Ry., 343 U.S. 774 (1953).

Marshall, Ray. 1968. The Negro in Southern Unions in Julius Jacobson, ed., *The Negro and the American Labor Movement*. Garden City, N.Y.: Anchor Books 1968.

Matthews, John Michael. 1974. The Georgia "Race Strike" of 1909. *Journal of Southern History* 40 (November):613-30.

Northrup, Herbert. 1971. *Organized Labor and the Negro*. New York: Kraus Reprint Co. (1944).

Note. 1953. Judicial Regulation of the Railway Brotherhoods' Discriminatory Practices. 1953 *Wisconsin Law Review* 1953:516-36.

Risher, Jr., Howard W. 1971. *The Negro in the Railroad Industry*. Philadelphia: University of Pennsylvania Press.

Ross, Malcolm. 1948. *All Manner of Men*. New York: Greenwood Press.

Scott, Emmett J. 1969. *Negro Migration During the War*. New York: Arno Press (1920).

Spero, Sterling & Harris, Abram. 1931. *The Black Worker*. New York: Columbia University Press.

Sundstrom, William A. 1990. Half A Career: Discrimination & Railroad Internal Labor Markets, *Industrial Relations* 29 (Fall):423-40.

Taillon, Paul Michel. 1997. *Culture, Politics, and the Making of the Railroad Brotherhoods, 1863-1916*. Ph.D. dissertation, University of Wisconsin.

Williams, Walter E. 1981. Freedom to Contract: Blacks and Labor Organizations, *Government-Union Review*. 2(3):28-44.

