Sections 2, Third and 2, Fourth of the Railway Labor Act give to employees the right to organize and bargain collectively through representatives of their own choosing without interference by the carrier. The extent to which the Courts will enforce these statutory rights depends almost entirely on the availability of other forums for the resolution of the same or related issues. As the Court of Appeals for the Second Circuit has recently acknowledged:

“The role of the courts in enforcing substantive obligations under the RLA is circumscribed by the Act’s unique history and dispute-resolution framework.” \textit{ALPA v. Texas International Airlines}, 656 F.2d 16, 19 (2d Cir. 1981).

In certain instances, the courts will intervene to prevent a party from engaging in conduct which will undermine the fundamental requirements of the RLA. See, \textit{e.g.}, \textit{Chicago & N.W. Ry. v. UTU}, 402 U.S. 570 (1971) (Section 2, First duty to exert every reasonable effort to make and maintain agreements judicially enforceable); \textit{Virginian Railway v. System Federation No. 40}, 300 U.S. 515 (1937); \textit{Texas & N.O.R. Co. v. Brotherhood of Railway Clerks}, 281 U.S. 548 (1930) (Section 2, Third judicially enforceable in cases arising from formation of company unions and company efforts to bypass certified representatives); cf. \textit{Klemens v. ALPA}, 736 F.2d 491 (9th Cir.), \textit{cert. denied}, 469 U.S. 1019 (1984) (Section 2, Eleventh enforceable against unions in suits arising out of union security clauses).

Accordingly, Sections 2, Third and Fourth have been held to provide employees with private rights of action against wrongful discharge for participation in union organizing campaigns prior to recognition or NMB certification. Indeed, the First Circuit has specifically rejected a carrier claim to the contrary, relying on \textit{Cort v. Ash}, 422 U.S. 66 (1975), \textit{Stephanischen v. Merchants Despatch Transportation Corp.}, 722 F.2d 922 (1st Cir. 1983). This analysis is consistent with prior decisions under the RLA. See, \textit{e.g.}, \textit{IAM v. Northwest Airlines, Inc.}, 673 F.2d 700 (3d Cir. 1982); \textit{Adams v. Federal Express Corp.}, 547 F.2d 319 (6th Cir. 1976), \textit{cert. denied}, 431 U.S. 915 (1977); \textit{Conrad v. Delta Airlines, Inc.}, 494 F.2d 914 (7th Cir. 1974). See also \textit{Beckett v. Atlas Air}, 150 LRRM 2749 (E.D.N.Y. 1995) (collecting cases). Moreover, in a case of first impression, the Fifth Circuit assumed - but explicitly chose not to decide — that Section 2, Fourth creates a private cause of action for a claim of discharge for engaging in concerted activity to improve conditions of employment. \textit{Davin v. Delta Airlines, Inc.}, 678 F.2d 567 (5th Cir. 1982). \textit{Clift v. United Parcel Service}, 133 LRRM 2641 (W.D. Ky. 1990) (discharge for opposing allegedly coercive carrier policies, outside of union organizing, nevertheless, states claim under Section 2, Fourth; no preemption of state law claim).
One court has since held that the RLA does not cover concerted activities unrelated to union organizing. Rachford v. Evergreen International Airlines, 596 F. Supp. 384 (N.D. Ill. 1984). See also Herring v. Delta Air Lines, 894 F.2d 1020 (9th Cir. 1990) (no private cause of action for retaliation based on employee activities unrelated to union organizing or employer activities unrelated to undermining a union); Gullickson v. SWAPA, 156 LRRM 2352 (D. Utah 1995) (same).

In Konop v. Hawaiian Airlines, 236 F.3d 1035 (9th Cir. 2001), the Court held that a pilot’s conduct in publishing articles on a secure website constituted protected union-organizing activity under the RLA, despite allegedly false and defamatory statements, and that his claim that the carrier accessed the website without authorization stated a claim under Section 2, Third and Fourth. The Court also held that plaintiff stated a claim of RLA violation arising from alleged disclosure of the website by the carrier to a union leader as well as from threatening to sue for defamation. Note, however, that this opinion subsequently was withdrawn without explanation (262 F.3d 972 (9th Cir. 2001)) and has not, to date, been replaced.

In Beckett v. Atlas Air, 155 LRRM 2820 (E.D.N.Y. 1997), the court held that Section 2, Fourth protects a narrower range of activities in the pre-certification context than does Section 7 of the NLRA since Section 2, Fourth does not expressly protect “other concerted activities.” However, the Court held that despite the fact that the discharged employee purported to be representing a group of unrepresented employees who were not interested in becoming a formal union, his activities were nevertheless arguably in support of a “labor organization” within the meaning of Section 2, Fourth.

In Virgin Atlantic Airways v. NMB, 956 F.2d 1245 (2d Cir. 1992), the Court held that a certified union’s claims that the carrier had discharged employees who had engaged in a strike designed to enforce an NMB certification and had solicited employees to sign a statement repudiating the union stated a claim under Sections 2, Third and Fourth.

In Fennessy v. Southwest Airlines, 91 F.3d 1359, 152 LRRM 3028 (9th Cir. 1996), the Ninth Circuit held that a private right of action existed under Section 2, Fourth for an employee who alleged that he had been discharged in retaliation for his activities on behalf of a union seeking to displace the incumbent. The Court reached this conclusion despite the employee’s prior unsuccessful pursuit of a contractual claim before the System Board and only after detailed review of numerous authorities which supported dismissal of the claim.

In Bishop v. ALPA, 159 LRRM 2005 (N.D. Cal. 1998), the Court held that pilot claims against their certified representative were not regulated by Sections 2, Second, Third and Fourth, which instead, require a dispute between a carrier and its employees.

There is a split of authority over whether the remedy of punitive damages is available in suits to enforce RLA claims. While there is a wide split of authorities in the district courts, the only appellate court to address the issue in the context of a wrongful
discharge claim has held that punitive damages are available.  Lebow v. American TransAir, 86 F.3d 661 (7th Cir. 1996).  See, also, Beckett v. Atlas Air, supra.  IAM v. Northwest Airlines, 131 LRRM 2598 (D. Minn. 1988) (punitive damages available); Belton v. Air Atlanta, 647 F. Supp. 28 (N.D. Ga. 1986) (punitive damages available); IAM v. Jet America, Inc., 115 LRRM 3283 (C.D. Cal. 1983) (punitive damages available); Brown v. World Airways, Inc., 539 F. Supp. 179 (S.D.N.Y. 1982) (punitive damages available).  But see Local 618 v. Trans States Airlines, 151 LRRM 2735 (E.D. Mo. 1996) (same).  Maas v. Frontier Airlines, 676 F. Supp. 224 (D. Col. 1987) (punitive damages not available); Tipton v. Aspen Airways, 741 F. Supp. 1469 (D. Col. 1990) (same); Brotherhood of Ry., Carmen v. Delpro Co., 579 F. Supp. 1332 (D. Del. 1984); see also Grosschmidt v. Chautaugua Airlines, Inc., 122 LRRM 3254 (N.D. Ohio 1986); Peterson v. ALPA, 759 F.2d 1161 (4th Cir.), cert. denied, 474 U.S. 946 (1985) (punitive damages not available against union for alleged breach of duty of fair representation).  The ultimate determination of this issue has often been held to affect a plaintiff’s right to a jury trial since, generally, a jury trial is not available for violations of the RLA but may be available if punitive damages are permitted.  Compare Maas, supra, with IAM v. NWA, supra; see Local 618, supra.  But see Hodges v. Virgin Atlantic Airlines, 714 F. Supp. 75 (1988) (striking jury trial demand despite claims for punitive damages).  However, in Lebow, supra, the Seventh Circuit found that a jury trial was available regardless of the availability of punitive damages (which it also found to be available); Beckett v. Atlas Air, supra.  In AFA v. America West, 161 LRRM 2381 (D. Ariz. 1999), the court ruled that punitive damages are not available in an action by a union alleging violation of the RLA.  A recent decision of the Fourth Circuit confirms that there is no implied right of damages to a carrier for a strike over a minor dispute.  Norfolk Southern Ry v. BLE, 164 LRRM 2647 (4th Cir. 2000).

All such suits under Sections 2, Third and Fourth must, however, be brought by the affected individuals or their certified bargaining representative; an uncertified union does not have standing to bring such a lawsuit.  Adams v. Federal Express, supra.  Cf. People Express Pilot Merger Committee v. Texas Air Corp., 127 LRRM 2879 (D. N.J. 1987) (uncertified representative has standing to enforce terms of labor protective agreement under RLA).  In such suits, the courts have authority to issue back pay awards and injunctive relief where appropriate.  Adams v. Federal Express Corp., 470 F. Supp. 1356 (W.D. Tenn. 1979), aff’d, 654 F.2d 452 (6th Cir. 1981); RLEA v. Boston & Maine Corp., 808 F.2d 150 (1st Cir. 1986), cert. denied, 108 S. Ct. 102 (1987).  One court has held that even a certified union lacks standing to pursue claims for reinstatement and back pay arising from alleged carrier violations by the RLA.  Brotherhood of Railway Carmen v. Delpro Co., 549 F. Supp. 780 (D. Del. 1982).  That same court subsequently authorized the use of a class action in which one of the former employees served as class representative in pursuing those claims.  Brotherhood of Railway Carmen v. Delpro Co., 98 F.R.D. 471 (D. Del. 1983).  Recently, however, another District Court has rejected the reasoning in Delpro and held that a union has standing to pursue individualized damage claims arising from RLA violations.  IFFA v. TWA, 126 F.R.D. 560 (W.D. Mo. 1989).  In IBT v. America West Airlines, 153 LRRM 2181 (D. Ariz. 1996), the court held that RLA rights were properly the subject of otherwise valid releases and that the union, which was uncertified at the time of the filing of the complaint, did not have standing to seek damages on its own behalf or to
represent any member in a representational capacity for purposes of seeking monetary damages. However, since IBT was certified while the matter was pending, leave to amend was granted. Subsequently, the Court held that IBT lacked standing to pursue claims on behalf of current and former employees because resolution of the claims required the participation of individual members in the lawsuit. IBT v. America West Airlines, 156 LRRM 2490 (D. Ariz. 1997).

In a suit alleging unlawful discharge for union activity, one court has adopted the standard that “anti-union motivation invalidates even a discharge which could be justified on independent grounds.” Conrad v. Delta Airlines, Inc., 494 F.2d 914, 918 (7th Cir. 1974). Until recently, that standard applied as well in claims of unlawful discharge under the National Labor Relations Act. However, in Wright Line, A Division of Wright Line, Inc., 251 NLRB 1083 (1980), enf’d, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), the NLRB changed the standards to be applied in dual motive discharge cases. In such cases before the NLRB, the discharged employee (represented by the General Counsel) first must make a prima facie showing sufficient to support the inference that union activities were a “motivating factor” in the employer’s decision. Where, in the past, this would be sufficient to find a violation, the NLRB now permits the employer to attempt to establish that the discharge would have taken place even in the absence of union activity. The Wright Line standard has withstood judicial scrutiny and has been approved by the Supreme Court. NLRB v. Transportation Management Corp., 462 U.S. 393, 103 S. Ct. 2469 (1983). While not followed precisely at least one court has held that the NLRA provides a useful analogy for establishing the order of proof in a suit alleging comparable claims under the RLA. Hodges v. Tomberlin, 510 F. Supp. 1287 (S.D. Ga. 1981). The Fifth Circuit has applied NLRA standards, including the Wright Line analysis, in considering a claim for wrongful discharge under RLA. Roscello v. Southwest Airlines Co., 726 F.2d 217 (5th Cir. 1984). It held, further, that the plaintiff was entitled to a jury trial on such claim. See also Grosschmidt v. Chautaugua Airlines, Inc, 122 LRRM 3254 (N.D. Ohio 1986) (applies Wright Line in a case tried to the court). The Seventh Circuit recently held that the Wright Line burden shifting method employed under the NLRA is applicable to a wrongful discharge claim under the RLA. Lebow v. American Trans Air, 86 F.3d 661 (7th Cir. 1996). See, also, Beckett v. Atlas Air, 155 LRRM 2818 (E.D.N.Y. 1997). The Wright Line analysis was recently applied in a case challenging a carrier’s solicitation ban. Held v. American Airlines, 158 LRRM 2414 (D.D.C. 1998).

Several courts have held that in defending a claim of discharge in violation of the RLA, unrebutted sworn statements that unlawful motivation played no part in the discharge decision would not remove the issue of motivation from the case where such improper motive could reasonably be inferred from other facts before the Court. Stepanischen v. Merchants Despatch Transportation Corp., supra; Conrad v. Delta Airlines, supra.

In ALPA v. EAL, 863 F.2d 891 (D.C. Cir. 1989) the court explicitly held that the Wright Line analysis was applicable to the union’s claim that the carrier’s furlough program violated Sections 2, Third and Fourth. Finding that since the carrier’s program was at least in part business motivated, the fact that it may also have been intended to