LABOR LAW—RAILWAY LABOR ACT—PRESERVING THE STATUS QUO IN "MAJOR DISPUTES"

Lang Yard in Toledo, Ohio, was the terminal point for train and engine crews going on and off duty, and from which switching services for the Monsanto Chemical Plant at Trenton, Michigan, was performed. The carrier notified the union that it intended to establish a new terminal point at Edison Station, Trenton, Michigan, thirty-five miles away from Lang Yard. The union, realizing the carrier's attempt to save money by having its employees report to work at Edison Station rather than at Lang Yard, thus making its employees travel the thirty-five miles on their own time, sought an amendment to the collective bargaining agreement and served a § 6 notice[1] designed to fix the terminal point at Lang Yard. The carrier postponed its proposal, and deliberations ceased. The union served another § 6 notice, and mediation was in progress when the carrier posted a bulletin once again announcing its intention to establish Edison Station as the new terminal point. The union attempted to strike, and the carrier brought an action in the federal district court to enjoin the strike. The union counterclaimed for an order restraining the carrier from violating the status quo provisions of the Railway Labor Act[2] by establishing any new outlying assignments. The district court dismissed the carrier's complaint, and issued an injunction against the proposed change in work assignments.[3]

The court of appeals affirmed,[4] and the Supreme Court also affirmed, holding, "The status quo obligation of both parties . . . is to preserve and maintain unchanged those actual, objective working conditions and

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1. Railway Labor Act, 45 U.S.C.A. § 156 (1954) (originally enacted as Act of May 20, 1926, ch. 347 § 6, 44 Stat. 582). Section 6 provides:

> Carriers and representatives of the employees shall give at least thirty days written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon written notice ten days after the receipt of said notice, and said time shall be within thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or poffer of the services of the Mediation Board.

2. Railway Labor Act, 45 U.S.C.A. §§ 151 *et. seq.* 153, 156 (1954).

3. Detroit & T.S.L. R.R. v. Bhd. of Locomotive Firemen and Enginemen, 267 F. Supp. 572 (N.D. Ohio 1967).

4. Detroit & T.S.L. R.R. v. Bhd. of Locomotive Firemen and Enginemen, 401 F.2d 368 (6th Cir. 1968).

practices, broadly conceived . . . .", and not alone those working conditions specifically covered in an existing collective agreement.[5]

The Railway Labor Act contains elaborate provisions for the peaceful resolution of disputes between carriers and unions.[6] There are two categories of disputes defined by the Act; "major" disputes and "minor" disputes. A "major" dispute relates to controversies over the formation of collective agreements or efforts to secure collective agreements. They arise where there is no agreement at all or where one party seeks to change an existing agreement. The question is therefore not whether an existing agreement controls the controversy. A "minor" dispute contemplates the existence of a collective agreement, not an attempt to create or change an agreement.[7] The question here is the application of a specific provision to a particular case. Under the Railway Labor Act, and the previous holdings, neither party may change his position in a major dispute, pending the exhaustion of statutory procedures.[8] These procedures include negotiation, mediation, offer of arbitration, and a "freeze" period during which a presidential board may be appointed to make recommendations.[9] In this case, the court is deciding what activities will constitute a violation under § 6.

The "condition freezing" aspect of § 6 is for the purpose of peaceful settlement of disputes without an interruption in the flow of commerce. If both parties are required to give notice of a proposed change in their activities affecting rates of pay, rules, and working conditions, the controversies can usually be peacefully worked out without resorting to the statutory procedures. However, there is always the statutory route if there can be no settlement.

The carrier would have § 6 read very narrowly allowing it to unilaterally change any of its activities not specifically covered in the collective agreement without mediation or renegotiation. The union on the other hand would have § 6 read broadly so that any unilateral change of activities could be construed as a change of working conditions under the Act, and the union could then force the carrier to mediate under § 6 or renegotiate.

The Court in this case holds that the parties are required to maintain

5. Detroit & T.S.L. R.R. v. United Transp. Union, 90 S. Ct. 294, 301 (1969).

6. Railway Labor Act, 45 U.S.C.A. §§ 152, 155, 156, 160 (1954).

7. Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 723 (1945).

8. Bhd. of Ry. Employees v. Florida E.C. Ry., 384 U.S. 238 (1966); Bhd. of Locotomotive Engrs. v. Baltimore & O.R.R., 372 U.S. 284 (1963); Manning v. American Airlines, 329 F.2d 32 (2d Cir. 1964).

9. Bhd. of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378 (1969).

their respective positions after a § 6 notice has been filed whether or not the activity changed was covered under the collective bargaining agreement. The important question is, does the unilateral action of the changing party affect the actual objective working conditions? If it does, § 6 demands the "freezing" of conditions, and action by the mediation board. This case holds then, that parties under the Railway Labor Act are required to resort to the statutory procedures in cases of "major" disputes if the "objective" working conditions are affected by unilateral change. The significance of this holding is that the Court enlarges the scope of the parties' duty to bargain on matters not expressly dealt with under an existing collective agreement. Employers subsequent to this case will be under a broader duty, under the Railway Labor Act, to bargain collectively concerning matters not previously subject to collective bargaining, and in the event of a "major" dispute, the statutory procedures will have to be complied with.

This holding is consistent with previous decisions of controversies under the Railway Labor Act concerning "condition freezing". The Court has time and time again stated that the letter and spirit of the Act is the avoidance of interruptions of commerce and prompt and orderly settlement of disputes concerning working conditions.[10] "The policy and basic philosophy of the Railway Labor Act is to give full force to the process of collective bargaining for orderly instrumentation of changes in rates of pay, rules or working conditions as embodied in agreements between the parties."[11] "[The] major purpose of Congress in passing the Railway Labor Act was to provide a machinery to prevent strikes."[12]

It is doubtful whether this holding will be broadly cited and used by the Court in the future, as it would limit the carrier in almost all of its attempts to technologically change its operations and would not allow for new innovations in the future. This position was noted in the dissenting opinion by Mr. Justice Harlan, who said, "I find it difficult to think that Congress intended that either party, by serving a § 6 notice, should be able to shackle his adversary and tie him to a condition that has been historically and consistently controverted."[13] It appears that cases such as the one here decided will have to be looked at individually to determine whether the actual, objective working conditions have been unilaterally changed.

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10. Illinois Cent. R.R. v. Bhd. of Locotmotive Engrs., 299 F. Supp. 1278 (N.D. Ill. 1969).

11. Airlines Stewards & Stewardesses Local 550 v. Caribbean Atl. Airlines, 289 F. Supp. 841, 845 (D. Puerto Rico 1968).

12. Texas & N.O.R.R. v. Bhd. of Ry. & S.S. Clerks, 281 U.S. 548, 565 (1930).

13. Detroit & T.S.L. R.R. v. Bhd. of Locomotive Firemen and Enginemen, 90 S. Ct. 294, 304 (1969).

Important, however, is that if the actual, objective working conditions have been changed, it matters not whether they were included in the actual collective bargaining agreement. The service of a § 6 notice will "freeze" the conditions in the state that they occupied before the unilateral change until the parties comply with the statutory proceudres.

PETER R. PERPALL