1-1-1988

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Publication Information
Jay E. Grenig, Did Amtrak Derail an Employee's Right to Union Representation?, 1987-88 Term Preview U.S. Sup. Ct. Cas. 378 (1988).

Did Amtrak Derail An Employee's Right to Union Representation?

By Jay E. Grenig

Paul G. Landers
v.
National Railroad Passenger Corporation
(Docket No. 86-2037)

Argued March 29, 1988

ISSUE

This case presents the question of whether a railroad and a union representing a bargaining unit of its employees may enter into a collective bargaining agreement providing that only the bargaining representative may represent those employees in company-level disciplinary and grievance proceedings.

FACTS

Paul Landers is employed as a passenger engineer by Amtrak (National Railroad Passenger Corporation). He is a member of the United Transportation Union (UTU), although Amtrak passenger engineers are represented by the Brotherhood of Locomotive Engineers (BLE) for purposes of contract negotiation. UTU represents engine attendants, passenger conductors and assistant conductors employed by Amtrak.

The contract between BLE and Amtrak sets the terms and conditions of employment for the passenger engineers, including discipline and investigation rules. The rules provide that the passenger engineer and the "duly accredited representative will have the right to be present" during disciplinary investigations and that the engineer or duly accredited representative may process appeals of any claim, grievance, or disciplinary action. The rules define the BLE as the "duly accredited representative."

If unsuccessful at the company-level, a passenger engineer may submit the dispute to binding arbitration before the National Railroad Adjustment Board where the engineer "may be heard in person, by counsel, or by other representatives" in accordance with the Railway Labor Act (RLA). The RLA provides that grievances involving the interpretation or application of the collective bargaining agreement shall be handled in the "usual manner" at the company-level.

In 1984, Landers was charged with misconduct while working as a passenger engineer. At the investigatory hearing into the charges, Landers appeared and represented himself. His request that he be represented by UTU was rejected by Amtrak, which advised him that under the terms of the collective bargaining agreement, he could only be represented by the duly accredited representative of his craft—the BLE.

Subsequently, Amtrak concluded the disciplinary charges against Landers had been proven and suspended Landers for thirty days. Landers did not appeal his suspension to the National Railroad Adjustment Board.

The lower courts rejected Landers' claim that he was entitled to representation by UTU at the company-level proceedings (814 F. 2d 41 (1st Cir. 1987)).

BACKGROUND AND SIGNIFICANCE

Compulsory unionism was forbidden by the RLA until 1951. In 1951, Congress amended the RLA to authorize compulsory union membership, but provided that a railroad operating employee may belong to "any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class" in any of the specified services. This amendment was apparently intended to avoid situations where operating employees, who had a long tradition of job progression from one craft to another, would have to belong to more than one union or frequently change union membership.

In *McElroy v. Terminal R.R. Ass'n of St. Louis* (392 F.2d 966 (1968)), the Seventh Circuit held that railway employees could process their grievances themselves or through a minority union. The court concluded that an exclusive grievance representation provision in the labor agreement violated the RLA.

It has been asserted that the *McElroy* decision conflicts with rulings under section 9(a) of the National Labor Relations Act (which does not cover railway employees) and that the decision is also inconsistent with certain prior decisions under the RLA which established that railroad employees in the non-operating crafts were not entitled to representation in company-level proceedings by an attorney or an official from a union other than the designated craft representative.

For example, in *Virginian Railway Co. v. System Federation* (300 U.S. 515 (1937)), the Supreme Court held that the "obligation imposed on the employer by the RLA to treat with the true representative of the employees is exclusive" and "imposes the affirmative duty to treat only with the true

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representative, and hence the negative duty to treat with no other."

Several cases since *McElroy* have read that decision as complying with the freedom of union choice policy expressed in the RLA and have suggested that any extension of the exclusivity of bargaining representation to include company-level grievance and disciplinary proceedings may be illegal under the RLA (*Taylor v. Missouri Pacific R. Co.*, 794 F.2d 1082 (5th Cir. 1986) and *United Transportation Union v. Taylor*, 104 S.Ct. 670 (1986)).

Since the Seventh Circuit's decision in *McElroy*, railroad management and labor, particularly the labor organizations representing operating employees, such as locomotive engineers, have lacked express guidance on the question of whether the Railway Labor Act makes unlawful a provision in a labor agreement limiting union representation in grievance handling at the company-level to the craft-designated bargaining representative.

A definitive ruling on this issue by the Supreme Court could bring some measure of stability to the collective bargaining relationships in the railway industry. However, a decision will only affect railroad employees in the operating crafts who exercise their right to belong to a union other than the union which represents the craft in contract negotiation. In addition, it will only affect railroads which disallow minority union participation at the lower stages of the grievance proceeding. Finally, the decision will not affect a railroad employee's right to be represented by the minority union at the arbitration proceedings before the National Railway Adjustment Board.

ARGUMENTS

For Paul G. Landers *(Counsel of Record, Clinton J. Miller, III, 14600 Detroit Avenue, Cleveland, OH 44107-4250; telephone (216) 228-9400)*

1. The right to be represented by a railway employee's own union in disciplinary hearings before the employer is a necessary incident of the employee's right to belong to that union.
2. Landers has been deprived of the assistance of his union at one of the most critical moments in employment—a disciplinary investigation.

For the National Railroad Passenger Corp. *(Counsel of Record, Joanna L. Moorhead, 400 N. Capitol Street, NW, Washington, DC 20001; telephone (202) 383-2216)*

1. Employers and labor unions are free to negotiate procedures for handling company-level disciplinary and grievance proceedings, including restrictions on employee representatives.
2. The "usual manner" at Amtrak for processing grievances at the company-level is to restrict representation of employees to the collective bargaining representative.

For the Brotherhood of Locomotive Engineers *(Counsel of Record, Harold A. Ross, 1548 Standard Building, 1370 Ontario Street, Cleveland, OH 44113; telephone (216) 861-1313)*

1. The RLA permits contractual provisions limiting representation at company-level proceedings to the craft representative.
2. The sole purpose of the alternative union membership provision of the RLA is to prevent compulsory dual union membership on carriers having intercraft transfers.

AMICUS BRIEF

In Support of Neither Party

The AFL-CIO and the Railway Labor Executives' Association filed a brief describing the National Labor Relations Act law with regard to the exclusive representation principle.