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Must a railroad bargain with its employees before selling its rail lines?

by Jay E. Grenig

Pittsburgh & Lake Erie Railroad Co.
v.
Railway Labor Executives' Association and the Interstate Commerce Commission
(Docket Nos. 87-1589 and 87-1888)

Argument Date: March 29, 1989

ISSUE

This case requires the Supreme Court to reconcile potentially conflicting provisions in three statutes.

First, whether under the Interstate Commerce Act the Interstate Commerce Commission's (ICC) authorization of a rail line acquisition by a non-carrier relieves the selling railroad of any obligation to bargain with its employees under the Railway Labor Act (RLA) concerning the sale.

Second, whether anti-injunction provisions of the Norris-LaGuardia Act prohibit the courts from enjoining a labor strike arising from a railroad's approved sale of a rail line.

Third, whether the RLA requires a railroad to postpone a sale of its rail lines to a non-carrier until the railroad has completed bargaining with its unions concerning the unions' proposed changes in the existing collective bargaining agreements that would address the effects of that sale.

FACTS

The Pittsburgh & Lake Erie Railroad Co. (P&LE) is a small railroad that owns and operates less than 200 miles of rail line in western Pennsylvania and eastern Ohio. Because of financial difficulties, P&LE agreed to sell its rail lines to P&LE Railco Inc. ("Railco"), a newly formed company that intended to operate the lines with fewer employees.

After they were informed of the proposed sale, P&LE's unions asked P&LE to bargain with them over the effects on labor of P&LE's decision to discontinue its railroad business. After P&LE responded that it had no duty to bargain under the circumstances, the unions proposed changes to their collective bargaining agreements that would give employees greater protection in the event of a sale of P&LE.

The Railway Labor Executives' Association (RLEA) then brought an action on behalf of P&LE's unions in federal district court, seeking an order enjoining the sale and forcing P&LE to bargain. On Sept. 15, 1987, the unions began a general strike of P&LE. At about the same time, Railco filed a "notice of exemption" from the ICC entitling it to exemption from the ICC approval process. RLEA then filed a petition asking that Railco's exemption be revoked.

Meanwhile, P&LE requested the district court to enjoin the strike on the ground that the strike was an illegal attempt to interfere with the ICC's exclusive jurisdiction over Railco's purchase of the rail line. After the court issued an injunction, RLEA appealed. The U.S. Court of Appeals for the 3rd Circuit reversed the district court, holding that Section 4 of the Norris-LaGuardia Act deprived the court of jurisdiction to enjoin the strike and directing the district court to determine whether P&LE was required to comply with the RLA bargaining procedures. 831 F.2d 1231 (3d Cir. 1988). P&LE then petitioned the Supreme Court (Docket No. 87-1589) for a writ of certiorari to review that decision.

The district court held that P&LE was obligated to bargain under the RLA with respect to the effects of the proposed sale on its employees and enjoined the sale "to the extent that such sale does not include provisions for the maintenance of the status quo." P&LE appealed and the 3rd Circuit affirmed the district court's decision. 845 F.2d 430 (3d Cir. 1988). P&LE petitioned the Supreme Court (Docket No. 87-1888) for a writ of certiorari to review the court of appeals' decision.

BACKGROUND AND SIGNIFICANCE

Under § 10901 of the Interstate Commerce Act, a non-carrier can acquire a rail line from an existing railroad only if the ICC approves "with conditions the Commission finds necessary in the public interest"—which may include employee protections. Under the ICC's expedited class exemption procedure, a § 10901 acquisition can be consummated seven days after notice is filed with the ICC.

Since 1980 the ICC has encouraged railroads to sell, rather than to abandon, less profitable regional rail lines. As a result, numerous new short lines and regional lines have been created through the sale of marginally profitable and unprofitable rail lines to new entities interested in providing rail service. However, affected rail employees have generally been unprotected by the ICC on the ground that it would effectively foreclose the formation of new rail carriers and would ultimately lead to further loss of jobs through the abandonment and dismantling of marginal rail lines.

This case presents the question of whether the ICC's approval of a non-carrier's acquisition of an existing rail line

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relieves the selling railroad of any obligation under the RLA to bargain with its employees concerning the sale. It also presents the question of whether the ICC's authorization releases the courts from the Norris-LaGuardia Act's prohibition against injunctions in cases involving labor disputes.

The questions of whether the RLA requires P&LE to bargain with its unions over the effects of its sale and to maintain the status quo during bargaining, involve matters of fundamental importance to labor-management relations.

The federal courts of appeals have disagreed as to the existence of a duty to bargain over the effects of termination of a business covered by the RLA. In *Air Line Pilots Ass'n v. Transamerica Airlines, Inc.*, 817 F.2d 51 (9th Cir. 1987), the 9th Circuit held that effects bargaining may continue despite the cessation of flight operations. However, the 1st Circuit in *International Ass'n of Machinists v. Northeast Airlines Inc.*, 473 F.2d 549 (1st Cir. 1972), held that where it is clear that bargaining about some effects of the decision would be ineffective unless the company could be required to renegotiate the merger, the duty to bargain about those effects does not arise at all.

The 8th Circuit has taken the position that the ICC has "superseding authority to supervise and implement labor protective conditions in terms of acquisitions, sales, and abandonments of railroad lines," and that the Interstate Commerce Act "supersedes the authority of the mandatory bargaining provisions of the [RLA] which provide an essentially duplicative or overlapping process designed to reach labor protective agreements." *Burlington Northern R.R. v. United Transportation Union*, 848 F.2d 856 (8th Cir. 1988); *Railway Labor Executives' Ass'n v. Chicago & Northwestern Transportation Co.*, 848 F.2d 102 (8th Cir. 1988).

Disagreeing with the 8th Circuit, the 5th Circuit has held that the injunction of an ICC-approved transaction involving a railroad's sale of its assets, and the leasing of its facilities to a newly formed rail company, "would not impermissibly contravene the Commission's approval" and that carriers involved in the ICC-approved sale of its assets are not relieved from the mandatory bargaining provisions of the RLA. *Railway Labor Executives' Ass'n v. City of Galveston*, 849 F.2d 145 (5th Cir. 1988).

If the Supreme Court agrees with the position of the ICC and the P&LE, it may encourage the formation of new rail carriers but leave employees with limited or no job protection. On the other hand, if a railroad is required to exhaust the dispute resolution procedures of the RLA (including conferences, mediation and possible investigations and recommendations by an emergency board appointed by the president) before consummating a sale to a non-carrier, the delay may kill the sale, while providing some protection for affected employees' jobs and their labor standards.

ARGUMENTS

For the Pittsburgh & Lake Erie Railroad Co. *(Counsel of Record, Richard L. Whyatt Jr., Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Ave., N.W., Suite 400, Washington, DC 20036; telephone (202) 877-4000):*

1. The RLA does not require that a railroad exhaust that Act's collective bargaining procedures before implementing a decision to go out of business.
2. Neither the loss of jobs that would result from P&LE's decision to go out of business nor the unions' bargaining proposals gave rise to a status quo obligation under the RLA, precluding implemention of P&LE's decision to sell.
3. The ICC's exclusive jurisdiction over railroad line sales supersedes any RLA duty to bargain over the effects.

For the Railway Labor Executives' Association *(Counsel of Record, John O'B. Clarke Jr., Highsaw & Mahoney, P.C., 1050 17th St., N.W., Suite 210, Washington, DC 20036; telephone (202) 296-8500):*

1. The RLA requires the railroad to notify its employee's representatives and bargain with them over its intention to sell its rail lines for continued rail operations without preserving existing rates of pay, rules, and working conditions.
2. Because the very existence of the employees' jobs is at the heart of this dispute, the RLA requires that these jobs be maintained until the parties have complied fully with the Act's major dispute resolution processes.
3. The ICC's jurisdiction over rail line sales does not relieve a rail carrier participating in such a sale of its obligations to its employees under the RLA, as the RLA and the Interstate Commerce Act regulate entirely different areas of conduct.

For the Interstate Commerce Commission *(Counsel of Record, Clyde J. Hart, Jr., 12th & Constitution Ave., N.W., Washington, DC 20423; telephone (202) 275-7009):*

1. The ICC's approval of a rail transaction under 49 U.S.C. § 10901 exempts the participants from the provisions of any statute that acts as an obstacle to the implementation of the approved transaction.
2. The Interstate Commerce Act is a labor statute to which other labor statutes must be accommodated.

AMICUS BRIEFS

In Support of the Pittsburgh & Lake Erie Railroad Co.

The National Railway Labor Conference, Guilford Transportation Industries, Inc., Boston and Maine Corp., Maine Central Railroad Co., Springfield Terminal Railway Co., State of South Dakota, Regional Railroads of America, the American Short Line Railroad Association, Chicago & North Western Transportation Co., Dakota, Minnesota & Eastern Railroad Corp., and the Airline Industrial Relations Conference.

In Support of the Railway Labor Executives' Association and the Interstate Commerce Commission

The AFL-CIO.

In Support of Neither Party

The Solicitor General of the United States