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EMPLOYEE PROTECTION AND THE REGULATION OF PUBLIC UTILITIES: MERGERS, CONSOLIDATIONS, AND ABANDONMENT OF FACILITIES IN THE TRANSPORTATION INDUSTRY

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WORKERS seek protection from adverse effects of labor-saving improvements in industrial organization. Although the most frequently encountered threats to employees are efficiency-producing changes in operating procedures introduced by a single employer, corporate consolidations, mergers, acquisitions, and other types of cooperative undertakings by two or more employers, as well as partial or total abandonment of operations by a single employer, are of equal, if not greater concern to workers. When operating economies are achieved as the result of such organizational changes, they usually represent in large part a reduction in labor costs. In many industries, employees discharged under such circumstances receive dismissal compensation, which softens the effect of unemployment and serves as a bonus for past service.[1] Although many such protection plans were adopted voluntarily by management after the first World War, the practice received its greatest impetus with the impact of the depression in the early thirties.[2]

Arguments favoring the protection of employees adversely affected by changes in industrial organization are especially valid when applied to the public utilities. Since these industries may not undertake reorganization without the sanction of government, they must apply to their respective regulatory agencies for approval. And these agencies are required to weigh the entire public interest before approving the requested reorganization. The public interest looks not only to the dependable, efficient, and economical operation of a utility, but also to the interests and welfare of the groups in the society affected by its operations. Thus, when a utility undergoes a

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1. See *Collective Bargaining Provisions—Dismissal Pay*, BUREAU OF LABOR STAT. BULL. No. 908-5 (Dep't Labor 1948); *Severance Pay Clauses in Recent Union Agreements*, 13 MANAGEMENT RECORD 359 (1951); NATIONAL INDUSTRIAL CONFERENCE BOARD, DISMISSAL COMPENSATION (Studies in Personnel Policy, No. 50, 1943).

2. See HAWKINS, DISMISSAL COMPENSATION (1940); Schwenning, *Dismissal Compensation: A List of References*, 34 MONTHLY LAB. REV. 478 (1932). See also Schwenning, *Protection of Employees Against Abrupt Discharge*, 30 MICH. L. REV. 666 (1932).

corporate or operational reorganization—often with governmental encouragement—it is usually with the objective of improving in some manner its service to the public. Stockholders, too, benefit through increased profits and dividends from resulting efficiency. However, increased efficiency and profits frequently result from reduced labor costs; so, more often than not, employees are likely to constitute the only group that suffers. Since employee welfare is an inseparable element of the public interest, the employee is entitled to protection.[3]

Development of the Protection Doctrine for Railroad Employees

1920-1936

Following World War I, Congress devoted considerable attention to legislation permitting emergency consolidation of railroads into fewer and more efficient operating units. The Transportation Act of 1920[4] declared that the Interstate Commerce Commission "shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems."[5] Neither Congress in this directive, nor the ICC in its tentative plan of the following year[6] mentioned labor's interests, despite the fact that from 1909 to 1920 there had been a number of railroad mergers and consolidations in which voluntary agreements between employee organizations and management recognized and protected the rights of employees. After the passage of the Act, railway labor organizations continued to press for protection of employees adversely affected by these transactions, but with little success.

In 1929, two events helped to focus attention on the problems of employee protection. In that year, the ICC, acting under the congressional declaration of policy contained in the Transportation Act of 1920, revealed its final plan for the consolidation of railroads,[7] again omitting any provision for the protection of adversely affected employees. By this time, however, railway labor had become sufficiently aware of the threat to job security created by mergers and consolidations, and loudly contested this omission.[8] The second event was a proposal filed before the ICC for the merger of the Great Northern and Northern Pacific railroads. Partly because of labor's uneasiness over increasing unemployment, and partly because of opposition to the merger

3. See, *e.g.*, congressional recognition of the employee protection principle in cases of merger of domestic telegraph companies. 57 Stat. 5 (1943), 47 U.S.C. § 222 (1946). This statute contained provisions for protection of employees of merged telegraph carriers. 57 Stat. 8 (1943), 47 U.S.C. § 222(f) (1946). See Goldin, *The Employee Interest in Public Utility Merger and Abandonment Cases*, 24 Land Econ. 161, 169-74 (1948).

4. 41 Stat. 456 (1920).

5. *Id.* at 481.

6. Consolidation of Railroads, 63 I.C.C. 455 (1921).

7. Consolidation of Railroads, 159 I.C.C. 522 (1929).

8. Sen. Doc. No. 77, 79th Cong., 1st Sess. (1944).

from non-labor sources, a congressional resolution was introduced to suspend the ICC's authority to approve any consolidation of railroad facilities.[9] Although the resolution failed to pass, Commissioner Joseph B. Eastman of the ICC made a significant argument to the effect that the proposed measure was unnecessary for the protection of labor, because, among other reasons, the interests of labor were already entitled to consideration as a part of the "public interest" referred to in the Act.[10]

Yet, it was by no means clear to the ICC that its duties under the Act included the protection of employees adversely affected by mergers and consolidations. In a major railroad consolidation case, the ICC stated that whenever labor's interests had been inadequately dealt with in consolidation cases, it would "consider the imposition of such conditions as we may find to be proper and within our jurisdiction."[11] That the Commission was not entirely sure of its powers in this connection, however, was indicated by this qualification: "If any doubt exists as to our jurisdiction . . . it should be safeguarded by Congress."[12]

Congress acted, but not to calm the jurisdictional doubts of the ICC. With the financial collapse of many railroads during the Depression, the movement for retrenchment resulted in passage of the Emergency Railroad Transportation Act of 1933.[13] This Act called for a Federal Coordinator of Transportation empowered to prevent unnecessary duplication of railroad services and facilities.[14] In addition, this Act marked the first congressional recognition of the principle of employee protection.[15] Section 7(b) provided that no individual in the employ of a railroad carrier in May, 1933, could be dismissed or reduced in pay as a result of an undertaking pursuant to the Act. Further, no carrier would be permitted to reduce the number of its employees below the level of May, 1933, by any coordination under the Act, except through the process of normal attrition, and even then not to exceed five percent per year of the number employed during May, 1933. The Act also provided for the establishment of three regional labor committees with

9. S.J. Res. 161, 71st Cong., 2d Sess. (1930).

10. 41 STAT. 481 (1920). *Hearings before Senate Committee on Interstate Commerce on S.J. Res. 161*, 71st Cong., 2d Sess. 310 (1930).

11. Consolidation of Railroads, 185 I.C.C. 403, 427 (1932).

12. *Ibid.*

13. 48 STAT. 211 (1933).

14. *Ibid.*

15. Both Great Britain and Canada had taken earlier steps to protect the interest of railroad employees affected by similar circumstances. Legislation was first enacted in Great Britain in 1863 that provided for the transfer of employees at the time of consolidation with the same status as existed under the old employer. The British Railway Act of 1921 ordered consolidation of that country's railroads into four systems, and provided for the protection of employees laid off, as well as those retained. Canada enacted protective legislation in 1913. Other countries, *e.g.*, Brazil and Roumania, made special provision in the early thirties for railroad employees. SEN. DOC. NO. 77, *supra* note 8, at 2, 4, 5, 10, 28-32.

which the Coordinator was directed to confer on labor matters. Moreover, the Act required compensation for employees who were forced to move as a result of economy measures.

Taking its cue from the labor protection philosophy expressed in the Emergency Railroad Transportation Act, and increased recognition of the employee protection doctrine by management and labor through private agreements, the Commission attached protective conditions for employees in *St. Paul Bridge & Terminal Ry. Control.*[16] The Commission granted authority to the Chicago, Great Western Railway to acquire the terminal railway company, on condition that a separate seniority list be maintained for employees of the latter, and that these employees be given a pro rata share of available work. The Commission held that its power to approve transactions of this type, after a finding that they would "promote the public interest,"[17] was "broad enough to comprehend every public interest and the interest of every group or element of the public."[18] It took the position that railway employees possessed an interest which was public as well as private, and that "just and reasonable requirements imposed in the interests of [the] employees" were relevant in the consideration of "public interest in the broad sense."[19]

The Washington Agreement

After the expiration of the powers of the Coordinator under the Emergency Transportation Act of 1933,[20] a private agreement between railroad management and employee organizations took over the field of employment protection. During the limited period of the Coordinator's powers to impose protective conditions, two bills for employee protection were introduced in Congress. One bill was sponsored by the Coordinator,[21] and the other, known as the Wheeler-Crosser bill, was drafted by the railway labor organizations.[22] Although the two measures were similar, the Coordinator's bill was considerably less favorable to employees than was the Wheeler-Crosser bill.[23] Congress took no action on either measure, because representatives of railroad labor and management reached an agreement in Washington on a detailed set of provisions designed to protect employees from the worst effects of

16. 199 I.C.C. 588 (1934).

17. Within the meaning of § 85(4)(b) of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act of 1933, 48 STAT. 211, 217 (1933).

18. 199 I.C.C. 588, 595 (1934).

19. *Ibid.*

20. By its terms, the provisions of the Coordinator section of the Emergency Transportation Act were to remain in effect for only one year, though it was extended for two additional one-year periods. Proclamation of the President, 48 STAT. 1740 (1934); Joint Resolution of Congress, 49 STAT. 376 (1935).

21. S. 1630 and H.R. 5378, 74th Cong., 1st Sess. (1935).

22. S. 4174, 74th Cong., 2d Sess. (1936).

23. See SEN. Doc. No. 77, *supra* note 8, at 12-16, 28-34.

mergers, consolidations, or pooling of lines, terminals, or other operating facilities.[24]

The Washington Agreement is still in effect, and many carriers have become parties to its provisions.[25] The Agreement provides a released employee with a dismissal allowance equal to sixty percent of his average monthly compensation. The allowance is paid over a period of six months to five years, depending upon the employee's length of prior service, and is reduced if the employee obtains other railroad employment. The employee retained in service at lower compensation receives, during a five-year protective period, a displacement allowance equal to the difference between his new earnings and the average compensation from his former position. In addition, this employee is compensated for required moving expenses, and any loss resulting from sale or lease of his residence; he also retains other job benefits during the five-year protective period.

In *United States v. Lowden*,[26] conditions similar to those contained in the Washington Agreement were the subject of a Supreme Court test of the Commission's power to impose protective conditions in consolidation proceedings.[27] The Court established the principle that the ICC had the *discretionary* power to impose such conditions, because the ICC was obligated to protect the public's interest in "the maintenance of an adequate and efficient transportation system."[28] Since labor strife and lowered employee morale might result from the lack of protective conditions, and hence threaten the public interest which the ICC was obligated to protect, the Court reasoned that the statutory phrase "public interest" comprehended mitigation of the otherwise unduly injurious effects which a consolidation might have on railway labor. The Court found congressional recognition of the relationship between the just and reasonable treatment of employees and the maintenance of adequate and efficient transportation in legislation governing labor relations on railroads,[29] and pending amendments to the Interstate Commerce Act

24. The Washington Job Protection Agreement of May, 1936, was the culmination of three and one-half months of negotiations between the Railway Labor Executives Association, representing twenty railroad labor organizations, and a Carriers' Joint Conference Committee representing 139 carriers covering about 85% of the country's railroad mileage. See joint statement by George M. Harrison, Chairman, Railway Labor Executives Ass'n and H. A. Enochs, Chairman, Carriers' Joint Conference Committee, announcing signing of the agreement, 80 CONG. REC. 7661 (1936). Text of the agreement is also reproduced in *id.* at 7766-70. See also, Bortz, *Displacement Compensation for Railroad Workers*, 3 LAB. INFORMATION BULL. 6 (1936); Enochs, *Railroad Consolidation and Dismissal Compensation*, 9 CONFERENCE BOARD SERVICE LETTER 53 (1936).

25. See Table I, at page 470 *infra* for a summary of the major provisions of the Washington Agreement. Almost every year the Washington Agreement is a subject of negotiations between the unions and one or more non-signing carriers.

26. 308 U.S. 225 (1939).

27. The conditions were imposed in Chicago, R.I. & G. Ry. Trustees' Lease, 230 I.C.C. 181 (1939).

28. 308 U.S. 225, 231 (1939).

29. *Id.* at 234.

which would require the ICC to impose protective conditions in consolidation proceedings.

The Transportation Act of 1940

Lowden became obsolete as a result of new legislation which *required* the ICC to protect employees adversely affected by consolidations. Section 5 of the Transportation Act of 1940 expressly required the ICC, in passing upon carrier consolidations and certain other types of transactions, to give weight, as an element of the public interest, to the "interest of carrier employees affected."[30] Moreover, the ICC, before it could approve a consolidation, was instructed to require a fair and equitable arrangement for the protection of the employees affected.[31]

In administering its absolute obligation under Section 5 to afford employee protection, the ICC relied on evidence of whether or not employees would be adversely affected by the railroad consolidation. At first, if no specific evidence was presented to show that consolidation would cause any adverse effect on the status or interest of carrier employees, the ICC did not impose specific protective conditions. The ICC reserved jurisdiction over the proceedings, however, in case adverse effects later developed.[32] On the other

30. 54 STAT. 905 (1940), 49 U.S.C. § 5(2)(c) (1946). The protective provisions of the Act apply to consolidations or mergers undertaken by two or more carriers; one or more carrier's purchase, lease, or contract to operate the properties, or any part thereof, of another; acquisition of trackage rights; and joint ownership or joint use of another carrier's railroad lines and terminals.

The protective features were embodied in the Harrington Amendment, and evolved out of the deliberations of the so-called Committee of Six which was composed of an equal number of railroad management and labor representatives. See REP. OF THE COMM. APPOINTED SEPT. 20, 1938 BY THE PRESIDENT OF THE UNITED STATES TO CONSIDER THE TRANSPORTATION PROBLEM AND RECOMMEND LEGISLATION (Dec. 23, 1938).

31. "As a condition of its approval . . . of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order, such transaction will not result in employees of the carrier or carriers by railroad affected by such order, being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order." 54 STAT. 905 (1940), 49 U.S.C. § 5(2)(f) (1946). The Supreme Court has held that the second sentence of this paragraph does not restrict the first sentence, and therefore that the ICC has the power to extend the period of protection of the interests of employees beyond four years from the effective date of the order. Railway Labor Executives Ass'n v. United States, 339 U.S. 142 (1950).

32. See Cuyahoga Valley Ry. Control, 252 I.C.C. 683 (1942); Harriman & Northeastern R.R. Abandonment, 249 I.C.C. 518 (1941); Unadilla Valley Ry. Purchase, 249 I.C.C. 1 (1941); Minneapolis & St. P.R.R. Reorganization, 244 I.C.C. 357 (1941).

hand, if evidence of expected adverse effects was introduced, the ICC either inserted a simple declaration that as a condition of its approval it would require "a fair and equitable arrangement to protect the interests of the railroad employees affected,"[33] or, when requested by intervening labor organizations, it imposed more detailed provisions generally modeled after the Washington Agreement.[34] In a 1944 proceeding, the ICC imposed conditions[35] which have since been imposed in Section 5 cases where it is shown that employees would be adversely affected, and their representatives have requested specific conditions.[36] But, if it is definitely shown that employees would not be adversely affected, or if it is not definitely shown that they would not be adversely affected, the ICC has uniformly followed the practice of prescribing the limited protective conditions set forth in Section 5 itself.[37]

Abandonments: The Burlington Formula

In addition to consolidation proceedings, a major area of ICC jurisdiction has been its power to approve abandonments.[38] Despite representations by labor groups, for a number of years the ICC consistently refused to consider employee protection in abandonment proceedings, on the ground that it did not have legal authority to afford protection under such circumstances.[39] The Commission's finding that it lacked such authority was based on its inter-

33. Chicago, R.I. & P. Ry. Reorganization, 247 I.C.C. 533 (1941). The Commission borrowed this language from the first sentence of Section 5(2)(f) of the Act. See note 31 *supra.*

34. Milwaukee, St. P. & P.R.R. Trustees Construction, 252 I.C.C. 49, 287 (1942); Texas & P. Ry. Operations, 247 I.C.C. 285 (1941). In these cases the Commission refused to grant protection such as is provided in the Washington Agreement in matters involving real estate losses or moving expense on the ground that no transfers of employees were contemplated as a result of its approval of the transactions in question.

35. Oklahoma Ry. Trustees Abandonment, 257 I.C.C. 177 (1944). The "Oklahoma Conditions" are nearly identical to the "Burlington Formula" which is imposed in abandonment cases. See note 49 *infra* and accompanying text.

36. Gulf, Mobile & Ohio R.R. Abandonment, 282 I.C.C. 311 (1952); International-Great Northern R.R. Trustee Trackage Rights, 275 I.C.C. 27 (1949). In one of the most recent cases, the Commission imposed the protection afforded by the Washington Agreement as to one class of employees, and the Oklahoma Conditions, see notes 35 *supra*, 49 *infra*, with respect to another. New Orleans Union Passenger Terminal Case, 282 I.C.C. 271 (1952).

37. Chicago & N.W. Ry. Merger, 261 I.C.C. 672 (1946). See also International-Great Northern R.R. Trustee Trackage Rights, 282 I.C.C. 30 (1951); Southern Ry. Purchase, 275 I.C.C. 724 (1950); Missouri Pac. R.R. Reorganization, 275 I.C.C. 59 (1949); New Orleans Union Passenger Terminal Case, 267 I.C.C. 763 (1948). For the limited conditions in § 5(2)(f) of the Act see note 31 *supra.*

38. 41 STAT. 477 (1920), as amended, 49 U.S.C. § 1(18) (1946).

39. *E.g.*, Chicago, M., St. P. & P.R.R. Trustees Abandonment, 240 I.C.C. 183 (1940); Atchison, T. & S.F. Ry. Abandonment, 212 I.C.C. 423 (1936); Chicago Great Western R.R. Trackage, 207 I.C.C. 315 (1935).

pretation of the statutory proviso which gave it authority over abandonments. Under Section 1 of the Interstate Commerce Act, abandonments must be consistent with the "public convenience and necessity," and the ICC may impose conditions which, in its judgment, the "public convenience and necessity" may require.[40] On the other hand, Section 5 of the Act gives the Commission power to approve consolidations, mergers, purchases, leases, operating contracts, and acquisitions of control which would "promote the public interest," subject to conditions which the Commission finds are "just and reasonable."[41] The ICC interpreted "the public interest" under Section 5 as broader than "public convenience and necessity" under Section 1, and held that it could not impose "just and reasonable" conditions in abandonment proceedings.[42]

The Supreme Court overruled the Commission.[43] The Court held that "the phrase 'public convenience and necessity' no less than the phrase 'public interest' must be given a scope consistent with the broad purpose of the Transportation Act of 1920 . . . to provide the public with an efficient and nationally integrated railroad system."[44] It stated that to exclude from the scope of "public convenience and necessity" the national interest in the stability of the labor supply available to railroads would be inconsistent with the Act.[45] Accepting the mandate of the Court, the Commission adopted the procedure of reserving jurisdiction in abandonment proceedings in order to see if adverse effects upon employees actually materialized.[46] However, the continued intervention of labor organizations in abandonment cases and their persistent proposals for detailed protective conditions similar to those found in the Washington Agreement, eventually caused the Commission to weaken,[47] and, in *Chicago, Burlington & Quincy R.R. Abandonment*,[48] to go all the way in granting labor's requests.[49]

The so-called Burlington formula is uniformly imposed by the ICC without modification in all abandonment proceedings in which protective con-

40. 41 STAT. 478 (1920), 49 U.S.C. § 1(18), (20) (1946).

41. 48 STAT. 217 (1933), as amended, 49 U.S.C. § 5(4)(b) (1946).

42. Chicago Great Western R.R. Trackage, 207 I.C.C. 315, 322 (1935).

43. ICC v. Railway Labor Executives Ass'n, 315 U.S. 373 (1942), *reversing* Pacific Electric Ry. Abandonment, 242 I.C.C. 9 (1940).

44. *Id.* at 376.

45. *Id.* at 377.

46. See Chicago, St. L. & N.O.R.R. Abandonment, 254 I.C.C. 491 (1943); Elmira State Line R.R. Abandonment, 252 I.C.C. 711 (1942); Erie R.R. Ferry Abandonment, 252 I.C.C. 659 (1942).

47. Buffalo & Susquehanna R.R. Abandonment, 254 I.C.C. 303 (1943) (dismissal and displacement allowances provided).

48. 257 I.C.C. 700 (1944).

49. That the conditions imposed in this case (Burlington Formula) are substantially similar to those arrived at voluntarily in the Washington Agreement can be seen in Table I, at page 470 *infra*.

ditions are warranted.[50] The ICC classifies the cases according to three general types: (1) abandonment of entire properties by carriers no longer able to continue the struggle for survival because of competition or other conditions; (2) partial abandonment by generally unprosperous carriers in their effort to reduce expenses and thereby preserve service to the public on their remaining lines; (3) abandonment of main lines, branch lines, or parts of lines by carriers not *in extremis* where abandonment benefits both the carrier, in the form of savings realized by discontinuing uneconomic service, and the transportation system as a whole.[51] On the basis of this classification, the Commission takes the view that the first type of abandonment warrants no protective conditions;[52] that each proceeding in the second category will be considered carefully to determine if protection is justified;[53] that in the third type of proceeding protection is afforded as a matter of course.[54]

Generally, the Commission's classification of abandonments is commendable, though on occasion it has led to questionable results.[55] The rule that protective conditions will not be imposed in instances of total abandonment of operations seems unnecessarily inflexible. Where abandonment of an entire railroad is likely to be followed by a liquidation that will substantially benefit stockholders, employees should also share in the proceeds by receiving benefits afforded by a protective formula.

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50. See New York Central R.R. Abandonment, 282 I.C.C. 283 (1952); East Tennessee & W.N.C.R.R. Abandonment, 275 I.C.C. 547 (1950); St. Louis-San Francisco Ry. Abandonment, 261 I.C.C. 781 (1946); Seaboard-All Florida Ry. Receivers Abandonment, 261 I.C.C. 334 (1945).

51. See Chicago, A. & S.R.R. Receiver Abandonment, 261 I.C.C. 646, 651 (1946).

52. Erie R.R. Acquisition, 275 I.C.C. 679 (1950); Missouri & A. Ry. Receivers Abandonment, 271 I.C.C. 171 (1948); Susquehanna & N.Y.R.R. Abandonment, 252 I.C.C. 81 (1942).

53. Baltimore Steam Packet Company Acquisition, Control, 244 I.C.C. 583 (1941). In Pacific Electric Ry. Abandonment, 275 I.C.C. 649, 676 (1950), the ICC stated: "The applicant takes the position that inasmuch as the purpose of the proceedings herein is to permit the elimination of heavy losses incurred in its passenger operations, it would be inappropriate to impose conditions for the protection of employees which would have the effect of perpetuating the burden from which relief is sought. That argument could be advanced in every abandonment case. The financial position of the applicant will be materially strengthened by the program involved although the realization of some portion of the benefits anticipated may be temporarily delayed by affording some protection to the employees adversely affected."

54. Chicago, B. & Q.R.R. Abandonment, 257 I.C.C. 700 (1944).

55. See, *e.g.*, Texas Electric Ry. Abandonment, 271 I.C.C. 391 (1948). In approving an application for total abandonment and dissolution of Texas Electric, the Commission noted that the stockholders would receive a substantial return from the distribution of assets. In addition, they were to continue as stockholders in a wholly-owned subsidiary that was being organized to furnish bus service over a major segment of the abandoned railroad. It was admitted that the bus company would furnish what was in reality a continuation of the railroad's passenger service. Nevertheless, the Commission held that an entire railroad system was being abandoned, and that no exception was warranted to its rule against the imposition of protective conditions under such circumstances.

EXTENSION OF THE EMPLOYEE PROTECTION PRINCIPLE

Although the employee protection principle developed primarily in rail carrier cases, the ICC also applies it to other branches of transportation under its jurisdiction. Under the Transportation Act of 1940, transfers of motor carrier certificates of convenience and necessity, as well as operating permits, have been subject to ICC approval.[56] In passing on certificate and permit transfers, the Commission must give weight to "the interest of the carrier employees affected."[57] Acting under this mandate, the ICC does not impose protective conditions as comprehensive as those imposed in railroad proceedings, but rather adopts the practice of reserving jurisdiction for two or three years following approval, in order to impose any conditions later found necessary for the protection of adversely affected employees.[58] A similar statutory provision governs ICC approval of certificate or permit transfers by water carriers;[59] however, the Commission has not yet found it necessary to impose conditions for the protection of employees affected by such transactions.[60] As to freight forwarders, the other branch of transportation under the jurisdiction of the ICC, the Commission is empowered to approve any transfer of operating permits. If the proposed transfer affects the interests of employees of a freight forwarder, the ICC must impose a "fair and equitable arrangement to protect the interests of the employees affected."[61]

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56. 54 STAT. 924 (1940), 49 U.S.C. § 312(b) (1946).

57. 54 STAT. 906 (1940), 49 U.S.C. § 5(2)(c) (1946). For a discussion of the effect and early application of the employee protection amendment with respect to motor carriers, see Meck & Bogue, *Federal Regulation of Motor Carrier Unification*, 50 YALE L.J. 1376 (1941).

58. See, *e.g.*, Hudson Bus Lines, Inc.—Purchase—Boston & Maine Transportation Co., 58 M.C.C. 73, 133 (1951). In *Hudson Bus Lines*, the Commission indicated that the protective formulas it has imposed in railroad abandonment cases are to serve as a guide to motor carrier employers. See also Greyhound Corps.—Control—Southeastern Greyhound Lines, 57 M.C.C. 123 (1950); Greyhound Mergers, 56 M.C.C. 238 (1949); Lake Shore Coach Co.—Purchase—Valley Greyhound Lines, 56 M.C.C. 205 (1949); Greyhound Mergers, 1948, 55 M.C.C. 237 (1948); Continental Bus System, Inc.—Purchase—Rio Grande Motor Way, 55 M.C.C. 31 (1948); Transit, Inc.—Purchase—Tyson-Long Co., Howerth, Schaefer, 50 M.C.C. 433 (1948); Transcontinental Bus System, Inc. —Control —Continental, 50 M.C.C. 305 (1948).

59. 54 STAT. 944 (1940), 49 U.S.C. § 912 (1946). Certificate or permit transfers are authorized, if they comply with provisions of the Act, and are "in accordance with such regulations as the Commission shall prescribe for the protection of the public interest." The Commission clearly has authority to impose protective conditions under the rule of the *Lowden* case. See page 449 *supra*.

60. See, *e.g.*, Upper Columbia River Towing Co. Purchase, 285 I.C.C. 211, 222 (1952); Fishers Island Ferry District Purchase, 265 I.C.C. 461, 465 (1948).

61. 56 STAT. 292 (1942), 49 U.S.C. § 1010(g) (1946). See 49 CODE FED. REGS. § 415.5(d) (1949) (ICC Regulations, sub-chapter C). Under § 1010(i) of the Act (pt. IV), no freight forwarder which is controlled by, or under common control with, a common carrier subject to pts. I, II, or III of the Act may abandon all or any part of its service, unless the Commission first certifies that such abandonment is consistent with

Yet, labor organizations are not content with the limitation of employee protection to corporate and operational reorganizations under the jurisdiction of the ICC. In 1946 twenty labor organizations advocated the extension of the "principle of job protection to safeguard the rights of workers in the event of mergers, consolidations, abandonments, coordination, etc., to all branches of transportation as it now applies to railroad industry."[62] This group has had considerable success in extending the job protection principle to the airlines.

The Employee Protection Doctrine Applied to the Airlines

In the Civil Aeronautics Act of 1938 Congress gave the Civil Aeronautics Board broad control over route structures and airline organization for "the encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense."[63] Under the Act no airline may transfer a route certificate, abandon a route, or merge with another airline without obtaining prior Board approval. Moreover, the Board may initiate unilaterally many types of action to strengthen and improve the air transport industry and the services it renders.

The Civil Aeronautics Act did not explicitly require the CAB, when exercising jurisdiction over air carriers, to consider the interest of carrier employees affected. Not until 1947 did the Board indicate that it would consider employee protective conditions in the airline industry.[64] In that year, when granting approval to seventeen airlines to form a jointly owned cargo company for the purpose of facilitating the handling of air freight transported by member carriers, the Board declared that it would reconsider its decision if at any time a showing was made that the interests of air carrier employees "have been or are about to be substantially adversely affected" by the operations of the cargo company.[65] Since 1947, the CAB has made a series of

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the "public interest and the national transportation policy declared in this Act." The authority to impose protective conditions under this section is indicated by the rule of the *Lowden* case. See page 449 *supra*.

62. Railway Labor Executives Ass'n, Labor and Transportation 27 (1946).

63. 52 Stat. 980 (1938), as amended, 49 U.S.C. § 402 (1946).

64. Employee organizations intervened in various proceedings before the CAB in the early years following passage of the 1938 Act. See, *e.g.*, American Airlines, Inc., Acquisition of Control of Mid-Continent Airlines, Inc., 7 C.A.B. 365 (1946); Western Air Lines, Inc., Acquisition of Inland Air Lines, Inc., 4 C.A.B. 654 (1944). In one merger case, the Examiner at the request of intervening labor organizations, recommended imposition of "necessary and proper" employee protective conditions in the event of Board approval of the application. The case was dismissed by the Board on other grounds. Pennsylvania-Central—Northeast Merger Case, CAB Dkt. 2168, Report of Ross I. Newmann, Examiner (August 9, 1946).

65. Air Cargo, Inc., Agreement, CAB No. 1041, Order Ser. No. E-1086 p. 3 (December 31, 1947).

decisions approving corporate and operational reorganizations of air carriers which, in certain respects, have protected employees adversely affected thereby. A pattern of regulation has emerged from these decisions irrevocably committing the airline industry to the doctrine of employee protection. To examine the history of this development will not only suggest the direction in which the CAB is likely to move, but will also point up some of the difficulties involved in applying the doctrine to specific airline problems.

The United-Western Case

The CAB first specifically established that it had legal authority to impose employee protective conditions in the *United-Western, Acquisition of Air Carrier Property* case.[66] This proceeding involved an application for approval of an agreement providing for a transfer by Western Air Lines to United Air Lines of a certificate of public convenience and necessity for Route No. 68 (between Los Angeles and Denver), and the concurrent acquisition by United from Western of four DC-4 aircraft and spare parts. The Air Line Pilots' Association, AFL, intervened, maintained that employment and security rights of Western pilots would be adversely affected, and requested protection for them. Relying on testimony by Western's president that none of the carrier's employees would be prejudiced, the Board refused to consider the Association's request.[67] Subsequent to approval of the agreement some Western employees were in fact adversely affected; and upon application of the Pilots' Association and two other labor organizations representing Western's clerical employees and maintenance employees,[68] the Board reopened the proceeding.[69]

The certificate transfer was governed by Section 401 of the Civil Aeronautics Act,[70] and the acquisition of the related physical property was subject to Section 408.[71] Section 408 gives the Board specific authority to impose "such terms and conditions as it shall find to be just and reasonable."[72] But Section 401 gives the Board no such express authority with regard to transfers of certificates. Yet in the *United-Western* case the Board held that the mere

66. 8 C.A.B. 298 (1947).

67. *Id.* at 311.

68. Brotherhood of Railway & Steamship Clerks, AFL (clerical employees); United Automobile Workers, CIO (maintenance employees).

69. United-Western, Acquisition of Air Carrier Property, CAB Dkt. 2839, Order Ser. No. E-1894 (August 25, 1948).

70. "No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest." 52 STAT. 989 (1938), 49 U.S.C. § 481(i) (1946).

71. "It shall be unlawful unless approved by order of the Board . . . for any air carrier . . . to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier . . . unless . . . consistent with the public interest." 52 STAT. 1001 (1938), 49 U.S.C. § 488(a)(2)(b) (1946).

72. 52 STAT. 1002 (1938), 49 U.S.C. § 488(b) (1946).

power to approve or disapprove a certificate transfer includes the power to grant approval contingent upon compliance with specified conditions without which the transfer would not be consistent with the public interest.[73] In supporting its decision, the Board pointed to three decisions of the Supreme Court dealing with ICC jurisdiction over railroads[74] as indicative of its general authority to impose employee protective provisions in such a proceeding. Explaining its reason for adopting the employee protection principle, the Board stated that route transfers, mergers and similar transactions in the public interest,[75] must not benefit stockholders and the public at the expense of employees; that it was in the national interest that such transactions "... should not be prevented or delayed by labor difficulties arising out of [resulting] hardships to employees. . . ."[76] Moreover, the Board noted that it was required to observe determinations by the ICC and by Congress "of what is desirable public policy in comparable situations."[77]

Concerning the scope of protection to be accorded employees affected adversely by the *United-Western* transaction the Board was urged by two of the labor organizations to adopt the ICC's Burlington Formula. However, the Board declined to accept this formula *in toto*, maintaining that it had not yet reached the stage in its study and experience to adopt any formula. None-

73. United-Western, Acquisition of Air Carrier Property, 11 C.A.B. 701, 707 (1950).

74. Railway Labor Executives Ass'n v. United States, 339 U.S. 124 (1950); ICC v. Railway Labor Executives Ass'n, 315 U.S. 373 (1942); United States v. Lowden, 308 U.S. 225 (1939).

75. In the airline industry, improved service and operating economies sometimes are obtained by the exchange of aircraft and personnel between carriers. Such an exchange must be based on agreement between the carriers involved, and the CAB must disapprove any contract between air carriers "adverse to the public interest," or violative of the Civil Aeronautics Act. 52 STAT. 1004 (1938), as amended, 49 U.S.C. § 492(b) (1946).

An agreement between Capital and National Airlines provided for the interchange of aircraft and flight personnel, in order that plane service would be available between cities served by each carrier, and to permit both carriers to equalize sizeable seasonal fluctuations in business. The Board approved the agreement; and while it found that no employees were likely to be affected adversely, it reserved jurisdiction to prescribe conditions in the event of a subsequent showing of adverse effects. Capital—National, Interchange of Equipment, 10 C.A.B. 23 (1949). The CAB did impose a condition requiring Capital and National to comply with the provisions of the Railway Labor Act, 44 STAT. 580 (1926), as amended, 45 U.S.C. § 151 (1946), to the extent of bargaining collectively with the employee organizations involved for the purpose of concluding agreements that would resolve conflicts between existing collective bargaining agreements and the interchange agreement. A similar condition is now imposed by the Board on interchange approvals as a matter of course. See Continental—United, Interchange of Equipment, CAB Dkt. 5228, Opinion and Order Ser. No. E-7556 (July 13, 1953); New York-Houston Interchange Case, CAB Dkt. 4656, Opinion and Order Ser. No. E-7030 (December 16, 1952); Mid-Continent Airlines, Inc., and Continental Air Lines, Inc., CAB Dkt. 4926, Opinion and Order Ser. No. E-5778 (October 10, 1951).

76. United-Western, Acquisition of Air Carrier Property, 11 C.A.B. 701, 708 (1950).

77. *Ibid.*

theless the Board looked to the Burlington Formula for guidance, and, in effect, imposed a modified version of it.[78]

The *United-Western* plan provided employees, dismissed as a result of the acquisition, with an allowance equal to their regular earnings less any compensation resulting from other employment or from unemployment insurance. Losses resulting from reduction to a lower paying position were compensated for, as were required moving and traveling expenses for an employee and his family. The Board specified that the protective period during which losses would be recognized and compensated for was to be a period equal to the time an employee was in the service of Western prior to the date of consummation of the United-Western agreement, but in no case to extend for more than a two-year period after that date. Excluded from benefits of the CAB order were employees with less than three months' service, and employees, other than flight personnel, meteorologists and dispatchers, paid a yearly rate greater than $6500. The latter exclusion was based on the theory that persons receiving such salaries were not employees but executive or supervisory personnel who traditionally are excluded from the benefits of protective labor provisions.[79] Although the Board's order laid down a method for determining the amount of individual employee claims under the protective provisions, there was some question as to the identity and number of employees adversely affected. The Board held that this should be determined by arbitration.[80]

In ruling on the employee protection provisions of the *United-Western* plan, the Ninth Circuit held that under the rule of the *Lowden* case the CAB had statutory authority to condition its approval of a certificate transfer by imposing terms which bore some just relation to the public interest.[81] However, the court held the arbitration requirement of the CAB order invalid. It maintained that the Board had failed to provide adequate criteria for determining the identity and number of employees adversely affected, and since Western was in effect liable for a mandatory judgment for money, it was entitled to the procedural safeguards usually accorded by the law. On the ground that it amounted to an unlawful delegation of the administrative function as prescribed by the Administrative Procedure Act,[82] the court ordered the Board to eliminate the arbitration feature from its order.

78. *Ibid.*; *id.*, Order Ser. No. E-4987 (December 29, 1950).

79. Under § 222(f) of the Communications Act, employees who receive more than $5000 per year are excluded from benefits. 57 STAT. 8 (1943), 47 U.S.C. § 222(f) (1946). In *United-Western* the CAB raised the level of ineligibility to $6500, "in view of the rise in living costs between 1943, the date of enactment of Section 222(f), and the present time [1950]." 11 C.A.B. 701, 712 (1950).

80. The Air Line Pilots Ass'n submitted to the CAB the names of six Western pilots alleged to have been adversely affected by the acquisition. The identity of these employees was determined by arbitration between Western and United pilots. Brief of Public Counsel to the Board, p. 13 (February 23, 1950), United-Western, Acquisition of Air Carrier Property, CAB Dkt. 2839.

81. Western Air Lines, Inc. v. CAB, 194 F.2d 211 (9th Cir. 1952).

82. The court held that the APA, 60 STAT. 237 (1946), 5 U.S.C. § 1001 (1946),

Although at first blush the court's ruling on the arbitration question appears to have merit, it seems at best an unnecessary refinement. For in most industries today, especially the airline and railroad, arbitration of disputes is an integral part of employer-employee relations.[83] Moreover, by ordering arbitration of disputes arising out of interpretation of its employee protective conditions, the CAB was merely following the custom established by the Washington Agreement many years earlier, as well as ICC practice exemplified by arbitration requirements in both the Oklahoma Conditions and the Burlington Formula.[84]

The North Atlantic Route Transfer Case

The next major development of the employee protection doctrine was embodied in the so-called *North Atlantic Route Transfer Case*. The proceeding involved a joint petition by Pan American Airways, American Overseas Airlines, and American Airlines requesting the Board to authorize the acquisition by Pan American of the assets and certificate of public convenience and necessity of American Overseas. After approval by the President pursuant to Section 801 of the Civil Aeronautics Act,[85] the Board approved a modified version of the Burlington Formula as a condition to its approval of the transaction.[86] This proceeding is a landmark, not only because it marks the first occasion that the CAB adopted a comprehensive plan for protection of adversely affected employees,[87] but also because it confronted the Board with

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requires a hearing before the agency concerned, or its fact-finding officer, and suggested that the appropriate course for the CAB would be to appoint a master or examiner to hear the dispute. In November, 1952, the Air Line Pilots Ass'n petitioned the CAB to appoint an examiner to take evidence on the identity of pilots with money claims against Western arising out of the sale of Route 68 to United. ALPA Petition for Appointment of Examiner (November 26, 1952), United-Western, Acquisition of Air Carrier Property, CAB Dkt. 2839. In January, 1953, the Board designated Examiner Thomas L. Wrenn to hear the matter. 84 AMERICAN AVIATION DAILY 140 (1953).

83. These two industries are subject to the Railway Labor Act, 44 STAT. 577 (1926), as amended, 41 U.S.C. § 151 (1946), which provides for arbitration as an integral part of its procedures for settling controversies.

84. See text at notes 35 and 49 *supra*; Table I, at page 470 *infra*.

85. 52 STAT. 1014 (1938), 49 U.S.C. § 601 (1946).

86. The Board made its decision in a series of five orders. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Opinion and Order Ser. No. E-4410 (July 10, 1950); Supplemental Opinion and Order Ser. No. E-4634 (September 22, 1950); Supplemental Opinion and Order Ser. No. E-4659 (September 25, 1950); Supplemental Opinion and Order Ser. No. E-5067 (January 24, 1951); Supplemental Opinion and Order Ser. No. E-5894 (November 27, 1951).

87. Pan American, not denying that employee welfare was a factor to be considered as part of the public interest, proposed that the CAB grant protection only to employees dismissed as a result of the transaction. Pan American suggested a graduated severance pay plan providing a maximum of $2000 per employee. $2000 was the amount an arbitration board had awarded in 1948 to employees dismissed as a result of Pan American's elimination of the non-pilot navigator from its operations. Pan American Airways, Inc.,

the most difficult problems—especially those concerning seniority—created by acquisitions, consolidations, or mergers of business enterprises.

The basic problem was how best to integrate two groups of employees into one work force in a manner that would result in minimum industrial unrest. Complicating the matter was the fact that the airline industry is organized along craft lines, each craft having its own seniority list. And seniority is crucial, for on it hinge, among other things, pay, promotions, demotions, assignments of work, lay-offs. The board had already spoken on the seniority rights of pilots affected by merger of air carriers. In 1949 it had unequivocally stated that "[s]eniority is a matter for private negotiation between the two groups of pilots, and one as to which there clearly should not be interference by us."[88] However, in order not to frustrate the North Atlantic transaction by interminable labor disputes, and in order to carry out the intent of its order of approval in a manner consistent with the purpose of the Civil Aeronautics Act, the Board was forced to reverse its previous position by taking an active role in attempting to facilitate the integration of seniority lists.

The CAB initially took the position that negotiation between Pan American and the employee groups concerned was the proper method for settling the seniority conflict, and, failing that, arbitration.[89] Four major classes of employees failed to resolve their differences: the pilots, flight engineers, flight service personnel, and mechanics or maintenance personnel.[90] Pan American employees of all four classes generally took the position that former American Overseas employees should be treated as new employees just coming to work for Pan American, and thus should go to the bottom of any integrated seniority list. Former American Overseas employees, on the other hand, insisted that this procedure would deprive them of many benefits to which they

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and Transport Workers Union of America, CIO (David L. Cole, Chairman), 11 LAB. ARB. REP. 940 (1948). The CAB, however, granted broader protection. See Table I, at page 470 *infra* for a summary of the major protective conditions imposed in the *North Atlantic Route Transfer Case.* With respect to a controversy about the computation of the dismissal allowance in the *North Atlantic Route Transfer Case*, see Danielson v. CAB, 204 F.2d 266 (2d Cir. 1953).

88. Monarch-Challenger Merger Case, CAB Dkt. 4129, Opinion and Order Ser. No. E-3721 (December 16, 1949).

89. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Opinion and Order Ser. No. E-4634 (September 22, 1950).

90. Flight radio officers, non-pilot navigators, and meteorologists in the employ of American Overseas were not absorbed into Pan American's organization, so there was no problem of integration with respect to these classifications. American Overseas clerical employees were taken over by Pan American and an agreement was reached with the Brotherhood of Railway Clerks, AFL, regarding their seniority. The seniority status of American Overseas' dispatchers brought into Pan American's employ was determined by an arbitration proceeding, which resulted in an integrated seniority list prepared on the basis of strict seniority as reflected by the dates of original employment of dispatchers by American Overseas and Pan American. Arbitration Rep., Pan American World Airways, Inc. and Air Line Dispatchers Association, AFL (Livingston Smith, Arbitrator, February 28, 1951).

were entitled by virtue of their service with American Overseas, and would also be a windfall for existing Pan American employees who would get the benefit of all jobs and opportunities for promotion resulting from Pan American's taking over the operations of American Overseas. Taking a middle ground, the CAB commented:

> "[It] seems to us fair to treat each group of employees as having an interest or equity in job opportunities in the combined enterprise to the extent to which the operations formerly conducted by such employees contribute to the combined enterprise."[91]

Four months after Pan American formally absorbed American Overseas, the seniority problem remained unresolved. To alleviate this situation the Board granted Pan American interim relief through an order directing it to make all promotions, demotions, lay-offs and other personnel policies on a ratio basis from separate seniority lists.[92] For example, if the pilots taken over from American Overseas by Pan American constituted one-fifth of the combined total of Pan American and transferred American Overseas pilots, the transferred American Overseas pilots would get one-fifth of the jobs and promotions and suffer one-fifth of the lay-offs and demotions. American Overseas pilots and flight engineers would have preferred that the CAB make a permanent disposition of the case on the basis of some sort of ratio plan, but because of inequities it would create, the Board was unwilling to do so.

Despite the mediatory efforts of the CAB the employee groups failed to arbitrate or to agree through negotiation. Sensing an impasse the Board ordered the proceeding reopened for further hearing on the seniority question.[93] Finally, the CAB ordered Pan American to integrate seniority lists for the four classes of employees on the basis of length of service.[94] However, pilots on the American Overseas list were given credit for service with other airlines prior to employment with American Overseas Airlines. In explaining its exercise of jurisdiction over the seniority matter, the Board in essence pleaded that there was no other alternative. To have left the parties to their own devices would have been consistent with the established policy that

91. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Opinion and Order Ser. No. E-5067, p. 7 (January 24, 1951). Full seniority credit was awarded by an arbitrator to American Overseas maintenance employees when they were transferred in 1948 to American Airlines, following the assumption by that carrier of responsibility for the maintenance and service of American Overseas aircraft in the continental United States. Arbitration Rep., American Airlines, Inc., and Transport Workers of America, CIO, (Paul R. Hayes, Arbitrator, June 21, 1948).

92. CAB Dkt. 3589 *et al.*, Supplemental Opinion and Order Ser. No. E-5067 (January 24, 1951).

93. *Id.*, Supplemental Opinion and Order Ser. No. E-5229 (March 22, 1951).

94. *Id.*, Supplemental Opinion and Order Ser. No. E-5894 (November 27, 1951). The Examiner's report contains a thorough discussion of the problems of integrating seniority lists. Rep. of Thomas L. Wrenn, Examiner (Aug. 24, 1951).

seniority conflicts be resolved by ". . . voluntary agreements or arbitration."[95] But the consequence of following precedent in this situation would at best be a "haphazard determination" with inequitable results,[96] or, at worst, deadlock and strife. A failure to impose conditions would ". . . have an undesirable effect both on future mergers and consolidations and on Pan American."[97] Citing three sections of the Civil Aeronautics Act [98] as authority for imposing conditions relating to seniority, the CAB concluded that its action "was a just and reasonable condition to our approval . . . and well within the spirit and rule of the *Lowden* case."[99]

Although the Board hoped that its order to integrate seniority lists would lead to a settlement, it soon became apparent that the conflicting interests of the employee groups had not been resolved. Pan American pilots threatened to strike; unrest continued. The National Mediation Board proffered its services,[100] and CAB stayed its order during the mediation.[101] The two pilot groups and Pan American Airways agreed to arbitrate and a board of arbitration handed down an award providing for a composite seniority list. The list was to be determined by a mathematical formula designed to reflect: (1) length of service, (2) maintenance of status, and (3) an equitable sharing of the gains or losses resulting from the consolidation of operations and assets.[102] This award, as well as an agreement between Pan American and the Transport Workers Union, CIO, which provided for the settlement of seniority matters with respect to flight service personnel, were found by the CAB to be just and reasonable and in the public interest. Consequently, Pan American was directed to establish seniority lists in accordance with their provisions.[103] As for integration of Pan American and American Overseas mechanics or maintenance employees, the CAB recently approved an earlier agreement between Pan American and the Transport Workers Union, CIO, as just and reasonable and in the public interest, and ordered Pan American

95. *Id.*, Supplemental Opinion and Order Ser. No. E-5894, p. 9 (November 27, 1951).

96. *Id.* at 15.

97. *Ibid.*

98. 52 STAT. 980, 984, 1002, 49 U.S.C. §§ 402, 425(a), 488(b) (1946).

99. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Opinion and Order Ser. No. E-5894, p. 16 (November 27, 1951).

100. Under authority conferred by § 5, First, (b) of the RLA, 44 STAT. 580 (1926), as amended, 45 U.S.C. § 155 (1946).

101. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Order, Ser. No. E-6034 (January 14, 1952); Supplemental Order, Ser. No. E-6226 (March 18, 1952); Supplemental Order, Ser. No. E-6432 (May 16, 1952).

102. Pan American World Airways, Inc., and Transport Workers Union of America, CIO (David L. Cole, Chairman), 11 LAB. ARB. REP. 940 (1948); *id.*, 19 LAB. ARB. REP. 14 (1952); Supplemental Opinion and Award of the Arbitrator (May 24, 1952), *petition to impeach denied sub nom.* O'Donnell v. Pan American World Airways, Inc., 200 F.2d 929 (2d Cir. 1953), *affirming* Civil No. 75-204, S.D.N.Y., July 31, 1952.

103. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Order, Ser. No. E-7609 (August 4, 1953).

to establish a seniority list in conformity with this agreement.[104] Following skirmishes before the CAB [105] and the National Mediation Board,[106] the CAB stayed operation of its conditions for the integration of seniority lists for flight engineers,[107] pending disposition of a petition for court review of its authority to impose such conditions.[108]

In *Kent v. CAB*, the Second Circuit, contrary to the contention of Pan American's flight engineers, held that the Board could not only condition its approval of airline mergers on the drafting of an integrated seniority list, but also require that the employer refrain from making any labor contract in the future which would not conform to such an integrated list.[109] The Board's order dealing with mechanics, coupled with the refusal of the Supreme Court to grant certiorari in *Kent* in effect closes the books on the seniority integration problems resulting from the Pan American-American Overseas merger. What remains of the three year tangle is for the Board to rescind the order which stayed the integration conditions affecting flight engineers, and for Pan American to carry out the integration.

To forestall union opposition to corporate and operational reorganizations, the CAB must develop satisfactory means for settling the troublesome seniority integration problem. That the CAB's jurisdiction over air carriers gives it power to enforce conditions relating to seniority is now established.[110] But, the Board is ill-equipped to deal with such continuing employer-employee relationships, since these matters will clutter an already overcrowded docket.[111] Also, many legal and non-legal problems are bound to arise from the fact that the Board's jurisdiction extends only to air carriers and not to labor organizations representing carrier employees.[112] Moreover, experience in this country has shown that coercive governmental regulation of labor-management relations is not only invariably repugnant to those affected, but seldom

104. *Id.*, Supplemental Order, Ser. No. E-7833 (October 20, 1953).

105. North Atlantic Route Transfer Case, Application of American Overseas Flight Engineers, CAB Dkt. 5175 *et al.*, Memorandum Opinion Ser. No. E-6578 (July 3, 1952).

106. Unsuccessful in its efforts to promote an agreement, the Mediation Board withdrew its services in March, 1953. (Case A-3948).

107. For the method of integrating seniority lists, see note 94 *supra* and accompanying text.

108. North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Supplemental Order Ser. No. E-7197 (March 2, 1953).

109. Kent v. CAB, 204 F.2d 263 (2d Cir. 1953), *cert. denied*, 74 Sup. Ct. 46 (1953). A similar suit based on the claim that the CAB's conditions concerning seniority conflicted with existing agreements between Pan American and flight engineers in its employ prior to the acquisition was dismissed by a New York state court for lack of jurisdiction. Kent v. Pan American World Airways, Inc., 200 Misc. 101, 101 N.Y.S.2d 927 (Sup. Ct. 1950).

110. Kent v. CAB, 204 F.2d 263 (2d Cir. 1953), *cert. denied*, 74 Sup. Ct. 46 (1953).

111. *See* North Atlantic Route Transfer Case, CAB Dkt. 3589 *et al.*, Order Ser. No. E-5894 (November 27, 1951) (dissenting opinion of Board Member Adams).

112. See 65 HARV. L. REV. 1059 (1952).

produces the effect desired. The CAB, therefore, has encouraged voluntary agreement as a means for settling seniority and related employee problems created by carrier consolidations. Voluntary negotiation between airline labor and management would be viewed with favor by the Board.[113]

Development of internal union machinery is another method of resolving the problem of seniority integration. That the ICC has not been troubled as much as the CAB with the problem of integrating seniority lists is primarily attributable to the fact that railroad labor organizations have developed internal union machinery to deal with the problem.[114] Similar action by airline unions certainly would be welcome. Chances of setting up adequate machinery to integrate seniority lists are fairly good, since one major union usually represents the same craft of employees on nearly all carriers. For example, the International Association of Machinists, AFL, represents mechanics or maintenance employees on a great majority of United States air carriers. At least one important union, the Air Line Pilots Association, AFL, has set up such internal machinery;[115] and the CAB has indicated that it will allow time for it to operate before any conditions imposed take effect.[116]

Braniff-Mid-Continent Merger Case

In the *Braniff-Mid-Continent Merger Case* the CAB, for the first time, relied on the Washington Agreement in an attempt to work out a new approach to the seniority question that had proved so troublesome in the *North Atlantic Route Transfer Case.* Braniff Airways, the proposed surviving com-

113. "We would not, of course be bound by the results of such collective bargaining, but we would certainly accord them considerable weight." United-Western, Acquisition of Air Carrier Property, 11 C.A.B. 701, 710 (1950).

114. The Brotherhood of Railway Carmen, AFL, is one such organization. 3 MILLIS & MONTGOMERY, ECONOMICS OF LABOR—ORGANIZED LABOR 456 (1945). As early as 1939, the Brotherhood of Railway & Steamship Clerks, AFL, which represents employees in both the rail and air transportation industries, empowered its Grand President to decide, subject to review by its Grand Executive Council, disputes between two or more of its own lodges resulting from the displacement of employees or rearrangement of personnel. BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, REPORT OF GEORGE M. HARRISON, GRAND PRESIDENT, TO THE NINETEENTH REGULAR CONVENTION 269 (1951). Similar machinery has been developed by unions in other industries. See, *e.g.*, SLICHTER, UNION POLICIES AND INDUSTRIAL MANAGEMENT 157 (1941) (International Typographical Union, AFL).

115. Bramley, *ALPA to Settle Own Merger Problems*, 15 American Aviation, p. 15, March 31, 1952. The ALPA's procedures consist of a prescribed period of negotiation with ultimate resort to arbitration between the pilot groups concerned. At the organization's Twelfth Biennial Convention in 1952, consideration was given to creation of a national seniority list of all ALPA members as a means of preventing seniority disputes resulting from mergers. The matter was defeated by opposition of pilots of smaller airlines who, generally speaking, were hired later than pilots on larger carriers. 82 AMERICAN AVIATION DAILY 311, 351 (1952).

116. Braniff-Mid-Continent Merger Case, CAB Dkt. 5376, Opinion and Order Ser. No. E-6459, p. 6 (May 26, 1952) (75-day stay order).

pany, suggested a plan providing for dismissal allowances, displacement allowances for demoted employees, and reimbursement for moving expenses. Braniff's proposal, which reflected anticipated union demands for employee protection and the CAB's continued recognition of the "protection" principle, was patterned after the Washington Agreement. Yet, it was a considerably modified version, far from satisfactory to the Brotherhood of Railway Clerks, AFL, which represented Braniff's clerical employees. The Brotherhood urged the Board to impose without change the provisions of the Washington Agreement as a condition of the proposed merger. It urged that unlike the Burlington Formula,[117] the Washington Agreement provided machinery that could be utilized for resolving seniority questions which might arise from mergers.[118] Thus adoption of the Washington Agreement might avoid the troublesome seniority problems involved.

The *Braniff-Mid-Continent* examiner was unconvinced by employee arguments supporting the comprehensive provisions of the Washington Agreement. Aside from recommending modified dismissal and displacement allowances, he refused to support adoption of an "all-inclusive plan," on the ground that it was not clear that all the contingencies provided for in the Washington Agreement would result from the merger.[119] The Board, however, disagreed; it imposed with very few modifications the provisions of the Washington Agreement as a condition to the merger.[120]

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117. The principal difference between the Burlington Formula and the Washington Agreement from a monetary standpoint is the more liberal separation allowance available to dismissed employees under the Burlington Formula. It provides an allowance equal to 100% of the dismissed employee's average compensation as compared with 60% under the Washington Agreement.

It is interesting to note that in the *Southwest-West Coast Merger Case*, the CAB Examiner and Public Counsel recommended that the 60% under the Washington Agreement be revised upward to 75%, in the event the Board imposed this set of provisions. Brief of Public Counsel (January 25, 1951), Rep. of Edw. T. Stodola, Examiner (April 11, 1951), CAB Dkt. 4405. Another important monetary difference is the feature under the Washington Agreement that permits a dismissed employee to elect to take a lump sum payment of his separation allowance in an amount somewhat less than the total amount that would otherwise be payable to him on a monthly basis. Although exercise of the lump-sum option results in waiver by the employee of all benefits afforded under the other protective provisions, critics of the option provision point out that it will result in a windfall in cases where an employee finds reemployment immediately after dismissal at a rate of compensation equivalent to that of his prior employment. Despite this argument against the option feature of the Washington Agreement, the provisions of the Agreement will generally result in lower cost to an employer than those of the Burlington Formula. See Brief of Public Counsel, *supra* at p. 23.

118. The Washington Agreement provides in effect that seniority questions are to be settled on the basis of agreement between the employer and labor organizations representing the employees affected. Agreement failing, arbitration is stipulated.

119. Braniff-Mid-Continent Merger Case, CAB Dkt. 5376, Rep. of William J. Madden, Examiner (April 10, 1952).

120. *Id.*, Opinion and Order Ser. No. E-6459 (May 20, 1952). For a summary of the major features of the CAB order in this case, see Table I, at page 470 *infra*.

Advantages expected from adoption of the Washington Agreement have not been completely realized. Over a year has elapsed since consummation of the merger, and complete integration of labor agreements and seniority lists remains unaccomplished.[121] Despite this situation, the Board's ruling is doubly significant: first, the Board, in *Braniff*, appears to have adopted a policy for the protection of employees as comprehensive as any it feels it can impose in most cases; second, and perhaps most important, it seems that the Board will follow *Braniff* in the future. These conclusions seem sound in view of the fact that one month after *Braniff*, the Board approved, virtually without discussion, the purchase by West Coast Airlines of the outstanding stock of Empire Air Lines, on condition that West Coast agree to the same protection conditions which were imposed on Braniff.[122] Moreover, in the *Delta-Chicago and Southern Merger Case*, the Examiner looked to *Braniff*, and maintained that in it the CAB "undertook to establish a comprehensive policy."[123] And the Examiner's contention proved correct, for the Board imposed in *Delta* the provisions of what it referred to as the "Braniff-Mid-Continent formula."[124]

Although the CAB has recognized the protection doctrine, recently it refused to extend it. In *Mid-West Certificate Renewal*, the Board refused

121. One class of Braniff employees, the aircraft dispatchers, was dissatisfied with proposals to integrate them with Mid-Continent dispatchers, and seceded from the Air Line Dispatchers Association, AFL, the parent organization representing both groups. The Braniff dispatchers invoked the services of the National Mediation Board to conduct a representation election (Case C-2103). In May, 1953, a majority of the dispatcher craft voted to have their own newly formed Air Transport Dispatchers Association represent them for purposes of collective bargaining (Case R-2682), and on July 24, 1953, Braniff signed a labor agreement with this organization. In the meantime, the CAB had ordered Braniff to arbitrate the seniority dispute with the parent AFL union, despite Braniff's claim that there could be no arbitration until the "true representative" of the employees affected was known. Braniff-Mid-Continent Merger Case, CAB Dkt. 5376, Opinion and Order Denying Request to Dismiss Complaint Ser. No. E-7214 (March 9, 1953). Subsequently, a composite seniority list emerged from arbitration proceedings. It was agreed that the organization representing the dispatchers at the time of the arbitration hearing would be a party-in-interest and bound by the award. Arb. Rep., Dispatchers of the Former Mid-Continent Air Line and Dispatchers of the Original Braniff Airways, Inc. (Frank P. Douglass, Arbitrator, July 15, 1953).

122. West Coast—Empire Merger Case, CAB Dkt. 5220, Opinion and Order Ser. No. E-6550 (June 27, 1952). The only modification was the proviso that if West Coast's certificate was not renewed following its expiration on September 30, 1953, West Coast would no longer be subject to the protective labor conditions after such expiration. Thus, the protective period could prove to be something short of that provided for in the *Braniff-Mid-Continent* case.

123. Delta-Chicago & Southern Merger Case, CAB Dkt. 5564, Recommendations of William J. Cusick, Examiner, p. 69 (November 13, 1952).

124. *Id.*, Opinion and Orders Ser. Nos. E-7052-3 (December 24, 1952). Integration of employees proved much less difficult in the *Delta-Chicago & Southern Merger* than in other major mergers. Within four months after CAB approval of the merger, agreement

to renew a certificate of public convenience and necessity [125] under Section 401(h) of the Civil Aeronautics Act. Section 401(h) gives the Board power to "alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require."[126] The Air Line Pilots' Association intervened and urged the Board to impose conditions for the protection of pilots of Mid-West who would lose their jobs as a result of the order. The Board rejected this plea on the ground that "the consequences flowing from termination of the service must be faced by shareholders and employees alike": employees should not be protected from the adverse effects of the certificate's expiration at the expense of the shareholder or the Government.[127] However, the Board has statutory authority to impose protective conditions in Section 401(h) cases just as it has in abandonment cases under Section 401(k) of the Act.[128] Despite the outcome of *Mid-West Certificate*

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had been reached with several of the major employee groups (pilots, dispatchers, communications employees, and stewardesses) on integration of seniority lists. Bramley, *Delta-C&S: Now Fifth Largest Trunk*, 16 American Aviation, p. 18 (May 25, 1953).

The Board departed from the Burlington Formula in only a few, relatively unimportant instances to meet the special circumstances of the case. One of the changes in *Delta-Chicago & Southern Merger* was removal of the $6500 annual earnings limitation in determining eligibility for benefits. The carrier applicants in this case had indicated their willingness to allow the employee protective conditions to be applicable to all employees, regardless of their total annual compensation, and the CAB's order was drawn accordingly. In another merger proceeding pending before the CAB in mid-1953, one of three intervening labor organizations requested the Board to impose protective conditions applicable to "employees and subordinate officials" within the meaning of the Railway Labor Act, 49 STAT. 1189 (1936), 45 U.S.C. § 181 (1946). Thus, an employee's non-supervisory status would determine his eligibility for benefits, rather than the "fortuitous circumstances of an amount of wages or salary earned." Exhibit No. 2 of Int'l Ass'n of Machinists, AFL, Intervenor, Eastern-Colonial, Acquisition of Assets, CAB Dkt. 5666, and National-Colonial, Integration Investigation, CAB Dkt. 5569. The Examiner in this case subsequently recommended imposition of the *Braniff-Mid-Continent* conditions as modified by the Board in the *Delta-Chicago & Southern Merger* case. *Id.*, Report of Examiner Edward T. Stodola (June 15, 1953). Employee protection considerations likewise loomed large in the Flying Tiger Line—Slick Airways Merger Case, CAB Dkt. 6047, which was also pending before the Board in 1953.

125. Mid-West Certificate Renewal Case, CAB Dkt. 4052 *et al.*, Opinion and Order Ser. No. E-6311 (April 10, 1952).

126. 52 STAT. 989 (1938), 49 U.S.C. § 481(h) (1946).

127. Mid-West Certificate Renewal Case, CAB Dkt. 4052 *et al.*, Order Denying Petitions for Rehearing, Reargument and for Reconsideration Ser. No. E-6532 (June 19, 1952).

128. Section 401(k) provides: "No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest." 52 STAT. 990 (1938), 49 U.S.C. § 481(k) (1946). The same reasoning that the Board employed in the *United-Western* case to sustain its authority to impose conditions on the transfer of a certificate under Section 401(i), see pages 406-7 *supra*, is equally applicable to actions under Section 401(h) and 401(k) of the Act. Similar thinking occurred in connection with the so-called *National Airlines Dis-*

Renewal, the Pilots Association has intervened in subsequent renewal proceedings in order to request protection for adversely affected employees. To date, however, the Board has made no final disposition of any of these cases.[129]

The CAB's ruling in *Mid-West Certificate Renewal* evidences an attitude similar to that of the ICC in proceedings involving abandonments of entire operations. Admittedly, cases of this type present situations at variance with most cases where the employee protection principle has been applied. Hence the reluctance of regulatory agencies to extend it to this area is understandable. However, in view of the imposing judicial authority upholding the rationale of the protection doctrine, and the now clearly defined public policy requiring the application of the doctrine to public utilities, it would seem incumbent not only upon the CAB, but upon all regulatory bodies, to maintain a flexible and adaptable policy, rather than the rigid one which precludes consideration of employee interests in an entire class of cases.

Employee Protection by State Regulatory Bodies

State regulatory bodies pass on proposed changes in public utilities which would adversely affect employees. There, too, employee groups have urged adoption of the protection doctrine. A recent decision by the California Public Utilities Commission indicates a typical state practice. On petition of three maritime unions, the Commission vacated an earlier ruling approving sale of the Richmond & San Rafael Ferry and Transportation Company to the State, preliminary to its eventual abandonment. Citing three United States Supreme Court decisions [130] as authority for the proposition that employee welfare is a vital part of the public interest, the Commission held that final approval of the sale and abandonment would be deferred until the carrier and unions had opportunity to negotiate appropriate dismissal benefits.[131] Yet protective conditions as comprehensive as those developed by the ICC and CAB have never been imposed by a state regulatory body.

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memberment case: a 1948 investigation undertaken by the CAB for the purpose of examining National's route pattern, in order to determine whether a transfer of any of National's routes, conditioned by just and reasonable terms, would be in the public interest. National Route Investigation, CAB Dkt. 3500 *et al.*

129. Bonanza Air Lines Certificate Renewal Case, CAB Dkt. 5773 *et al.*; Ozark Air Lines Certificate Renewal Case, CAB Dkt. 5998 *et al.*

130. See note 74 *supra*.

131. Richmond & San Rafael Ferry & Transportation Co.—Termination of Service, Application No. 33942, Decision No. 48045 (December 16, 1952), Decision No. 48112 (December 30, 1952), Decision No. 48315 (February 28, 1953). In another proceeding the California Commission recently authorized the transfer of certain passenger transportation properties, on the condition that "reasonable provision" be made for adversely affected employees, and reserved jurisdiction to see that its order was carried out. Pacific Electric Ry. and J. L. Haugh—Sale and Lease, Application No. 34249, Metropolitan Coach Lines—Purchase of Properties of Pacific Electric Ry., Application No. 34402, Decision No. 48923 (August 4, 1953). Subsequently, an agreement on employee protection was reached between the labor groups and companies concerned, and a Petition for Rehear-

Some states seem loath to support the protection doctrine in any form. In an abandonment proceeding involving the Lackawanna & Wyoming Valley Railroad, the Pennsylvania Public Utility Commission held that the rule of the *Lowden* case was inapplicable to the state law under which it functions.[132] It should be asked, however, whether the Commission's ruling is based upon law or upon the Commission's own concept of public policy. The pertinent provisions of the Pennsylvania statute empower the Commission to grant a certificate of public convenience permitting an abandonment, if and when the Commission finds that the granting of such a certificate is "necessary or proper for the service, accommodation, convenience or safety of the public; and the Commission in granting such certificate, may impose such conditions as it may deem to be just and reasonable."[133] This language, and its interpretation by the Pennsylvania courts, show clearly that the Commission is authorized to approve abandonments in the public interest,[134] and that reasonable conditions may be attached to such approvals.[135] Failure of the Pennsylvania Commission to apply the rule of the *Lowden* case can hardly be ascribed to any basic distinction between the law in Pennsylvania and comparable federal law as interpreted by the federal courts, or the law in California, for that matter; but must be attributed to other reasons not stated by the Commission in its decision.

CONCLUSION

A sound program for the regulation of public utilities must give regulatory bodies authority to encourage or restrain consolidations and abandonments as the public need dictates. And a regulatory commission can ill-afford to jeopardize the public interest by arousing the concerted opposition of organized labor to this aspect of its regulatory activities. Hostility and opposition by labor unions characterized the railroad industry for many years, particularly in times of depressed economic conditions.[136] To date, the post-war proceedings before the CAB have not given rise to this attitude. Union acquiescence

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ing that had been filed by labor representatives was dismissed. *Id.*, Decision No. 49071 (September 15, 1953). See The Railway Clerk, June 1, 1953, p. 3, col. 2; *id.*, July 1, 1953, p. 7, col. 1.

132. Lackawanna & W.V.R.R.—Abandonment, Application Pa. Pub. Util. Comm. Dkt. 78602, Order (November 6, 1952). See The Railway Clerk, Nov. 15, 1952, p. 7, col. 3.

133. PA. STAT. ANN. tit. 66, § 1122, 1123 (Purdon, 1941).

134. See Northern Pennsylvania Power Co. v. Pennsylvania Public Utility Comm., 333 Pa. 265, 5 A.2d 133 (1939); West Penn Ry. v. Pennsylvania Public Utility Comm., 135 Pa. Super. 89, 4 A.2d 545 (1939); Abington Electric Co. v. Pennsylvania Public Utility Comm., 131 Pa. Super. 200, 198 Atl. 906 (1938).

135. Commuters' Committee v. Pennsylvania Public Utility Comm., 170 Pa. Super. 596, 88 A.2d 420 (1952); Borough of Irwin v. Pennsylvania Public Utility Comm., 142 Pa. Super. 157, 15 A.2d 547 (1940).

136. SLICHTER, UNION POLICIES AND INDUSTRIAL MANAGEMENT 135 (1941).

can be attributed to the high level of post-war employment, and the expansion of the airline industry. Moreover, CAB recognition of the employee protection principle has unquestionably served to minimize union opposition.

The extent of protection afforded by formulas already recognized and applied has been determined primarily by the proposals advanced by labor organizations. When labor no longer considers these formulas adequate to protect the interests of employees, one can expect representations from the vocal labor movement. Also, one might expect further labor efforts to have both federal and state agencies extend the protection doctrine to other areas of utility regulation. State regulatory bodies, in particular, can anticipate continued union efforts to gain more widespread recognition of the principle. The success of future demands undoubtedly will reflect business conditions prevailing in the affected industry at that time, as well as the state of the national economy.

TABLE 1 — COMPARISON OF EMPLOYEE PROTECTION PROVISIONS

PROTECTION AFFORDED	WASHINGTON AGREEMENT OF 1936	BURLINGTON FORMULA	*NORTH ATLANTIC ROUTE TRANSFER CASE*	*BRANIFF-MID-CONTINENT MERGER CASE*
EMPLOYEES DISCHARGED				
Dismissal Allowance	Employee with at least one year's service is entitled to monthly allowance of 60% of average monthly compensation during year preceding dismissal. Allowance reduced to extent that earnings in other railroad employment and allowance exceed amount upon which allowance is based.	Employee entitled to monthly allowance equal to 1/12 of his earnings in the twelve months of employment preceding dismissal. Allowance reduced by amount of earnings in any other employment, and any unemployment insurance benefits.	Same as Burlington Formula.	Same as Washington Agreement, except that allowance is reduced to extent that earnings in any other employment plus allowance and any unemployment insurance benefits exceed amount upon which allowance is based.
Protective Period (during which allowance is paid)	*Length of Service* — *Period of Payment* 1 yr. and less than 2 yrs. — 6 months 2 yrs. " " " 3 " — 12 " 3 " " " " 5 " — 18 " 5 " " " " 10 " — 36 " 10 " " " " 15 " — 48 " 15 " and over — 60 " Note: Employee with less than one year's service entitled to lump sum equal to 6 days' pay for each month's service.	Four years from effective date of ICC certificate, or length of time equal to employee's service with employer, whichever is shorter.	21 months from date of CAB order (until 7/6/62, expiration date of American Overseas' temporary certificate), or length of time equal to employee's service with employer, whichever is shorter.	Same as Washington Agreement.
Claim Period (during which employee's claim must arise if it is to be recognized)	3 years from effective date of consolidation.	Same as above.	Same as above.	Same as Washington Agreement.
Lump Sum Payment	Employee entitled to dismissal allowance may resign and in lieu of all other benefits accept lump sum as follows: *Length of Service* — *Allowance* 1 yr. and less than 2 yrs. — 3 months' pay 2 yrs. " " " 3 " — 6 " " 3 " " " " 5 " — 9 " " 5 " " " " 10 " — 12 " " 10 " " " " 15 " — 12 " "	*No provision.*	No provision.	Same as Washington Agreement.
EMPLOYEES RETAINED IN SERVICE				
Displacement Allowance	Employee placed in worse position with respect to compensation is entitled to monthly allowance equal to difference between earnings in any month in new position and average monthly compensation during last 12 months preceding displacement.	Same as Washington Agreement.	Same as Washington Agreement.	Same as Washington Agreement.
Protective Period	5 years from date on which consolidation is effective for specified groups of employees, as fixed by agreement between employers and unions.	Four years from effective date of ICC certificate, or length of time equal to employee's service with employer, whichever is shorter.	21 months from date of CAB order (until 7/6/62, expiration date of American Overseas' temporary certificate), or length of time equal to employee's service with employer, whichever is shorter.	4 years from date employee is displaced.
Claim Period	5 years from effective date of consolidation.	Same as above.	Same as above.	3 years from effective date of merger.
TRAVEL AND MOVING EXPENSES	Reimbursed for expense of moving self and household, including living expenses for employee and family, and wage loss during time necessary for such transfer and reasonable time thereafter (not to exceed 2 working days) used in securing place of residence in new location; except that employee is not reimbursed for changes of residence subsequent to the initial change which result from exercise of employee's seniority rights. If "furloughed" within 3 years of change of residence, entitled to reimbursement for expense of returning to original residence.	Reimbursed for expense of moving self and household; including living expenses for employee and family, and wage loss during time necessary for such transfer and reasonable time thereafter (not to exceed 2 working days) used in securing residence in new location; except that employee is not reimbursed for changes of residence subsequent to the initial change which result from exercise of employee's seniority rights.	Same as Burlington Formula.	Same as Washington Agreement, except that employee is not reimbursed for changes of residence subsequent to initial change.

Real Estate	Employer must protect employee against any loss resulting from sale of home at less than fair value; from any obligation under contract to purchase home, and against loss to the extent of fair value of his equity; and against loss in obtaining cancellation of unexpired lease. Fair value or loss in these matters to be determined by agreement or by board of three appraisers.	Same as Washington Agreement.	No provision.	Same as Washington Agreement.
Period of Protection	3 years from effective date of consolidation.	Four years from effective date of ICC certificate, or length of time equal to employee's service with employer, whichever is shorter.	One year from consummation of acquisition.	Three years from effective date of merger.
Other Benefits	No employee is to be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc. under the same conditions and so long as such benefits continue to be accorded other employees of his original employer. For period of five years from effective date of consolidation, no employee is to be placed in a worse position with respect to rules governing working conditions.	Same as Washington Agreement, except that protection is not afforded beyond protective period (four years from effective date of ICC certificate, or length of time equal to employee's service with employer, whichever is shorter).	During the protective period (21 months from date of CAB order or length of time equal to employee's service with employer, whichever is shorter) no employee is to be placed in a worse position with respect to rules governing working conditions, nor is to be deprived of benefits attaching to his previous employment, such as pensions, hospitalization, etc. to the extent as such benefits are accorded to other employees of the surviving employer.	During the "applicable"** protective period no employee is to be deprived of benefits attaching to his previous employment, such as hospitalization, relief, etc. under the same conditions and so long as such benefits continue to be accorded other employees of his original employer.
Integration and Assignment of Employees	Provision is to be made for the selection of forces from employees of all the employers involved on bases accepted as appropriate for application in the particular case. Assignment of employees to be based on agreement between carriers and representatives of the employees affected.	No provision.	Integration of employees by seniority to be accomplished by agreement with employee groups involved, and that failing, by arbitration. (Upon failure of certain groups to agree, integration was ordered on basis of length of service. Subsequently threatened work stoppage caused stay of order and referral of matter to mediatory processes under Railway Labor Act.) No provision regarding assignment of personnel.	Provision is to be made for integration of seniority lists on basis of agreement between employers and representatives of employees. No provision regarding assignment of personnel.
Arbitration	Any dispute with respect to the protection provisions, except as to real estate, which cannot be settled within 30 days, may be referred by the carrier or employee representative to an arbitration committee for determination.	Same as Washington Agreement, except that an employee party to a dispute may request arbitration other than through his authorized representative.	Same as Burlington Formula.	Same as Burlington Formula
Executive and Supervisory Personnel	No provision.	No provision.	Benefits not applicable to employees, other than flight personnel, meteorologists, or dispatchers, who immediately prior to the transaction were compensated at rate in excess of $6000 a year.	Same as *North Atlantic Route Transfer Case.*

*"Furloughed," in common usage today, means the same as a temporary layoff caused by lack of work, inclement weather, etc. As used in the Washington Agreement, however, it may be the equivalent of "discharged." For this reason the term is ambiguous and it is difficult to ascertain which interpretation is the proper one.

**"Applicable" is CAB terminology. The opinion is ambiguous, but the CAB apparently meant that the Displacement Protective Period or the Dismissal Protective Period would apply, depending upon the category in which the employee falls.