The Future of Railroad Labor-Management Relations as an Industry of Five, or Three, or Two Mega-Railroads Enter the Next Millennium

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I. INTRODUCTION

Labor relations in the railroad industry have been governed by the provisions of the Railway Labor Act, 45 U.S.C. Sec. 151, *et seq.*, for the latter three-quarters of the 20th Century. For the most part, the Railway Labor Act has been considered an adequate instrument in keeping the railroads running despite times of severe labor-management stress. Given the turbulent and sometimes bloody history of railroad labor relations

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before the Act's enactment, one must conclude that the Act was a relatively successful expression of national policy.[1] Its success has been due to several factors, the first of which is the Act's emphasis upon the settlement of disputes between the parties by negotiation and mutual agreement.[2] A salient feature of the Act is its postponement of the possibility of self-help by any of the parties until its procedures are exhausted.[3] This postponement can be extended for a very long time, particularly when the services of the National Mediation Board are invoked by one of the parties.[4]

For more than two-thirds of its life the RLA (or simple voluntary mutual agreement by the parties outside the RLA's procedural provisions) provided the only means which could be employed to change the rates of pay, rules and working conditions the parties had agreed upon as a result of their negotiations. In addition, the laws governing the conduct of railroads in their financial and operational aspects included provisions designed to protect the interests of employees that might be adversely affectèd by the actions of the railroads.[5] These safeguards provided rail-

1. For a history of railroad labor relations in the Nineteenth Century, see generally SHELTON STROMQUIST, A GENERATION OF BOOMERS: THE PATTERN OF RAILROAD LABOR CONFLICT IN THE NINETEENTH CENTURY (1987); WILLIAM CAHN, A PICTORIAL HISTORY OF AMERICAN LABOR (1973); DEE BROWN, HEAR THE LONESOME WHISTLE BLOW (1977).

2. Compulsory arbitration was suggested many times as a means of resolving railroad bargaining impasses but, unlike its legislative enactments governing other industries, Congress consistently rejected it. The Arbitration Act of 1888, ch. 1063, 25 Stat. 501; Erdman Act of 1898, ch. 370, 30 Stat. 424; Newlands Act of 1913, ch. 6, 38 Stat. 103; Adamson Act of 1916, ch. 436, 39 Stat. 721; Transportation Act, 1920, Pub. L. No. 66-152, Title III, 41 Stat. 456 (codified as amended in scattered sections of 49 U.S.C.); Railway Labor Act of 1926, Pub. L. No. 69-257, 44 Stat. 577 (codified as 45 U.S.C. § 151 (1940)); Regional Rail Reorganization Act of 1973, Pub. L. 96-448, 94 Stat. 1895 (codified as amended at 45 U.S.C. § 74, *et seq.*(1988)).

3. Railway Labor Act, §§ 2 First, 6 and 10 (codified at 45 U.S.C. §§ 152 First, 156 and 160 (1994)).

4. Railway Labor Act § 5, (codified at 45 U.S.C. § 155 (1994)). Once a notice of intended change is served or the services of the NMB are invoked, the parties may not engage in self-help and it is entirely within the discretion of the NMB as to how long it will keep the parties in mediation. Detroit, Toledo & Shore Line R.R. . v. United Transport. Union, 396 U.S. 142, 150 (1968). Although the party seeking the contract change may feel that the delay caused by mediation seems interminable, that delay is an essential feature of the Act's bargaining process because it creates in the party seeking the change an incentive to compromise. *Id.*; Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378 (1969).

5. Emergency Railroad Transportation Act, 1933, ch. 91, §§ 1-17, 48 Stat. 211; Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898; Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327; Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (codified as amended at 45 U.S.C. § 701, *et seq.* (1988)); Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976) (codified as amended in scattered sections of 45 U.S.C.); Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (codified in scattered sections of 49 U.S.C.); Northeast Rail Service Act of 1981, Pub. L. No. 97-35, 95 Stat. 643 (codified as 45 U.S.C. § 1101 *et seq.*); ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified as 49 U.S.C. § 14501, *et seq.*).

road employees with a sense of security in their employment, as well as a sense of individual dignity conveyed by the knowledge that they had contractual rights which could not be taken from them without the consent of their elected statutory representatives. As a result, a working relationship between the management and employee representatives of the railroads, while not always serene, was effective, as exemplified by the many successful results achieved through labor-management cooperation in joint legislative efforts between 1960 and 1980.[6]

Employees had a long history of fierce loyalty to their home railroads - evidenced by the ability of many to trace their railroad lineage to grandfathers and great-grandfathers. This loyalty was enhanced by knowledge that when dealing with railroad management, the employees' representatives were operating on a relatively level playing field.

II. Collective Bargaining and Labor Relations

Prior to World War I, about 30 percent of the non-operating railroad employees were organized and about 80 percent of the operating employees were organized.[7] Except for one or two instances, which involved operating employees, collective bargaining was conducted on a railroad-by-railroad basis.[8] The Coordinator of Railroads, appointed by President Woodrow Wilson to take over railroad operations for the World War I war effort, began negotiating with each of the unions on a nationwide basis[9] and, as a result of such negotiations and his prohibition against anti-union discrimination, union membership in the industry increased dramatically.[10] By 1920 the non-operating employees were 80 percent organized, and the operating employees were 90 percent organized.[11] The

6. *E.g.*, Railroad Retirement legislation; the Regional Rail Reorganization Act of 1973 creating Conrail (Pub. L. 93-236, 87 Stat. 986); the Rail Passenger Service Act of 1970 creating Amtrak (Pub. L. 103-272, § 7(b), 108 Stat. 1379 (codified at 45 U.S.C. § 501)) and the maintenance of the existence of Amtrak despite repeated attempts to eliminate it; the Railroad Revitalization And Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 31); Staggers Rail Act of 1980 (Pub. L. 96-448, 94 Stat. 1895); and, the defeats of Coal Slurry Pipeline legislation in the Congress as well as many other bills thought to be inimical to the interests of the railroad industry and its employees.

7. H.D. Wolf, The Railroad Labor Board 59 (1927).

8. For a history of the development of collective bargaining in the railroad industry see The Railway Labor Act (Douglas L. Leslie ed. 1995); The Railway Labor Act at fifty, Collective Bargaining in the Railroad and Airline Industries (Charles M. Rehmus ed. 1977).

9. Leslie, *supra* note 8, at 25-26; Army Appropriations Act, ch. 8, 39 Stat. 619 (1916) (codified in scattered sections of 18 U.S.C. (1976); *see also* William G. Mahoney, *Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act*, 24 Transp. L.J. 249 (1997).

10. Wolf, *supra* note 7, at 58-59.

11. Membership in the Brotherhood of Maintenance of Way Employees increased from

Government's method of national bargaining continued until Congress returned the industry to its private owners in 1920.[12]

The railroads divided themselves into regions for operational purposes: The Eastern Region or Territory consisting of approximately 67 railroads; the Western Region with about 188 railroads; and, the Southeastern Region representing 52 railroads.[13] They established Carriers' Conference Committees to negotiate for the railroads in each region.[14] The railroads in each region then selected their individual bargaining representatives to meet with the representatives of the various unions to bargain collectively on wages.[15] Other issues involving rules, working conditions, and other matters, were left for the individual railroads to bargain.[16]

In 1926 and 1934, the passage of the Railway Labor Act and its primary amendment,[17] established a procedure for bargaining to make and maintain agreements, as well as, to handle disputes in the application and interpretation of such agreements.[18] The procedure has not changed significantly during the seven decades of its existence.

In 1963, however, the railroads did make a significant change in their method of bargaining with the establishment of the National Railway Labor Conference (its negotiating arm), the National Carriers' Conference Committee, and the dissolution of the regional system of bargaining.[19] Under this method of bargaining, which continues today, the railroads negotiate national wages and rules with the national unions representing

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30,000 in 1917 to 300,000 in 1920; the Brotherhood of Railway Carmen's membership went from 50,000 to 200,000; the Order of Railroad Telegraphers from 46,000 to 80,000; the Sheet Metal Workers from 4,000 to 15,000; the Trainmen from 159,000 to 184,000; Firemen and Enginemen from 103,000 to 125,000; Engineers from 75,000 to 86,000; and, Conductors from 48,000 to 52,000. Leslie, *supra* note 8, at 58-59.

12. Transportation Act, 1920, Pub. L. No. 66-152, 41 Stat. 456. At the time of its return to private ownership, the industry had over 1,993,000 employees. WOLF, *supra* note 7, at 67.

13. The Washington Job Protection Agreement of May 1936, at 11-19.

14. Rehmus, *supra* note 8, at 84-85.

15. *Id.*

16. Leslie, *supra*, note 8 at 29-30; Rehmus, *supra* note 8, at 80-81.

17. Railway Labor Act, ch. 347, 44 Stat. 577 (1926) (adopting compulsory mediation and voluntary arbitration as the preferred means of dispute resolution in railroad labor relations); Act of June 21, 1934, ch. 691, 48 Stat. 1185 (eliminating the Board of Mediation and establishing the present National Mediation Board; establishing the National Railroad Adjustment Board to resolve disputes involving the interpretation and application of agreements).

18. Railway Labor Act, §§ 2, 3, 6 and 10 (codified at 45 U.S.C. §§ 152, 153, 156 and 160). Terminal R.R. Ass'n of St. Louis v. Brotherhood of R.R. Trainmen, 318 U.S. 1, 6 (1942) (stating that the Railway Labor Act merely provides a procedure for dispute resolution and is indifferent to the parties' terms of agreement which may be as favorable or unfavorable to labor or management as they choose).

19. Rehmus, *supra* note 8, at 84-85. This bargaining is sometimes conducted with individual unions and sometimes with groups of unions.

the industry's employees.[20] Individual railroads bargaining with individual unions on issues is, however, still carried on.[21]

Labor relations by nature, are not continually tranquil. Over the years, strong disagreements between the parties arose which necessitated appointment of Presidential Emergency Boards under section 10 of the Act (45 U.S.C. 160).[22] These Boards recommend solutions to disputes over bargaining issues.[23] The Boards' recommendations are not binding on the parties, and if one party rejects a Board's recommendations, a strike or lockout may occur after a prescribed period of time.[24] Between 1963 and 1988, Congress enacted 14 bills in ten disputes which remained unresolved following Emergency Board recommendations.[25] This legislation either required further bargaining, or settled the pending disputes by imposing of a solution to avoid a nationwide strike or one, which would seriously affect the nation's commerce or economy.[26] While there were a number of strikes over contract issues, most involved individual railroads and individual unions over local issues.[27] In such disputes, each side recognized the legitimate right of the other to differ with regard to the issues involved in the pending dispute.[28] While these labor disputes were often heated, and resulted in strikes or lockouts, employee morale did not suffer because both parties were aware that each was exercising its legitimate rights in the area of labor relations. The employees were also secure in the knowledge that whatever agreement resulted from the dispute it would be one which could not be modified without the consent of their representatives.[29]

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20. *Id.* at 80-84.

21. *Id.*

22. Section 10 requires the National Mediation Board to notify the President, if in its judgment an unadjusted dispute "threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Then the President, at his discretion, may appoint the board. 45 U.S.C. § 160.

23. *See generally*, Rehmus, *supra* note 8, at 151-86.

24. Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378-79 (1969).

25. Pub. L. No. 100-429, 102 Stat. 1617 (1988); Pub. L. No. 100-380, 102 Stat. 896 (1988); Pub. L. No. 100-2, 101 Stat. 4 (1987); Pub. L. No. 99-431, 100 Stat. 987 (1986); Pub. L. No. 99-385, 100 Stat. 819 (1986); Pub. L. No. 97-262, 96 Stat. 1130 (1982); Pub. L. No. 93-5, 87 Stat. 5 (1973); Pub. L. No. 92-17, 85 Stat. 39 (1971); Pub. L. No. 91-541, 84 Stat. 1407 (1970); Pub. L. No. 91-203, 84 Stat. 22 (1970); Pub. L. No. 90-54, 81 Stat. 122 (1967); Pub. L. No. 90-13, 81 Stat. 13 (1967); Pub. L. No. 90-10, 81 Stat. 12 (1967); Pub. L. No. 88-108, 77 Stat. 132 (1963).

26. Wilson v. New, 243 U.S. 332, 351-52 (1917) interpreted congressional intent to establish authority to so "arbitrate" railroad labor disputes.

27. Rehmus, *supra* note 8, at 155.

28. For a discussion of railroad strike experience generally to 1976 see Rehmus, *supra* note 8, at 187-207; for a discussion of the various types of self-help employed by unions and management, see Leslie, *supra* note 8, at 310-24.

29. *Id.*

An agreement which contributed immensely to the stability of labor relations following the passage of the Railway Labor Act was the Agreement that occurred in Washington, D.C. during May 1936, known as the Washington Agreement or the Washington Job Protection Agreement.[30] This Agreement was executed by railroads that operated 85 percent of the mileage in the United States, and all of the standard railroad labor unions. It was executed one month before the 1933 Emergency Transportation Act, which effectively froze the number of jobs in the industry, was to expire or be renewed for another year. The Washington Agreement provided partial financial protection to employees who were deprived of their employment or otherwise adversely affected in their employment as a result of coordination.[31] The Washington Agreement also provides for negotiation of a means of protecting employees in their seniority rights, and their place and type of work, before the railroad can take action to affect them.[32] That agreement is still in effect, has never been amended, and has been the basis of all subsequent employee protective arrangements, whether reached by agreement or imposed by statute.[33]

The Railway Labor Act, together with the Washington Agreement and its progeny of employee protective arrangements, provided the basis for labor relation's stability in the industry until 1983.

III. Effects of Mergers and Abandonments on Labor Relations, 1957-1975

Mergers did not play a significant part in railroad economics for many years prior to 1957.[34] In that year the President of the Norfolk & Western Railroad ("N&W"), Stuart Saunders, began a campaign to merge the Virginian Railroad ("Virginia") into the N&W. An attempt to merge those railroads had failed in 1926 and Mr. Saunders wanted to ensure the success of this later attempt by personally lobbying the parties that opposed the earlier merger, and those that might oppose the later merger.

One day in 1957, Mr. Saunders called at the offices of the law firm, which represented the labor organizations with contracts on the N&W

30. This latter name is a misnomer since the agreement does not protect jobs, but rather protects the compensation that is paid to employees.

31. "Coordination" is a joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such facilities. Washington Agreement, § 2a.

32. Washington Agreement §§ 4, 5.

33. New York Dock Ry. Co. v. United States, 609 F.2d 83, 84 (2d Cir. 1979).

34. A readable guide to the history of the railroad merger movement in the United States is to be found in Frand N. Wilner, Railroad Mergers, History, Analysis, Insight (1997). This book, informative as it is, deals with the employee issues that arose in railroad mergers from a management perspective.

and Virginian. He commenced what clearly appeared to be a set speech that he delivered to every Chamber of Commerce and shipper on the lines of the two railroads. What was extraordinary about his presentation was that it was to two lawyers in the privacy of their firm's conference room, rather than a room full of people.[35] He began by saying that the two railroads served mines which produced different types of coal and that "blending coal is like blending scotch"; the purpose of the merger was to form a railroad that efficiently serves the producers of two types of coal, have the coal properly blended, and then it deliver it to the merged railroad's customers.

When Mr. Saunders turned to the effects of the merger upon the employees of the two railroads, he assured the two lawyers that no employees would lose their jobs or be otherwise adversely affected. The senior lawyer then asked Mr. Saunders if he would put that assurance in writing. Mr. Saunders paused a moment and then asked if he could call his Vice President-Law, John P. Fishwick. After speaking privately to Mr. Fishwick, Mr. Saunders announced that he would put his assurances in writing and so, the merger attrition agreement was born.

The merger attrition agreement adopted the Washington Agreement as the basic protective arrangement for the employees, with a number of specific modifications.[36] The merged railroad agreed to take into its employ all employees who had an employment relationship with the railroads between the date of the agreement and the date of consummation of the merger. The railroad also guaranteed that these employees "would not be deprived of employment or placed in a worse position with respect to compensation, fringe benefits, or rights and privileges pertaining at any time during such employment by"[37] the merged company with exceptions for death, retirement disciplinary dismissal, emergency force reduction (strike, act of God, etc.), or a decline in business as specified in the agreement.[38] In return for this guarantee, the unions agreed to enter into implementing agreements with the merged company and provide for the transfer and use of employees, allocations, and rearrangements of forces made necessary by transfers of work throughout the merged system to the extent not otherwise permissible under existing rules and agreements.[39] This latter provision was extremely important to the railroads

35. The lawyers were the firm's senior partner and the author.

36. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, executed on June 18, 1959, by Stuart T. Saunders, President of the N&W, Frank D. Beale, President of the Virginian, and G.E. Leighty, Chairperson of the Railway Labor Executives' Association, § 1.

37. *Id.* at § 1(a).

38. *Id.* at § 1(b).

39. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, June 18, 1959, Stuart T. Saun-

because without it, they could not transfer their employees beyond the boundaries of the employees' seniority districts without violating their union contracts. As expressed to Congress in 1973, by then Southern Railroad President Graham Clayton, that type of provision made the merged railroad a viable thing for without it employees could not be transferred.[40]

The merged company also took over and assumed all contracts, schedules and agreements between the merging carriers and the unions subject to changes in accordance with the provisions of the Railway Labor Act.[41]

The attrition agreement proved beneficial both to rail labor and to rail management. It was beneficial to rail labor because it provided security to employees. It was beneficial to rail management because it allowed the reduction of jobs through natural attrition[42] and enabled the transfers of work and employees between the former separate railroad properties which otherwise would have been prohibited by the railroads' existing contracts with the rail unions.[43] It improved employee morale thereby making difficult transitions more efficient and economical and it facilitated the successful negotiation of implementing agreements. These agreements effected the rearrangement of work and the work force prior to the carrier's proposed date for particular consolidations resulting from the merger. Thus, attrition agreements, when administered in a spirit of good faith (as they generally were) were advantageous to both management and labor.

The ICC's approval of the N&W-Virginian merger opened a floodgate of major merger and control approvals throughout the following decade, until the collapse of the Penn-Central in 1970.[44] Employment on

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ders, Pres. N&W-Frank D. Beale, Pres. Virginian-G. E. Leighty, Chmn. Ry. Labor Executives' Ass'n.

40. Hearings on S. 2188 and H.R. 9142 Before the Surface Transp. Subcomm. of the Comm. on Commerce, 93rd Cong., 972-73 (1973) (statement of Graham Claytor, President, Southern Railroad)). *See* Mahoney, *supra* note 9, at 258-59.

41. Agreement for the Protection of Employees as a Result of the Merger of the Norfolk & Western Railway Company and the Virginian Railway Company, executed on June 18, 1959, by Stuart T. Saunders, President of the N&W, Frank D. Beale, President of the Virginian, and G.E. Leighty, Chairperson of the Railway Labor Executives' Association, § 1.

42. The overall attrition rate in the industry at the time was about five percent or six percent a year, so that within four years all job reductions resulting from the merger could be realized. The protective arrangement required by statute at that time provided compensation protection to employees who lost their jobs following approval of the merger at 100 percent for four years and at 60 percent thereafter. *See infra* note 47.

43. *See* text accompanying note 52.

44. Erie/Delaware, Lackawanna & W., 312 I.C.C. 185 (1960); Chicago & N. W./Minneapolis & St. Louis, 312 I.C.C. 285, 296 (1960)*; N&W/Virginian, 307 I.C.C. 401, 439(1959)*; Louisville & Nashville/Nashville, Chattanooga & St. Louis, 300 I.C.C. 125 (1957); *see* Illinois Central/Gulf, Mobile & Ohio into the Illinois Central Gulf, 338 I.C.C. 805 (1971)*; Seaboard Coast Line/

Class I railroads during this period declined from approximately 950,000 in 1957 to about 488,000 in 1975.[45] This drastic loss of jobs was due primarily to the merger-mania which swept the industry; technological advances, abandonment of miles of railroad lines and, the deterioration of rail passenger service were also contributing factors.

Despite this severe, unrelenting decline in employment, employee morale did not suffer as much as one might have expected because, even in those cases in which attrition agreements were not executed, the ICC imposed an employee protective arrangement known as the New Orleans Conditions.[46] The New Orleans Conditions, theoretically at least, protected adversely affected employees for periods of up to five years from the time they were first affected by the merger.[47] The employees who remained in the employ of the merged carrier were secure in the knowledge that their contracts protected them from arbitrary actions of management which could affect their income, the location of their work, or the rules under which they worked. This combination of contractual and statutory protections of employee interests provided relative tranquility in railroad labor relations while the industry experienced some of the

Piedmont & N., 334 I.C.C. 378, 384-385 (1969)*; Chicago & N. W./Chicago Great W., 330 I.C.C. 13 (1967); Great N./N. Pac./Chicago, Burlington & Quincy into the Great N. & Burlington, 331 I.C.C. 228, 277-279 (1967)*; N&W/Delaware & Hudson and the Erie-Lackawanna, 330 I.C.C. 780 (1967)*; Chesapeake & Ohio-Baltimore & Ohio/ the W. Maryland, 328 I.C.C. 684 (1967); Pennsylvania/New York Cent., 328 I.C.C. 304, 313 (1966)*; Missouri Pac./Chicago & E. Illinois, 327 I.C.C. 279 (1965); N&W/New York, Chicago & St. Louis, and the Wabash, 324 I.C.C. 1, 50 (1964)*; Atlantic Coast Line/Seaboard Air Line, 320 I.C.C. 122 (1963); Chesapeake & Ohio/ Baltimore & Ohio 317 I.C.C. 261 (1962); Southern/Cent. of Georgia, 317 I.C.C. 557 (1962); Line/ Minneapolis, St Paul & Sault Ste. Marie, the Duluth, S. Shore & Atl. and the Wisconsin Central, 312 I.C.C. 341 (1960). The asterisks (*) indicate the execution of attrition agreements by the railroad and union parties.

45. ASSOCIATION OF AMERICAN RAILROADS, RAILROAD FACTS 55 (1998).

46. First imposed in the New Orleans Union Passenger Terminal Case, 282 I.C.C. 271, 280-81 (1952), these conditions adopted by reference the provisions of the Washington Agreement and for the first four years following ICC approval of the merger, superimposed upon that agreement the provisions of the Oklahoma Conditions. The effect of this was to begin the employee's protective period (up to four or five years) on the date he or she was affected rather than on the date of the ICC's order of approval and to provide full compensatory protection for employees deprived of employment for the first four years following the ICC's order. These protections were imposed in order to comply with the terms of Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. § 5(2)(f), as interpreted by the U.S. Supreme Court in Railway Labor Executives Association v. I.C.C., 339 U.S. 142, 155 (1950).

47. The attrition agreements negotiated by the unions provided effective protection from all causes for all employees of the merging railroads. However, the employee protective conditions required by law to be imposed by the I.C.C. protected only against effects caused by the merger and therefore were often not as effective at protecting employees since management often claimed that the effects suffered by the employees were the results of declines in business or technological advances and left it to the employees to prove otherwise to an arbitrator - an often impossible burden since the facts underlying a carrier's position were within its sole knowledge.

most traumatic events in its history as its workforce declined by half.[48]

IV. Effects of Mergers and Line Sales on Labor Relations, 1980-1998

The years between 1975 and 1980 produced no railroad mergers with any significant effects upon the employees in that industry, but they did produce two statutes which had lasting effects upon the welfare of railroad employees, both in their application and in their misapplication: the 4R Act[49] and the Staggers Rail Act.[50] These statutes were designed to relieve the rail industry of burdensome, unnecessary regulation by government. Because it was evident that providing railroad management with a freer hand in their financial and operational activities might jeopardize the interests of their employees, Congress expanded, both in scope and quality, the protection it afforded employees who might be affected by its enactment of these statutes.

In the 4R Act, Congress expanded the protection traditionally afforded employees under the Interstate Commerce Act[51] and in the Staggers Act, it provided specific protections for employees at each point in the statute where it relieved railroads of some form of regulation.[52] In

48. CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 22) Slip op. at 10 WL 661418, (I.C.C. Sept. 25, 1998): "[T]he enactment of section 5(2)(f) in the Transportation Act of 1940 [requiring the imposition of employee protective conditions] codified the legal framework that had been agreed upon by the negotiators of the WJPA in 1936, and set the stage for a 40-year era of labor peace with regard to mergers and consolidations."

49. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31.

50. Staggers Rail Act of 1980, Pub. L.96-448, 94 Stat. 1895.

51. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 § 402(a), 90 Stat. 31 (recodified at 49 U.S.C. § 11326(a)). Section 402(a) provided employees with the protections developed by the Secretary of Labor under the law creating Amtrak as well as the protections already developed by the I.C.C. The effect of this, *inter alia,* was to extend the protection period for employees to six years and to expressly direct the then Interstate Commerce Commission to condition its orders of approval upon terms requiring the carriers to preserve all existing statutory and contract rights of the employees involved should the carriers decide to carry out the permissive authority granted. The protective arrangement developed by the I.C.C. pursuant to Section 402(a) became known as the New York Dock Conditions.

52. Staggers Rail Act of 1980, Pub. L.96-448, 94 Stat. 1895. Section 213 (relief from all ICA requirements and I.C.C. regulations except (1) employee protection provisions and (2) prohibited intermodal ownership); Section 219 (lessened need for rate bureaus but required Section 11326(a) employee protection for employees affected); Section 221 (construction of rail lines liberalized-discretionary protection provided equal to Section 11326(a)); Section 223 (reciprocal switching agreements-discretionary employee protection provided); Section 226 (limitations on issuance of car service orders-required hiring of employees who had performed that work); Section 227 (bankruptcy courts bound by section 11326(a)); Section 228 (liberalized merger provisions but left Section 11326(a) untouched); Section 401 (sales of lines to financially responsible persons for feeder line development-required use of employees who normally would have per-

short, in 1976 and 1980, Congress continued the policy it pursued since 1933[53] - of protecting the interests of railroad employees in furtherance of efficient railroad operations throughout the country.[54] The Interstate Commerce Commission, charged with administering the employee protective provisions of the Interstate Commerce Act, continued to apply the compensatory protections to employees as it had since 1944.[55] It also refused to meddle in the contractual relationships between labor and management.[56] Consequently, labor-management relationships on the nation's railroads remained stable.

This stability began to weaken in 1982 when the ICC refused to impose the traditional employee protective provisions in the sales of lines by major railroads to non-carrier companies created to purchase them.[57] The ICC converted that decision into an official policy in December 1985, with its promulgation of regulations formally exempting sales of such lines from virtually all regulation and ruling that employee protective conditions would be imposed only in "exceptional circumstances."[58]

The ICC accomplished this objective by a creative interpretation of the Interstate Commerce Act. Sales of rail lines between carriers were subject to the provisions of then Sections 11343 and 11347 of the Act (now Sections 11323 and 11326(a), respectively). The latter section required the ICC to impose employee protective conditions upon the sale. The ICC opined, correctly as it turned out, that if it could eliminate em-

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formed the work); Section 402 (liberalized abandonment provisions but mandated Section 11326(a) protection rather than the lesser discretionary protection previously provided).

53. Emergency Railroad Transportation Act of 1933, 48 Stat. 211, *expired* June 17, 1936, 49 Stat. 376. Particularly Section 7(b) which prohibited a reduction in the numbers of jobs by reason of any action taken pursuant to the authority of the Federal Railroad Coordinator and guaranteed against individual employees being deprived of employment or placed in a worse position with respect to compensation by reason of any action taken pursuant to the authority of the Coordinator.

54. United States v. Lowden, 308 U.S. 225, 234 (1939):

> One must disregard the entire history of railroad labor relations in the United States to be able to say that the just and reasonable treatment railroad employees in mitigation of the hardship imposed on them in carrying out the national policy of railway consolidation has no bearing on the successful prosecution of that policy and no relationship to the maintenance of an adequate and efficient transportation system.

55. Oklahoma Ry. Trustees—Abandonment of Operations, 257 I.C.C. 177 (1944); New York Dock Railway—Control—Brooklyn E. Dist. Terminal, 360 I.C.C. 60, 73, 84 (1979), *aff'd.* New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

56. Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C. 696, 701 (1958); Leavens v. Burlington N., Inc., 348 ICC 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., 366 ICC 857, 861 (1983).

57. Knox & Kane R.R. Co. (Petition for Exemption), 366 I.C.C. 439 (1982).

58. *See* Ex Parte No. 392 (Sub.-No. 1), 1 I.C.Cb2d 810, 811 (1985). The ICC made its determination without reference to any study or any evidence as to what protective conditions had cost railroads in the past and never required any applicant to produce evidence as to such costs in any case before it.

ployee protective conditions from the purchase equation, sales of railroad lines would soar.

The ICC decided to declare the sales of such lines subject to that provision of the Act which dealt with the construction of railroad lines and the extension of a railroad's lines caused by acquisition of additional lines.[59] The advantage in utilizing this provision was that the imposition of employee protective conditions, while always imposed under this section when it appeared that employees might be affected by its use, was not mandated but was left to the discretion of the Commission. The ICC simply refused to impose such conditions in sales conducted under this section to non-carriers or to operating short lines.[60] The fact that Section 10901 by its express terms could be invoked only by a *rail carrier providing transportation* subject to the jurisdiction of the Interstate Commerce Commission[61] did not impede the Commission from encouraging *non*-carrier corporations that did *not* provide transportation to utilize Section 10901. The ICC merely ruled that these corporations would *become* carriers providing transportation *after* the ICC approved their purchase of the rail lines in question. Therefore, under the ICC's novel interpretation, such non-carriers (including newly formed subsidiaries of major railroads that purchased lines from their own parent carriers) could avail themselves of the new ICC policy of rejecting employee protection as these non-carriers purchased thousands of miles of lines from the Class I carriers.[62] Employment opportunities on the Class I railroads were not only reduced by these sales, but jobs offered by the new short lines were fewer in number. Short lines employ about 71 percent fewer workers per mile of line than do Class I carriers[63] and short line pay was about 15

59. 49 U.S.C. § 10901.

60. The I.C.C. at first held that it would not impose employee protective conditions unless the employee adverse effects were "significant" but when confronted with a sale of 700 miles of track in which 261 employees would lose their jobs with the Illinois Central Gulf Railroad, it held that to impose protection with so many employees affected would defeat the sale. Gulf & Mississippi R.R. Corp. – Purchase (Portion) – Exemption – Illinois Cent. Gulf R.R. Co., F.D. 30439 (Jan. 2, 1985) (not printed). Later that year the ICC issued its formal exemption policy, see *supra* note 58, and in 1989 interpreted its "exceptional circumstances" test, "in a manner (to quote dissenting Commissioner Lamboley) which precludes petitioners (i.e., employees' representatives) from ever prevailing on the merits of their arguments." Southeastern Rail Corp. – Acquisition and Operation Exemption – Gulf and Mississippi R.R. Corp., F.D. 31187 (Aug. 31, 1989) (not printed).

61. Italics supplied.

62. In 1995, Congress amended Section 10901 to allow any person to utilize its provisions and expressly prohibited the imposition of employee protective conditions in Section 10901 sales, thereby belatedly legitimizing the STB's short line policy. ICC Termination Act of 1995, Pub. L. 104-88, Title I, § 102(a), 109 Stat. 822.

63. The number of employees of a railroad divided by the number of miles of line operated by that railroad provides the number of employees per mile operated. Nine Class I railroads have 177,981 employees and operate 121,670 miles of line or 1.46 employees per mile; 34 re-

percent less than on the Class I pay.[64] Needless to say, this new philosophy of the ICC and the enthusiasm with which railroad management embraced it, did not improve labor relations in the industry. To the contrary, it began the most highly litigious period in the history of the industry; one which continues to this day.[65]

In 1983, the Commission decided to deregulate the railroad managements' obligations to their employees under their labor contracts by holding that 49 U.S.C. § 11341(a) (now § 11321(a)) overrode collective bargaining agreements and where those agreements conflict with a transaction which we have approved they must give way to the implementation of the transaction.[66] This decision was appealed to the U.S. Court of Appeals for the D.C. Circuit which vacated and remanded it to the Commission holding that the ICC gave no justification for a view that waiver of the Railway Labor Act [was] necessary to effectuate the [trackage rights] transactions at issue.[67] The U.S. Supreme Court, in a 5-4 decision, dismissed the case on a technical deficiency which was raised *sua sponte* by a member of the Court at oral argument - the appeal was filed too late as it was taken from an ICC decision on clarification which does not toll the time for appeal, rather than from an ICC decision on reconsideration which does toll such time.[68]

That decision of the ICC was followed in 1985 by its decision in the *Maine Central* case[69] in which the Commission announced that its orders, not the RLA or Washington Agreement (WJPA) govern employee-management relations in connection with an approved transaction.[70]

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gional railroads (350 miles or more of line) have 10,995 employees for 21,466 miles of line or .512 employees per mile; and, 507 short lines (less than 350 miles of line) operate 28,149 miles of line with 11,741 employees or .417 employees per mile. AMERICAN ASSOCIATION OF RAILROADS, *supra* note 33, at 3.

64. *See* Paul S. Dempsey and William G. Mahoney, *The U.S. Short Line Railroad Phenomenon: The Other Side Of The Tracks*, 21 TRANSP. L. J. 383 (1993).

65. *Id.*

66. Denver and Rio Grande W. R.R. Co.—Trackage Rights—Missouri Pac. R.R. Co., Finance Docket No. 3000, p. 6 (Sub-No. 18) (Oct. 18, 1983) (not printed).

67. Brotherhood of Locomotive Eng'rs v. I.C.C., 761 F.2d 714, 725 (D.C. Cir. 1985):

> We thus vacate the 1983 orders and remand the case to the Commission. The Commission is not empowered to rely mechanically on its approval of the underlying transaction as justification for the denial of a statutory right. On remand, to exercise its exemption authority, the Commission must explain why termination of the asserted right to participate in crew selection is necessary to effectuate the pro-competitive purpose of the grant of trackage rights or some other purpose sufficiently related to the transaction. Until such finding of necessity is made, the provisions of the Railway Labor Act and the Interstate Commerce Act remain in force.

68. I.C.C. v Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987).

69. Maine Cent. R.R.-Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executive Ass'n v. I.C.C., 812 F.2d 1443 (D.C. Cir. 1987) (Table).

70. *Id.* at 6.

Since these two decisions were issued, there has been continuous litigation before the ICC, its successor Surface Transportation Board, and the federal courts. The issue of the STB's authority over the collective bargaining agreement and statutory rights of employees has not been resolved. The Supreme Court had two opportunities to determine the matter and each time avoided it. In the first case, *ICC* v. *BLE*,[71] it dismissed on a technical deficiency. In the second case, eight years later, the Supreme Court chose to reverse the decision of the D.C. Circuit (which had again reversed and remanded the ICC's decision) by *assuming* the railroad had met all of the requirements of the statute which, as is manifest from a reading of the dissenting opinion, was an ill-founded assumption.[72]

Eight more years have passed since the Supreme Court last had an opportunity to address the issue. During this time, the ICC, and its successor STB, have continuously extended government control over the agreement, as well as statutory rights of railroad employees in a series of decisions. The agency held that a railroad does not need to show a connection between the change it wishes to make and a specific ICC or STB order containing the so-called employee protective conditions in order to force changes in employees' agreement rights by compulsory arbitration.[73] Nor does the carrier have time limits when deciding to make a change effecting elimination of employee contract rights even though the order containing the conditions on which the railroad relies may have been issued over 30 years before.[74] The STB has expressly held that the explicit language of its New York Dock Conditions, language required by Section 11326(a), does not mean what it plainly says. That statute requires the STB to mandate that rates of pay, rules, working conditions and other rights, privileges and benefits under existing collective bargaining agreements or otherwise must be preserved by railroads obtaining STB merger approval.[75] However, the STB holds that this language in reality means quite the opposite: rates of pay, rules and working condi-

71. I.C.C. v. Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987).

72. Norfolk & W. Ry. v. Am. Train Dispatchers Ass'n, 499 U.S. 117 (1991) (*see* dissent of Justices Stevens and Marshall at 134-43.)

73. CSX Corp.—Control—Chessie System, Inc. Etc., Finance Docket No. 28905 (Sub-No. 27) (Arbitration Review), slip op. at 8) (Dec. 7, 1995) (not printed). Employees submitting claims for protection however, must show a *causal nexus* between a specific order approving a railroad application and its effects upon them. Atlantic Richfield Co. & Anaconda & Pac. R.R. Co. & Tooele Valley R. Co., Finance Docket No. 28490 (Sub-No. 1 (Arbitration Review), slip op. at 8 (Mar. 2, 1988)) (not printed).

74. *Id.* at 8, 9; CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Indus., Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 22) Slip op. at 25 (Sept. 25, 1998): "Moreover, it is now settled that the mere passage of time does not prevent a finding of nexus between the proposed changes and the initially approved transaction."

75. New York Dock Ry. Co. v. United States, 609 F.2d 83, 84 (2d Cir. 1979).

tions are *not* to be preserved if their modification or elimination would be beneficial to the railroad involved:

> [C]hanges in rates of pay, rules, and working conditions can be required by this agency acting under *New York Dock.* Carriers may invoke *New York Dock* to modify such CBA terms when modification is necessary to obtain the benefits of a transaction that was approved as being in the public interest.[76]

In rendering this extraordinary reading of the statute, however, the STB held that its arbitrators must not modify contracts beyond the extent to which they traditionally modified them between 1940 and 1980.[77]

The six major railroads existing today[78] are the result of ICC and STB orders approving the merger of some 47 railroads into those six carriers over the past 40 years with each order subject to either the New Orleans, or New York Dock Conditions.[79] Consequently, the collective bargaining agreement rights of virtually every railroad employee in the United States are threatened with modification or elimination by their railroad employers under the New Orleans or New York Dock conditions as the STB interprets and applies them. A railroad need only claim that it is the product of an approved merger or control application and that its planned changes are necessary in order to achieve efficiencies or benefits. On the basis of such claims the employees can be forced to arbitration. And, if an arbitrator's decision proves in any way unsatisfactory to the railroad, the railroad can appeal to the STB for a more satisfactory result

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76. *Id.* at 29.

77. *Id.* at 12, 20, 36. The STB based this conclusion upon the *assumption* that such modifications traditionally must have been made by arbitrators during that period. *Id.* at 23. In fact there was no such tradition of modification of agreements between 1940 and 1980, or at any other time prior to 1983. Consequently, it remains to be seen whether the STB meant what it has said and will now require the railroads to adduce evidence of the existence of such traditional modifications when they seek to change agreements before arbitrators or, whether the STB in future decisions will reverse that directive to its arbitrators, clarify it out of existence, or perhaps, simply ignore it.

78. Norfolk Southern; Burlington Northern/Santa Fe; Union Pacific/Southern Pacific; CSX; Conrail; CN/ICG. These six are about to become five with the STB-approved division of Conrail between Norfolk Southern and CSX.

79. The single exception is Conrail, which was created by Congress from the remains of Penn Central and had congressionally imposed attrition-agreement-type protection for the employees of Penn Central. 3R Act, Title V, Pub. L. No. 93-236, 87 Stat. 1012 (repealed). The employees subject to attrition agreements have virtually all left the railroads as the last agreement became effective in 1971. *See* Chicago, St. Paul, Minneapolis & Omaha Ry.—Lease, 295 I.C.C. 696, 701 (1958); Leavens v. Burlington N., Inc., 348 I.C.C. 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., 366 I.C.C. 857, 861 (1983).

Since that time those railroads either have merged, controlled or come under the control of other railroads through ICC or STB orders of approval upon which the New Orleans or New York Dock Conditions were imposed.

or simply serve another notice of change.[80]

New York Dock arbitrators are bound by the policy of the STB in all cases so that New York Dock arbitrators must conform to the agency's wishes even though they would decide otherwise on the basis of the evidence before them.[81] Entire seniority districts of employees may be removed from their agreements and moved to other agreements or to unrepresented status, thereby being stripped of all agreement rights and their collective bargaining representation if to do so would save the railroad but one job.[82]

The STB's basic justification for the removal of employees' contract and statutory rights is its contention that the modification or loss of such rights is the *quid pro quo* for the employees' receipt of six years compensation protection under the protective conditions.[83] Aside from the questionable credibility of a contention first raised some 60 years into the history of employee protection, it is fallacious because there is no compensation provided in any formula of employee protection, including the original Washington Agreement, for the loss of contractual or statutory rights.[84] As the plain language of the protective formulas reflect, compensation protection is provided only for specific adverse effects to employees (dismissal, displacement, and transfer). No compensation is provided for the loss of one's collective bargaining agreement rights or the loss of one's representation by their elected bargaining agent. In short, an employee who is not dismissed, displaced, or transferred, re-

80. In no other American industry are employees' collective bargaining agreement rights so subject to governmental modification or elimination.

81. *See, e.g.*, Delaware and Hudson Ry. Co. C Lease and Trackage Rights C Springfield Terminal Ry. Co., Finance Docket No 30965 (Sub-Nos. 1 and 2), slip op. at 4-5 (Sept. 21, 1998) (not printed).

82. Union Pac. Corp., Pac. Rail Sys., Inc., and Union Pac. R.R. Co.—Control—Missouri Pac. Corp. and Missouri Pac. R.R. Co., Finance Docket No. 30000 (Sub-No. 48) (Arbitration Review) slip op. at 8 (July 17, 1996) (not printed). Because the parties in this case had resolved their dispute, the union agreed to move to dismiss the Petition for Review of the decision it had filed with the D.C. Circuit Court of Appeals provided the STB would vacate its decision. The STB agreed, the appeal was dismissed, and the decision was vacated by STB on February 26, 1997.

83. Study of Interstate Commerce Commission Regulatory Responsibilities Pursuant to Section 210(A) of the Trucking Regulatory Act of 1994, Interstate Commerce Commission, at 13; 1994 WL 639996, at *12 (I.C.C.).

84. The reason no compensation is provided is because neither the Washington Agreement nor its progeny were designed to affect, nor did they affect, rates of pay, rules or working conditions except in the very limited area of adjustments in seniority when work is consolidated. All other rights privileges and benefits under collective bargaining agreements remain unaffected. *See* Washington Agreement, Journal of Negotiations, Feb. 3 – May 21, 1936, at 3, 8, 11-12, 16-17, 19, 136, 142, 160-61, 168, 183-84. *See also*, I.C.C. v Brotherhood of Locomotive Eng'rs, 482 U.S. 270 (1987); Maine Cent. R.R.-Exemption from 49 U.S.C. 11342 and 11343, Finance Docket No. 30522 (Sept. 16, 1985) (not printed), *aff'd per curiam*, Railway Labor Executive Ass'n v. I.C.C., 812 F.2d 1443 (D.C. Cir. 1987) (Table).

ceives no compensation under New York Dock or any other protective arrangement. Yet, that employee can have his agreement and statutory rights modified or eliminated just like the employees who do receive compensation under the arrangement. It is disingenuous for anyone who understands railroad labor relations and employee protective arrangements to claim that *quid pro quo* is provided employees for the loss of their contractual and statutory rights.

The loss of those rights, when compounded by the severe decline in employment and employment opportunities in the railroad industry, has had a gravely enervating effect upon relations between labor and management in the industry. Little else is expected when a contract, negotiated as the result of an exchange of consideration, with each side having provided the other with significant concessions, can be changed or eliminated by management without return of the employees' consideration. This can be done a day, a week, a month or ten years after the contract's execution through a governmentally imposed compulsory arbitration process.[85] And it can occur because, in the eyes of the railroad, such changes are necessary in order for it to achieve "efficiencies," "economies," or "benefits."[86]

A sense of the tenor of labor relations in the industry today can be found in an article written by Mr. Sonny Hall, President of the Transportation Trades Department, AFL-CIO and President of the Transport Workers Union. This article appears in the October 26, 1998 issue of the Journal of Commerce. Mr. Hall said in part:

> The irony is rich: emboldened by the STB's advocacy, carriers now bypass the collective-bargaining process and go straight to the agency to change labor agreements in their favor. Why sit down with your workers when the federal government will give you a better deal?
>
> So, as past and future mergers are played out, mega-rail corporations will be free to do what they want with their employees. Workers who thought they were protected by contracts they negotiated will instead be at the mercy of powerful corporations and government seemingly unconcerned with their plight.
>
> Sound familiar? More than 100 years ago, this was the modus operandi of the robber barons, the monopolists who built American railroads on the mistreated backs of workers.
>
> Little has changed. Today, the STB is undermining its explicit mandate to

85. William G. Mahoney, Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations: The Contrived Collision of the Interstate Commerce Act with the Railway Labor Act, 24 TRANSP. L.J. 249, 290 (1997).

86. *Id.* at 296-97.

protect the public interest by fostering the types of abuses that harmed workers more than a century ago.

The jobs and rights of tens of thousands of workers are on the line. Dealing fairly with these people is a big part of what our government is supposed to do. It's called the public interest, and current and future STB members must be forced to understand what the term means or be replaced with appointees who do.

V. Labor Relations into the Next Millennium

As the railroads become fewer, their size larger, and the number of jobs on those railroads decline, the members of unions will become fewer and the pressure on unions to merge will become greater. As the efforts of the labor force become more unified and focused through merger among unions, their effects upon the industry will become more pronounced. And, as the railroads rely more and more upon the compulsory arbitration provisions of a STB-imposed arrangement[87] as a vehicle to modify or eliminate employee rights in the name of efficiency, the futility of negotiating contracts with those railroads become more and more apparent to the employees and their representatives.

When the railroad industry's workforce determines it is fruitless to negotiate contracts with the railroads, the entire fabric of labor relations will be changed.[88] What might occur is speculation but, to determine what might happen, we can look to the history of the industry during that very unfortunate period in the 19th Century when employees had no contract right protection upon which to rely.[89]

Such a dark future seems likely unless railroad management: (1) becomes aware of the long term damage their present course can inflict upon themselves; or (2) Congress acts to avoid future damage to the nation's economy by removing the STB from that field about which it knows nothing - labor relations; or (3) the STB once again acknowledges it has no expertise in labor relations as it has attested so many times in the past[90] and removes itself from the field; or (4) the Supreme Court

87. Ironically, the protective arrangements imposed by the STB were originally designed to *protect* employee rights and effectively did so for some 50 years. *See* Mahoney, *supra* note 9, at 251-62, 264-75.

88. Contracts can be changed at any time a railroad wishes to go to arbitration to change or eliminate them and the employees right to strike is now effectively eliminated because each Class I railroad is a combination of a number of railroads and serves a large region of the country. Consequently, Congress is most unlikely to permit strikes to occur in the future. *See supra* notes 20 and 25.

89. Those who cannot remember the past are condemned to repeat it. George Santayana, The Life of Reason, vol. 1 (1905).

90. See Hearings on H.R. 7650 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. at 54 (1934); Chicago, St. Paul, Minneapolis & Omaha Ry.—

confronts and decides the issue if it is again presented; or (5) the employees and their representatives decide to acquiesce meekly in the modification or elimination of their rights by the STB or its arbitrators. Absent the realization of one of these alternatives, as we proceed into the next millennium, the future of labor relations in the railroad industry is ominous.

Lease, 295 I.C.C. 696,702 (1958); Leavens, et al. v. Burlington N., Inc., 348 I.C.C. 962, 975, 976 (1977); Brotherhood of Locomotive Eng'rs v. Chicago and N. W. Transp. Co., et al., 366 I.C.C. 875, 861 (1983); and for an extensive discussion of the duties and limitations upon the I.C.C. (now STB) under the law see Southern Ry.—Control—Cent. of Ga. Ry. Co., 331 I.C.C. 151, 169-170 (1967).