Boston College Law Review

Volume 5 | Issue 3 Article 20

4-1-1964

Communications Law—Communications Act of 1934—Right of a Party in Interest to a Trial-type Hearing upon a Challenge to a License Application.—Interstate Broadcasting Co. v. FCC

Jerome K. Frost

mination of different minimum wages for different occupations, although purportedly made under sections 1(b) and 6 as read in conjunction, will be held invalid. Such determination would thwart legislative intent in providing for an opportunty for a hearing, notice requirements and a statement of findings before a valid wage determination could be reached. It would also result in an infringement upon fundamental standards of due process in failing to provide an opportunity to introduce evidence and to make argument.[87]

GEORGE M. FORD

Communications Law—Communications Act of 1934—Right of a Party in Interest to a Trial-type Hearing upon a Challenge to a License Application.—*Interstate Broadcasting Co. v. FCC.*[1]—Interstate (hereinafter referred to as WQXR), a class I-B AM radio station operating at 50 kilowatts on 1560 kc in New York City, challenged the applications for broadcasting permits made by intervenors Patchogue and Grossco.[2] The Commission

[87] Londoner v. Denver, 210 U.S. 373 (1908); Morgan v. United States, 304 U.S. 1 (1938).

[1] 323 F.2d 797 (D.C. Cir. 1963).

[2] In 1957, Patchogue applied for a construction permit to operate a new AM station at Riverhead, Long Island, on 1570 kilocycles with a power of 1 kilowatt, to broadcast daytime only. In 1959 the application was granted without a hearing. WQXR filed a protest under § 309(c) of the Communications Act of 1934, 48 Stat. 1085, as amended, ch. 879, § 7, 66 Stat. 715 (1952), ch. 1, 70 Stat. 3 (1956), which then provided:

> When any instrument of authorization is granted by the Commission without a hearing . . . such grant shall remain subject to protest . . . for a period of thirty days. . . . Any protest . . . shall contain such allegations of fact as will show the protestant to be a party in interest, and shall specify with particularity the facts relied upon by the protestant as showing that the grant was improperly made or would otherwise not be in the public interest. The Commission shall . . . render a decision making findings as to the sufficiency of the protest in meeting the above requirements; and, where it so finds, shall designate the application for hearings upon issues relating to all matters specified in the protest . . . except with respect to such matters as to which the Commission, after affording protestant an opportunity for oral argument, finds, for reasons set forth in the decision, that, even if the facts alleged were to be proven, no grounds for setting aside the grant are presented.

In 1959, Grossco applied for its permit to establish a 1 kilowatt, daytime only station on 1550 kilocycles in the Hartford, Conn., area. WQXR petitioned to intervene under § 309(b) of the Communications Act of 1934, 48 Stat. 1085, as amended, ch. 879, § 7, 66 Stat. 715 (1952), which then provided:

> If upon examination of any such application the Commission is unable to make the finding specified in subsection (a), it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding. . . . The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application may acquire the status of a party . . . by filing a petition for intervention showing the basis for their interest. . . . Any hearing subsequently held upon such application shall be a full hearing in which the applicants and all other parties in interest shall be permitted to participate . . . .

Both § 309(b) and (c) were amended in 1960, 74 Stat. 889, 47 U.S.C. § 309 (Supp. IV, 1959-62).

relied upon its rules governing allocation of frequency channels, which, when applied to these license application proceedings, amounted to a legislative presumption that the advantages of new adjacent channel service outweighed the disadvantages occasioned by loss of existing service beyond the normally protected contour.[3] In both cases WQXR's basic contention was that special circumstances, namely, superior programming fare, established the public interest in maintaining its broadcasting service beyond its normally protected 0.5 millivolt per meter contour, and that this militated against the granting of the permits. The Commission rejected this contention without a hearing on the ground that it alleged no more than a claim on a matter which had already been foreclosed, as a matter of policy in 1957, in its deletion of the "unique service" rule.[4] On appeal to the Court of Appeals for the District of Columbia it was HELD: The Commission did not deal adequately with WQXR's contention that special circumstances created a public interest justifying the extension of protection to its broadcasting service beyond the normally protected service area. Only by balancing the public interest factors of the benefit of new service against the loss of existing service can the Commission decide the ultimate question of public interest.

The court goes a long way in implementing the doctrine of *United States v. Storer Broadcasting Co.*,[5] wherein the Supreme Court decided that more flexibility was necessary in administering the Communications Act of 1934. The net effect of the instant case may well be to place the administration of the Act on an ad hoc basis. Henceforth, it would seem, no broadcasting license will be granted until the ultimate issue of public interest has been adjudicated in a full evidentiary hearing.[6] However, flexibility is not the

[3] Station WQXR, as a Class I-B station, is protected at least to its 0.5 millivolt per meter (mv/m) groundwave contour from stations operating on the same and adjacent channels. 47 C.F.R. § 3.182(a)(1)(ii) (1958). The term "millivolt per meter" relates to signal strength intensity, which decreases as the distance increases from the transmitter. "Groundwave" refers to that portion of electrical waves which is propagated along the earth's surface. Thus, WQXR is protected to the outer limits of the geographical area receiving a signal rated at .5 mv/m or higher. It sought protection beyond this area. The Regulations resolving the issue of protected contour in this case are: 47 C.F.R. §§ 3.11-(a), (c), 3.21(a), 3.182(a)(1), (f), (h), and (j) (1958), cited by the court in the instant case, supra note 1, at 800-01.

[4] Patchogue Broadcasting Co., 23 Pike & Fischer Radio Reg. 435, 439-42 (FCC 1962); Grossco Broadcasting Corp., 23 Pike & Fischer Radio Reg. 707, 718 (FCC 1962). In essence, WQXR's allegations called for a comparison of the relative merits of the program services and a finding that its service was so superior that it deserved extraordinary protection. The Commission abandoned its efforts to protect such "unique service" in 1957 on the grounds that no workable definition of unique service could be attained and that its attempts to protect such service had resulted only in detriment to the public by discouraging applicants with threatened delay and by inducing them to water down their proposals for new service. 16 Pike & Fischer Radio Reg. 1501, 1504 (FCC 1957).

[5] 351 U.S. 192 (1956).

[6] This would be so at least where someone challenges the grant of a construction permit. Standing to challenge is easy to establish. FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 476-77 (1940) and Metropolitan Television Co. v. United States, 221 F.2d

only feature desired in administering the Communications Act and it may have been purchased at too dear a price. For, as the court recognizes, this decision presents serious problems of abuse of the intervention and protest devices.

> As a practical matter, then, under our ruling, an established and powerful station can delay the grant of new applications for apparently available frequencies by setting up a barrage of allegations as to why the established station should be protected at distant points well beyond its normally protected contour, because of the "unique service" it renders. Allegations of this sort are not hard to make . . . .[7]

The court was of the view that it had no choice but to follow *Storer*. Granting the constraint of precedent, it does not appear that *Storer* necessarily compelled the result in the instant case. Nor does it appear that the court correctly applied *Storer*.

In *Storer*, the question before the Court was whether a corporation subject to the authority of the Commission could obtain a waiver of the amended Multiple Ownership Rules.[8] On the very day the amendments were promulgated, Storer's application for an additional television station was dismissed by reason of these amendments. The Commission's regulations then in effect provided for a waiver of any of its rules upon a showing of good cause.[9] The Supreme Court held that, while the Commission had the statutory authority

> to limit the number of stations consistent with a permissible "concentration of control," . . . we read the Act and Regulations as providing a "full hearing" for applicants who have reached the existing limit of stations, upon their presentation of applications conforming to Rules 1.361(c) and 1.702, that set out adequate reasons why the Rules should be waived or amended.[10]

Storer has been roundly criticized by Professor Davis as failing to recognize the distinction between "adjudicative" and "legislative" facts and the type of hearing required in their respective determinations.[11] Professor

879 (D.C. Cir. 1955) held that possible impairment of a licensee's ability to serve the public as a result of harmful competition suffices to give a party standing. It is on this theory that WQXR was held to have standing to object to the grants in the instant case. Interstate Broadcasting Co. v. FCC, 285 F.2d 270 (D.C. Cir. 1960) (Patchogue); Interstate Broadcasting Co. v. United States, 286 F.2d 539, 544 (D.C. Cir. 1960) (Grossco).

[7] Supra note 1, at 803.

[8] These Rules limited single ownership of broadcast stations to 5 television stations, § 3.636, 7 AM stations, § 3.35, and 7 FM stations, § 3.240, 18 Fed. Reg. 7799 (1953).

[9] § 1.361 (c), 11 Fed. Reg. 177A-414 (1946), as amended, 18 Fed. Reg. 7195 (1953); § 1.702, 11 Fed. Reg. 177A-424 (1946), superseded by 47 C.F.R. § 1.15 (1958).

[10] Supra note 5, at 203, 205.

[11] Davis, The Requirement of a Trial-Type Hearing, 70 Harv. L. Rev. 193, 197-98 (1955). Professor Davis distinguishes "adjudicative" from "legislative" facts as follows:

Davis is doubtless correct in his thesis that a trial-type, or evidentiary, hearing is not *essential* to the determination of the legislative facts which provide the policy foundation for the formulation of rules such as those in *Storer* and in the instant case. Nevertheless, the need for flexibility in the functioning of administrative bodies may justify holding a trial-type hearing if an individual party alleges facts which if proven would show that the public interest would best be served by not applying the rule in his case. It is upon this ground that *Storer* can be defended.

> The Commission therefore did not bind itself inflexibly to the licensing policies expressed in the Regulations. In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the "public interest, convenience, or necessity." If time and changing circumstances reveal that the "public interest" is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.[12]

In *Storer* the court found this "flexibility . . . under the present § 309(a) and (b) and the FCC's [waiver] regulations."[13]

Storer involved an application for new broadcasting facilities; the instant case involves challenges to applications for new facilities. Denial of Storer's application meant that the public would be deprived altogether of the benefit of a new television station; denial of WQXR's challenges would mean only that the public would get new local broadcasting service at the expense of allegedly superior service it had before, service of a kind

---

> Adjudicative facts are facts about the parties and their activities, . . . usually answering the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy, and discretion.
>
> . . . [A]djudicative facts, are intrinsically the kind of facts that ordinarily ought not to be determined without giving the parties a chance to know and meet any evidence that may be unfavorable to them, that is, without providing the parties an opportunity for trial. . . . Yet people who are not necessarily parties, frequently the agencies and their staffs, may often be the masters of legislative facts. . . . [T]he method of trial often is not required for the determination of disputed issues about legislative facts.

Id. at 199.

For the proposition that due process requires a trial-type hearing for the determination of *adjudicative* facts, see Londoner v. Denver, 210 U.S. 373 (1908); another case found that there is no such requirement when *legislative* facts are at issue. Bi-Metallic Inv. Co. v. State Bd. of Equalization of Colorado, 239 U.S. 441 (1915). Professor Davis criticizes the Supreme Court in *Storer* for failing "to inquire whether any issue of adjudicative fact was presented. . . . [I]f Storer merely sought to attack the multiple ownership rules, argument and not trial was the appropriate procedure. . . ." Id. at 197-98.

[12] National Broadcasting Co. v. United States, 319 U.S. 190, 225 (1943).

[13] Supra note 5, at 205.

the Commission had found itself unable to protect under any reasonable definition and standard of public interest.[14]

Conceding the validity and applicability of *Storer*, this would not have precluded the court in the instant case from holding that WQXR had failed to allege "facts, sufficient if true, to justify a change or waiver of the Rules," or that the Commission erred only in failing to supply a sufficient explanation why the facts alleged were insufficient. *Storer* may be read as holding that section 309(b) gives a party standing only to request a rules waiver.[15] There is nothing in *Storer* that prevents the Commission from testing the sufficiency of the allegations upon which the requested waiver is based. On the contrary, it seems expressly to call for such a test.

> As the Commission has promulgated its Rules after extensive administrative hearings, it is necessary for the accompanying papers to set forth reasons, sufficient if true, to justify a change or waiver of the Rules.[16]

If the Commission were allowed to utilize a demurrer or motion-to-dismiss device on a requested rules waiver, all that would be necessary by way of a hearing would be argument on the sufficiency of the allegations.[17]

Yet it appears that under the instant decision an applicant or other party in interest has a right to a trial-type hearing on his request for a rules waiver, a hearing defined in *Storer* as one in which "every party shall have

---

[14] It is true that WQXR would be finally foreclosed by a denial of its requested rules waiver. But public, not private, interest is the criterion, and the detriment to the public from the denial of WQXR's challenges would not be so great as in a case where the denial of an application meant total deprivation of new service.

[15] "Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law." Dyestuffs & Chemicals, Inc. v. Flemming, 271 F.2d 281, 286 (8th Cir. 1959), cert. denied, 362 U.S. 911 (1960); Superior Oil Co. v. FPC, 322 F.2d 601, 609-15 (9th Cir.), petition for cert. filed, 32 U.S.L. Week 3236 (Dec. 18, 1963) (both relying on *Storer*). *Superior Oil* presents the Supreme Court an excellent opportunity to define the right of a party in interest to a trial-type hearing.

[16] Supra note 5, at 205.

[17] This was exactly what § 309(c), quoted in note 2, provided for, and what the 1960 amendment of § 309 provides. Under the 1960 amendment, the Commission may use a demurrer device on both interventions and protests. It appears also to impose a good faith requirement on challengers by specifying that affidavits accompany those allegations of fact other than those which the Commission may judicially notice. The purpose of the 1960 amendment was to remedy the procedural abuses (delay and harrassment) that arose out of misuse of § 309(b) and (c). H.R. Rep. No. 1800, 86th Cong., 2d Sess., 2 U.S. Code Cong. & Ad. News 3516, 3517 (1960). The same purpose was announced for the 1956 amendment of § 309(c), the protest section. S. Rep. No. 1231, 84th Cong., 2d Sess., 2 U.S. Code Cong. & Ad. News 2195 (1956). The Court of Appeals for the District of Columbia has shown a marked reluctance to effectuate this purpose. Hudson Valley Broadcasting Corp. v. FCC, 320 F.2d 723 (D.C. Cir. 1963); Wometco Enterprises, Inc. v. FCC, 314 F.2d 266 (D.C. Cir. 1963) (both applying 1960 amendment).

the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."[18] Such hearings are often unduly protracted and excessively expensive; their ready availability would frequently serve only to discourage applicants and prospective applicants.[19]

The FCC is charged with the task of determining whether considerations of "public interest, convenience, and necessity" favor the granting of a license to establish and operate a broadcast station.[20] So nebulous a standard as "public interest" is extremely difficult of application and necessarily implies a great deal of discretion on the part of the agency applying it.[21] In order to accomplish the statutory objective of furnishing the public the best broadcasting service possible, Congress also equipped the Commission with certain specific criteria and conferred on it not only the ordinary administrative rule-making power but also the authority to formulate broad policy rules, enunciating the Commission's own attitudes on public interest.[22] The Multiple Ownership Rules and the presumption in favor of new adjacent channel service over the recognized but unprotected service are products of this broad legislative power.

Such rules were held in *Storer*, however, to lack the sanctity of Congressional enactments. This interpretation is reasonable in view of the necessity for flexible administration of a national broadcasting policy according to the protean standard of public interest and in view of the fact that an agency, when applying its own policies, can achieve a flexibility that no court dealing with a Congressional act is capable of. In other words, the circumstances of an individual case may indicate that it would be better not to apply a particular ordinance founded upon the public interest. A court, faced with a Congressional act which applies to the case at bar, is not in the best position to make an exception to the general statutory rule. Not having made the law and not being apprised of all the underlying policy considerations, the court cannot be expected to know whether Congress in-

---

[18] Supra note 5, at 202.

[19] Elias, Administrative Discretion—No Solution in Sight, 45 Marq. L. Rev. 313, 314-16 (1962). Both the Administrative Procedure Act, 60 Stat. 240, 243 (1946), 5 U.S.C. §§ 1005(a) and 1009(e) (1958), and the Communications Act of 1934, 48 Stat. 1066, as amended, 47 U.S.C. § 154(j) (1958), provide that agency proceedings shall be conducted with reasonable speed. In Deering Milliken, Inc. v. Johnston, 295 F.2d 856 (1961), the Fourth Circuit Court of Appeals affirmed the principle that a party may seek equitable relief in the federal district courts from oppressive agency action.

[20] Communications Act of 1934, 48 Stat. 1085, as amended, 47 U.S.C. § 309(a) (Supp. IV, 1959-62). National Broadcasting Co. v. United States, supra note 12, at 214-26 (excellent review of the history of the Act).

[21] "[I]t is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license. And the fact that we might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the latter." FCC v. WOKO, Inc., 329 U.S. 223, 229 (1946).

[22] Communications Act of 1934, 48 Stat. 1066, 1082, as amended, 47 U.S.C. §§ 154(i), 303(f)(r) (1958).

tended that there be such an exception. On the other hand an administrative agency acting as a court is perfectly adapted to making a judicial exception to its own legislative pronouncements.[23]

But certain practical difficulties are presented. It must be conceded that when the Commission, in the exercise of its discretion and expertise, formulates a general policy rule, adherence to that rule ought to be excused only in the most exceptional case and then only upon a showing of good cause. For, while the administration of a national broadcasting policy demands flexibility, it also demands stability and predictability.

> This does not mean, of course, that the mere filing of an application for a waiver . . . would necessarily require the holding of a hearing, for if that were the case a rule would no longer be rule.[24]

An individual seeking a broadcast license has a right to expect that the rules of the Commission will be observed unless there is a clear showing of a strong public interest against their observance. He has a right not to be delayed, discouraged or harassed. Further, the public interest requires that these rights be secured him because the public interest is advanced by competition and diversification.

In following *Storer*, the court in the instant case held that section 309(b) and (c) provided for the contingency that in a given case the public detriment from the impairment of existing service might exceed the benefit of new service by stating that a "party in interest" is entitled to participate in a license application proceeding in order to help determine whether the grant of a license is in the public interest.

Section 309(c) provided for a means of testing the sufficiency of the protestant's allegations of a favorable public interest. A like ability could be read into section 309(b),[25] despite the fact that, before 309(c) was amended to provide for a demurrer test, it was practically identical with 309(b) and had been interpreted to provide for a trial-type hearing on all

[23] Consider, e.g., the Multiple Ownership Rules, which, as applied to television facilities, proscribe single control of more than seven (no more than five VHF) television stations. 47 C.F.R. § 3.636 (1958). Suppose a party with seven stations applies for a television license in an area that has no television service. The Commission could waive application of the Rule in this case. If, however, the same blanket proscription were embodied in a congressional act, there would be no justification for its waiver either by the Commission or the courts. For an example of a pre-*Storer* waiver of a Commission regulation, see City of New York Municipal Broadcasting System v. FCC, 223 F.2d 637 (D.C. Cir. 1955).

[24] Brief for the FCC in Storer Broadcasting Co. v. United States, supra note 5, quoted by the Court at 201.

[25] In Federal Broadcasting System v. FCC, 231 F.2d 246 (D.C. Cir. 1956), the court (at 250) indicated that the Commission could employ a demurrer device on a protest under § 309(c), as it then stood, 48 Stat. 1085 (1934), as amended, ch. 879, § 7, 66 Stat. 715 (1952), even though it contained no explicit provision for one. See generally, Harbenito Broadcasting Co. v. FCC, 218 F.2d 28, 31 (D.C. Cir. 1954). But see, Elm City Broadcasting Corp. v. United States, 235 F.2d 811 (D.C. Cir. 1956) and Clarksburg Publishing Co. v. FCC, infra note 26.

protests.[26] The Commission in effect interpreted both sections to permit such a test and dismissed WQXR's objections for want of sufficient allegations of public interest. And in both cases the Court of Appeals apparently acquiesced in this action. Still, in order to discharge its statutory obligation of judicial review, the court must have a record adequate to determine the correctness of the Commission's order.[27] Here it felt it was faced with no more foundation for the Commission's disposition of WQXR's contention than a few summary remarks.[28] Thus, it had no alternative to reversal except abdication in favor of the complete and undisclosed discretion of the Commission.

In doing so, however, the court appears to have done nothing toward solving the problem presented by abuse of the protest and intervention devices. For it states:

> If the Commission concludes that the allegations are not sufficient it may decide both cases against WQXR, *provided it supports its conclusions with explanations founded on sufficient findings of facts. In its discretion it may hold further hearings even if not required to do so.*[29] (Emphasis supplied.)

On the strength of this language one might conclude that no trial-type hearing would be necessary to make the "findings of fact" of which the court speaks.[30] Yet a reading of Judge Washington's concurring opinion (in which the other two judges concurred) indicates that such a hearing must be held.

> If the Commission grants a hearing, the ensuing delay will no doubt be substantial, and the expenses probably such as to be a heavy burden to Patchogue and Grossco, which evidently lack the financial resources of WQXR. If the Commission decides against WQXR, without a hearing, a further appeal to this court by WQXR would seem probable.[31]

It is submitted that the court might have done something to solve the problem of dilatory and worrying tactics posed by an abuse of the procedures for challenging license applications instead of merely recognizing and compounding it. Its mandate to the Commission might and should have

---

[26] Clarksburg Publishing Co. v. FCC, 225 F.2d 511 (D.C. Cir. 1955).

[27] Television Corp. of Mich. v. FCC, 294 F.2d 730, 733 (D.C. Cir. 1961); Telanserphone, Inc. v. FCC, 231 F.2d 732, 735 (D.C. Cir. 1956).

[28] Supra note 1, at 801-02.

[29] Supra note 1, at 802.

[30] Whether or not a party in interest is entitled to a trial-type hearing on any and all allegations of favorable public interest is the crucial question in this case. The court is of little help in supplying an answer. How is the Commission to support its decision with "findings of fact" unless it holds a trial-type hearing? It is true that "some findings rest on judgment or discretion or policy, which in turn rests on the kind of facts that are not necessarily susceptible of proof," and hence need not be made in an evidentiary hearing. 2 Davis, Administrative Law § 16.11 (1958). But the "findings of fact" the court refers to in this case do not appear to be that kind. Anglo-Canadian Shipping Co. v. Federal Maritime Comm'n, 310 F.2d 606 (9th Cir. 1962).

[31] Supra note 1, at 802-03.

been: Give WQXR the opportunity for oral argument on its allegations of public interest. Decide, upon the basis of the facts alleged and upon all reasonable inferences which may be drawn from them, whether these facts, if proven, would show that the public interest demands that extraordinary protection be accorded WQXR's broadcasting service. If you decide that the allegations are insufficient to warrant additional protection, you must give a full explanation why they are insufficient. If you decide that they are sufficient, you must give WQXR an opportunity to prove them in a trial-type hearing.[32] Had the court done this, it would have contributed greatly toward a rational reconciliation of the conflicting demands of flexibility and predictability in the administration of the Communications Act.

JEROME K. FROST

Constitutional Law—First Amendment Protection of the Right to Picket and State Public Policy.—***Schwartz-Torrance Inv. Corp. v. Bakery & Confectionary Workers.***[1]—This action was commenced by respondent-corporation in the Los Angeles County Court to enjoin appellant-union's alleged trespass upon property which respondent had leased from the City of Torrance, California, and was operating as a shopping center. Appellant, in its attempt to organize the employees of Revels' Bakery Shop, a sub-lessee in the center, commenced and maintained, over respondent's objection, a peaceful organizational picket line on the center's sidewalk immediately in front of the sub-lessee's shop.[2] The county court granted an injunction on the basis that the center's sidewalk had been provided for use by the sub-lessee's actual and potential customers; appellant, by its maintenance of the picket line, was not using the sidewalk for its intended purpose; such action constituted a trespass.[3] The primary question on appeal was whether a lessee of property, who has the right to exclusive possession and is not a party to a labor dispute, can enjoin, as a trespass, peaceful organizational picketing directed at the business premises of a sub-lessee-employer. HELD: The dis-

[32] This is all that is required by the 1960 amendment. 74 Stat. 889, 47 U.S.C. § 309(d) (Supp. IV, 1959-62), which provides:

> (2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a) of this section, it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition.

In view of the inability of the Commission and the Court of Appeals of the District of Columbia to accomplish the Congressional objective of providing an expeditious means of hearing objections to the applications for construction permits, the best solution may well be to abolish the intervention and protest procedures altogether. The Commission could then admit adverse parties in interest at its discretion. Southwestern Publishing Co. v. FCC, 243 F.2d 829 (D.C. Cir. 1957).

[1] 222 Cal. App. 2d 378, 35 Cal. Rptr. 179 (1963).

[2] Respondent is not a party to any labor dispute.

[3] Restatement, Torts §§ 157-164 (1938) especially § 158.