

Supreme Court of the United States

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FILED

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JOHN F. DAVIS, CLERK

In the Matter of:

ELMER L. DIRKS, Individually and as General
Chairman of the BROTHERHOOD OF RAILROAD
TRAINMEN, an Unincorporated Association,
and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILWAY COMPANY, a Corporation,

Docket No. 172

Petitioners,

v.

W. L. BIRKHOLZ, RAY GRANGER, THOMAS FOLEY,
DAVID TUCIBAT, WAYNE BLACKBURN, and MARVIN
HOISINGTON, Individually and in Belalf of
All Members of the Switchmen's Union of
North America, AFL-CIO, Who are Employed
by the Chicago, Milwaukee, St. Paul &
Pacific Railroad Company, and SWITCHMEN'S
UNION OF NORTH AMERICA, AFL-CIO, an
Unincorporated Association,

Respondents.

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Place Washington, D. C.

Date January 14, 1969

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300 Seventh Street, S. W.

Washington, D. C.

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David Leo Uelmen, Esq., on
behalf of Petitioners

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Lee Leibik, Esq., on
behalf of Respondents

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - -X
4 ELMER L. DIRKS, Individually and as General :
Chairman of the BROTHERHOOD OF RAILROAD :
5 TRAINMEN, an Unincorporated Association, :
and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC :
6 RAILWAY COMPANY, a Corporation, :
:

7 Petitioners, :
:

8 v. :
:

No. 172

9 W. L. BIRKHOLZ, RAY GRANGER, THOMAS FOLEY, :
DAVID TUCIBAT, WAYNE BLACKBURN, and MARVIN :
10 HOISINGTON, Individually and in Behalf of :
All Members of the Switchmen's Union of :
11 North America, AFL-CIO, Who Are Employed :
by the Chicago, Milwaukee, St. Paul & :
12 Pacific Railroad Company, and SWITCHMEN'S :
UNION OF NORTH AMERICA, AFL-CIO, an :
13 Unincorporated Association, :
:

14 Respondents. :
:

15 - - - - -X
16 Washington, D. C.
17 Tuesday, January 14, 1969

18 The above-entitled matter came on for argument at

19 1:20 p.m.

20 BEFORE:

21 EARL WARREN, Chief Justice
HUGO L. BLACK, Associate Justice
22 WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
23 POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
24 ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice
25

1 APPEARANCES:

2 DAVID LEO UELMEN, ESQ.
3 211 West Wisconsin Avenue
4 Milwaukee, Wisconsin
5 Counsel for Petitioners

6 LEE LEIBIK, ESQ.
7 343 South Dearborn Street
8 Chicago, Illinois
9 Counsel for Respondents

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P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 172, Elmer Dirks, Individually and as General Chairman of the Brotherhood of Railroad Trainmen, et al., Petitioners, versus W. L. Birkholz, et al.

Mr. Uelmen.

ORAL ARGUMENT OF DAVID LEO UELMEN, ESQ.

ON BEHALF OF PETITIONERS

MR. UELMEN: Mr. Chief Justice, may it please the Court: This case does present the same legal issue that was presented in the previous case, although the language of the contract is slightly different, and in our opinion there is no mootness problem here and to that end we did file a supplemental brief a few days ago to which, I believe, Justice Fortas referred earlier.

Q This is here on Certiorari, isn't it?

A That is correct, Your Honor.

Q The basic issue -- there may be a money claim pending -- but the question in my mind is whether it is a matter on which we would have granted Certiorari, if the facts have been established, if the facts that seem to exist now existed at the time that we considered the petition a Certiorari.

A Well, of course, the merger facts didn't exist at that ---

1 Q I know that but I say that if they did the
2 question is whether we would have issued the rest here.

3 A You mean because the amount of dues paid to
4 the brotherhood by the individual claimants and their class
5 was a small amount of money?

6 Q Well, not that so much as the underlying
7 issue seems to be one of which might not be appropriate. I
8 don't know whether it is or not, because we haven't heard from
9 the other side. The other side filed nothing here and I
10 noticed your supplemental pleading here but I don't know that
11 Certiorari would have been granted. I don't know that it
12 wouldn't have, but I just don't know that Certiorari would
13 have been granted because here you have people arguing a very
14 important issue on the basis, not of a basic conflict of
15 interest but on the basis of a relatively small money judg-
16 ment below.

17 A Well, there was a small money judgment involved
18 in the Felter case against Southern Pacific also because it
19 involved only the check-off dues of one particular man.

20 Q I know, but ---

21 A This difference in this case and in the previous
22 case, of course, is there was no restraining order issued in
23 this case. The effort to obtain the restraining order failed.
24 As a result, the plaintiff and his class were compelled to
25 join the Brotherhood of Railroad Trainmen and they were

1 compelled to pay dues to the Brotherhood of Railroad Trainmen.

2 When the appeal was pending in the Court of Appeals
3 for the 7th Circuit those plaintiffs argued to that court that
4 they wanted the case remanded to the trial court for the purpose
5 of having their dues money that they had paid to the Brotherhood
6 restored to them.

7 That issue, of course -- the issue of money damages --
8 still makes this a live issue or a case of controversy for
9 this Court, because even if this Court does, pursuant to a
10 mootness point, reverse and remand and vacate the judgment,
11 then these individual plaintiffs and the class that they repre-
12 sent will not be restored to the dues that they paid and would
13 still have the claim for that money.

14 Q Mr. Uelmen, I expect it is as Justice Fortas
15 suggested that this case may not be moot but if you are familiar
16 with Monroe's case of that kind where there have been occurrences
17 since the grant of Certiorari which make it, in our judgment,
18 a case not to be decided, we dismiss it as a improperly
19 granted and I expect that is the case here, isn't it?

20 A Well ---

21 Q About whether or not this issue ought to be
22 decided in the context as to the money claim, or await an
23 actual application of the same sort of thing in some contest
24 between this new union and the engineers.

25 A Well, I think that if the case is remanded to

1 the lower court, the Federal ---

2 Q That wouldn't be what would happen. The Writ
3 would simply be dismissed as improperly granted and the
4 judgment below would stand; that is the choice, I expect.

5 A And then ---

6 Q But there are still proceedings to go on in the
7 lower court if that would happen.

8 A Well, yes. The individuals would certainly have
9 the right to, if they so desired, and I think under the class
10 action rules of the Federal Rules of Civil Procedure each
11 member of that class would have to be notified that the Court
12 intends to act on their claims and they would have the right
13 to say whether they waive them or not.

14 From the letters that we have received and the
15 protests that were filed at the time they paid the dues, we
16 have no reason to believe that these members are going to
17 waive those claims.

18 They were not happy at all by being compelled to
19 join the brotherhood.

20 Q How many are there?

21 A Well, the individual claimants are six in number
22 and they purport to represent a class and, frankly, that
23 actual damages issue was never tried, so it could be several
24 hundred.

25 I would say probably between 200 and 300 that were

1 compelled to join the brotherhood, and are not pleased about
2 it.

3 If the Court please, the court below ---

4 Q Was the judgment of the court below stayed or
5 did the people cease being members of the brotherhood?

6 A Well, we won the case in the district court.
7 So then the men, of course, were compelled to join the
8 brotherhood. Now, some of them remained members of the
9 Switchmen's, also, in other words, were members of two unions.

10 Then the court of appeals reversed the district.

11 Q That is right. Then the men ceased being
12 members of the brotherhood?

13 A Well, I think some of them did, yes.

14 Q Well, why wouldn't all of them, if they
15 objected? Unless the 7th Circuit opinion was stayed.

16 A There was no stay.

17 Q I see.

18 A Then, of course, we filed the petition for
19 Certiorari here. The court of appeals for the 7th Circuit
20 held that Section 2(11)(c) of the Railway Labor Act must be
21 read literally and that the legislative history supports
22 the literal reading of that statute.

23 The court also noted, and stated, that in its judgment
24 the opinion of this Court in Rychlik vs. Pennsylvania Railroad,
25 which construed the legislative history differently, was

1 dictum on that point. They also held that the Court of Appeals
2 opinion in the 3rd Circuit in Rohrer vs. Black Lick Railroad
3 was inapplicable because that railroad was owned by a steel
4 company and was organized on an industrial basis.

5 With those positions, and with that reason of the
6 court below, of course, we disagree. The legislative history
7 of this law shows clearly that Congress intended the Railway
8 Union to have a union shop agreement just like the industrial
9 unions have.

10 The one problem that kept coming up and being debated
11 was what they were going to do with the operating unions as
12 distinguished from the non-operating unions, because in the
13 operating crafts there was this craft progression from Firemen
14 to Engineer and back again to Firemen and between Conductor
15 and Brakemen and back again to Brakemen.

16 That argument was debated in Congress at some length,
17 and different proposals were made at various stages of legisla-
18 tive history. At one time the proposal was made that, perhaps,
19 the parties could just negotiate it out. That wasn't
20 satisfactory.

21 Another time a proposal was made similar to what we
22 did here, that the man would have to be a member of the
23 union that held the bargaining rights, and that proposal was
24 not adopted in that form.

25 Another was a proposal to simply issue a general

1 prohibition on requiring membership in more than one union.

2 In the final analysis, everyone agreed to one very
3 important point, and that is that the only item they wanted
4 to correct, the only difference that they wanted in this parti-
5 cular bill, was to correct the problem of compelling a man to
6 become a member of more than one union.

7 They felt that a man should not be forced to pay dues
8 to one union. The Congress was willing to permit the union and
9 the employer to compel him to pay dues to one union but they
10 didn't want him to pay dues to two.

11 With that concept in mind, and with that overall
12 objective, language was agreed to by the various unions and,
13 ultimately, adopted by Congress. This Court, exhaustively,
14 analyzed the legislative history on that section in the Rychlik
15 case and held that that legislative history must be read
16 carefully in order to understand the exact language of the
17 statute, and that the statute, itself, could not be read
18 literally on its face.

19 The court adhered to those holdings in the Felter
20 case that the statutory language must be read in the light of
21 solving this problem and that problem we agree with and we
22 have incorporated into our collective bargaining agreement
23 specific language which states that if the man has a right
24 to work in another craft, such as a conductor, and if the
25 conductors have a contract with the railroad under which it is

1 compulsory, unionism is a factor, he can become a member
2 and remain a member of the Conductor's Union.

3 That, we say to the Court, solves the problem that
4 Congress was trying to reach and that is the man cannot be
5 compelled to become a member of two. But what does the
6 Switchmen's Union have on the Milwaukee Road?

7 It has no contract. It cannot negotiate a contract.
8 It never did have a contract since the Railway Labor Act was
9 passed, and it would be impossible for that union to negotiate
10 a contract with the employer that would compel the men to
11 become members of the Switchmen's Union.

12 With that in mind, we have asserted that the legisla-
13 tive purpose is served by compelling the men to become and
14 remain members of the union that bargains for him. If the
15 union does not bargain for him, the union is just a stranger
16 to the property, which the Switchmen's Union was on this
17 railroad, that membership in that union could not be used to
18 satisfy the union shop requirements.

19 Q Is there anything in the legislative history
20 that shows that Congress was aware of this problem?

21 A You mean that -- no, Your Honor, there is nothing
22 specific on that. I think that it is concerned with the
23 union shop legislation, itself, though.

24 Q The language of the Act certainly supports the
25 Court of Appeals, doesn't it?

1 A The language of the Act literally read, of course -
2 if the language is literally read why some modification would
3 have to be made of the Rychlik language.

4 Q I don't remember anything in the Rychlik opinion
5 which I wrote that would indicate that we were aware of the
6 problem that we have got here or we would have addressed our-
7 selves to it.

8 A Rychlik said several times, of course, that the
9 language could not be read literally, that it had to be read
10 in the light of solving the problems ---

11 Q But what we were dealing with it in the context
12 of a union that still was a bargaining agent for the crafts.

13 A Yes. Of course, there are a very few railroads
14 in the United States in which the railroad is organized on
15 what we call a privy basis where the Engineers represent only
16 the engineer and the Firemen only the fireman and so on down
17 the line.

18 Q Yes.

19 A It is true that the legislative history didn't
20 consider that problem specifically, but it inconsistent with
21 the overall provisions of the union shop agreement and the
22 union shop statute to permit a man to satisfy the compulsory
23 union features of the statute by becoming a member of the union
24 that cannot, and does not, bargain for him.

25 Q But it certainly was a standard thing at the

1 time this Act was passed and this amendment was passed for one
2 of the railroad unions to represent several crafts.

3 A Oh, yes.

4 Q And I guess with that background Congress used
5 this broad language.

6 A Oh, yes, that is true. They used very broad
7 language. Well, of course, how else are we going to solve
8 the problem of a dual union situation? That was really the
9 tough problem that they faced. What language is there that
10 they could adopt which would make the man join at least one
11 union but not make him join two. This was the subject of
12 considerable debate in Congress, but the overall picture was, I
13 think, clearly, and the legislative history shows, that that
14 was only ---

15 Q But your position is they didn't need any
16 language. All they needed to do was to live up to the union
17 shop agreement.

18 A Well, except ---

19 Q And be a member of the union at the contract.

20 A Well, no, because you may have a situation
21 where the trainmen and the conductors each have a contract,
22 and the trainmen do work as conductors from time to time.

23 Q I understand that.

24 A And, of course, the purpose of this language
25 of the statute was to permit the man, even though he was

1 employed as a trainman, perhaps a majority of the time, to be
2 a member of the Conductors' Union. If he chose to do so, as
3 long as he had the right ---

4 Q All right, suppose Congress could have put it
5 like your brief puts it.

6 A That is true, Your Honor. I think, though, that
7 the Rychlik opinion pointed the way clearly in that direction
8 and the decision of the Court of Appeals in Rohrer vs.
9 Black Lick made it very plain that that is exactly the way
10 it should work and it only makes labor relation sense to work
11 to have the man belong to the union that must do his bargaining
12 that is obligated under the duties of fair representation,
13 all the rest, to defend him ---

14 Q Mr. Uelmen, I think, on occasions, you have
15 observed an opinion that the Railway Labor legislation
16 is really collectively bargained between carriers and unions.
17 Was that true of these?

18 A I think that there was an agreement between
19 the five train brotherhoods on this language. I understand
20 the Engineers had a different version of it from time to time
21 but ---

22 Q Well, does that have any bearing on whether
23 we should read this language literally or ---

24 A There is no place in this record or anywhere
25 else that I can find that someone said: "Well, I was there

1 at the time that language was drafted and we intended that the
2 man to be able to be a member of any one of five unions.

3 Q Well, this is considerably different language
4 than the Trainmen recommended, though, isn't it?

5 A The language is different, Your Honor, that
6 is true. But the problem that the language was intended to
7 solve was the same.

8 There were alternate proposals made as to how they
9 should meet this problem, and I don't think it was fair to say,
10 as the Court of Appeals said, that the Trainmen's proposal
11 was rejected. It is too strong to say that, because there is
12 a group of men contesting men trying to solve one problem.

13 No one, as Justice Harlan pointed out, no one had
14 this problem specifically in mind. They had the problem of
15 trying to avoid the situation where a man could be forced,
16 and be compelled, to join two unions, and that problem is not
17 present unless both unions have a contract.

18 Unless the alternate union has a contract, the man
19 cannot be compelled. The alternate union is a stranger to the
20 situation.

21 Q Is there another case in which the issue is
22 whether the employee may get a minority union -- get some union
23 other than the collective bargaining representatives -- to
24 process his grievance for him or to represent him at a
25 grievance?

1 A Yes, I think that your Honor said that
2 Certiorari was denied yesterday in the McElroy case. That
3 was a case, as I understand it, where the Engineer's Union
4 holds a collective bargaining agreement with the railroad
5 and the Firemen's Union, which does not hold a contract,
6 did seek to and did, in fact, represent a particular man
7 under the Engineer's contract.

8 Q These cases aren't related?

9 A Well, I think that the labor relations
10 principle is fairly similar, although not identical, because,
11 although I can't argue with what you did yesterday, I do
12 say that it doesn't again make labor relations sense to say to
13 a Union, like the Engineers who had the contract with the
14 carrier, we are going to let some other union interpret that
15 contract, enforce that contract, settle grievances under that
16 contract, and not even have the Engineers present or on the
17 scene when that is done.

18 Where this case is related, in a sense, that what
19 we are saying to a man is that, you have a union that repre-
20 sents you and you can make him represent you, you can force
21 him to represent you, you can take him to court to make sure
22 he doesn't represent you unfairly, but we are going to let
23 him pay his dues to somebody else.

24 That is the evil that we are getting at in this
25 argument.

1 MR. CHIEF JUSTICE WARREN: Mr. Leibik.

2 ORAL ARGUMENT OF LEE LEIBIK, FSQ.

3 ON BEHALF OF RESPONDENTS

4 MR. LEIBIK: Mr. Chief Justice, may it please the
5 Court:

6 As in the previous companion case, we have no client
7 to have any continuing interest in this litigation.

8 Q You have no what?

9 A We have no clients who have any continuing
10 interest in this litigation.

11 Q I was puzzled by your statement, you have no
12 clients. You are not concerned with any damage claims.

13 Would you elaborate that a little bit?

14 A Yes, insofar as we are able to ascertain there
15 are no pending damage claims on behalf of any member. At
16 the time and prior to the effectiveness of this agreement on
17 the Milwaukee Railroad issue bulletin informing all its
18 employees that there would be no enforcement of this agreement
19 pending the outcome of this litigation.

20 No employee on Milwaukee Railroad has been discharged
21 No employee, to the best of our knowledge, has ever been cited
22 for non-compliance with the union shop provision.

23 Q Did they join the union as they were required
24 to?

25 A As I understand, some people did ---

1 Q Didn't they have a damage claim in the
2 Court of Appeals?

3 A No. There were no damages alleged on behalf
4 of any individual in our complaint in the District Court.

5 Q So they did join the union that they didn't
6 want to join?

7 A I believe that some individuals did join the
8 Brotherhood of Railroad Trainmen.

9 Q Have you never asserted any right to -- in
10 the Court of Appeals, make any claims to be remanded in the
11 District Court to determine damages for the individual having to
12 pay dues when he shouldn't have had to?

13 A We made some reference in our brief in the
14 Court of Appeals the fact that if we could possibly prove
15 up in the District Court that if anybody was damaged by
16 being compelled to join the union ---

17 Q Do you now say that whether you had any claims
18 or whether you didn't, you don't have them now?

19 A I have no knowledge of any pending claim for
20 damages growing out of compelling membership in the Brother-
21 hood of Railroad Trainmen during the course of ---

22 Q Well, you may have pending claims, but you have
23 as much claim to damages as you had when you made this kind
24 of a claim in the Court of Appeals.

25 A Well, the fact is that I ---

1 Q Do you change your position now? I mean, you
2 are saying now I abandon all claims to damages?

3 A No, I do not believe, to the best of my informa-
4 tion and belief, there are no damage claims which were incurred
5 by any employee on the Chicago, Milwaukee Railroad.

6 Q And you are saying that on behalf of your
7 clients?

8 A Yes.

9 Q And if they made a damage claim, it would
10 be fruitless? I mean there has been no damage.

11 A As far as I can ascertain, nobody has been
12 damaged. There is a machinery within the United Transportation
13 Union ---

14 Q Except that they paid dues to the union that
15 they then claimed and it may still be true that they did have
16 to join.

17 A That is speculative.

18 Q What is speculative?

19 A I am not certain as to whether they were ever
20 compelled to join the Brotherhood of Railroad Trainmen and
21 abandon their membership in the Switchmen's Union of North
22 America, particularly inasmuch as the Chicago, Milwaukee
23 Railroad did issue a bulletin to all the employees that there
24 would be no enforcement of this particular agreement pending
25 the outcome of the litigation.

1 Q The thing I don't understand -- your opponent
2 says the opposite. He says there are potential claims against
3 the Brotherhood.

4 A Some 200.

5 Q Are you in a position to represent that if this
6 case is dismissed as moot, that the Brotherhood is running
7 no risk of facing a future damage claim and relitigating this
8 whole thing?

9 A I believe it would be purely speculative on
10 my part to suggest that some individual may or may not file
11 a claim for damages based upon being compelled to join the
12 Brotherhood of Railroad Trainmen.

13 Q You represent not only individuals but you
14 represent the class

15 A That is correct.

16 Q Aren't you in a position to ascertain, and
17 shouldn't you ascertain, before the Court acts on the claim of
18 mootness -- I am talking now about the this case and these
19 events -- shouldn't the Court have those facts before it?

20 A I have made every effort to ascertain from the
21 six named individual plaintiffs whether or not they have any
22 continuing interest in this litigation ---

23 Q There are only six.

24 A There has been no effort made to ascertain the
25 desires of the entire class. If this were handled on the

1 basis of the Writ of Certiorari having been improperly granted
2 this would be remanded to the District Court for further
3 proceedings.

4 I believe that could clearly take care of any
5 conceivable claims which may be advanced by any individuals.

6 Q Well, if this Court should do that, that would
7 mean that the judge of the Court of Appeals would remain
8 standing and your opponent would have lost.

9 A Well, we are in the unfortunate position of
10 having been requested by the United Transportation Union and
11 we are representing the same union now. The unions have
12 merged.

13 Not arguing our position in this case that we
14 advanced in the District Court and in the United States
15 Court of Appeals for the 7th Circuit where we were
16 successful.

17 Q Four of these operating unions have merged,
18 or consolidated, or whatever they did?

19 A That is right.

20 Q So it is only one union?

21 A Yes.

22 Q There remains a fifth one, however ---

23 A The Brotherhood of Locomotive Engineers, which
24 is not a party to this litigation and at no time has been a
25 party to this litigation.

1 Q Right. They filed amicus briefs here in
2 support of the position, right?

3 A No.

4 The Brotherhood of Locomotive Engineers filed
5 amicus briefs in support of the position of the -- Mr. Uelmen
6 here.

7 The Brotherhood of Locomotive Firemen and Enginemen,
8 however, filed amicus briefs in support of our position prior
9 to the merger of the unions.

10 Neither the Brotherhood of Locomotive Engineers nor
11 the Brotherhood of Locomotive Firemen and Enginemen are parties
12 to the litigation in the Erie case or are parties to the
13 litigation in the Milwaukee case and they are not parties to
14 the contract.

15 Q I am wondering if it wouldn't be appropriate
16 for you to file something which happens here is that both
17 sides have come in and presented us with a new drama, a new
18 script, and this drama was to be enacted before this Court
19 on this day, the 14th of January, 1969.

20 Your adversary did file a supplemental pleading and
21 we haven't heard from you until this moment, have we?

22 A No, you have not.

23 Q I am wondering very much whether we oughtn't
24 to have one here just so we can be sure of who is on first
25 base, if anybody is, because at the moment everybody seems to be

1 in between bases.

2 A We would be very delighted ---

3 Q You say these four have merged?

4 A That is correct.

5 Q They are now one.

6 A One.

7 Q Under what name?

8 A Under the United Transportation Union. That
9 embraces the Brotherhood of Railroad Trainmen, the Order of
10 Railway Conductors and Brakemen, the Brother of Locomotive
11 Firemen and Enginemen, and the Switchmen's Union of North
12 America.

13 Q Does that one union in the contract agree to
14 assume all the obligations of each of the merging unions?

15 A That is quite correct.

16 Q Would everything go into the same treasury?

17 A Yes. There is one treasury for all four
18 unions. Now, it is a completely merged operation, and there
19 is a disputes committee set up within the United Transportation
20 Union to provide for overlapping interunion disputes.

21 Q Suppose it should be turned up later, which I
22 gather it is most likely to be, that some person has been
23 injured by this union that has been absorbed into the one
24 union -- is it possible for him to sue this big merged union,
25 now?

1 A There have been suits already instituted.

2 Mr. Uelmen referred to a suit brought in the South which has
3 been dismissed, as of this date.

4 But I suppose there will be matters litigated with
5 respect to this merger for some period of time.

6 Q What you are really saying is, that, from your
7 standpoint, at the moment, based on your present information,
8 you think the case is moot, and, therefore, it would be appropriate
9 for the Court, in your view, to not only remand the case but
10 to vacate the judgment of the law so that there are only
11 future claims -- in other words, the Brotherhood will be
12 protected in that fashion; is that your point?

13 A I believe the Brotherhood would be protected
14 in that fashion.

15 Q How could anyone be injured by it?

16 A I can't conceive of anybody having been
17 injured by the effect of what occurred as a result of the
18 agreement.

19 Q Would you submit a memo to us in response to
20 it?

21 A Certainly.

22 MR. UELMEN: One minute, Your Honor. To answer
23 your question, if the case is remanded and vacated, similar
24 to the preceding case, and if that is the end of it, of course,
25 nobody will have any problem. But, it does seem to me that

1 because the plaintiff pleads a representative suit here, a
2 class action, it does seem to me that when it goes back to
3 the District Court, that class under the Federal rules is
4 going to have to be circularized in some fashion to find out
5 if they want to have their dues refunded because they certainly
6 claimed that in the case so far and if the individuals do
7 claim that they want their dues refunded, as far as I know the
8 United Transportation Union is not going to just write them
9 out a check.

10 We are going to be back in the ---

11 Q Do you have any idea how much money there is
12 involved in this?

13 A No, I can't honestly say that, Your Honor. I
14 think that the sum is fairly small. I would doubt that it
15 would be more than a couple of thousand dollars.

16 Q Whatever the legal situation is, given the
17 merger, maybe you would find that better to refund all that
18 money as a practical matter than to go through an expensive
19 litigation, to litigate an abstract question of this kind, as
20 it is now.

21 A I think that is a possibility. But also, on
22 the other hand, I think the answer of the organization would
23 be that they have spent that money right up to the Supreme
24 Court now.

25 Q Well, it is very disappointing -- any litigant

1 who comes up here and then finds himself out of a case. It
2 is very disappointing.

3 A Well, if all of the claims would be dropped,
4 I think that if counsel for the respondents could say that
5 he is authorized to drop all claims, that would be the same
6 situation as the previous case.

7 Q But I am not sure that the class section --
8 the District Court would have to give notice in the event
9 that the judgment were vacated on the grounds that there is
10 no case of controversy as it presently stands.

11 That would be quite different from the situation
12 where the District Court dismisses the complaint or proves
13 a settlement or something like that. I suggest to you that
14 there is at least that possibility.

15 A It would also be possible, if you did that, to
16 cite the Rychlik v. Pennsylvania Railroad.

17 Q Mr. Uelmen, did I correctly understand your
18 adversary suggesting that perhaps none of these dues were
19 collected from anyone in that class of 200 or 300.

20 A No, the dues were definitely collected. We
21 printed it in our appendix -- just one letter that we received
22 from a man who made it very plain that he was unhappy about
23 joining and there was just literally dozens and dozens of
24 protests made when the man came in and paid under protest.

25 Q Perhaps I misunderstood. When these unions

1 merged was there any consideration given to either one of
2 these cases? Couldn't they have all been worked out then?
3 Why do you leave it until this last moment and then drop it
4 into our laps? Why?

5 A Well, the merger was effective January 1 of this
6 year, Your Honor.

7 Q How long has it been -- I think I would
8 appreciate that unions don't merge overnight. This has been
9 going on for quite awhile.

10 A As a matter of fact, merger of these unions
11 has been talked about for years and years, but specifically ---

12 Q Weren't these two cases discussed?

13 A They were not settled in the merger at all.

14 Q Weren't they discussed?

15 A Your Honor, I really don't know because ---

16 Q Well, couldn't they have been settled?

17 A I suppose it is possible for them to have been
18 settled, yes.

19 Q And then we wouldn't have any trouble. Now,
20 instead of doing that on your own, you are asking us to find
21 some way to get the case back to the other court so this
22 can be litigated all over again.

23 A No, Your Honor, we are asking you to reverse
24 the case based upon the precedence here of Rychlik v.
25 Pennsylvania Railroad and ---

1 Q But we don't have anybody versus anybody here.
2 We have union versus the same union.

3 A No, Your Honor, there are individual plaintiffs
4 here, named individually and purporting to represent a class.
5 That is the only difference between our case and ---

6 Q Well, who represents them?

7 A Well, Mr. Leibik represents ---

8 Q He just told me he represents your union.

9 A Well, Your Honor, I think you put your
10 finger right on the problem because in that case those
11 individuals are unrepresented at this point.

12 Q What bothers me about this is that you filed
13 this document as of January 13.

14 A That is right, Your Honor.

15 Q I don't know when your merger was agreed on.
16 It became effective January 1.

17 A That is right.

18 Q January 13 was yesterday and now you and your
19 adversary are in here with very totally changed, basically
20 changed, set of circumstances and facts.

21 As far as I am concerned, I will await whatever
22 submission you make.

23 MR. LEIBIK: I refer to the fact that no employee
24 of the Milwaukee Railroad was compelled to drop his membership
25 in the Switchmen's Union and join the Brotherhood of Railroad

1 Trainmen.

2 Q I must have misunderstood you. In other words,
3 although not compelled, some may have paid.

4 A That is correct.

5 Q Well, they were compelled to join, they weren't
6 compelled to drop their membership.

7 A They were neither compelled to join nor drop
8 their membership on the basis of the bulletin issued by the
9 Milwaukee Railroad while this litigation was pending.

10 We know of no employee who was cited for noncompliance
11 with the union shop agreement.

12 Q Do you know of any who, in fact, paid as Mr.
13 Uelmen suggested?

14 A I know of none, personally, and I am speaking
15 only to the named plaintiffs.

16 Q Speaking in somewhat of a switchman's language,
17 as I understand it, what you are putting up to us is that the
18 snakes and the trainmen's union have become one?

19 A As they now are, yes.

20 Q And the controversy is over.

21 A That is quite correct.

22 Q Who represents the individuals, the 200 or 300
23 member class?

24 A We represent these individuals but we do not
25 believe and we have not been informed by any member of the

1 class that there is any continuing interest in this litigation
2 on behalf of those individuals.

3 MR. CHIEF JUSTICE WARREN: Very well.

4 (Whereupon, at 1:45 p.m. the argument in the
5 above-entitled matter was concluded.)
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