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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-792 & 85-793

TITLE INTERSTATE COMMERCE COMMISSION, Petitioner V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.; and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, Petitioner V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.

PLACE Washington, D. C.

DATE November 10, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

INTERSTATE COMMERCE COMMISSION,
Petitioner
v. : No. 85-792
BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.;
and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
Petitioner
v. : No. 85-793
BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.

Washington, D.C.

Monday, November 10, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:43 p.m.

APPEARANCES:

HENRI F. RUSH, ESQ., Deputy General Counsel, Interstate Commerce Commission, Washington, D.C.; on behalf of the Petitioner ICC.

JOSEPH L. MANSON, III, ESQ., Washington, D.C.; on

behalf of the Petitioner MO-KS-TX Railroad.

HAROLD A. ROSS, ESQ., Cleveland, Ohio; on behalf of the Respondnet Brotherhood/Locomotive Engineers.

JOHN O'B. CLARKE, JR., ESQ., Washington, D.C.; on behalf of the Respondent United Transportation Union.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments next in two consolidated cases, Interstate Commerce Commission against Brotherhood of Locomotive Engineers and Missouri-Kansas-Texas Railroad Company against Brotherhood of Locomotive Engineers.

You may proceed whenever you're ready, Mr. Rush.

ORAL ARGUMENT OF HENRI F. RUSH, ESQ.,

ON BEHALF OF PETITIONER ICC

MR. RUSH: Mr. Chief Justice, and may it please the Court:

The Interstate Commerce Commission is the Federal agency charged with implementing what this Court has recognized on a number of occasions to be a national policy favoring consolidation of the railroads in the interests of improving the economy and efficiency of their operation.

The Commission is also charged with implementing the Congressional structure established to promote the privately initiated transactions being presented in a single forum for a fair but expeditious proceeding.

This case involves the consequences of the Interstate Commerce Commission's approval of a railroad

consolidation transaction. The statutory provision primarily implicated is 49 U.S.C. 11341(a), which provides in relevant part that a carrier participating in an approved transaction, quote, is exempt from the antitrust laws and from all other laws, as necessary, to let that person carry out the transaction, end of quote.

The Commission, with the approvals of the courts, over a long period of time, has interpreted that section to be self-executing, which is to say that individuals desiring to consummate a transaction, negotiate their deal, and bring it to the Commission for a proceeding in which all persons with the many and varied conflicting interests that arise in these transactions are permitted to make their case before the Commission.

The Commission, upon the record made at that time, determines whether the transaction is, or can be made to be, consistent with the public interest, and approves, disapproves, or conditionally approves that transaction.

QUESTION: Mr. Rush, did the respondents in this case raise their argument about their rights under the collective bargaining agreement before the ICC at its hearings on the merger?

MR. RUSH: They did not, Justice O'Connor.

QUESTION: Well, how is it that they can raise them later? Raise that argument later?

MR. RUSH: The guise, if you'll --

QUESTION: Why aren't they precluded from doing that?

MR. RUSH: Well, the court below held that they the jurisdiction to determine whether the Commission had improperly failed to clarify at the request of the petitioners.

We did not argue that they did not have what I would call the limited jurisdiction to determine whether that denial was arbitrary and capricious.

The majority of the court then went on --

QUESTION: You took the position that it was perfectly all right for them to come in later and raise the issue; is that it?

MR. RUSH: No, that's not our position at all. But in terms of the question of how the court was able to address it, that's the way the court was able to address it.

Our position is that all of the arguments ought to be raised at the time of initial consideration of the transaction.

QUESTION: Exactly. So it may turn on timeliness, when they can raise it. If they didn't

raise it then, why can they can? It just -- I don't understand.

MR. RUSH: Well, I think that an argument can be made for waiver of rights not raised at the proper time before the agency's procedure.

And that was one of the arguments, of course, that we raised before the court below.

At the same time --

QUESTION: It isn't just that. It isn't just not raising before the agency. It's not filing an appeal within 60 days under the Hobbes Act, as they're supposed to.

MR. RUSH: That's correct, Judge Scalia. But at the same time --

QUESTION: So how do you get around that here? And that's jurisdictional, so you really shouldn't be talking to the merits if we don't have jurisdiction.

MR. RUSH: Well, our view of jurisdiction is that there was at least jurisdiction in the lower court to determine whether the Commission abused its discretion by refusing the clarify its earlier ruling.

QUESTION: Okay, now how is that? The Commission denied the petition to clarify, right?

MR. RUSH: That's correct, Judge Scalia.

QUESTION: Then there was filed a petition to reconsider the denial of the petition to clarify, right?

MR. RUSH: Right, correct.

QUESTION: And the appeal that we have before us is from that denial of the petition to reconsider, isn't it?

MR. RUSH: Both the petition for clarification and the petition to reconsider.

QUESTION: Was an appeal filed from the petition to clarify?

MR. RUSH: It was embraced within the denial of the petition to reconsider, it seems to me, because clearly, upon denying the petition to reconsider, the initial petition would be in issue.

QUESTION: It's not what the statute reads like. 49 U.S.C 10327(g) says that an interested party may petition to reopen and reconsider an action of the Commission under regulations of the Commission. But goes on to say that, notwithstanding this subtitle, an action of the Commission under this section is final; that is, the denial of the petition to clarify, is final on the date on which it is served. And a civil action to enforce, enjoin, suspend or set aside the action may be filed after that date.

So the Hobbes Act 60 days would have begun

running when the petition to clarify was denied, wouldn't it?

MR. RUSH: That's correct, except viewed as an administrative appeal, it has also been held that a properly filed administrative appeal -- which is what we deem the two petitions to reconsider the denial of clarification to be -- tolls that period and commences it running at the time of the denial of the administrative appeal.

QUESTION: A petition to reconsider stays the -- tolls the running of the Hobbes Act?

MR. RUSH: It commences the time running for seeking judicial review, much as denial of a petition for rehearing in a lower court starts the time for seeking certain --

QUESTION: Judicial review of what? Of the original order?

MR. RUSH: No, no, no. Of the denial of clarification. We've contended all along that all that was open to the court was denial of clarification.

The question of whether --

QUESTION: Why was that even open? Why was -- let's do it more simply. Let's assume you have an ordinary ICC order, in a rate-making or any other proceeding. Sixty days have gone by.

Within those 60 days, a petition for reconsideration is filed. Then the 60-day time limit expires. Then the petition for reconsideration is decided.

No appeal has been filed in the interim. May an appeal now be taken from the original order?

MR. RUSH: It may, if I understood your question, that a properly filed petition for reconsideration was filed with the agency.

QUESTION: Within the 60 days?

MR. RUSH: Within the time limit.

QUESTION: And then the 60 days expire. That's not how the Hobbes Act reads.

MR. RUSH: Well, that -- there are a number of cases that are not included in our brief, I regret to say, that address that issue.

QUESTION: It's not what Eagle-Picher says. It's not what any D.C. Circuit case says that I'm aware of. In fact, the D.C. Circuit has advised the ICC practitioners explicitly that they should file the motion for reconsideration with the agency, and simultaneously file an appeal to protect their rights, because the motion for reconsideration does not preserve the 60-day period.

MR. RUSH: Well, there are other cases that do

address that, and have in fact held that the time commences from the --

QUESTION: Well, I'd like to know what they were. Could you --

MR. RUSH: I will supply them to the Court. I'm sorry I don't have them. And at the Commission we have acquiesced in that interpretation for the last, about, eight year.

Now, I understand the question, the ripeness issue, as being another issue that you're very concerned with, and so are we. And Eagle-Picher, we think, will improve things greatly in review of our decisions, particularly in cases like this, where the issue certainly ought to have been foreseen, because the parties, the MKT here, and the DRGW, explicitly requested the right to crew with their own crews under the trackage rights that were being granted.

QUESTION: Let me make sure I understand your argument now. We had here the denial of the petition to clarify, all right.

MR. RUSH: That's correct.

QUESTION: And your argument is that the petition to reconsider the denial, what, tolls the 60-day period as long as that petition is pending, the 60-day period is tolled?

MR. RUSH: Made the 60-day period, for appeal of that denial of clarification, run from the date the administrative appeal is denied.

QUESTION: But what do you do with the statute that says, notwithstanding the ability to file a motion for reconsideration, notwithstanding it, an action of the Commission under this section is final on the date in which it was served, and a civil action to enforce or suspend it may be filed after that date?

MR. RUSH: Well, I think we look at the "may" in that, and also consider the issue of exhaustion of administrative remedies, which is implicated in a D.C. Circuit case shortly after that very provision was passed.

QUESTION: It may be filed. It must be filed for purposes of statutory limitation purposes.

MR. RUSH: Well, we have not so interpreted it. We've interpreted it to mean that you cannot be required to seek an administrative appeal. You can go directly to court.

But should you choose to file an administrative appeal, that your time to go to court runs from 60 days after that appeal is dealt with.

QUESTION: So long as the appeal is filed within the 60 days?

MR. RUSH: That's correct.

QUESTION: That does seem -- that does seem to -- that does seem to disregard the 60-day reference in the statute.

QUESTION: Well, isn't this a matter for your opposition as well as for you?

MR. RUSH: Yes, I'm sure it is, Justice Black.

QUESTION: (Inaudible) real substance to it, you'll win.

MR. RUSH: But on a very narrow ground. We initially moved to dismiss, and the court then took the issue, in part I presume because of the suggestion that we might be required as a matter of law to have addressed the question of the relation between the Interstate Commerce Act and the Railway Labor Act.

QUESTION: And you want a ruling on the merits?

MR. RUSH: Yes, we very much do, having exerted this much time and effort in the case to date; and I believe that the respondents want the same thing.

We want vastly different rulings. But nonetheless, a ruling seems very much necessary to guide the parties for the future in these matters. And there are innumerable matters pending, as we've noted in our petition for the writ.

QUESTION: One more question. We've just been

talking about filing the reconsideration for the petition to clarify.

Okay, the petition to clarify itself was filed more than 60 days after the original decision here was rendered, right?

MR. RUSH: That's correct.

QUESTION: So your theory would not even cover that?

MR. RUSH: No, I --

QUESTION: How do you enable us to get into the merits of the original order on the basis of the petition to clarify?

MR. RUSH: I think that very much as with a rule, and there are a number of cases from the D.C. Circuit on that, that rather than go to court with an untimely challenge, you can ask the agency to amend, reconsider, in this case clarify --

QUESTION: Well, that's all you need to get around the 60 days of the Hobbes Act? Just file a petition to clarify, and then the 60 days can be extended indefinitely?

MR. RUSH: Well, we believe, as we've indicated in our brief, that an Eagle-Picher analysis can and should be applied to whether that request for clarification is proper.

QUESTION: Well, how does it work out here? Why couldn't all of the points raised in that petition for clarification, which is really more like a petition for reconsideration, it seems to me, why couldn't all of them have been made at the time of the original proceeding, or urged before a court within 60 days after the original proceeding?

MR. RUSH: They can, and unquestionably, should have been. The issue is --

QUESTION: Well, that's the end of it then, as far as Eagle-Picher is concerned, isn't it?

MR. RUSH: Well, of course, Eagle-Picher has been -- not been applied retroactively, if you will, when this case was in the pipeline.

QUESTION: Well, nor is Eagle-Picher -- nor is Eagle-Picher a decision of this Court.

MR. RUSH: That's very correct.

QUESTION: Mr. Rush, if the respondents had raised the issue of their collective bargaining rights during the original ICC hearings on the merger, would the agency have considered them, the ICC?

MR. RUSH: I have no doubt they would have, Justice O'Connor. I mean, that's the point of having all of the matters in tension presented at one time.

QUESTION: Well, the respondents seem to be

suggesting that had they done so they wouldn't have been heard. And I wondered what your position was.

MR. RUSH: I think they have absolutely no basis for that assertion.

QUESTION: Are there any limits as to what the ICC can exempt under this statute? Or does the exempted action have to be germane to the transaction?

MR. RUSH: Well, the ICC does not exempt. That is a critical aspect of the case. The ICC approves, and the statute exempts.

But yes, certainly, the exemption effected by the statute could raise an issue of germaneness to the transaction. And in that context, perhaps Palestine revisited would come out differently if, in that case, that had been a central aspect of the merger as crewing was here.

Instead, in that case, the situation was that they said, since you're approving the merger, by the way can you get us out of this agreement that we're not very fond of. And we said, sure, ignore it.

But had, for example, the consolidation of yards, of which Palestine was one, been a public benefit associated with the merger, I think you'd get a very different analysis. And I think that's what, in essence, is involved here.

QUESTION: Why don't you spend a couple of minutes on the merits before your --

MR. RUSH: Well, I had hoped to reserve some time. But the issue on the merits seems to be very simply the question of the Commission's approval of the transaction effecting a statutory exemption from all other laws and impediments to the carrying out of the transaction.

And the problems presented are classically illustrated by the case here, where a condition which the Commission imposed upon its approval of one of the most significant rail mergers ever approved by it has been thrown into doubt and left open with a cloud hanging over it for three, close to four, years.

The Commission approved it in 1982, and that approval was affirmed by the D.C. Circuit in 1983.

Hence we believe that unless the view expressed by the Commission is carried out here, the --

QUESTION: Mr. Rush, can I ask just one question. In the Commission's view, when did the exemption from the Railway Labor Act take place? On October 20, when the original transaction was approved, or later on, when all the petitions were denied?

MR. RUSH: I would think when the Commission's approval had withstood judicial review, sir.

QUESTION: You don't contend that the exemption became effective automatically on October 20, 1982?

MR. RUSH: Well, I think it does, subject to being overturned, if some aspect of the decision is overturned on reviewed.

So yes, I would think that the Commission's approval causes the statute to exempt the transaction. But that if some aspect of that approval is subsequently overturned or modified, then the extent of the --

QUESTION: Yes, but nothing has been overturned since then.

MR. RUSH: No, it has not. So that it --

QUESTION: Well, that's not quite right, I guess, because -- well, okay.

MR. RUSH: In the context of this case, my answer would be that it took place in 1982 when the Commission approved the transaction.

And if I may, I'd like to reserve the balance of my time.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Rush.

We'll hear now from you, Mr. Manson.

ORAL ARGUMENT OF JOSEPH L. MANSON, III, ESQ.,
ON BEHALF OF PETITIONER MO-KS-TX RAILROAD

MR. MANSON: Mr. Chief Justice, and may it

please the Court:

Mr. Rush has just told you that the ICC wants a ruling on the merits. Let me assure you that the Missouri-Kansas-Texas would be delighted with a ruling on jurisdictional grounds, if the ruling of this Court is that the Court of Appeals did not have jurisdiction to hear the appeal of the unions below.

That's precisely what we argued to the Court of Appeals. We moved to dismiss the action.

The decision of the ICC approving the merger was dated October the 20th, 1982. According to Judge MacKinnon, he found that the time for an appeal under the Hobbes Act expired on December the 20th, 1982.

Yet a petition for clarification, filed by the unions, the BLE in this case, was not filed with the Commission until April the 4th, 1983.

The Administrative Orders Review Act, or the Hobbes Act, provides that any party aggrieved by a final order of an agency may within 60 days file a petition for review.

In our judgment, the Court of Appeals below failed to follow National Bank of Davis and the Eagle-Picher decisions.

QUESTION: (Inaudible) any of the questions in the petitions reserved?

MR. MANSON: Well, it's not raised in our cert petition, but the government raised it in there, as a preliminary matter in its belief. And we would subscribe to the government's view on that point.

Turning to the merits, the Commission conditioned its approval of the Union Pacific-Missouri Pacific-Western Pacific merger upon a grant of a competitive trackage rights application, filed by the Missouri-Kansas-Texas Railroad.

In that application, Katy proposed to use its own crews, and to operate over the lines of its principal competitor, the Missouri Pacific, between Kansas City and Omaha.

The Brotherhood of Locomotive Engineers and the United Transportation Union represent employees on both the Katy and the Missouri Pacific.

Despite the fact that both of those unions entered into implementing agreements with Katy, on behalf of Katy employees, that provided that the Katy employees would provide the operations in this trackage rights application, those unions argue in this case that Missouri Pacific employees have rights under the Railway Labor Act to bargain with the Missouri Pacific concerning the crewing of Katy's trackage rights operation.

If the unions are correct that this negotiation is governed by the procedures of the Railway Labor Act, then the unions would have the right to strike over this issue.

We agree with the government's analysis of the fundamental errors in the Court of Appeals interpretation of the consolidation provisions of the Interstate Commerce Act.

We would emphasize that this statutory scheme was enacted by Congress to encourage railroad consolidations; and according to the legislative history, to restore to the carriers all initiative in formulating consolidation proposals.

Indeed, this Court noted in United States versus Interstate Commerce Commission, that although the Commission in fulfilling its statutory responsibilities is to carefully review all of the terms of a merger proposal, and determine whether they are just and reasonable, it is not for the agency, much less the courts, to dictate the terms of the merger agreement once this standard has been met.

Unions or other parties contesting trackage rights applications have never been given the rights to change the terms of the carriers' proposals, as the unions in this case seek to do. Rather, those parties

are given an opportunity to demonstrate to the Commission that the proposed terms and conditions are inconsistent with the public interest.

The Court of Appeals' decision is inconsistent with the decisions of this Court, particularly Schwabacher v. United States and Texas v. United States.

In Schwabacher, the Court held that once the Commission approved a railroad merger under Section 5 of the Interstate Commerce Act, the predecessor of Sections 1130 -- 343 and 11343, the approved transaction goes into effect without the need for invoking any approach under State authority.

This answers the question that you raised, Justice Stevens, about the date of the effect of the Commission's exemption. That exemption was -- went into effect as soon as the Commission approved the decision. And in this instance, after the Court of Appeals ruled on the appeal from that decision.

If the Court of Appeals' necessity standard in this case --

QUESTION: Would that also -- would that also have been true if the terms of the trackage lease agreements had not said anything about who would do the crewing?

MR. MANSON: Yes, it would, Your Honor. The

focus, in my judgment, and in our judgment, has to be on the impact of the statute, and what would happen under the statute if the carriers were not exempted from it.

Even if the crew provisions were left blank, giving the unions the right to negotiate under the Railway Labor Act, the identity of the crews would also give them a concomitant right to strike.

And if they're given the right to strike, then the trackage rights operation can be frustrated. And that's what the Commission recognized in its decisions in this case. And that's what -- one of the main reasons Congress intended for these exemptions to apply.

But under the Court of --

QUESTION: But Mr. Manson, what did the statement in the ICC labor protective conditions, to the effect that collective bargaining rights shall be preserved, mean?

MR. MANSON: That provisions means, Justice O'Connor, that the collective bargaining agreements, the rights of the employees, are preserved, but in the context of the Commission's approval.

You'll see that there's another provision of the labor protective conditions that provides that the carriers have a right to arbitrate over the implementation of their agreements, in Article I Section

4.

And clearly this right to arbitrate is not found in the Railway Labor Act. This right to arbitrate disputes in implementations necessarily involves the overriding of collective bargaining agreements, especially in seniority matters.

And so we believe that that Article I Section 2 on the preservation of collective bargaining rights must be read in the context of the other labor protective conditions that are imposed; and more importantly in this case, in the context of the Commission's approval of the transaction at issue.

QUESTION: I'm not sure what you're saying. You meam it preserves collective bargaining rights except with respect to those matters that are specifically disposed of by the agreements?

MR. MANSON: Well, except, I would say principally -- the principal exception would be with respect to the implementation of a transaction.

If, for example, a collective bargaining agreement provide that there could be no layoffs, and the Commission found that in order to satisfy the public interest, there had to be a consolidation of facilities as proposed by the carriers, then that provision of the collective bargaining agreement must give way to the

Commission's approval.

And I think it's important to note that the employees are not left out in the cold. They have a whole series of benefits, of compensation benefits, that the statute provides, including the receipt of full pay for up to six years in the event that they are dismissed as a result of the transaction.

QUESTION: Well, why wasn't the Commission's order qualified then? You say that the statement doesn't mean literally what it says, that not all collective bargaining rights are preserved. So why wasn't it qualified?

MR. MANSON: Well, because I think that it's clear from the -- from reading Article I Section 4 in conjunction with Article I Section 2, and it's certainly clear from the decisions of the Interstate Commerce Commission, from the legislative history and decisions of the courts, that provisions of collective bargaining agreements must give way to implementation of Commission-approved transactions.

If the Court of Appeals' necessity standard that it adopted were applied to the facts of Schwabacher, the carriers would not have been able to be exempted from the Michigan State law at issue there, since the State law did not preclude the merger from

being implemented.

Likewise, applying the majority's rationale to the facts of Texas v. the United States would lead to the conclusion that the carriers could not be exempted from the State statute at issue in that case, for the same reason.

But the most glaring error in the majority's opinion is its failure to assess whether the Railway Labor Act procedures sought to be enforced by the unions could frustrate the implementation of Katy's trackage rights operation.

Putting aside for the moment the fact that the unions never demonstrated that they had any Railway Labor Act rights that were being violated by the Katy's crewing decision, the court below failed completely to focus on the fact that the application of Railway Labor Act procedures, and especially the fact that the unions may strike under the statute, could frustrate the implementation of every rail transaction approved by the Commission.

The most pertinent decision to this case on that score is the Eighth Circuit decision in Missouri Pacific Railroad v. United Transportation Union. In enjoining the UTU from striking the Missouri Pacific in an effort to shut down Katy's trackage rights operations

at issue in this case, in that decision, the Eighth Circuit found it inconceivable that Congress could have intended that a labor union would be able to participate in an ICC proceeding, as UTU did, and then, if dissatisfied with the results or a part thereof, strike a carrier to obtain the advantage it desired.

That is the same conclusion reached by the Commission in its October, 1983 decision in this case, when it specifically found that its approval of the transactions under Sections 11343 and 11344 necessarily carries with it an exemption from the Railway Labor Act.

The Eighth Circuit decision again in Missouri Pacific v. UTU refutes any argument that a Railway Labor Act exemption is not necessary in this case.

In its opinion enjoining the UTU's threatened strike, the District Court of Missouri found that the threatened strike of UTU would cause irreparable injury to Missouri Pacific and to thousands of shippers that it serves.

The Eighth Circuit reasoned that the balance and efficiency which Congress sought to achieve through the Interstate Commerce Act provisions relating to rail consolidations would be essentially and materially frustrated if employees were free to strike.

For these reasons, we suggest that the Court

should reverse judgment of the Court of Appeals.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Manson.

We'll hear next from you, Mr. Ross.

ORAL ARGUMENT OF HAROLD A. ROSS, ESQ.,

ON BEHALF OF RESPONDENT BROTHERHOOD OF LOCOMOTIVE ENGINEERS

MR. ROSS: Mr. Chief Justice, and may it please the Court:

As petitioners state, this case arises out of a petition to review an order of the Interstate Commerce Commission which purported to automatically exempt the participating railroads from the provisions or requirements of the Railway Labor Act in their labor contracts.

The case, however, involves much more than a question of administrative law. And as -- by the questions of the Court today, apparently there is a timeliness question that also arises.

However, that issue was presented to the court below. It was only an oblique reference in the petition for writ of certiorari that was filed in the case by the government in regard to the timeliness issue. And that only, as I understand it, to the scope of the Commission's order or what had been presented before the

court in this particular case.

QUESTION: It's jurisdictional though, isn't it? Isn't the Hobbes Act juridictional?

MR. ROSS: Yes, Your Honor. However --

QUESTION: Well, if that's the case, the parties simply by agreeing not to raise it can't confer jurisdiction on us, can they?

MR. ROSS: However, there are certain exceptions that even the Court of Appeals below recognized are applicable.

For example, in Eagle-Picher -- and this was also used in the opinion of the majority in the case -- that the instant case clearly presents a situation which the petitioners claim ripened after the expiration of the statutory period due to changed circumstances resulting from a misleading statement of position by the ICC.

QUESTION: Well, Mr. Ross, Eagle-Picher isn't a decision of this Court.

MR. ROSS: I understand, Your Honor. But I'm just referring to the fact that what really is present before the Court today basically gets to the merit of the case. Whether the Court should enter into the merits of the case is determinative about what the Commission's past practice and its well-established

precedent was in this case.

QUESTION: But if all that was properly brought to the Court of Appeals was a refusal of the Commission to, in effect, rehear a petition to clarify, I would think the standard of review would be dramatically different than if you were really bringing the merits before it properly?

MR. ROSS: Well, Your Honor, the thing was is this, that it's come up in previous decisions of the Court: The organizations, the employee representatives, had no idea that the Commission's order that was issued in October of 1982 had the function that is now being claimed by the Commission that it had; that in other words that the collective bargaining agreements had been effectively abrogated by the Commission's decision.

All past precedent that the Commission had ever issued before indicated that it had no jurisdiction over collective bargaining matters; that it had no authority in labor relation matters.

Rather the Commission even as -- in 1977, it says that we have no jurisdiction, either to impose crew assignment provisions or to remove crew assignment provisions.

QUESTION: But the merger agreements it approved specifically said that the railroads would or

might use their own crews. Those were the agreements that were approved.

MR. ROSS: But, Your Honor, that had never represented what actually was going to take place. In every previous case that had come before the Commission, the Commission merely put -- approved the financial transaction between the railroads.

It never indicated that by doing that that it was making employees rearrangements. And it always said that it wasn't tampering at all with the collective bargaining agreements, or making any accommodation insofar as to the employee work rights.

QUESTION: Had all these other ones contained specific provisions like that where the railroads said that they would use their own crews?

MR. ROSS: Yes, Your Honor. For example, I was going to get to that, this Court, in BLEA v. ICC in 1964, remanded the Southern Central of Georgia case back to the Commission because the Commission purportedly had not inserted Sections 4, 5 and 9 of the Washington agreement in the employee protection.

And when it went back to the Commnission as a result of that, the Commission was confronted with the very same case that is here before the Court today. The Southern Railway in that case, on remand to the

Commission, said, since the rearrangements were contained in our initial application, that means that the Commission's approval of the transaction permitted us to discharge the Central employees and give all of the jobs to the Southern Railway employees.

Further, the Commission said at that time that as a result of that the carrier was not required to give notice as would normally be required -- they would normally be required to do under Section 4 of the Washington job -- or the Commission-imposed conditions, which at that time were the New Orleans conditions.

The Commission said, no, you have to file notice. You have to give notice to the employee organizations.

And the reason for that is, is that when we imposed the condition, we did not make any rearrangements of work forces. We didn't do anything except place into effect the monetary conditions for the protection of employees who might be displaced or dismissed; and also provided a means whereby there would be a selection and allocation of work forces. Which meant, in effect, that the parties would sit down and negotiate, after a certain period of time when the notice had been served, and they would either determine the equities, or if they were unable to do that, that

that would be submitted to arbitration.

And that's the glue --

QUESTION: That's the case in which the consolidation agreement said specifically that --

MR. ROSS: The Southern Railway employees would have all of the jobs, or most of the jobs. It specifically stated that.

QUESTION: What is the citation -- is that the only example that you have of how the Commission prevoiusly has written opinions like this that didn't mean what they appear to me to mean on their face?

MR. ROSS: That citation is at 331 ICC 151, and the discussion, I believe, was at pages 165 through 173. And I believe that at page 165, the Commission mentioned this Court's decision in McLean v. U.S., an antitrust case, in which the Commission read that -- and I believe that the Court's decision specifically say that there had to be an accommodation between Interstate Commerce Act and the Antitrust Act, that it didn't -- Section 11341's predecessor did not automatically exempt the railroad from the antitrust laws; that there had to be something more than that.

The Commission also cited the decision of the Fifth Circuit in the Texas and New Orleans case, which they -- the Commission said required it to achieve some

type of accommodation with Section 5 paren 11 of the Interstate Commerce Act which was the predecessor of the Section 11341, did not automatically exempt the carrier from the Railway Labor Act requirements or the contracts that were in effect at that time.

As we see it, Your Honor, actually the Interstate Commerce Act and the Railway Labor Act are consistent with each other; that the bond that holds the two acts together is the employee protection; that the only thing in this case that had to be done under those employee protections would be the selection and allocation of work forces.

And as I indicated, that strictly is a determination as to the equity between the various employee groups that were involved.

Insofar as what would occur after that, the rates of pay, where the home terminal and away-from-home terminal would be, suitable lodging at the away-from-home terminal, or those kinds of matters, those would be dictated by the existing collective bargaining agreements.

And as we've indicated, consistently throughout 60 years of the ICC administering the Interstate Commerce Act and the Railway Labor Act, the two acts have existed together.

Congress during that entire period has regulated labor relations. As a matter of fact, in 1934, 14 years after the predecessor to 11341 was enacted, Congress enacted the Railway Labor Act.

And as this Court has found on numerous occasions, that's a very intricate statute that sets up the procedures for handling labor relations in the railroad industry.

And even though that -- and Congress went further, and this Court has gone farther, that the Section 2 rights under the Railway Labor Act are to be enforced by the Federal courts; that major disputes are to be governed by the mediatory services of the National Mediation Board; representation disputes --

QUESTION: Mr. Ross, may I just ask you to clarify for a minute why you didn't ask in the original proceedings that the ICC specifically eliminate the part of the application that had to do with the crews on trackage rights?

MR. ROSS: Justice O'Connor, it was our understanding at the time that the case was heard before the Commission that the Commission would impose certain employee protections.

QUESTION: That the Commission would?

MR. ROSS: Yes, impose certain employee

protections under Section 11347 of the Interstate Commerce Act; and that those employee protections would be the methods by which the rearrangements of forces and other matters that are now before the Court today would be handled.

When I filed the petition for clarification with the Interstate Commerce Commission, I thought that the response of the Commission, as it had been so many times before, in cases that are cited in our brief, would be, use your arbitration procedures under the employee protective conditions or the Railway Labor Act.

QUESTION: If you thought what the Commission had actually done didn't protect you, I would have thought you would have appealed right away?

MR. ROSS: No, Your Honor, we did. We thought that we were fully protected. We thought that the fact that there may have been suggestions in the applications that had been filed by the trackage right --

QUESTION: Well, it wasn't a suggestion. It just stated flat out that was what they were going to do. You knew what they were going to do from reading the application.

MR. ROSS: But in previous cases, Justice O'Connor, where this had taken place, the employee protective conditions then came into being; the railroad

served its notice as to what it intended to do, which contained the so-called rearrangements or the employee schedules that were in its application before the Commission; the parties sat down and negotiated, and if they couldn't agree on what the carrier had suggested to the Commission, then that matter, at least in that narrow area as to the equities, would be resolved by the arbitrator.

And there are several arbitration awards which were attached to the brief of the United Transportation Union in this case which shows exactly what I'm saying, that those matters as to what collective bargaining agreements would apply, or what the equities would be, had been handled by arbitrators in the past, and therefore, the employees in this case had no idea that the MKT employees, or the Denver & Rio Grande employees would operate the trains of their carriers the 600 miles or so over the Missouri Pacific, thereby depriving employees of the Missouri Pacific of work that they had handled previously.

And that's the understanding that we had. And we were shocked when we received notice from the Missouri Pacific that it -- or when we went to the Missouri Pacific and asked why, they said, we don't have to serve the notice under the employee protective

conditions. We don't have to sit down --

QUESTION: I guess behind this whole thing is your view that somehow the collective bargaining agreement gave the union you represent the right to have its crews used?

MR. ROSS: To a certain extent --

QUESTION: Does the record show what the collective bargaining agreement provided? Has that ever been furnished or attached?

MR. ROSS: Now, it was not, Your Honor, because of the basis that we had proceeded on before the Commission, believing that the Commission's employee protective conditions would take care of that one limited area, and that the Commission was, as it had said previously like in the Southern Central of Georgia case, that its decision had no effect whatscever on the collective bargaining agreements.

As a matter of fact, Article 1, Section 2 of the conditions that had been imposed by the Commission in this case specifically retains the rates of pay rules, working conditions, collective bargaining agreements that were in effect, subsequent to being changed by subsequent collective bargaining agreements or by statute.

And therefore, we had understood that those

agreements would continue in effect, and that there wouldn't be any problem in regard to the situation that's now presented to the Court.

As a matter of fact, we thought that Section 11341's language, which says, as necessary to effectuate the transaction, that that language has some meaning.

As we find out now, the ICC some 20 years later, following Southern Central of Georgia, says, that that is superfluous language. That really is not necessary at all. When in the Southern Central of Georgia case, it said that there had to be an accommodation between the Railway Labor Act and the Interstate Commerce Act.

And in regard to the suggestion that this Court's decision in Schwabacher v. United States disposes of the entire case, I think that Schwabacher -- which arose in 1948 -- must be read in conjunction with this Court's decision in Burlington Truck Lines v. United States, where the Court said that the Commission, when it got into labor relations, was dealing in a very delicate area; and therefore, it was required to accommodate the Interstate Commerce Act with the Railway Labor Act.

And to this day, the Commission has never made any findings in regard to an accommodation of the

Interstate Commerce Act with the Railway Labor Act insofar as railroad operating employees are concerned.

It has never made any study as to the economic impacts on the carriers --

QUESTION: Well, the merger statute that the ICC was operating under in this case didn't have any specific requirement of accommodation, did it?

MR. ROSS: Yes, Your Honor. If we look at Section 11347, which provided that the Commission was required to impose employee protections which included certain protections that had been formulated by Congress in the Rail Passenger Service Act, a combination of the two --

QUESTION: But there's no contention that there was a failure to impose that here, is there?

MR. ROSS: No, there's no -- no. They did impose the employee protections. But there's some misunderstanding, I think, in regard to what the employee protections do.

I gather it's felt that because there are certain monetary benefits that are specified in those conditions, that that takes care of all of the problems.

Those monetary protections take care of the displacements and the dismissals. But also those employee protections do more than that.

They provide for certain notices that have to be served on the employees; and for other functions that have to take place.

And that's why we're trying to say, Your Honor, that the employee protections are the glue between the two acts; and that when you read them correctly, this whole undertaking can be resolved, and requires an affirmance of the decision of the Court of Appeals.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Rosee.

Mr. Clarke?

ORAL ARGUMENT OF JOHN O'B. CLARKE, JR., ESQ.,
ON BEHALF OF RESPONDENT UNITED TRANSPORTATION UNION

MR. CLARKE: Mr. Chief Justice, may it please the Court:

At the beginning it might be wise to go back to the jurisdictional questions that's been raised here in the arguments.

When the ICC's order -- and that's the controlling aspect -- is looked at, the order shows that rail labor's position was what the order imposed; not what the Katy and the Missouri Pacific several months later said the order meant.

The ICC's order that was issued in October of

1982 said that the trackage right application of the Katy and the Rio Grande were approved, but to the extent specified in the decision, and subject to the conditions for the protection of employees.

The conditions for the protection of employees, as required by 11347 of the act, specifically required two things that are relevant to what we're dealing with here.

One, that the carriers, in consummating the transaction, had to preserve rates of pay, rules, and collective bargaining agreement of the employees. And they shall be preserved until changed by applicable statute or collective bargaining.

Secondly, the conditions required that the carriers -- all carriers -- give notice to all interested employees who might be affected by a rearrangement of the forces, and that they negotiate, if requested by the unions, what's known as an implementing agreement.

The implementing agreement, contrary to what is being said in this Court in the briefs -- and just as a matter of an aside, if you'll look at the ICC's findings, beginning in the District Court -- the Court of Appeals, and then on their petition, and then finally on their brief and their reply brief, you'll see a

gradual progression into firmness, where before, in front of the District of Columbia -- the Court of Appeals they stated that, yes, there is some language in the conditions that would support the unions' belief that all carriers had to participate in the notice.

Now they say, we don't know where they came up with that idea. It's incredible. Because the ICC's never held it.

They've never held the other way. And the District Court, in the case that was before the -- that's now before this Court on a cert petition to the Eighth Circuit that's still pending, in that case the District Court found that the ICC conditions required the Katy, as well as the MoPac, to give negotiating rights to the Missouri Pacific employees. And they did not.

And the reason they did not was because the ICC found in the May 18th and the October opinions that are -- that were subsequently reversed by the Court of Appeals, the reason they did not was because the ICC's order granted them an exemption from that requirement of the protective conditions.

But when you go back and put the thing in its proper perspective, what you have in this case is an order of the Commission specifically imposing an

obligation -- limiting the applications that were filed, and imposing an obligation on the parties to consummate those transactions in compliance with those orders, with the employee protective conditions.k

Now, implementing agreements under the Interstate Commerce Act are not to implement the transaction, as the ICC is now saying, and as the carriers are saying, but historically, back from the time they were first -- the requirement was first imposed back in 1936 by agreement, implementing agreements are to do things. One, to apply -- and this right in Article 4 of the current provisions right now -- to apply the basic terms and protections of the conditions, the protective conditions, to the particular transaction.

The transactions, for example, give an employee protection against being required to relocate without -- and changing his residence as a result of that. The question of what is a change of -- what is a required change of residence, if you have to move 30 miles, 40 miles or 50 miles, is that a required change. That's a subject for implementing agreements, and it's normally devised -- decided at that point.

There are no claims procedures under the New York Dock conditions, and that's what an implementing

agreement does. It establishes the claims procedure.

It also has a second aspect, and that is, to provide the basis upon which the selection of forces will be made. And it specifically provides, in any assignment of forces, shall be made on the basis of the agreement as to the selection or an arbitration decision.

QUESTION: You say, it specifically provides. What is the antecedent of "it"?

MR. CLARKE: I guess I got to go back to it, where I said it -- the interstate -- the protective condition itself does not authorize -- when we're talking about the implementing agreement -- it does not authorize the abrogation of collective bargaining agreements.

Because the implementing agreement requirement, in the employee protective conditions, provides that -- has two bases. One, to provide for the application of those terms to the particular transaction. And two, to provide for the basis upon which the forces to perform the transaction that's involved will be selected.

And if the parties can't agree on that selection basis, that equity ratio, they are then to arbitrate it. That's what arbitrated.

And you have to view that arbitration

requirement in Article 1, Section 4 along with the requirement in Article 1, Section 2, that they preserve collective bargaining agreements.

Historically, as we've shown in the arbitration decisions attached to the brief by the UTU, the Commission's decisions have not been viewed as abrogating or authorizing the abrogation of collective bargaining rights.

QUESTION: Well, MR. Clarke, I still don't understand, if you're right that the ICC just doesn't have authority to upset these collective bargaining rights, and if you read in the application what the intention of the merging railroads was with regard to the crews, you could see for yourself that that was not in accord with your view.

MR. CLARKE: That's correct, ma'am.

QUESTION: Why, then, wouldn't you have gone into the ICC hearing initially and said, eliminate that from the application?

MR. CLARKE: We did. We did, Your Honor, and that's the one thing that's being ignored in this case. When the applications were filed by the Katy and the Rio Grande for the trackage rights, rail labor, the UTU in particular along with other unions, filed an opposition to that -- to those applications and said, that if

granted as requested they would adversely affect employees' interest.

And we asked that if they're approved, that they be approved subject to employee protection conditions. Those conditions would require, as the Commission subsequently imposed, preservation of collective bargaining rights and a voice in the selection of the forces.

So rail labor asked for protection if those applications were approved.

QUESTION: But did you directly address the crew trackage right problem?

MR. CLARKE: We did not directly address the question of whether or not the Katy's provisions would authorize the Katy to implement them with their own people for this --

QUESTION: And yet it was perfectly clear in the application was intended.

MR. CLARKE: That is correct, Your Honor.

QUESTION: That is the sticking point.

MR. CLARKE: That is the sticking --

QUESTION: That you should be able to lie in wait --

MR. CLARKE: It wasn't lying in wait.

QUESTION: -- seeing this, and then come in

later; that's the point.

MR. CLARKE: It was not lying in wait, Your Honor, because the Commission's -- the Commission's approval said that the applications were approved subject to employee protection.

This is something that has gone on in the rail industry for years. This case is comparable to the Texas and New Orleans case and the Southern Railway case.

QUESTION: Mr. Clarke?

MR. CLARKE: Yes, sir.

QUESTION: Can I ask you another question? Supposing in October of 1982, all of the arguments that have been had here in this Court and since then were fleshed out before the Commission at that time, and the Commission said, well, we think we'll change the policy we've followed in the past, and with respect to the crew assignments, we think it makes sense, A, to let the leasee railroad use its own crews, and, B, not to have any strikes or arbitration over that issue, and that is what we intend, and so forth.

Would they have had -- and we say, we further find that it's necessary in order to effectuate the consolidation promptly and carry out the purposes of the act to do it that way -- would they have had statutory authority to enter that order at that time?

MR. CLARKE: No, we submit they would not, Your Honor. And the reason for that is that since the time that the Interstate Commerce Commission was first given the authority to authorize exemptions, and that exemption power is nothing more than a recognition of the supremacy of the Interstate Commerce Commission over the economic regulation of the railroads, it's a preemption and a supremacy provision, from that time -- when Congress gave the ICC that power, it also was regulating rail labor relations by Title III of the 1920 Transportation Act.

Regulation of labor relations is separate and distinct from rail economic regulations by the Interstate Commerce Commission.

When the Commission authorizes an exemption, it can only -- the exemption can only be of transactions that it has the power to authorize, or the jurisdiction over.

QUESTION: You're saying they had a statutory duty to leave open the question of who would crew the trains?

MR. CLARKE: That's correct, Your Honor. Because that goes to the --

QUESTION: Even though it might result in a strike and prolonged arbitration?

MR. CLARKE: The problem -- that's the argument that comes in later. They're not saying that rail labor has a veto over these financial transactions.

Rail labor has had that veto from 1920 and even prior to that. But the transactions haven't been -- thousands of transactions have been authorized. And they haven't been frustrated by a right to strike.

The right to strike -- and the need to strike is different than the right to strike. The need to strike only comes about as a result of unilaterally imposed terms being imposed on the employees, as has occurred here.

That is why, since 1983, you've had the potential strike on the Missouri Pacific as a result of this; you had the potential strike on the Milwaukee, as shown in the cert petitions; you've had the potential strike up in Boston.

All of these are because now you have the Interstate Commerce Commission saying it has a power over labor relations.

But since 1976, if there was any question on that, Congress has taken that away, by specifically saying, in the 1976 amendments, that from that date forward, all merger approvals and trackage rights -- trackage rights approvals have to include provisions

that do two things among others: preserve collective bargaining rights, and provide for the implementing agreements.

QUESTION: Yes, but those things could both be preserved and have them nevertheless decide who will crew the train?

MR. CLARKE: No, we submit they cannot, Your Honor. And that's the problem that we have here.

The employee protective conditions are a bridge, as Mr. Ross indicated, between the Railway Labor Act and the financial transaction.

The Railway Labor Act deals with employer-employee. The financial transactions have an added ingredient to it, because suddenly you're dealing with a nonemployer who has an impact on the transaction, namely, the Katy coming over to the Missouri Pacific.

You need a bridge to give the Missouri Pacific employees an ability to talk to the Katy. If the Katy wants to go over on the Missouri Pacific tracks, it has to, as a condition of that approval, that right of receiving that right, agree to talk to the Missouri Pacific employees.

QUESTION: Would you say that was true even if there was no loss of employment on the landloard railroad?

MR. CLARKE: Yes, Your Honor, because what you're dealing with in this case -- and to take it out of the theoretical and put it down to the concrete -- prior to the consummation of the transaction, January 3rd, when the Katy began operations, Missouri Pacific employees performed that work.

Now, suddenly, Katy employees are performing that work.

QUESTION: No, I'm assuming there's no loss of work on the landlord railroad. Just, you supplement additional operations over the same lines at different times.

MR. CLARKE: In that case, Your Honor, the employee protective conditions would most likely work out an arrangement that would give the other carrier all the rights, because it has the equity to perform the work. But they're still talking about it.

Now, in this case, the Missouri Pacific employees who performed the work as of January 3rd or January 6th suddenly stopped.

Secondly, the Missouri Pacific employees went to the Missouri Pacific and they said, negotiate with us over two things: One, whether or not the Katy can come onto the property and leave us out of the picture; and two, negotiate with us over what you are going to do

with our people who are suddenly affected by this transaction.

And the Missouri Pacific said, we can't negotiate with you. We have no right to talk to you because the ICC's order gave the Katy the authority to do this. And we can't negotiate with you about that because we can't control what they do.

But that's not what the ICC order said. And it was at that point that the parties then began to take the diverging paths.

When it became clear to the UTU that the Missouri Pacific would not negotiate, they voted for and declared a strike. When it became clear to the BLE that the parties were not going to negotiate, they went to the ICC and asked the ICC to refute what the Katy and Missouri Pacific and Rio Grande were saying the ICC's order meant.

Because the past practice has always been, the Interstate Commerce Commission order, even if the carriers put in the order in the application what they intended to do, that did not bind -- or that did not become part of the order of the Commission.

And that's the important thing. Does an application that is submitted to the Commission that says, if we're granted this authority, here's how we'll

do it, become an order of the Commission?

Historically, it has never been an order, because the carrier does not have to do -- consummate the transaction in the way in which it says, in its application, it will do it.

If it says in the application, we're going to use one train crew for 200 miles, the ICC's order certainly doesn't exempt that carrier from the hours of service laws, which prohibit more than 12 hours of work.

And as a result of that, the application to the Commission is nothing more than a general blueprint which the Commission then uses to determine whether or not the financial transaction, namely, trackage rights, is in fact within the public interest.

QUESTION: What's the best way for us to satisfy ourselves that has indeed been the practice?

MR. CLARKE: Your Honor, that's -- I would ask that you take a look at the Texas and New Orleans case. Because in that case, the carriers did exactly what they're doing here.

They put in their application an employment contract which they said would govern the consolidated work. And the Fifth Circuit said, that's not what five two allows to be done, and then went into (inaudible).

I'd ask you to take a look at the Southern

Central case, because in that case, the carrier put into its application how it would go about consolidating. And it put all of the Southern people on the rosters, and took the Central of Georgia and put them at the bottom.

And the Commission said that our order didn't go that far.

You go back and you take a look at the arbitration decisions that were filed, up until 1983. And two of them were attached -- two arbitration decisions were attached to the UTU brief. One of them was a pre-1983 decision where Referee Zumus went through a tremendous history, including a Referee Bernstein decision under the Washington job agreement, where they specifically said that the conditions did not give the right to abrogate collective bargaining agreements. They were separate and distinct.

CHIEF JUSTICE REHNQUIST: Your time has expired, Mr. Clarke.

Mr. Rush, do you have anything more? You have two minutes left?

REBUTTAL ARGUMENT OF HENRI F. RUSH, ESQ.,
ON BEHALF OF THE PETITIONER ICC

MR. RUSH: Yes, I do. There's so much I disagree with Mr. Clarke on that it's hard to know where

to start.

But I think perhaps the most fundamental issue is the question of Commission approval, and the effet that it has in connection with the employee protection conditions.

First, I would note that in every case cited to you by rail labor, they have been dealing with the actual combining consolidating carriers themselves. In this case, that would be the Missouri Pacific, the Union Pacific and the Western Pacific.

The Missouri Pacific, the Union Pacific and the Western Pacific have honored the employee protection conditions as to rearrangement of forces, including the displacements resulting from their acquiescing in the condition imposed by the Commission that the Katy and DRGW be permitted to operate trackage rights utilizing their own crews.

There is no case anywhere holding that in the context of an imposed condition, or even in the context of a trackage rights situation, where the Commission has looked at a term and deemed it to be a material term, that RLA rights continue to exist.

And the reason that there has never been a disputation on this is that until this case, labor has never asserted that right.

Turning to the question Justice O'Connor asked about what does the Commission guarantee of existing collective bargaining agreements mean, and coupling that with the other observation made that in 1976 with the amendment to 11347 Congress intended to require that existing collective bargaining agreements be preserved and kicked over into the RLA, the Commission's provisions, as the Commission explained, preserve collective bargaining simply to the extent of the approved transaction.

If I may finish this sentence on the 11347 amendment, the Amtrak agreements which were required to be incorporated were added to ensure that all collective bargaining would not be eliminated because the railroads were transferring their operations to semi-public Federally funded operation.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Rush.

The case is submitted.

(Whereupon, at 2:45 p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-792 - INTERSTATE COMMERCE COMMISSION, Petitioner V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.; and

#85-793 - MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, Petitioner V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)