Supreme Court of the United States

OCTOBER TERM, 1969

In the Matter of:

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, Petitioner	**Docket No.** 29
vs.	
UNITED TRANSPORTATION UNION, Respondent	

Place Washington, D. C.

Date October 20, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

BENHAM

IN THE SUPREME COURT OF THE UNITED STATES

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vs	)	
UNITED TRANSPORTATION UNION, Respondent	)	

Washington, D. C.
Monday, October 20, 1969

The above-entitled matter came on for argument at 10:15 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

FRANCIS M. SHEA, ESq.
Washington, D. C.
Counsel for Petitioner

RICHARD R. LYMAN, Esq.
741 National Bank Building
Toledo, Ohio 43604
Counsel for Respondent

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: The Detroit and Toledo Shore Line Railroad company against the United Transportation Union.

You may proceed whenever you are ready, Mr. Shea.

MR. SHEA: Mr. Chief Justice, may it please the Court, the parties to this case are the Detroit and Toledo Shore Line, which I shall refer to as Shore Line and UTU which is a merger of four operating unions I shall refer to, including the Fireman's Union. I shall refer to it as the union or the Fireman's Union.

This case arises under the Railway Labor Act. As Your Honors are well aware, there are two kinds of disputes that arise under that act, the so-calledminor disputes which involve the interpretation or application of existing agreements and they follow the course of negotiation and compulsory arbitration before an adjustment board whose decisions find are binding on the parties, and then there is the major dispute involving not an interpretation or application of existing agreements, but the making or changing of these existing agreements and these follow a different course. A Section 6 Notice proposed change is served as negotiation mediation, proper arbitration and discussion of the present appointment of an emergency board and then the parties are free to exercise self-help at the end of that route.

In this case an adjustment board determined that there was nothing in existing agreements which precluded Shore Line from establishing an outline reporting point; a point at which the firemen made the required report for work, retire at the end of the day, away from the main terminal.

Shore Line proposed to establish such a point. The Union served a notice proposing that the exclusive reporting point should be at the Plum Terminal at Toledo. And a Court of Law held that in virtue of the mere filing of that note to deprive Shore Line of its right under the existing agreement to establish an outlying terminal, that was accomplished and they were deprived of that right.

Now, the facts are briefly these: Shore Line is a small railroad; it runs about 50 miles from Toledo to Detroit. Lang Yard is the main line at the yard in Toledo and the yard just south of Detroit is called Dearoad and there is one other geographic point they have in mind, and that's at Trenton where there is the Edison Yard. That's about 35 miles north of Toledo.

There is a growing and large industrial development there at Trenton. While outlying have historically been established for many years, Trenton was served by firemen who reported at the Toledo Yard and went with their engines up to Trenton, did the switching there then went back the 35 miles and tied up at Toledo.

In '61 this growing industrial development, in view of the railroad, required that they establish an outlying point at Trenton, and they posed to the union that they would establish an outlying point at Trenton. The Union served a Section 6 Notice proposing negotiations on terms or conditions under which that outline assignment should be established. Negotiations were had; mediation was had; proffer of arbitration and finally the matter was released. But at that time when there was no strike, and at a subsequent point the Union withdrew that notice and there wasn't the establishment of the reporting point at Trenton.

The alternate year for switching at Monsanto by Shore Line had passed, and they said "We don't propose to establish at this point at Trenton.

In the meantime, in late "62 and September of '63 they established an outlying point just south of Detroit, called Dearoad. And on this occasion the Union pursued the minor dispute route. It took it to an adjustment board and it urged that under existing agreements and under existing practices, Shore Line was barred from establishing this outlying reporting point at Dearoad.

The Adjustment Board decided againt. The Adjustment Board said there is nothing in the rule of agreement which precludes the establishment of that point and it is not contested that under the existing agreements then Shore Line was

privileged to establish that outlying point. They

They then proposed again to establish an outlying reporting point at Trenton. And the response to that was a Section 6 Notice proposing that the only point at which firemen might be required to report would be the Toledo Yard.

Q That is proposing the negotiation of a provision in the collective bargining contract that would so provide?

A That's right, sir; and which would deny Shore Line of the right that they then had to establish the outlying points.

There was negotiation about this and that didn't get in anywhere and Union invoked mediation and mediation was pending at the time this record was made.

In late September of '66 Shore Line being confronted with the immediate requirement again of switching Monsanto and McCouth Steel, having demanded service of them, they posted a bulletin establishing an outlying assignment at Trenton for trains to operate in the switching of these industrial establishments at Trenton.

At that point the Union threatened strike; Shore Line sought an injunction against the strike; the Union counterclaimed for an injunction against the establishment of this outlying point, but this Court denied the injunction against the strike; granted the injunction against the establishment of the outling point. The Court below affirmed and the issue is thus

posed as to the correctness of the decision on certiorari of this Court.

Now, the only provisions of the Railway Labor Act which are actually involved here are Section 2 Seventh and Section 6. The so called Status Quo Provision of Section 6 and to me you have indicated that these two sections have to be read together and now I read them to you. The first appears on 2-A; Page 2-A of our brief. That Section 2 Seventh, which reads as follows:

"No carrier, its officers or agents shall change the rates of pay, rule or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements of in Section 6 of the Act." Now, I think there is no contest about the fact that that bars only a change in the existing agreement. It does not deprive the parties of the rights under the existing agreements.

Section 6 reads:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rule or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such

notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 this Act, by the Mediation Board," et cetera.

Now, what we say that this provision, Section 6 means, read together with Section 2 -- what this Court said it meant -- in Williams versus the Terminal Co., here is what this Court said:

"Institution of negotiations applied in the Section 6 Notice, the institution of negotiations for collective bargaining does not change the authority of the carrier. The prohibitions of Section 6 against change of wages or conditions pending bargaining and those of Section 2 Seventh are aimed at preventing changes in conditions previously fixed by collective bargaining pleas."

What we say Section 6 means is again what this Court said it meant in the Order of Railroad Conductors against Pitney. There this Court said 2 Seventh of the Act provides that no carrier, its offices or agents, shall change the rates of pay rules or working conditions of its employees as a class, as embodied in agreements except in the manner prescribed in such agreements in Section 6 of the Act.

Section 6, as we have seen, prohibits such change unless notice is first given and its requirements are otherwise complied with Section 2 Tenth of the Act, makes a misdemeanor, punishable by both fining and imprisonment for a carrier willfully to violate Section 6.

These sections make it clear that the only contract which would violate Section C is a change of those working conditions which are embodied in agreement.

And what we think it means is also what the Mediation Board has consistently interpreted it means. Since 1966 the Board repeatedly, in its annual reports; in its inspections to mediators; in its response to demands of the unions, repeatedly they have said this, and I read their latest pronouncement. Their pronouncements earlier were of a kind.

In brief, the rights of the parties which they had prior to serving the notice of intention to change -- that's prior to serving the Section 6 notice - the rights of the parties which they had prior to serving the notice of intention to change, remain the same during the period the proposal is under consideration and remains such until the proposal is finally acted upon. The Board has stated in instances of this kind that the service of a Section 6 Notice for a new rule or change -- a change in an existing rule, does not operate as a bar to carrier actions which are taken under rules currently in effect. We also think, if the Court please, the interpretation

which we give Section 6 is the interpretation which was given in the making of the legislative history of that provision.

Section 6, the initial bill which ultimately changed in the subsequent year, the 1926 Act was called the Howell-Bartley Bill and Mr. Richburg, in explaining the provision that became Section 6 from what was apparently a prepared text under the heading: "Changes of Agreements," had this to say: "An agreement that can change without notice is really no more agreement at all. Certain of the power on one hand and fear on the other of arbitrary change will breed discord and inharmony."

It is provided in Section 6 that either party shall give at least 30 days' written notice of intended change and that the time and place of conference shall be agreed upon, thereafter a change -- and it seems to me clearly it refers back to the change -- proposed thereafter changes prohibited until the machinery for peaceful adjustment has been fully utilized. There are, I think important considerations which are entitled to wait.

If I understand opposing counsel correctly, he says that the so-called status quo provisions equally applicable to the ; equally applicable to the Union and equally applicable to the carrier. And I couldn't, below, when he was not willing to right the and I doubt he will here. I put in one of these situations, or one of these two

situations: One of the most cherished rights of workmen in this field: their seniority rights. When a place opens up the man who has been there longest can bid it in. And the place he opens up the man with the next amount of seniority can bid that in, and so forth.

And the railroads, we'll suppose will serve notice saying, "This is disruptive. From now on we want to assign men to the posts that they are best fitted for.

Now, for the long period -- the intentionally long period to exhaust procedures of the Railway Labor Act, are the seniority rights suspended, or I will take another situation which is not unusual, the negotiation for an agreement for an increase in wages -- three percent next January and I'll take two percent in July and I'll take three percent the following January. They enunciate that bargain and a couple of months later the Shore Line, the carrier, serves notice saying, "We're losing money; we want to freeze wages." Freeze wages for the lengthy period of two years or more in which the procedures of the Railway Labor Act are being exhausted. Now, I say, if the aggrieved would do that I can think of nothing which would be more disruptive than the stability of labor relations or more frustrating at the possibility of making and maintaining a grievance in such a rule.

Now, as I understand the main thrust of his argument, it is that while the provisions of Section 5, the status quo

-- there are status quo provisions in 5 and 10 that are not applicable here because this is still a mediation and those are applicable only after mediation has been terminated or after emergency board is appointed.

But, if I understand the main thrust of his argument, it is that all of these provisions -- not all, 6, 5, and 10 must mean the same thing -- not two because he concedes that 2 isn't to be read with them -- all of them. This Court said it had to be read with 6 and Pitney. He says "let," that isn't a status quo provision after the major dispute has arisen. But he says these three have to be read together and he gets some comfort from the language of 5 and 10. Now, I don't know what comfort he gets from 10, indeed, 5. But 10 says that after a emergency board has been appointed until 30 days after reports to the president, no change shall be made in the conditions out of which the dispute arose. And I think the conditions of the "dispute arises," is that under existing agreements we have the right to establish an outlying point and they want to take it away from us, and they have proposed that change and that's what shouldn't be changed. That means that our rights under the existing agreement shouldn't be changed for this period.

Now, 5 provides that after the mediation board releases the dispute for 30 days there should be no change in rate pay rules, working conditions or established practices. There's little to indicate the reason for the introduction of

established practices. We've done a textual analysis which there isn't time for in oral arguments, but I think I can point this out: That was introduced in the '34 Amendment and Eastman who drafted the '34 Amendment said that this was merely to plug a loophole which theretofore existed. Prior to that when mediations terminated, the railroads could go in immediately and effect their changes, even though later an emergency board might be established and certainly the only purpose of this is to hold to hold it long enough to give the president an opportunity to establish an emergency board.

Q I take it you would argue that if there were no agreements at all between a carrier and its employees but they were in the process of negotiating an agreement, that the employer could, pending the working out of sections of these mediation procedures, change wages, hours and working conditions.

A I would, because this Court squarely so held in Williams.

Q And would you say that the union likewise would strike?

A I would say no, because I think that was so held in Williams.

Q So, the Union may not strike pending the resolution procedures, but the carrier may change wages, hours and working conditions, so long as they are not governed by an existing agreement?

A They may exercise this -- yes they may exercise those rights that they then had.

Q And apparently you agree that this business of establishing an outlying terminal was subject to Section 6 procedures?

A Was subject to Section 6?

Q I mean it was proper for the unions.

A We're not raising here the issue that this was purely a matter of managerial discretion.

Q This was a volatile matter as far as this case is concerned?

A Well, I think it wasn't, but so far as the argument here is concerned, I can see --

Q So far as the issue here is concerned, this is just as though it were wages, in the absence of an agreement?

A Yes, I think so. But remember, if the Court please, that in the railroad industry there is and has been for a very long time, detailed rules.

Q You mean agreed upon by the parties?

A Yes. But, also had this in mind, that very often there will be a controversy and it will be allowed to drop if there were a decision which required that every right the railroad had had to be in that agreement, why, I think you would compromise the possibility of reaching an agreement very largely needed.

Q I take it that you would think this is no different than if a railroad proposed to build a spur and the union didn't want the spur built so it filed a Section 6 Notice to keep the railroad from building the spur, you would say the railroad ought to be able to go ahead and build the spur regardless of the notice. And the union said it shouldn't build the spur regardless of the notice.

A Yes. It is entitled to, under existing agreements, I should say. It certainly ought to be permitted to go ahead and build it.

There is one other point which I'd like to touch on before concluding. I don't know how my time is. And that is this: Opposing Counsel has raised in this Court -- he didn't plead it; he didn't raise it in the District Court and he didn't raise it in the Court for Pleadings. He raised it for the first time in this Court. He urges that under our obligation to exert every reasonable effort to make and maintain agreements under the two firsts of the Act, we're barred from taking unilateral action as to any matter which was the subject of discussion under negotiations. And he relies on Fiberboard and Katz.

First of all I would like to observe that if the Court was going to get into this area, I suppose they would want the considered views for the Court below and they haven't those views because the issue wasn't raised in the Court below.

Secondly, this Court has warned against importing the provisions of the LMRA into the -- and particularly in a case like this where you have specific prosisions of the Railway Labor Act, even with the problem of status quo. But, finally, it seems to me that these two cases are holding in opposite in any event. I think all this Court held in Fiberboard, if I read it correctly was that contracting out work under circumstances of that case where the contracting out was going to discharge all the men and destroy the union in the contracting out of that work was a mandatorily bargainable issue;that the company had refused to bargain and that the Labor Board didn't abuse its discretion in setting the remedy it did. And there is no problem of that kind here. We have talked to them for five years about this.

Secondly, and there is nothing irreversible about this action which has been taken here. As to Katz, if I read Katz correctly, what Katz holds is that you can't -- there was a proposal for increase of wages and a proposal for merit increases; proposals as to sick leave -- you can't, where you are in the process of negotiations go directly to the men and offer them so thing without giving the union notice and without discussing it wit the union. Now, Katz said, however, or I understand that expressly in the statement of the question by reference to the Bradley case and the Landis case said expressly that this is to be distinguished from a case, for

instance, where the union's demand of the 16 cent raise; the companies offer pending and rejected it and the company then said, "Well, we are going to get it; and did get it." That did not involve any violation.

I don't think that you have anything apposite about that opinion here because there have been some lengthy discussions and you know all about it. We try to work out the arrangements of bunkhouse, et cetera, with them.

Now, there is nothing here that can be urged as an undercutting of the union; as going behind the bargaining agent to go directly to the men.

If the Court please, that's our submission, unless there are questions from the Court.

MR. CHIEF JUSTICE WARREN: Thank you, Mr. Shea.

Mr. Lyman.

ORAL ARGUMENT BY RICHARD R. LYMAN, ESQ.

ON BEHALF OF RESPONDENT

MR. LYMAN: Mr. Chief Justice, and Honorable Justices, I represent the Respondents in this case who consist of the successive organization to one of the original defendants, the Brotherhood of Locomotive Firemen and Enginemen, and two of its officers, the President and General Chairman of that Brotherhood.

Originally, when the case was filed and tried below in the District Court, another organization was a co-defendant,

and the suit was brought to enjoin both the Firemen and the Railroad Trainmen from striking. They have both been in these 1961 negotiations but the Firemen, at the time they decided to take the case to the Special Board of Adjustments, had withdrawn their 1961 Section 6 Notice.

The Trainmen, however, had not. Therefore, the Trainmen had a live, matured right to strike. And the District Court so held and denied the railroad an injunction against the strike by the Trainmen.

Now, of course, no strike has, in fact, taken place since that division nor has there been any threat of one over this dispute, because of the fact that the railroad was enjoined from doing the thing that the strike was alleged to have been about -- that the threatened strike was alleged to have been about.

In the District Court, Shore Line raised three contentions in defending their action. They said, one: This was a minor dispute, not a major dispute. Two: It involved an unbargainable matter, in any event, and therefore the Respondent Firemen did not have a valid Section 6 Notice pending. And three: They argued the status quo question which is before this Court.

In the Court of Appeal below, they no longer argued the minor dispute question, but relied on two arguments: the managerial preroggative and the status quo argument.

In this Court they have abandoned and have not placed before the Court the managerial preroggative argument. The fact is, of course, that this operating change in starting assignments at Trenton, was objected to by the union from the point of view of its impact on the employees in the sense of reporting to and from duty. The District Court did not enjoin the railroad from making any changes in its physical facilities or plant set up that it desired to do and the Court of Appeals make this very clear, that it didn't construe the District Court as enjoining any such thing which might be a barrier of managerial preroggatives.

Basically, Shore Line is contending here that the status quo requirements of the Railway Labor Act is designed to protect the public and preserve industrial peace, are strictly limited to what the Railroad has already bound itself to contractually.

Carrying on Mr. Justice White's thought a little further, in an employment at will they would say during all the course of these major dispute procedures, they would be free to change anything and everything. In this case it's their contention that part of the area of wages, rules and working conditions is not covered by the agreements and therefore, as to that part of the working conditions area not covered by agreements, they are free to change those, even though bargaining under the Railway Labor Act is proceeding; even though, at

the time this case came before the District Court, the Mediation Board had accepted jurisdiction and the parties were awaiting assignment of a mediator, they went ahead with this unilateral change.

That theory can only be supported if we say, ultimately, that unemployment at will or an area of working conditions outside the coverage of the current contract, the phrase "working conditions" is used in the statute in which Congress required the carriers to preserve during this procedure, only means such things as are contractually covered.

In other words, the carrier's argument, and it's set forth in their briefs, is that here the working conditions applicable to this particular dispute merely consisted of the carrier's right to change working conditions as it saw fit. Now, we submit that there is a very sophistical approach to the problem and we contend, rather, that working conditions are things which are in effect and which are being observed and have been observed from the employees' point of view. The employee, when he goes to work, doesn't have an idea of his job as a set of things that management can do or can't do in the abstract; he's interested in where he goes to work and how much he's paid -- those sort of things, and there is a change, certainly from his point of view and from any realistic point of view, that if all of a sudden operating changes are made by management, whether or not in the exercise of claimed rights

under agreement --

Q Mr. Lyman, as I understand it, there had been a minor dispute as to the meaning and application of the collective bargaining agreement with respect to management's making outlying work assignments. That had been decisively concluded against your position.

A Yes.

Q And was decided under an Adjustment Board that under the existing collective bargaining agreement management had the right to make outlying assignments. So, this isn't just some claimed right.

A I suggest it be defined somewhat, because it may enter into Your Honor's consideration of this matter. I think there could well be a difference in a situation where something is specifically provided for in an agreement; and a situation where something is simply management's right by default for the reason that the agreement doesn't cover the subject matter.

Mr. Shea remarked that the Special Board, or its award, conclusively established that management was privileged to do this, only in the sense that the Special Board held that there was no prohibition in the agreement against it. The parties hadn't bargained; there was no clause in the agreement that said from time to time management could change reporting points for these men.

Now, I think that brings me into the argument

that Mr. Shea made at the conclusion about seniority, and couldn't they go ahead and make the usual bumps and furloughs and recalls and so forth that the agreement provided for, if there was a notice pending? Well, of course they would, because the agreement specifically calls for that and set it out and that was an established working condition without any question.

But where there is something in this never-never land of employment at will, managerial preroggatives, then the same consideration is going to hold true, and I think that we can only have meaningful bargaining where management refrains from going ahead and doing whatever it wants to, regardless of the fact that it is currently bargaining about whether it's going to do it.

Now, the contention has been made here that Section 2 seventh and Section 6 are the only sections of the statute that are involved in this case. There was further contended in the reply brief that we had conceded that there were four -- pardon me -- four status quo sections in the Railway Labor Act: Section 2 seventh, Section 6, Section 5 and Section 10.

Our position, of course, has been very clearly stated in our brief and we contend that Section 2seventh is not a status quo provision at all, it is simply a prohibition against changes of agreements unilaterally and it says that when there is a written agreement, a carrier -- and it speaks only in terms

of the carrier, because they are the ones that apply and administer the agreement and the only ones that have the power to change agreements unilaterally. It says they can't change them unilaterlaly, they have got to do it by the notice procedure of Section 6.

Now, that notice procedure in Section 6 in the first part of it where they talk about giving notice of changes in agreements embodying rights and working conditions, that is not really a status quo requirement, it is again, simply a statement of a mechanism by which you change agreements. This notice procedure provision for arranging for a conference within ten days after the notice requirement that the conference be held thirty days after the notice.

But it's at the latter part of Section 6 that you then get into the two status quo provisions in major disputes handling. In there it says that while these things are going on either party may change rate of pay rules or working conditions. And it doesn't -- in the latter part of that paragraph, use any reference to agreements. Section 5, providing the status quo to be observed after the Mediation Board takes over and after it's handled and after it has failed in its efforts. That does not speak in terms of agreements at all and Section 10, the Emergency Board status quo provisions say nothing about agreements and speak in terms that are completely inconsistent with the theories that all this is limited to the

sterile coverage of an existing contract.

Now, it has been suggested that perhaps we will have to read Section 2 seventh and Section 6 as something separate and apart from Section 5 and Section 10 and it may be we might be right in our interpretation of Sections 5 and 10, but something different in the way of the status quo should be required for Section 6.

This Court very recently in the Brotherhood of Railroad Trainmen against Terminal Company, an actual terminal case that was decided earlier this year, had an introductory description of the major disputes procedures in the Act which we think completely refute any theory that these should be divided into two stages and that maybe the carrier could do what it wanted to do for a while but then was going to have to pull its horns in and go back to the original status quo if we got into Section 5 and Section 10.

In that decision in the Terminal Company case, and I must apologize for not having the official paging, but it's 22, Lawyer's Edition, Page 354 in the Lawyer's Edition paging. The Court concluded its description of that major disputes handling with this language: While the dispute is working its way through these stages, neither party may unilaterally alter the status quo, citing Sections 2 seventh, 5 first, 6 and 10. The Court clearly does not, on the basis of their opinion, contemplate any division in what is mean by status quo; it's a

uniform sort of thing.

Q What weight do you think should be given to the Board's interpretation of the --

A Like a legislative history which we have been criticized for our references on the basis that they refer only to Sections 5 and 10. But as I say, I think we must consider this wholesstatus quo together, and in view of that legislative history, the Mediation Board's interpretation is clearly untenable. I don't think that you have to accord controlling effect to the interpretations of the administrative tribunal, if those interpretations are probably in conflict with the statutory scheme and language and in conflict with the very clear legislative history that we find on the Railway Labor Act of 1926.

We have referred to that legislative history in our brief, commencing at Page 12 and that language is just completely irreconcilable with any thought that the status quo means just the terms of a contract that's apparently existing. At the bottom of Page 12, top of Page 13, I am reading from Mr. Richberg's comments before the House Committee on Interstate and Foreign Commerce. He said: "The thought was to include in the broadest way all the factors which contributed to what is commonly called the status quo. The purpose is to preserve unchanged all the conditions involved in the controversy until there is full opportunity for a presidential

investigation and a thirty-day report."

He further said, and we have quoted this at the bottom of Page 13: "It was the desire of those who attempted to work out an agreement on this to have a phrase here which would be broad enough so that in the ordinary interpretation of language in its natural meaning it would be well understood what was intended."

And then this is quite pertinent to our case to, I believe. He goes on, following the statement that I just read, with these comments: "It was not the desire of either party to write in at this section of the bill something that had not been written in anywhere else, and that was an absolute prohibition and a compulsion against one party alone of the bill.

"The question was raised as to strikes. This is not a one-sided affair." And then he went on to point out that the intent of management and labor which had concurred, of course, and agreed upon the draft of the 1926 Act which was presented to Congress jointly. Their purpose was to -- as it applied to both parties, not just one. And of course, they couldnt' have worked out any agreement among themselves if what Shore Line contends here was true. But what the unions were giving up was their most cherished right to strike in an exchange only getting from the carrier a commitment that it would do what it contracted to do and nothing else.

I have been unable to find anything helpful in the

Committee Report. I think that these that are just in the hearings by the spokesmen?

Q Yes. Was he speaking to the labor unions?

A Mr. Richberg spoke for the labor unions and Mr. Tom spoke for the carriers. Mr. Richberg put in practically all of the testimony on the status quo provision. Mr. Tom --

Q Were they both testifying as to the same bill?

A Yes. This is bill which was currently drafted by railroad management and railroad labor. Mr. Tom was designated as the Representative before Congress of the Railroad industry and Mr. Richberg was the representative of the union. In other words, they were co-sponsors of the bill.

Q Did Mr. Toms disagree with anything Mr. Richberg said?

A No, sir; he did not. In fact, it was made clear to Congress by both Mr. Tom and Mr. Richberg that their joint support of this bill was contingent upon Congress accepting it as presented to Congress. Neither side wanted Congress to change one sentence in the bill. And in fact, they said that this had been bargained long and hard and that each side had given up things in order to reach an agreement on a bill. The compul

The compulsion behind this joint effort, I suppose, was the fact that both management and labor were interested in preserving their rights to bargain on a voluntary basis and

the primary concern was to convince Congress that they did not need to have compulsory arbitration; that they did not need to have Interstate Commerce Commission review of wages and that sort of thing, and that -- and in order to convince Congress of that, they thought that they had to have very strong status quo measures for the protection ofthe public against railroad strikes, because that ultimately was Congress's primary interest in the Railway Labor Act, in avoiding interruptions to commerce.

Q Why is there a difference between 2 seventh and Section 6 as far as status quo is concerned?

A Section 2 seventh is not a status quo section. Section 2 seventh accords, you might say, legal effects to collective bargaining agreements and, in fact, goes beyond that to impose criminal sanction under the Railway Labor Act, a violation of Section 2 seventh is made a crime, punishable under prosecution by the United States Attorney.

Incidentally, it's not true, although Court in Pitney made this observation -- it's not true that a violation of Section 6 is a crime, but perhaps -- I assume that observation was made because Courts have commonly tended to take the first half of Section 6 and treat it as an extension of 2 seventh on this serving of notice, so that in many instances you will find the Court talking about Section 6 when it's really 2 seventh that is involved, and it is 2 seventh and 2 seventh only that

was involved in Pitney. There was no Section 6 notice extant in Pitney, but rather that the Union was trying to enjoin the trustees of the railroad company from changing things without resorting to Section 6 under notice procedure.

I think that the Williams case can hardly be considered determinative here, both on its facts and considerations before the Court. Primarily it involved the question of the railroad's obligations under the Fair Labor Standards Act. I don't see, in analyzing the facts, where the railroad made any change in working conditions or wages. The pullman porters received the same pay or more after the Act went into effect as they had previously. Before, they just got their tips. Then the railroad realized it had to comply with the Fair Labor Standards Act so they said, "Well, if your tips don't make it up then we will give you enough above your tips to meet our obligation. So, from the employees' point of view there was no effective change in their working conditions at all.

Counsel for Petitioner has written to the courts advising that they were in error in their contention -- or in the statement that the organization relied on Section 6.

Before I close I would very much like to direct --

Q There is a pretty square statement in Williams about the way the Court read Section 6.

A There again, it may be that the Court had this sort of overlapping between the Section 6 and 2 seventh in mind,

and meant that the Terminal Company did not have to serve the Union with a Section 6 notice in order to make this change in the arrangement for bookkeeping on the wages.

In any event, some two years after this change was made the parties signed a collective bargaining agreement which did not even include the subject of wages. The parties were clearly content to treat this not as a bargaining matter but as an argument about what the Fair Labor Standards Act required. And of course, in any event, that is not something that the parties could control by their bargaining. A statute of the United States, of course, takes precedence over what's in the bargaining agreement.

Just last week, Your Honors, the decision by the Court of Appeals for the 5th Circuit came to my attention. It was decided September 23rd, the National Airlines against the Machinists, unofficially reported at 72 Labor Relations Reference Manual 2294, which I would like to direct the Court's attention to without commenting on it, except for this, leading into another case citation.

On two or three occasions in the course of this opinion, the Fifth Circuit cited with approval the opinion of Mr. Joseph Marshall, then sitting on the Court of Appeals for the Second Circuit, in the case of the Rutland Railway Corporation against Brotherhood of Locomotive Engineers, which is cited in all our briefs here.

I particularly would like to direct the Court's attention to that dissenting opinion as a rather complete statement and exposition of the position that we take in this case.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lyman.

Mr. Shea, you have just one minute left.

MR. SHEA: Unless the Court has questions, I don't have any rebuttal.

MR. CHIEF JUSTICE BURGER: I think not. The case is submitted.

Mr. Shea, and Mr. Lyman, thank you for your submissions.

(Whereupon, at 11:15 o'clock a.m. the oral argument in this case was concluded)