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SERVICE DATE - LATE RELEASE JUNE 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 22)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
--CONTROL AND MERGER--
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

Decided: June 26, 1997

We grant the petition of the United Transportation Union (UTU) for review of the arbitration decision issued by James E. Yost as it pertains to health benefits and decline to review the decision concerning the remaining issues raised by UTU.

BACKGROUND

By decision served August 12, 1996, in Finance Docket No. 32760 (the *Merger Proceeding*), we approved the common control and merger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP or the carrier), the respondent in this proceeding. In our decision approving the control and merger application, we imposed the employee protection conditions established in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979) (*New York Dock*), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

Under *New York Dock*, labor changes related to approved transactions are effected through implementing agreements negotiated before the changes occur. If the parties cannot agree, the issues are resolved by arbitration, with possible appeal to the Board under its deferential *Lace Curtain* standard of review.[1] Affected employees receive comprehensive displacement and termination benefits for up to 6 years.

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[1] Under 49 CFR 1115.8, the standard for review is provided in *Chicago & North Western Tptn. Co.--Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers v. I.C.C.*, 862 F.2d 330 (D.C. Cir. 1988) (popularly known as the "*Lace Curtain*" case). Under the *Lace Curtain* standard, the Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." *Id.* at 735-36. In *Delaware and Hudson Railway Company--Lease and Trackage Rights Exemption--Springfield Terminal Railway Company*, Finance Docket No. 30965 (Sub-No. 1) *et al.* (ICC served Oct. 4, 1990) at 16-17, *remanded on other grounds* in *Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806 (D.C. Cir. 1993), the Interstate Commerce Commission (ICC) elaborated on the *Lace Curtain* standard as follows:

> Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

Here, the parties were unable to reach an implementing agreement on labor changes covering two geographical areas, referred to by UP as the "Salt Lake Hub" and the "Denver Hub." When the parties could not agree, the dispute was taken to arbitration. On April 14, 1997, arbitrator James E. Yost issued his decision. The decision adopted the two implementing arrangements proposed by the carrier, with exceptions that have not been appealed by the carrier. The arbitrator found that the implementing provisions adopted in his decision were "necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations."

On May 5, 1997, UTU filed an appeal of the arbitrator's decision. UTU also requested a stay of the decision pending our review.[2] On May 21, 1997, UTU filed a motion for leave to submit a supplement to its petition for review and a tendered supplemental petition. UP filed a reply in opposition to admission of UTU's tendered supplement on May 23, 1997. UP filed its reply in opposition to UTU's appeal on May 27, 1997.

PRELIMINARY MATTER

In its motion for leave to supplement its petition, UTU submits two UP notices scheduling implementation of the award, which were sent to UTU on May 1, 1997. We will consider these notices because they provide material that was not available to UTU until shortly before the deadline for submission of its appeal and UP does not object.

UP does object to consideration of the remaining content of UTU's tendered supplement to its petition, arguing that UTU is not entitled to file "yet another brief on the merits." We agree. Under 49 CFR 1115.8, UTU is entitled to file only one appeal pleading. Moreover, UTU's supplement essentially constitutes repetitive and cumulative argument.

DISCUSSION AND CONCLUSIONS

UTU raises four issues in its appeal: (a) whether it was proper for the arbitrator to include language in his decision regarding representation during future negotiations; (b) whether the arbitrator properly approved provisions allowing the carrier to merge seniority districts and to force employees to switch seniority districts; (c) whether the arbitrator's approval of the current UP Eastern District Agreement as the uniform collective bargaining agreement for the affected employees (replacing the separate pre-consolidation agreements) was proper; and (d) whether the arbitrator properly approved the provisions in the implementing arrangements requiring employees to switch health care providers.

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[2] By decisions served May 30, 1997, and June 10, 1997, implementation of the arbitrator's decision was stayed, with the latter stay running until July 1, 1997. The Brotherhood of Locomotive Engineers, on June 19, 1997, filed in opposition to the grant of a further stay. On the same date, UP filed a petition to vacate the stay. Given our decision here resolving the merits of the petition for review, the relief sought in these two pleadings has become moot. Moreover, both BLE and UP could have, and indeed should have, made the arguments contained in these pleadings in response to the initial stay request rather than some 45 days afterwards. Further, we find incredible the claim by UP now that a less than 30-day stay of the implementation of the subject arbitral award has materially disrupted the implementation of the underlying merger, our approval of which has been in effect since September 11, 1996. And we continue to expect UP to submit an in-depth analysis of the effects of the merger and condition implementation in its July 1, 1997 quarterly progress report on the underlying merger. Because we are resolving the merits of the petition for review, however, we will vacate the stay as of the service date of this decision.

I. UP's Allegation of Waiver

Before we discuss these issues, we must consider UP's contention that UTU waived consideration of them for the Denver Hub. During arbitration, UTU submitted a separate implementation proposal concerning the Salt Lake Hub but did not submit a separate proposal for the Denver Hub. The carrier argues that, by not making its own proposal concerning the Denver Hub, UTU waived its right to raise any of the aforementioned four issues on appeal as they apply to that Hub.

We disagree. A party can waive its objections only by failing to make them below. UTU did not fail to make objections below concerning the Denver Hub. In its submission, UTU phrased its criticism of UP in general terms that applied equally to the changes proposed by UP for both hubs, which changes were virtually identical. There was nothing in UTU's overall submission to indicate that UTU did not object to the changes proposed by the carrier for the Denver Hub. UTU's submission put the arbitrator on notice that UTU believed that certain changes proposed by UP were improper under *New York Dock* for *both* hubs. The arbitrator must have been on notice as to the scope of UTU's objections because he rejected implementation provisions proposed by the carrier for both hubs, not just the Salt Lake Hub. Because the record shows that UTU did object to the carrier's Denver Hub proposals, we conclude that UTU has not waived all arguments for the Denver Hub simply by not submitting its own separate proposal for that Hub.

II. The Issues Appealed by UTU

As explained in greater detail below, only one issue — whether the arbitrator properly approved the provisions in the implementing arrangements requiring employees to switch health care providers — satisfies the criteria for review by us under our *Lace Curtain* standard of review. The health care issue is reviewable because it involves an allegation that the arbitrator's decision exceeds the authority entrusted to him under our *New York Dock* labor conditions. The issue involving language pertaining to union representation during future negotiations is moot in light of our interpretation of the arbitrator's decision. The issues involving the necessity of seniority district changes and the consolidation of collective bargaining agreements are the sort of matters that have historically been decided by arbitrators under the Washington Job Protection Agreement of May 1936 and subsequently under our labor protective conditions on which, with the approval of the courts, we have traditionally deferred to arbitrators in the absence of egregious error. *CSX Corp.--Control--Chessie and Seaboard C.L.I.*, 6 I.C.C.2d 715 (1990).

A. Representation During Future Negotiations

The arbitrator's decision stated (at 4 and 5) that, if there are to be future negotiations, they should be between the "Eastern District General Chairman" and the carrier. UTU asserts that any future negotiations must be between "UTU" and the carrier, arguing that only UTU, as the current bargaining representative of the affected employees, has the authority to direct the carrier to the persons with whom the carrier must negotiate.

We do not interpret the decision as interfering with UTU's right to designate its own representative for future bargaining over issues affecting the Hubs. UTU has selected the UP Eastern District General Chairman to bargain for employees who come under the UP Eastern District Agreement.[3] The arbitrator imposed the UP Eastern District Agreement. When the arbitrator referred to possible future negotiations as being between the carrier and the Eastern District General Chairman, he was not attempting to lock UTU into this choice of a bargaining representative but was merely referring to the person whom UTU itself had designated to represent its members as being best able to discuss with management what various provisions mean. His suggestion was limited to the implementing agreement process and was not made any

[3] Declaration of W. Scott Hinckley, filed May 27, 1997, at 5-6.

part of the award we are asked to review. Plainly, the arbitrator did not purport to, nor could he, dictate representation for future bargaining purposes. Our interpretation moots UTU's appeal concerning this issue.

B. Changes in Seniority Districts[4]

UTU objects to the general provisions of the implementing arrangements approved by the arbitrator that allow the carrier to alter seniority districts and to force employees within the new hubs to move to different seniority districts. The implementing arrangements also contain special provisions that, in conjunction with the aforementioned general provisions, specifically allow the carrier to make seniority district changes for firemen, and UTU specifically objects to these provisions as well. UTU argues that all of these provisions contravene *New York Dock* by overriding collective bargaining agreement provisions[5] when an override is not necessary to realize the public benefits of the consolidation.

It is now firmly established that the Board, or arbitrators acting pursuant to authority delegated to them under *New York Dock*, may override provisions of collective bargaining agreements when an override is necessary for realization of the public benefits of approved transactions. Where modification has been necessary, it has been approved under either former sections 11341(a) [recodified in section 11321(a)] or 11347 [recodified in section 11326(a)]. *Norfolk & Western v. American Train Dispatchers*, 499 U.S. 117 (1991); *Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806 (D.C. Cir. 1993) (*RLEA*); *American Train Dispatchers Association v. I.C.C.*, 41 F.3d 1157 (D.C. Cir. 1994) (*ATDA*); and *United Transportation Union v. Surface Transportation Board*, 108 F.3d 1425 (D.C. Cir. 1997) (*UTU*). In *RLEA*, 987 F.2d at 814-15, the court elaborated on the necessity test, as follows:

> [I]t is clear that the Commission may not modify a CBA willy-nilly: § 11347 requires that the Commission provide a "fair arrangement." The Commission itself has stated that it may modify a collective bargaining agreement under § 11347 only as "necessary" to effectuate a covered transaction. [Citation omitted.] ... We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer ....

In other words, the court's standard is whether the change is necessary to effect a public benefit of the transaction.

As noted, the arbitrator found that the consolidation was "necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations." This was a factual finding to which we must accord deference to the arbitrator under our *Lace Curtain* standard of review. Under our *Lace Curtain* standard of review, such factual findings are reviewed only if the arbitrator committed egregious error. Because UTU has failed to make the required showing, applying the *Lace Curtain* standard of review, we decline to review this finding.

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[4] Due to the nature of work in the railroad industry, operating employees are assigned to "seniority districts," which are lists of employees who are eligible to work in a given craft or operation in a defined geographical area, such as a hub. The order in which employees appear on these lists determines various employment rights.

[5] Except for the firemen, UTU does not cite or provide the specific collective bargaining agreement provisions that are alleged to be contravened by the provisions of the implementing arrangements that allow mandatory switching of seniority districts. For the firemen, UTU cites language in Article XIII, section 1(7) of the October 31, 1985 UTU National Agreement.

C. Uniform Collective Bargaining Agreement

UTU challenges the arbitrator's decision to allow UP to select its collective bargaining agreement for the Eastern District as the uniform collective bargaining agreement that will apply to the affected employees (replacing the separate pre-consolidation agreements). As noted in our discussion of the changes in seniority districts, it is now firmly established that the Board (or arbitrators acting under *New York Dock*) may override provisions of collective bargaining agreements when an override is necessary for realization of the public benefits of approved transactions. Here, the arbitrator found that application of a uniform collective bargaining agreement was also among the changes that were necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations. This was a factual finding to which we must accord deference to the arbitrator under our *Lace Curtain* standard of review. Again, under our *Lace Curtain* standard of review, such factual findings are reviewed only if the arbitrator committed egregious error.

UTU itself admits that there are circumstances in which collective bargaining agreements may be merged to effect the goals of mergers, stating on page 29 of its submission to the arbitrator: "The Organization has continually recognized where there is a coordination, a fusion of collective bargaining agreements is necessary." Here, the necessity for the merger of bargaining agreements is supported by the number of collective bargaining agreements alone that were in effect before the merger — before the merger, the Salt Lake Hub consisted of six collective bargaining agreements, and the Denver Hub consisted of three collective bargaining agreements.[6] The arbitrator could reasonably find that UP cannot effectively manage employees in a merged and coordinated operation if the operation must be burdened with six collective bargaining agreements, each with its own set of work rules. Our predecessor agency has previously upheld the consolidation of collective bargaining agreements.[7] Under these circumstances, UTU bears a heavy burden in attempting to show that the consolidation of collective bargaining agreements in the Hubs was egregious error. We find that UTU has failed to meet its burden of showing that the arbitrator committed egregious error in approving the consolidation of collective bargaining agreements in the Hubs.

UTU also seems to argue that the arbitrator erred by failing to apply the predominate collective bargaining agreements in the respective Hubs.[8] We disagree. UTU has submitted no

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[6] Declaration of W. Scott Hinckley, filed May 27, 1997, at 5.

[7] In *Norfolk and Western Railway Company, Southern Railway Company and Interstate Railway Company--Exemption--Contract to Operate and Trackage Rights*, Finance Docket No. 30582 (Sub-No. 2) (ICC served July 7, 1989), the ICC upheld an arbitrator's merger of only two collective bargaining agreements. Consolidation of collective bargaining agreements was also approved in *CSX--Control--Chessie System, Inc., and Seaboard Coast Line Industries, Inc., et al.*, Finance Docket No. 28905 (Sub-No. 27) (ICC served Dec. 7, 1995) (*CSX--Control--Chessie/Seaboard*), 10 I.C.C.2d __ (1995), *aff'd, UTU, supra*. In *Wilmington Term. R.R.--Pur. & Lease--CSX Transp., Inc.*, 6 I.C.C.2d 799, 819-21 (1990), the ICC refused to require a lessee to apply the different collective bargaining agreement in effect for the lessor to former employees of the lessor who transferred to the lessee, citing a court decision that noted the operational difficulties involved in such a requirement. *See also*: the 1985 Seidenberg arbitration decision (Exh. 11 of UP's submission to the arbitrator); the 1985 Brown arbitration decision (Exh. 12 of UP's submission to the arbitrator); and the 1985 Ables arbitration decision (Exh. 13 of UP's submission to the arbitrator). These examples of approved consolidations do not exhaust the list.

[8] UTU states (Petition at 23) that it agreed to application of UP's Eastern District Agreement for the Salt Lake Hub and that the Eastern District Agreement predominates in the Denver Hub. UP responds that the UP Eastern District Agreement does *not* predominate in the

(continued...)

authority from the Board, the ICC, or a court that establishes a duty to adopt the predominate collective bargaining agreement that is in effect in an area where operations are being coordinated when consolidation of collective bargaining agreements is necessary in such an area to effect the benefits of a merger. While arbitrators may conclude that adoption of the predominate agreement makes sense in given situations, UTU has not explained why the arbitrator's failure to so conclude here was egregious error.

In *RLEA, supra*, the court admonished the ICC to refrain from approving modifications that are not necessary for realization of the public benefits of the consolidation but are merely devices to transfer wealth from employees to their employer. In its appeal, UTU made no effort to show that the UP Eastern District collective bargaining agreement is inferior to the collective bargaining agreements that it replaced. This is not a situation where the carrier is using *New York Dock* as a pretext to apply a new, uniform collective bargaining agreement that is inferior in matters such as wage levels, benefit levels, and working conditions. In fact, UP argues that its Eastern District Agreement is more costly because the collective bargaining agreement for the Denver & Rio Grande Western Railway Company, which was the other pre-merger agreement that might have been selected, has a crew consist provision more favorable to the carrier than the UP Eastern District Agreement.[9]

For these reasons, UTU has not shown that the arbitrator committed egregious error in approving the consolidation of collective bargaining agreements in the Hub territories as necessary for realization of the public benefits of the consolidation. Nor has UTU shown that the arbitrator committed egregious error in imposing the UP Eastern District collective bargaining agreement as the uniform agreement for operations in both of the Hubs. Because UTU has failed to make either of these required showings under the *Lace Curtain* standard of review, we decline to review this finding.

D. Health Benefits

UTU challenges the arbitrator's approval of provisions requiring employees to change their health benefits provider from the DRGW Hospital Association to the UP Hospital Association. UTU argues that: (1) the carrier negotiated implementing arrangements with the carmen, clerical, and engineer crafts that offered employees a choice of plans and that the same choice should be available here; (2) the withdrawal of employees from the DRGW Hospital Association plan will jeopardize that plan; (3) under the DRGW Hospital Association plan, the premiums are $300 lower for a retired couple with no drug limits; and (4) health "fringe benefits" have a protected status under *New York Dock*.

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[8](...continued)
Denver Hub but proceeds to argue that (1) UTU has in effect locked itself into its statement that the Eastern District Agreement should apply in both Hubs, if a single collective bargaining agreement is applied, and therefore (2) we should dismiss UTU's attack on the consolidation of collective bargaining agreements on the grounds that the arbitrator applied the agreement sought by UTU.

We will not dismiss UTU's argument on these grounds. While UTU's statements in this portion of its petition are not clear, a fair reading of the entire record submitted by UTU shows that it is interested in preserving prior collective bargaining rights as much as possible and that it believes that the consolidation of collective bargaining agreements approved by the arbitrator would be detrimental to this interest.

[9] The arbitrator rejected the carrier's attempt to reduce train operating crews in the Hubs (and several other changes), apparently finding that crew size was a systemwide "problem" having nothing to do with the *multiplicity* of carriers operating in any given area prior to the merger.

UP responds that UTU waived objection to the change in health benefits provider by failing to object to this change when the carrier submitted it to the arbitrator. We disagree. On page 19 of its separate submission to the arbitrator addressing certain commitments by UP made during the *Merger Proceeding*,[10] UTU argues that, under our labor protective conditions, SP employees are entitled to retain their hospitalization and medical care after the merger. This put the arbitrator on notice that health benefits were at issue and that UTU desired to have negotiated benefits retained. Moreover, as explained below, the issue of health benefits goes to the adequacy of an implementing agreement imposed under our labor conditions--a matter that we are required to address whenever it is brought to our attention. *See Norfolk & Western R. Co. v. Nemitz*, 404 U.S. 37 (1971).

In its decision in *CSX--Control--Chessie/Seaboard*, *supra* note 8, the ICC defined the scope of rights, privileges, and benefits that must be preserved as including hospitalization and medical care. It did so by looking to an essential item of legislative history, paragraph 10 of the Model Agreement for the protection of labor under the Urban Mass Transit Act of 1962, which it set forth in its decision (ICC served Dec. 7, 1995, slip op. at 14-15):

> (10) No employee receiving a dismissal or displacement allowance shall be deprived during his protection period, of any rights, privileges, or benefits attaching to his employment, including without limitation, group life insurance, *hospitalization and medical care*, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions so long as such benefits continue to be accorded to other employees of the bargaining unit, inactive service or furloughed as the case may be. [Emphasis added.]

Immediately after quoting this provision, the ICC summarized its view of rights, privileges, and benefits by stating (slip op. at 15):

> We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits," *Southern Ry. Co.--Control--Central of Georgia Ry. Co.*, 317 I.C.C. 557, 566 (1962), and does not include scope or seniority provisions.

In its decision reviewing *CSX--Control--Chessie/Seaboard*, the court adopted the ICC's test, which definitively governs this issue, holding (108 F.3d at 1430):

> In this case, the Commission offers a definition: "rights, privileges, and benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions." *See Commission decision* at 14, *reprinted in* J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits" refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. *See id.* at 15, *reprinted in* J.A. 238.
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> * * * *
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> Under the Commission's interpretation, "rights, privileges and benefits" are protected absolutely, while other employee interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue

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[10] *See* Attachment A to Second Declaration of Paul C. Thompson, filed May 5, 1997.

> sacrifice of employee interests. In our view, this is exactly what was intended by Congress.

From this definition, we believe that employees' rights to membership in the DRGW Hospital Association plan must be preserved because these rights are a fringe benefit pertaining to "hospitalization and medical care."

UP responds that we must uphold the change in health benefits because (1) it is merely incidental to the approved adoption of a uniform collective bargaining agreement and (2) a contrary result would contravene the Board's refusal to allow parties to "cherry pick" among the provisions of pre-merger collective bargaining agreement provisions.[11] Moreover, UP notes that the arbitrator declined to impose the crewing provision it sought from another collective bargaining agreement on the grounds that doing so would violate the prohibition against "cherry picking."

We disagree. Our approval of a uniform collective bargaining agreement and refusal to allow "cherry picking" was not intended, and may not be used, to abrogate UTU's absolute right to the preservation of pre-consolidation rights, privileges, or benefits under collective bargaining agreements as a result of Section 2 of our *New York Dock* labor conditions, as interpreted by the ICC with the approval of the court in *UTU*.

UP also argues that UTU supported similar changes of benefits pursuant to the adoption of uniform agreements in other merger proceedings. Even if UTU did this, however, its support of such changes in the past would not estop UTU from opposing a change here. A union does not waive its right to preservation of rights, privileges, and benefits by failing to assert that right in prior proceedings. Nor does the fact that it might voluntarily agree to changes in rights, privileges and benefits mean that it can be forced to do so where, as here, the implementing agreement is imposed by arbitration. Thus, at a minimum, as UTU contends and as UTU asserts UP has done in other instances, UTU's members should have been afforded the choice of remaining with the DRGW Hospital Association plan or switching to the UP Hospital Association plan.

Regarding UP's argument that the change in health benefits is merely incidental, and that the harms alleged by UTU from the change in health care providers are "entirely speculative," there may be circumstances in which a "change" in a right, privilege, or benefit would be so inconsequential or nonsubstantive that it is really not a change at all and may thus be made without contravening the requirement in *New York Dock* that rights, privileges, and benefits under pre-existing collective bargaining agreements must be preserved. However, on the record before us, we conclude that the arbitrator exceeded his authority in imposing provisions requiring employees to change to the UP Hospital Association health plan against their will instead of preserving their right to continue to be covered by the DRGW Hospital Association plan.

This decision will not affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The arbitration decision requiring employees to change their health benefit provider from the DRGW Hospital Association to the UP Hospital Association for the Salt Lake Hub and the Denver Hub is reversed. We otherwise decline to review the arbitration decision.

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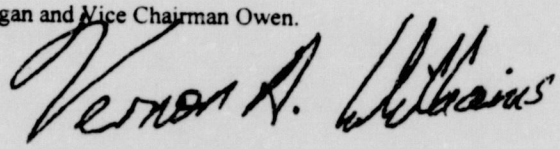
[11] In approving the underlying merger, we specifically rejected a proposal by a group of unions to allow the unions to "cherry pick" the best provisions from existing UP or SP collective bargaining agreements. *Merger Proceeding*, slip op. at 84-85, 174.

2. The stay of the implementation of the arbitration award is vacated.

3. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

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SURFACE TRANSPORTATION BOARD

DECISION

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SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

Decided: June 6, 1997

BACKGROUND

By decision served August 12, 1996, in Finance Docket No. 32760, the Board approved the common control and merger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In its decision, the Board imposed the employee protection conditions established in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979) (*New York Dock*).

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DISCUSSION AND CONCLUSIONS

Some additional time is needed for the Board's consideration of the issues raised in this proceeding. To provide that time and to avoid the disruption associated with implementation while the Board considers these issues, implementation of the arbitrator's decision will be stayed for an additional 20 days (until July 1, 1997).

It is ordered:

1. Implementation of the arbitration award is stayed until July 1, 1997.

2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

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[1] While the arbitrator's decision provided that it would go into effect on the date that it was issued, the approved implementing arrangements required the carrier to give 30 days' notice prior to implementation. The carrier gave notice and implementation was scheduled to occur on June 1, 1997.

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BACKGROUND

By decision served August 12, 1996 in Finance Docket No. 32760, the Board approved the common control and merger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In its decision, the Board imposed the employee protection conditions established in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979) (*New York Dock*).

The UTU and UP were unable to reach an implementing agreement on labor changes covering two geographical areas, referred to by UP as the "Salt Lake Hub" and the "Denver Hub." The dispute was taken to arbitration under *New York Dock*. On April 14, 1997, arbitrator James E. Yost issued his decision. On May 5, 1997, UTU filed an appeal of the arbitrator's decision and in the same document requested a stay of the decision pending review by the Board.[1] On May 27, 1997, UP filed a reply in opposition to UTU's appeal and its request for stay.

DISCUSSION AND CONCLUSIONS

The scheduled implementation will be stayed for ten days (until June 11, 1997) to provide time for the Board to consider the merits of the stay request. Because pleadings in response to the stay request have been filed as recently as this week, this short delay is warranted so that the positions of the parties can be assessed on whether a further stay should be imposed prior to implementation.

It is ordered:

1. Implementation of the arbitration award is stayed until June 11, 1997.

2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

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[1] While the arbitrator's decision provided that it would go into effect on the date that it was issued, the approved implementing arrangements required the carrier to give 30 days' notice prior to implementation. Accordingly, implementation evidently could occur on June 1, 1997.

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