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Administrative Law—Interstate Commerce Commission—Conditions Imposed on Railroad Consolidation

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COMMENT ON RECENT DECISIONS

ADMINISTRATIVE LAW—INTERSTATE COMMERCE COMMISSION—CONDITIONS IMPOSED ON RAILROAD CONSOLIDATION—[United States].—Plaintiffs, trustees of railroads joining in a lease, sued for an injunction to set aside an order of the Interstate Commerce Commission. The order imposed as conditions to approval of the lease that employees retained be protected against wage cuts for five years and be compensated for moving expenses and loss in selling their homes, and that employees dismissed be given monthly allowances for a fixed period. The Supreme Court reversed the order of the district court granting an injunction and held, that the public interest to be served under the provision of the Emergency Railroad Transportation Act of 1933, which authorizes the Interstate Commerce Commission to attach conditions to such leases in the “public interest,” includes the protection of employees affected by a proposed lease.

The broadest grants of discretion are found in statutes which without limitations authorize administrative agencies to execute broad legislative policies by promulgating general rules. These grants permit administrative authorities to determine both the content of legal regulations and the occasions for bringing particular rules into effect. Another type of discretion appears in enabling legislation which authorizes administrative agencies to attach conditions to the activity authorized. Virtually as broad a type of discretion is found in statutes which confer licensing power without specifying the grounds for disapproval. Sometimes such grants contain general


words of public policy as supposed guides to administrative action,⁶ but it is
doubtful if these do more than state the limits that would be implied judicial-
ly if no such words were used.⁷ Discretion is further narrowed in a third
type of statute, which confines the exercise of authority to action upon
official findings of facts which justify the action.⁸ Although the courts find
less trouble in upholding the last type of grant, even these standards have
fallen afoul of some courts' conception of permissible extent of statutory
scope of authority.⁹

Grants of discretion to the Interstate Commerce Commission have been
broad,¹⁰ but in dealing with them the court has not hesitated to construe
the legislative limits set by Congress more strictly than has the Commission
itself. Thus, in rate-fixing the Court has held that the standard "just and
reasonable" does not permit basing rates upon such equities of shippers as
do not relate to discrimination or other statutory bases.¹¹ This holding has

Scott v. Waterloo (1937) 223 Iowa 1169, 274 N. W. 897; State v. Pulsifer
(1930) 129 Me. 423, 152 Atl. 711 (revocation); State v. Morrow (1928) 175
Minn. 386, 221 N. W. 423; Lantz v. Hightstown (1884) 46 N. J. Law 102
(revocation); Larkin Co. v. Schwab (1926) 242 N. Y. 330, 151 N. E. 637;
Martin v. Morris (1932) 62 N. D. 381, 243 N. W. 747 (revocation); Solt v.
Public Utilities Comm. (1926) 114 Ohio St. 283, 150 N. E. 28 (revocation);
Lyons v. Gram (1927) 122 Ore. 684, 260 Pac. 220; Child v. Bemus (1891)
1923) 248 S. W. 420 (revocation). But see Welton v. Hamilton (1931) 344
Ill. 82, 176 N. E. 338; Schireson v. Walsh (1933) 354 Ill. 40, 187 N. E. 921
(revocation); Picone v. Comm'r (1925) 241 N. Y. 157, 149 N. E. 336;
Matter of Small v. Moss (1938) 279 N. Y. 288, 13 N. E. (2d) 281; Winslow
v. Fleischner (1924) 112 Ore. 226, 228 Pac. 101; Holgate Bros. Co. v.
Board (1930) 158 S. C. 491, 155 S. E. 830; State ex rel. Strike v. Common
Council (1930) 201 Wis. 435, 230 N. W. 70; St. Johnsbury v. Aron (1930)
182 Vt. 22, 151 Atl. 650.

Co. v. Board of License Comm'r (Mass. 1936) 4 N. E. (2d) 628; Ex parte
118, 277 Pac. 226; San Antonio v. Zogheib (Tex. Civ. App. 1934) 70 S. W.
(2d) 333, rev'd (Tex. Comm. App. 1937) 101 S. W. (2d) 539; Clay River
But see State ex rel. Makris v. Superior Court (1920) 113 Wash. 296, 193
Pac. 845, 12 A. L. R. 1428.

7. Noble v. English (1918) 183 Iowa 893, 167 N. W. 629; Miller v. John-
269, 159 N. E. 41; In re Rudhlan Amusement Corp. (1932) 262 N. Y. Supp.
269.

Thompson (1901) 160 Mo. 323, 60 S. W. 1077; Investors Syndicate v. Bryan
(1925) 113 Neb. 816, 205 N. W. 294, aff'd (1926) 274 U. S. 717.

(revocation); People v. Stanley (1932) 90 Colo. 315, 9 P. (2d) 283; People
ex rel. Gamber v. Sholem (1920) 294 Ill. 204, 128 N. E. 377; R. G. Lydy v.
Chicago (1934) 356 Ill. 230, 190 N. E. 273; Lux v. Milwaukee Mechanics
Ins. Co. (1929) 322 Mo. 342, 15 S. W. (2d) 343.

10. 2 Sharfman, The Interstate Commerce Commission (1931) 357-360.

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been adhered to in spite of attempts by Congress to import such considerations into the standards of the Act.\footnote{12} Although the Commission was authorized, in reorganization proceedings, to impose such terms and conditions “as the commission may deem necessary or appropriate in the premises” upon the issuance of securities, a condition requiring court or Commission approval for the disposition of a fund to be set aside for the expenses of the reorganization from receipts from the sale of new securities was held void as not within the power over interstate commerce.\footnote{13}

But for the principal case, there exists, in Railroad Retirement Board v. Alton Ry., impressive authority for the view that it is not within the power of Congress, and hence not within the authority of the Commission, to provide for the welfare of railroad employees, when such provision conduces merely to contentment of mind and not to efficiency or safety.\footnote{14} Moreover, the sections of the Transportation Act of 1920 setting forth its purposes are silent as to what kind of protection of labor, if any, is included in the objective of maintaining an adequate transportation system. In the principal case, the Court resorted to provisions in a separate title of the Act of 1920,\footnote{15} other legislative enactments,\footnote{16} and pending legislation\footnote{17} as indicating Congressional recognition of a relationship between satisfactory employment conditions and the sound conduct of the transportation system,\footnote{18} expressly declining to consider the Railroad Retirement Board case. However, the Court’s reliance on explicit legislative intention to protect carrier labor is

15. Transportation Act of 1920, Tit. III (1921) 41 Stat. 1469, (1928) 45 U. S. C. A. secs. 131-146, sets up a board to adjust labor disputes, and states that it is the duty of carriers and their officers to exert effort “to avoid any interruption to the operation of any carrier growing out of any dispute.”
18. Administrative agencies sometimes apply the policy of other agencies. See Doctor Bloom Dentist, Inc. v. Cruise (1932) 259 N. Y. 358, 182 N. E. 16. In the instant case, however, no existing federal regulation was directly in point.
a double-edged weapon; a contrary intention might have been inferred from the absence of any explicit provision in this title of the Act.

The Court also relied on economic reasoning to bolster its conclusion. According to the Court, consolidation of railroads involves savings which bear most heavily on the interests of labor. If this hardship is not mitigated, employee morale will be impaired, danger of disputes increased, and interruption of transportation rendered more probable. Even granting that the threat is of sufficient magnitude to overcome objections raised on the basis of the Railroad Retirement Board case, it is still possible to question the Commission's authority to deal with a problem normally dealt with by Congress. After eight years of depression, the harsh effects of railroad consolidations on labor are not so unforeseeable as to justify Congress in granting, and the Commission in exercising, such authority on grounds of emergency. The principal case sanctions a liberal extension of an originally wide discretion. The conditions here imposed, unlike past Congressional action and contrary to the holding of the Railroad Retirement Board case, seem only indirectly related to the maintenance of an adequate transportation system. The conditions, however, are not beyond the bounds of reasonableness.

V. K.

**ADMINISTRATIVE LAW—JUDICIAL REVIEW OF ADMINISTRATIVE PROCEDURE**—[United States].—The Federal Communications Commission after a hearing denied a corporation's application for a broadcasting license on the grounds that the applicant was not financially responsible and that the principal stockholder was not a resident of the locality in which the station would operate. As the first ground rested upon a mutual mistake of law and the Court of Appeals did not deem the second a considered basis for the decision, on appeal it reversed the decision and remanded the case for further consideration of the second ground. Notwithstanding its own regulation to the effect that it will endeavor to fix the same date for hearing conflicting claims “excepting, however, applications filed after any such application has been designated for hearing,” the Federal Communications Commission then set the case for a rehearing together with other conflicting applications filed subsequent to the setting of the original hearing of the case. The applicant resorted to the Court of Appeals for writs of prohibition and mandamus to require the Commission to hear the application separately and to decide the case upon the previous record. That court granted the writs,

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2. Rules of Practice, Rule 106.4. This has become sec. 12.21 of the Commission's Rules of Practice and Procedure, effective January 1, 1939.