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Deny

CA 2 held that L/I Island
Ry - owned & operated by
State of N. Y. - is not subject
to the Ry Labor Act

CA 2 held that the Ry is
an integral govt function
w/in the meaning of Nat. League
of Cities.

Pete now says decision below
is inconsistent with Ship Mining Cases.
Could GVR, but I would
still deny. Paul C

Still
deny

PRELIMINARY MEMORANDUM

June 18, 1981 Conference
List 1, Sheet 5

No. 80-1925

UNITED TRANSP. UNION

v.

Cert to CA 2
(Mulligan, Spears,
and Sweet, (D.J.))

LONG ISLAND
RAILROAD CO. (ET AL.)

Federal/Civil

Timely

1. SUMMARY: Whether the operation of a state-owned railroad
is a traditional and integral governmental function, within the
meaning of National League of Cities v. Usery, 426 U.S. 833, and
therefore constitutionally shielded from the provisions of the
Railway Labor Act?

I would deny, but I'll bet
that some of your Brethren will disagree!

Paul C

2. FACTS AND DECISION BELOW: Resp is a rail common carrier serving five counties within the metropolitan New York city area. Resp was acquired by New York State in 1966 and carries approximately 250,000 passengers each weekday. Petr is one of seven collective bargaining representatives for resp's operating and train employees. Beginning in 1979, petr brought suits seeking a declaratory judgment that the relationship between the parties was governed by the Railway Labor Act, 45 U.S. § 151 et seq. which permits strikes by covered employees and that the employees could thus not be subjected to the sanctions of New York's Taylor Law, N.Y. Civ. Cir. Law § 200-214, which prohibited strikes by public employees.

Following much procedural posturing, the DC eventually found that resp was a "carrier" engaged in interstate transportation and therefore subject to the Railway Labor Act. It also concluded that the federal scheme preempts the state from regulating the labor relations of the railroad employees.

The CA 2 reversed. It agreed that resp is subject to the literal terms of the RLA, that it is a "carrier". Relying on National League of Cities v. Usery, 426 U.S. 833 (1976), it nonetheless held that application of the RLA to resp is not within the authority granted to Congress under the Commerce Clause. In reaching that result, the CA 2 relied primarily on Justice Blackmun's concurring opinion. It first concluded that the State's operation of a passenger rail service, as distinguished from a freight service, to be an "integral governmental function". It is a service that the state and local

governments are particularly suited to provide because of the community wide need and it is a service that they have come to provide because economic consideration have eliminated most private suppliers. The CA thus distinguished United States v. California, 297 U.S. 175 (1936) which concluded that a state's operation of a freight service was not an integral part of their governmental activities. The CA then held that the RLA displaces "essential governmental decisions", namely, the ability of the state to structure its employer-employee relationships. Not only is the particular activity involved here essential to the public, it is also essential that the government step in to furnish it.

Turning to Justice Blackmun's balancing test, the CA concluded that there was no demonstrably greater federal interest which overrides the State's interests. First, the objectives of the RLA are consistent with those of the Taylor Law, to provide an orderly method of dispute resolution and to ensure continuous service. The Taylor Law seeks to further that purpose, thereby helping the resp to maintain its status as a "vital link" in the flow of interstate commerce. Second, the state has a far greater interest in dispute resolution related to resp than does the federal government. The federal interest in preserving the right of resp's employees to strike is not "demonstrably greater" than New York State's interest in preventing strikes. Strikes by resp's employees must be discouraged so as to ensure continuous passenger service for so many daily commuters. The CA distinguished Lafayette v. Louisiana Power and Light Co., 435

U.S. 389 on the grounds that Usery did not control there because of the presumption against implied repeals of the antitrust laws.

3. CONTENTIONS: (1) The decision below conflicts with such cases as California v. Taylor, 353 U.S. 553; United States v. California, 295 U.S. 175, and Pardon v. Terminal R. Co., 377 U.S. 184. Those cases upheld the application of federal railroad legislation, including the RLA, to the operations of state-owned common carriers engaged in interstate commerce. Indeed, in Usery, this Court expressly asserted that the decision of United States v. California was not inconsistent with its decision. 383 U.S., at 854, n. 18. In sum, the CA has misapplied Usery. It has substituted the Usery test of "traditionality" and "integrability" for an "essentiality" test, with "essentiality" to be gauged not only in terms of the nature of the public service, but also its availability in the marketplace. In broadening the scope of Usery to include a state operated interstate freight/commuter railroad, the CA deviates from a line of decisions which had properly given narrow construction to Usery.

(2) The RLA does not displace the state's power to make "essential governmental decisions". Cf. Pearce v. Witchita County, 590 F.2d 128 (CA 5) (Congress may constitutionally impose the provisions of the Equal Pay Act on state employers). The RLA does not impose federal standards on the decisions the State must make with respect to wages, hours, and conditions of employment. It simply requires the State to bargain collectively with petr.

The RLA is not directed to the States, but to the operation of interstate railroads.

(3) Nor does the State have a greater interest in dispute resolution than the federal government. The Taylor Law is simply ineffective. Since its enactment there have been close to 300 strikes by public employees. Nor do these stoppages have a devastating economic effect on the community. Nor is there any support for the CA's proposition that the provision of passenger transportation has "to be supplied primarily by state and local governments."

Resp asserts that the decision below fully conforms to the holding in National League of Cities. Surely when the federal government instructs a State that it must permit its employees to strike to enforce their wage demands, there has been as much an abrogation of the State's otherwise plenary authority to structure its relationship with its employees as there was in National League of Cities. The CA properly included public transit within the National League of Cities doctrine. Surely a transit system such as resp's, which transports 250,000 people each day, is providing an integral public service. As to petr's emphasis on the word "traditional", the provision of public transit by the state is not an new phenomenon. In any event, transit has changed and it is more a public service than ever before. Even if not quite "traditional" the provision of the service is certainly integral. The railroad cases cited by petr are irrelevant. Freight railroading in the United States--as opposed to local passenger railroading--is still a private sector

function. All the cases cited by petr are concerned with freight railroading.

4. DISCUSSION: The issue is important. In my view, the CA made a reasonable effort to apply the principles announced in National League of Cities though the extent to which National League of Cities should be applied to federal regulation of state activities is a subject of continuing uncertainty.

Although a GVR in light of Hodel v. Virginia Surface Mining might be appropriate, Hodel strikes me as readily distinguishable since the regulation here clearly affects states as states. I would deny.

There is a response.

6/8/81
JBP

Knauss

Op in petn.

BENCH MEMORANDUM

To: Mr. Justice Powell
From: John Wiley
No. 80-1925: United Transportation Union v. Long Island RR Co

January 11, 1982

Question Presented

Whether application of the Railway Labor Act to the Long Island RR (LIRR) violates National League of Cities.

I. Discussion

This case is similar to FERC v. Mississippi (which is being argued the day before) because both turn on an interpretation of National League of Cities. With the miracle of modern word processing, I will crib my introductory discussion regarding National League of Cities from my FERC bench memo. (I do this--at the risk of boring you--both to avoid cumbersome cross referencing, and because you may read this memo before

the FERC bench memo.)

As stated in the FERC bench memo, the Virginia Surface Mining decision from last Term stated that the National League of Cities test has four elements: (1) whether a federal statute regulates "States as States;" (2) whether the federal regulation addresses indisputable "attributes of state sovereignty;" (3) whether the federal law directly impairs state ability "to structure integral operations in areas of traditional functions;" and (4) whether--if a federal law offends all three of the foregoing principles of state independence--the nature of the federal interest nevertheless is such as to justify state submission. (The first three requirements were listed together in text, while the fourth was added in a footnote.) 101 S.Ct. at 2366 & n.29.

The Virginia Surface Mining case was decided on the first ground: that the strip mining regulations concerned private activity rather than "States as States." See, e.g., 101 S.Ct. at 2369. The Railway Labor Act in this case, however, is more like the minimum wage law in National League of Cities, because the Railway Labor Act imposes obligations on state employers (primarily the obligation to permit strikes) in the same manner as did the 1974 amendments to the minimum wage act. Consequently I have no serious doubt but that the Railway Labor Act regulates "States as States." Therefore the LIRR's challenge to the federal law satisfies the first element of the National League of Cities test--which distinguishes this case

from Virginia Surface Mining.

As also stated in the FERC memo, the second (indisputable attributes of state sovereignty) and third (displacement of state ability to structure integral operations in areas of traditional functions) elements of the National League of Cities test are difficult for me to differentiate. Again, for purposes of this memo, I will assume that the second test does not supplement the third test in a way that is material to this case.

Turning then to the third element (displacement of state ability to structure integral operations in areas of traditional functions), it is important to note an initial ambiguity. This third step might in fact represent a single inquiry, or it could be two distinct sub-tests. The difference is important. It depends on whether "integral operations" and "traditional functions" represent rephrasings of the same notion, or whether the two phrases are additive requirements, both of which must be satisfied before the Tenth Amendment protects a given state action from federal invasion.

The difference can be illustrated with the hypothetical used in the FERC bench memo. Suppose California decides to embark on a space exploration program. Suppose also that Congress passes a minimum wage law similar to that in National League of Cities, except that the law applies only to federal and state government space exploration programs. Would the Tenth Amendment prohibit the application of this law to

California?

Yes, if the third test is a single inquiry. National League of Cities makes clear that wage determination is an integral state activity. With only slight semantic difference one can also say that it is traditional for states to determine their own wage policy. | *yes*

But if the third test is a double inquiry, the Tenth Amendment would not constrain the application of this federal law. As before, National League of Cities establishes that wage determination is integral. But this federal usurpation of an integral state operation would not displace the state in an area of traditional functions--because it is not traditional for states to explore space.

My sense is that the third inquiry should be a two-pronged test. The language of National League of Cities leads me to this conclusion. See 426 U.S. at 851:

[The 1974 amendments to the wage act will] significantly alter or displace the States' abilities to structure employee-employer relationships in such areas as fire prevention, police protection, sanitation, public health, parks and recreation. These activities are typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services. Indeed, it is functions such as these which governments are created to provide, services such as these which the States have traditionally afforded their citizens (emphasis added).

I also think this is wiser of the two possible interpretations. To hold otherwise would permit states to insulate themselves from federal regulation in fields that traditionally

have been national matters, simply by establishing programs in those fields. A contrary decision also could cut the National League of Cities doctrine off from its concern with preserving historic state roles. The doctrine instead would focus on the general need for protecting state autonomy in any area in which a state might chose to become involved. This idea seems to accord more with the concept of states in the Articles of Confederation than with the notion of states in the present Constitution.

If you accept the idea of a two part test for the third step of the National League of Cities inquiry, the next problem is to apply each of these two parts to the present problem. The easier issue is whether the Railway Labor Act displaces state ability to structure "integral" operations. I think the answer to this question must be yes. The essential feature of the Railway Labor Act to which the LIRR objects is the employees' statutory right to strike. While this right is encumbered by waiting periods (that have been increased by the Railway Labor Act amendments passed since the CA2 decision), I still believe that whether or not to confer the right to strike is a basic employer policy choice. It is "integral," in my judgment.

This leaves the second half of the third test: whether the operation of the LIRR is a "traditional function" of state government. This question is the crux of this case. Its resolution will be important from the perspective of precedent. 9

SGS argument

The SG makes five arguments why operation of the LIRR is not a "traditional function." First, National League of Cities reaffirmed the holding in United States v. California, 297 U.S. 175 (1936), and stated explicitly that "operation of a railroad engaged in 'common carriage by rail in interstate commerce'" was "not in an area that the States have regarded as intergral parts of their governmental activities." 426 U.S. at 854 n.18. See also Parden v. Terminal R. Co., 377 U.S. 184 (1964) (operation of a common carrier railroad in interstate commerce by a State constitutes a waiver of sovereign immunity and consent to a FELA suit in federal court) and California v. Taylor, 353 U.S. 553, 568 (1957) ("If California, by engaging in interstate commerce by rail, subjects itself to the commerce power so that Congress can make it conform to federal safety requirements, it also has subjected itself to that power so that Congress can regulate its employment relationships.")

Second, the federal government has a long history of involvement in the regulation of railroads. yes

Third, the history of the LIRR and the behavior of NY Metropolitan Transportation Authority (MTA) in this particular litigation belie MTA's claim that operation of the LIRR is a traditional state activity. The LIRR was established in the last century, and was not operated publically until 1966. And the MTA did not take the formal steps of reorganizing the LIRR to claim that the Railway Labor Act did not apply until this very litigation. Only since 1966

Fourth, of the 17 commuter railroads in the United States, only two are publicly owned and operated.

Fifth, the LIRR is a link in the national freight and passenger rail network.

In reply, resps' do not attempt to argue that states historically have operated commuter railroads. The SG therefore wins if the "traditional function" test is cast in historical terms. Resps' argument instead is--as it must be--that the content of "traditional functions" must be determined by means other than historical reference. Their proposal is phrased in various ways, but it is best captured by their statement that the protection of National League of Cities "is triggered by public dependence on the particular government service at issue, not by its lineage or the length of time during which the State has been involved in its provision." Red brief at 19 (emphasis added). See also id. at 20 ("by 1980 transit service had become overwhelmingly a public function in the United States"); id. at 21 ("without public transit, the City of New York could not survive as a vital entity").

*State
relies on
"public
dependence"*

This proposed "public dependence" test plainly is incomplete. The City of New York also would have a difficult time surviving without food or national defense. Yet the former good is primarily supplied by the private sector (with an assist from a federally financed national highway system), and the latter function is the exclusive preserve of the federal government. Obviously neither is immune from federal regula-

tion. Resps hint at this incompleteness when they concede, "[o]f course, the Constitution does not require that any service which the State chooses to provide be deemed immune from federal commerce regulation." Red brief at 22.

If this approach is to succeed at all, a key additional element must be added--an element that resps mention only in passing. See id. at 24 ("the people of New York have an extraordinary and special need for public transportation, which only the State of New York is available to satisfy") (emphasis added). Crucial to any test that defines a state immunity against federal regulation for a given state act must be a showing--not only that the state act services a need on which there is public dependence for governmental action, but also that the act will not be supplied by the federal government. The most logical reason why the federal government will not supply certain services is that the need being serviced is too localized for national attention. And the reason why this is a crucial part of such a state immunity test is that, without such a requirement, National League of Cities could become a bar against federal action in areas in which all agree there is a need for a national response.

It would broaden National League of Cities to interpret it in this manner. I have doubts whether such an interpretation would be wise. Certainly it is a more activist application of federalism limitations. This reading would not only entitle states to unimpeded administration of traditional

/Tmw

state functions ("in areas such as fire prevention, police protection, sanitation, public health, and parks and recreation," National League of Cities, 426 U.S. at 851). It also would grant states hegemony over new areas of governmental activity--for instance, perhaps regulation of CATV or other new and developing "state-sized" technologies. The state entitlement to immunity from federal interference would have to be based on a judicial determination that a particular social problem was confined to the state or local level. As occurs every time that constitutional protection is expanded, the role of the judiciary would increase, because it would be the duty of courts to determine which were "state-" and "local-sized" problems that, by their nature (and not by their history), would be immune from federal regulation.

I suppose one could write an extended essay on the advantages and disadvantages of such general and theoretical alternative approaches to a young doctrine like that of National League of Cities. I will be happy to offer such an essay if you think this helpful. In this memo, however, I will simply state my view--which is that an essentially historical test is preferable to the resps' proposed interpretation. I so conclude because a historical analysis articulates National League of Cities' concern with preserving traditional state roles at the same time it provides a manageable framework for deciding cases. I therefore would reverse, for the reasons given by the SG on pages 5-6 of this memo.

No

10.
*I don't think
I will*

If you disagree with my view, a more pragmatic difficulty with the resps' approach remains. That difficulty is the issue of whether operation of the LIRR in fact is a "state-sized" social problem for which state sovereignty should be guaranteed. Railroad bankruptcy is not an unprecedented problem. As Amtrack and the Gibbon case (argued in December) make apparent, such bankruptcies often have caused a federal rather than a state response. Significantly, of course, the railroads in those cases definitely were interstate lines, whereas the LIRR tracks are completely intrastate. As petr argues, however, the LIRR remains a part of the national rail system; it provides the only extension that connects Long Island with nationwide passenger and freight service. Although interstate freight service is comprises a tiny proportion of LIRR's revenues (4%, according to red LIRR brief at 25), in absolute terms the interstate freight car activity is substantial--involving 120,000 freight cars and two million car miles in 1979. Blue brief at 11-12. (We are given no statistics on interstate passenger traffic--presumably suggesting that such traffic is minimal.)

In short, it is not plain that the bankruptcy of the LIRR is a problem that calls for a governmental response solely from the state level. Due to this fact, this may not be the case to expand National League of Cities beyond that the limits of a historical approach--even if you are ultimately persuaded that such a historical analysis is an overly restrictive view

of the proper constitutional federalism doctrine.

Finally, if you disagree with my view and believe that the LIRR has the better argument up to this point, there remains the fourth step in the National League of Cities test: whether the nature of the federal interest is such as to justify the federal invasion of state sovereignty. The paradigm case illustrating this balancing is Fry v. United States, 421 U.S. 542 (1975) (upholding application of federal wage-price freeze to state governments). I am not persuaded that railroad labor problems are of such a national priority as to countenance this unusual federal intrusion upon state sovereignty. Similarly, the Railway Labor Act is not a temporary measure that will expire once an emergency has passed. In these respects, rail labor strife is a different sort of problem than was inflation, and the Railway Labor Act is a different sort of law than was the Economic Stabilization Act of 1970. If the S.G. loses up until this final test, I think he also must fail this test as well.

III. Conclusion

The National League of Cities test has four elements: (1) whether a federal statute regulates "States as States;" (2) whether the federal regulation addresses indisputable "attributes of state sovereignty;" (3) whether the federal law directly impairs state ability "to structure integral operations in areas of traditional functions;" and (4) whether the

nature of the federal interest nevertheless is such as to justify state submission.

The first prong of the National League of Cities test, as stated by Virginia Surface Mining, is satisfied here because the Railway Labor Act regulates "States as States."

How? - By limiting state power?
yes

The second and third prongs of the test should, in my view, be understood as inquiring, first, whether the challenged federal regulation displaces an "integral operation" of state government, and second, whether this occupation occurs in a "traditional function" of state government. Because decision about the right to public employees to strike is very similar to decisions about minimum wages for public employees, I think there is no question but that the Railway Labor Act displaces an "integral operation" of state government.

Is an "integral" operation?

The crux of this case is whether running the LIRR is a "traditional function" of state government. The SG makes strong arguments that rail operation is not a tradition state function as a historical matter. If this is how this prong of the third test is to be understood--and I think it should be so understood--then these arguments are conclusive and the case should be reversed.

yes

Resps argue that the LIRR performs a vital function for NYC. If this prong of the third test is to respond to this argument, the Court must add the requirement that the given activity is one that only a state or local government will supply. There is some doubt whether operation of the LIRR is in-

deed such an activity, because operation of the LIRR does implicate national interests. But the Court could hold for the LIRR on these grounds if it were willing to adopt a fairly activist version of the National League of Cities doctrine.

Finally, if the LIRR prevails to this point, it should win the whole case. The fourth National League of Cities test does not pose a insuperable barrier; the federal interests behind the Railway Labor Act do not outweigh state sovereignty interests in the manner of the wage freeze in Fry v. United States.

80-1425 Long Island RR case 1/11/82

CA 2, relying on Nat. League of Cities, held Railway Labor Act invalid as applied to L.I. Ry.

Inclined to Reverse

Calif. v Taylor (Ry Labor Act)

Parden (FEA) & U.S. v Calif (Ry Safety Act)

The critical elements of Nat League of Cities (as construed in Hodel) are whether:

1. The Act intrudes on "undisputably attributes of state sovereignty"? No

2. Regulating right to strike is an "integral state operation"?

If control of wages & hours of state & local employees is "integral" - req. of strike is also.

3. Is owning & op. RR a "traditional function" of State? No.

In N.Y., only since 1966

Few states own RRs.

Req. of RR is traditionally a fed. function, vitally affecting interstate commerce.

80-1925 UNITED TRANSPORTATION UNION v. LONG ISLAND

Argued 1/20/82

Friedman (For Union Petr)

Relies on ~~Calif~~ Calif v Taylor, U.S. v Calif
& Parden

Schwartz (SG)

Even if employees of RR were employees of the State, RLA Act would apply if the RR engaged in interstate commerce.

Congress limited RLA to RR in interstate commerce. Thus, urban transit systems are not covered. Statute itself excludes them.

Kader (Rep - N.Y. City) Able lawyer

Emphasizes facts.

N.Y.'s sovereignty includes right to strike, to bargain collectively, & to request arbitration. State interest in all of these is great. But possibly by Safe Act act.

Rate regulation as to freight traffic is conceded to be a subj. to ICC.

x x x

Collective bargain is peculiarly important to state. State may ?? allow this but doesn't have to

FELT
Safe Act beyond
reach

9/1/9
write
must
obtain
oral
transcript
to see
what
N.Y. claims
is beyond Fed
reach.

Kaden (cont.)

State took over L/9 Ry because its bankruptcy ~~so~~ would have affected severely the State ~~and~~ economy.

State owned Ry should not be subject to RR Retirement Act.

The Q of what service or activities come within ~~League~~ League of Cities.
~~Standard~~

Propose a standard for distinguishing bet. service that may be essential to State sovereignty & those that are not. (I did not understand Kaden's standard)

UIC subsidy is about \$1 billion per year

If there were no freight traffic (47%) the RL Act would not ~~so~~ apply because of the exception in the Act.

Consider freight traffic is interstate.

Employees of L/9 Ry are employees of State.

L1 Ry has been operating since 1830s.

It provides an essential State & municipal service.

No. _____,

The Chief Justice *Rev*Justice Brennan *Rev*Justice White *Rev.*

Justice Marshall *Rev*

Justice Blackmun *Rev.*

Justice Powell *Rev.*

Calif v Taylor
U.S. v Calif
Parden } *Control*

Justice Rehnquist

Rev.

Justice Stevens

Rev.

Our case control.

Justice O'Connor

Rev

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

L.F.P.

From: The Chief Justice

Circulated: MAR 12 1982

Recirculated:

Reviewed
3/14

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1925

UNITED TRANSPORTATION UNION, PETITIONER *v.*
LONG ISLAND RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[March —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether the Tenth Amendment prohibits application of the Railway Labor Act to a state-owned railroad engaged in interstate commerce.

I

The Long Island Rail Road, incorporated in 1834, provides both freight and passenger service to Long Island.¹ In 1966, after 132 years of private ownership and a period of steadily growing operating deficits, the railroad was acquired by New York State through the Metropolitan Transportation Authority.

¹The railroad's western terminus is Pennsylvania Station in Manhattan; there it connects with lines of railroads which serve other parts of the country. The eastern terminus is at Montauk Point, at the tip of Long Island, but most of its main and branch line traffic originates in the western half of Long Island, in the boroughs of Brooklyn and Queens, and in the suburbs of Nassau and western Suffolk counties. By far the bulk of the railroad's business is carrying commuters between Long Island's suburban communities and their places of employment in New York City. However, the Railroad supplies Long Island's only freight service; it does a significant volume of freight business, with 1979 freight revenue of over \$12 million.

Thereafter, the Railroad continued to conduct collective bargaining pursuant to the procedures of the Railway Labor Act. 45 U. S. C. § 151 *et seq.* The United Transportation Union, petitioner in this case, represents the Railroad's conductors, brakemen, switchmen, firemen, motormen, collectors and related train crew employees. In 1978, the Union notified the Railroad that it desired to commence negotiations and the parties began collective bargaining as provided by the Act. They failed to reach agreement during preliminary negotiations and, in April, 1979, the Railroad and the Union jointly petitioned the National Mediation Board for assistance. Seven months of mediation efforts by the Board failed to produce agreement, however, and the Board released the case from mediation. This triggered a 30-day cooling-off period under the Act; absent Presidential intervention, the Act permits the parties to resort to economic weapons, including strikes, upon the expiration of the cooling-off period.

The Union apparently thought the State was considering a challenge to the applicability of the Act to the Railroad and on December 7, one day before the expiration of the 30-day cooling-off period, it sued in federal court seeking a declaratory judgment that the dispute was covered by the Railway Labor Act and not the Taylor Law, New York's law governing public employee collective bargaining and prohibiting strikes by public employees.² The next day, the Union commenced what was to be a brief strike. Pursuant to the Act, the President of the United States intervened on December 14, thus imposing an additional 60-day cooling-off period

² On January 17, 1980, the Railroad responded to the Union's suit for declaratory judgment by asserting that no justiciable controversy existed because the railroad did not believe the Taylor Law applied and therefore had no intention to invoke its provisions.

which was to expire on February 13, 1980.³ A few days before the expiration of the 60-day period, the State converted the Railroad from a private stock corporation to a public benefit corporation, apparently believing that the change would eliminate Railway Labor Act coverage and bring the employees under the umbrella of the Taylor Law.

The Railroad then filed suit in state court on February 13 seeking to enjoin the impending strike under the Taylor Law. Before the state court acted, the United States District Court for the Eastern District of New York heard and decided the Union's suit for declaratory relief, holding that the Railroad was a carrier subject to the Railway Labor Act, that the Act, rather than the Taylor Law, was applicable, and that declaratory relief was in order. *United Transportation Union v. Long Island R. R.*, 509 F. Supp. 1300 (EDNY 1980).

In a footnote the District Court rejected the argument now presented to this Court that application of the Act to the state-owned railroad was inconsistent with *National League of Cities v. Usery*, 426 U. S. 833 (1976). 509 F. Supp., at 1306, n. 4. The District Court noted that in *National League of Cities*, the Supreme Court "specifically held that operation of a railroad in interstate commerce is not an integral part of government activity" and affirmed the rulings in *California v. Taylor*, 353 U. S. 553 (1957), and *United States v. California*, 297 U. S. 175 (1936), which held that the Railway Labor Act and the Safety Appliance Act could be applied to state-owned railroads. *Ibid.*

The Court of Appeals reversed, holding that the operation of the Long Island Railroad was an integral government function and that the federal Act displaced "essential governmental decisions" involving that function. *United Transpor-*

³ The Presidential intervention also triggered the creation of a Presidential Emergency Board to investigate and report on the matter.

4 TRANSPORTATION UNION *v.* LONG ISLAND R.R. CO.

tation Union v. Long Island R.R., 634 F. 2d 19 (CA2 1980). The court applied a balancing approach and held that the State interest in controlling the operation of its railroad outweighed the federal interest in having the Act apply.

We granted certiorari, — U. S. — (1980), and we reverse.

II

There can be no serious question that, as both the District Court and the Court of Appeals held, the Long Island Railroad is subject to the terms of the Railway Labor Act⁴, or that the Commerce Clause grants Congress the plenary authority to regulate labor relations in the railroad industry in general.⁵ This dispute concerns the application of this acknowledged congressional authority to a state-owned railroad; we must decide whether that application so impairs the ability of the state to carry out its constitutionally-preserved sovereign function as to come into conflict with the Tenth Amendment.⁶

⁴The Railroad acknowledges in its brief that the Long Island's freight service, which is admittedly engaged in interstate commerce, "eliminat[es] any dispute regarding its coverage by the RLA." Brief for the Respondents, at 23.

In the Court of Appeals, the Railroad maintained that Congress did not intend the Act to apply to state-owned passenger railroads. 634 F. 2d, at 23. Whatever merit that claim may have had, it is no longer tenable. After that court rendered its decision, Congress amended the Act to add section 9a, 45 U. S. C. § 159a. Section 9a establishes special procedures to be applied to any dispute "between a publicly funded and publicly operated carrier providing rail commuter service . . . and its employees."

⁵See *Texas & N.O.R. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548 (1930).

⁶The Tenth Amendment provides:

"The powers not delegated to the United States by The Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

A

The Railroad claims immunity from the Railway Labor Act, relying on *National League of Cities v. Usery*, *supra*, where we held that Congress could not impose the requirements of the Fair Labor Standards Act on state and local governments.⁷ That Act generally requires covered employers to pay employees no less than a minimum hourly wage and to pay them at one and one-half times their regular hourly rate for all time worked in any workweek in excess of forty hours. Prior to 1974, the Act excluded most governmental employers. However in that year Congress amended the law to extend, in somewhat modified form, its provisions to “public agencies,” including state governments and their political subdivisions.⁸ We held that the 1974 Amendments were invalid “insofar as [they] operate to directly displace the States’ freedom to structure integral operations in areas of *traditional governmental functions*. . . .” 426 U. S., at 852. (Emphasis supplied.)

Only recently we had occasion to apply the *National League of Cities* doctrine in *Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, — U. S. — (1981). In holding that the Surface Mining and Reclamation Act of 1977, 30 U. S. C. § 1201, *et seq.*, did not violate the Tenth Amendment by usurping State authority over land-use regulations, we set out a three-prong test to be applied in evaluating claims under *National League of Cities*:

“[I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* must satisfy *each* of three requirements. First, there must be a showing that the challenged regulation regulates the ‘States as States.’

⁷ The Fair Labor Standards Act is codified at 29 U. S. C. § 201 *et seq.*

⁸ 88 Stat. 55 (1974). The 1974 amendments modified several of the definitions contained in 29 U. S. C. § 203.

Id., at 854. Second, the federal regulation must address matters that are indisputably 'attributes of state sovereignty.' *Id.*, at 845. And third, it must be apparent that the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional functions.' *Id.*, at 852."⁹

The key prong of the *National League of Cities* test applicable to this case is the third one, which examines whether "the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional functions.'"

B

The determination of whether a federal law impairs a State's authority with respect to "areas of traditional [State] functions" may at times be a difficult one. In this case, however, we do not write on a clean slate. As the District Court noted, in *National League of Cities*, we explicitly reaffirmed our holding in *United States v. California*, 297 U. S. 175 (1936), and in two other cases involving federal regulation of railroads:¹⁰

"The holding of *United States v. California* . . . is quite consistent with our holding today. There California's activity to which the congressional command was directed was not in an area that the states have regarded as integral parts of their governmental activities. It was, on the contrary, the operation of a railroad engaged in 'common carriage by rail in interstate commerce. . . .' 297 U. S., at 182." 426 U. S., at 854, n. 18.

⁹ However, even if these three requirements are met, the federal statute is not automatically unconstitutional under the Tenth Amendment. The federal interest may still be so great as to "justif[y] State submission." *Ibid.*, at —, n. 29. Cf., *Case v. Bowles*, 327 U. S. 92 (1946).

¹⁰ *Parden v. Terminal R. Co.*, 377 U. S. 184 (1964); *California v. Taylor*, 353 U. S. 553 (1957).

It is thus clear that operation of a railroad engaged in interstate commerce is not an integral part of traditional state activities generally immune from federal interference under *National League of Cities*. See also *Lafayette v. Louisiana Power & Light Co.*, 435 U. S. 389, 422-424 (1978) (concurring opinion of THE CHIEF JUSTICE).¹¹ The Long Island is concededly a railroad engaged in interstate commerce.

The Court of Appeals distinguished the three railroad cases discussed in *National League of Cities*, noting that they dealt with freight carriers rather than primarily passenger railroads such as the Long Island. That distinction does not warrant a different result, however. Operation of passenger railroads, no less than operation of freight railroads, has traditionally been a function of private industry, not state or local governments.¹² It is certainly true that some passenger railroads have come under government control in recent years, as have several freight lines, but that does not alter

¹¹ "[T]here [is] certainly no question that a State's operation of a common carrier, even without profit and as a 'public function,' would be subject to federal regulation under the Commerce Clause. . . .

. . . The *National League of Cities* opinion focused its delineation of the 'attributes of sovereignty' . . . on a determination as to whether the State's interest involved 'functions essential to separate and independent existence.' *Ibid.*, quoting *Coyle v. Oklahoma*, 221 U. S. 559, 580 (1911). It should be evident, I would think, that the running of a business enterprise is not an integral operation in the area of traditional government functions. . . . Indeed, the reaffirmance of the holding in *United States v. California*, *supra*, by *National League of Cities*, *supra*, at 854, n. 18, strongly supports this understanding." *Ibid.*, at 422-424 (CHIEF JUSTICE BURGER, concurring).

¹² At the time of this suit, there were 17 commuter railroads in the United States; only two of those railroads were publicly owned and operated, both by the Metropolitan Transportation Authority. American Public Transit Association, *Transit Fact Book* 74-75 (1979). Those two public railroads the long Island and the Staten Island were originally private railroads. The Staten Island was founded in 1899 and acquired by the Metropolitan Transportation Authority in 1971. *Moody's Transportation Manual* 97 (1979).

the historical reality that the operation of railroads is not among the functions *traditionally* performed by State and local governments. Federal regulation of state-owned railroads simply does not impair a State's ability to function as a State.

III

In concluding that the operation of a passenger railroad is not among those governmental functions generally immune from federal regulation under *National League of Cities*, we are not merely following dicta of that decision or looking only to the past to determine what is "traditional." In essence, *National League of Cities* held that under most circumstances federal power to regulate commerce could not be exercised in such a manner as to undermine the role of the States in our federal system. This Court's emphasis on traditional governmental functions and traditional aspects of state sovereignty was not meant to impose a static historical view of state functions generally immune from federal regulation. Rather it was meant to require an inquiry into whether the federal regulation affects basic State prerogatives in such a way as would be likely to hamper the state government's ability to fulfill its role in the Union and endanger its "separate and independent existence." *Ibid*, at 851.

Just as the federal government cannot usurp traditional state functions, there is no justification for a rule which would allow the States, by acquiring functions previously performed by the private sector, to erode federal authority in areas traditionally subject to federal statutory regulation. Railroads have been subject to comprehensive federal regulation for nearly a century.¹³ The Interstate Commerce Act—

¹³ The initial exercise of the federal authority over railroads occurred before the completion of the first transcontinental railroad. See the Pacific Railroad Act of 1862. 12 Stat. 489. Of course, federal regulation of interstate transportation goes back many more years than that. See the 1793

the first comprehensive federal regulation of the industry—was passed in 1887.¹⁴ A year earlier we had held that only the federal government, not the states, could regulate the interstate rates of railroads. *Wabash, St. L. & P. Ry. v. Illinois*, 118 U. S. 557 (1886). The first federal statute dealing with railroad labor relations was the Arbitration Act of 1888;¹⁵ the provisions of that Act were invoked by President Cleveland in reaction to the Pullman strike of 1894. Federal mediation of railroad labor disputes was first provided by the Erdman Act of 1898¹⁶ and strengthened by the Newlands Act of 1913.¹⁷ In 1916, Congress mandated the eight-hour-day in the railroad industry.¹⁸ After federal operation of the railroads during World War I, Congress passed the Transportation Act of 1920,¹⁹ which further enhanced federal involvement in railroad labor relations. Finally, in 1926, Congress passed the Railway Labor Act, which was jointly drafted by representatives of the railroads and the railroad unions.²⁰

Act regulating coastal trade discussed in *Gibbons v. Ogden*, 9 Wheat. 1 (1824).

¹⁴ 24 Stat. 379.

¹⁵ 25 Stat. 501.

¹⁶ 30 Stat. 424.

¹⁷ 38 Stat. 103.

¹⁸ Adamson Act of 1916, 30 Stat. 721.

¹⁹ 41 Stat. 456.

²⁰ Railway Labor Act of 1926, 44 Stat. 577. 45 U. S. C. § 151 *et seq.* The purposes of the Railway Labor Act are set out in Section 2 of the Act, 45 U. S. C. § 151a:

“The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements

The Act has been amended a number of times since 1926, but its basic structure has remained intact. The Railway Labor Act thus has provided the framework for collective bargaining between all interstate railroads and their employees for the past 56 years. There is no similar history of longstanding State regulation of railroad collective bargaining or of other aspects of the railroad industry.

Moreover, the federal government has determined that a uniform regulatory scheme is necessary to the operation of the national rail system. In particular, Congress long ago concluded that federal regulation of railroad labor relations is necessary to prevent disruptions in vital rail service essential to the national economy. A disruption of service on any portion of the interstate railroad system can cause serious problems throughout the system. Congress determined that the most effective means of preventing such disruptions is by way of requiring and facilitating free collective bargaining between railroads and the labor organizations representing their employees. Rather than absolutely prohibiting strikes, Congress decided to assure equitable settlement of railroad labor disputes, and thus prevent interruption of rail service, by providing mediation and imposing cooling-off periods, thus creating "an almost interminable" collective bargaining process. *Detroit & T. S. L. R.R. v. United Transportation Union*, 396 U. S. 142, 149 (1969). "[T]he procedures of the Act are purposely long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Brotherhood of Railway & Steamship Clerks v. Florida E. C. R.Co.*, 384 U. S. 238, 246 (1966).²¹ To allow individual

covering rates of pay, rules, or working conditions."

²¹ Under the recent amendments to the Act, adding a new Section 9a, 45 U. S. C. § 159a, the process has been made even more "long and drawn out" insofar as it applies to publicly-owned commuter rail lines such as the Long Island. The law now provides for a "cooling-off period" of up to 240

States, by acquiring railroads, to countermand the federal system of railroad bargaining, or any of the other elements of federal regulation of railroads, would destroy the uniformity thought essential by Congress and would endanger the efficient operation of the interstate rail system.

In addition, a State acquiring a railroad does so knowing that the railroad is subject to this longstanding and comprehensive scheme of federal regulation of its operations and its labor relations. See *California v. Taylor*, 353 U. S. 553, 568 (1957). It is particularly clear in the present case that the State acquired the railroad with full awareness that it was subject to federal regulation under the Railway Labor Act. At the time of the acquisition, a spokesman stated:

“We just have a new owner and a new board of directors. We’re under the Railway Labor Act, just as we’ve always been. The people do not become state employees, they remain railroad employees and retain all the benefits and drawbacks of that.”

The parties proceeded along those premises for the next thirteen years, with both sides making use of the procedures available under the Railway Labor Act, and with Railroad employees covered by the Railroad Retirement Act, the Railroad Unemployment Insurance Act and the Federal Employ-

days after failure of mediation. Any party to the dispute, or the Governor of any State through which the rail service operates, may request appointment of a Presidential Emergency Board to investigate and report on the dispute. If the dispute is not settled within 60 days after creation of the Emergency Board, the National Mediation Board must hold a public hearing at which each party must appear and explain any refusal to accept the Emergency Board’s recommendations. The law then requires appointment of a second Emergency Board at the request of any party or Governor of an affected State. That Emergency Board must examine the final offers submitted by each party and must determine which is the most reasonable. Finally, if a work stoppage occurs, substantial penalties are provided against the party refusing to accept the offer determined by the Emergency Board to be most reasonable.

ers' Liability Act. Conversely, Railroad employees were not eligible for any of the retirement, insurance or job security benefits of New York civil servants.

There is thus strong evidence not only that the State knew of and accepted the federal regulation, but also that it was able to operate under federal regulation without any noticeable impairment of its traditional sovereignty. Indeed, the State's initial response to this suit was to acknowledge that the Railway Labor Act applied. It can thus hardly be maintained that imposition of the Act on the State's operation of the Railroad is likely to impair the State's ability to fulfill its role in the Union or to endanger the "separate and independent existence" referred to in *National League of Cities v. Usery*, *supra*, at 851.

IV

Accordingly, the judgment of the Court of Appeals is reversed and the case is remanded for proceedings consistent with this opinion.

Reversed and remanded.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 15, 1982

No. 80-1925 United Transportation Union
v. Long Island Railroad Co.

Dear Chief,

Please join me.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

March 15, 1982

80-1925 United Transportation Union v. Long Island Railroad

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1982

Re: No. 80-1925 United Transportation Union v.
Long Island Railroad Company

Dear Chief:

Please join me.

Sincerely,

WRW

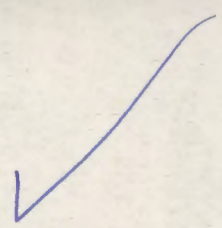
The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 17, 1982



RE: No. 80-1925 United Transportation Union v. Long
Island RR Co., et al.

Dear Chief:

I agree.

Sincerely,

Bill

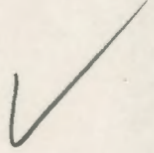
The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 17, 1982

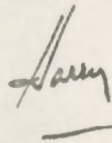


Re: No. 80-1925 - United Transportation Union v.
Long Island Railroad Company

Dear Chief:

Please join me.

Sincerely,

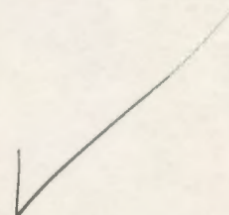


The Chief Justice

cc: The Conference

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1982

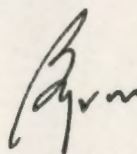


Re: 80-1925 - United Transportation
Union v. Long Island Railroad Company

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 17, 1982

Re: No. 80-1925 - United Transportation Union v.
Long Island Railroad Company

Dear Chief:

Please join me.

Sincerely,

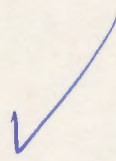
T.M.
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



March 18, 1982

Re: 80-1925 - United Transportation Union
v. Long Island Railroad Co.

Dear Chief:

Please join me.

Respectfully,

The Chief Justice

Copies to the Conference -

THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
1/25/82								
1st draft 3/12/82	agree 3/17/82	join CG 3/17/82	join CG 3/17/82	join CG 3/17/82	join CG 3/15/82	join CG 3/16/82	join CG 3/18/82	join CG 3/15/82
2nd draft 3/15/82								

80-1925 United Transportation v. Long Island