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Labor Standards of the Mass Transportation Act

Agreement Provisions Pertaining

to the

Labor Standard Requirements

of

The Urban Mass Transportation

Act of 1964

Prepared by The American Transit Association
July 25, 1968

PREFACE

Due to the large volume of material received in response to the American Transit Association letter of April 19, 1968, which appears on the following page, it was determined that it would be impractical to forward each member a complete set of the Section 13 agreements. This booklet was therefore prepared for the purpose of providing the membership with a sampling of the most widely used approaches to the critical requirements of Section 13(c) of the Urban Mass Transit Act of 1964.

Also included is a section containing provisions not required by Section 13 but common to most of the agreements received. Finally, as appendices we have included a model agreement and the important New Orleans Union Passenger Terminal Case.

It should be kept in mind that the model agreement is narrow in scope, and may be insufficient to meet many local situations.

American Transit Association

815 CONNECTICUT AVENUE, N. W., WASHINGTON, D. C., 20006

(202) 223-5770

F. NORMAN HILL . . . President
S. A. CARIA . . . . Vice-President
P. J. MEINARDI . . . . Treasurer

Founded 1882

ROBERT SLOAN . . . . . Executive Vice-President and General Secretary

April 19, 1968

TO: All Transit Systems Which Have Received Grants Under the Urban Mass Transportation Act of 1964.

Gentlemen:

During the recent Executive Conference held in Puerto Rico, considerable discussion was devoted to the various elements of the Urban Mass Transportation Act. Section 13, Labor Standards, received the most attention. It was decided that it would be extremely helpful to all member transit systems if they had the benefit of reviewing the various Section 13 agreements which have been executed by the applicants to date.

It is requested, therefore, that each transit system which has executed one or more agreements in compliance with Section 13 of the Act, forward copies of such agreements to ATA headquarters in Washington.

Please comply with this request without delay.

All such agreements received will be reproduced and a complete set forwarded to each transit system member. In the future, ATA will secure copies of new agreements as they are made and distribute them to its transit system members so that they will be kept current on agreements made under Section 13.

Sincerely,

Robert Sloan

blm

TABLE OF CONTENTS

SECTION 13 OF THE URBAN MASS TRANSPORTATION ACT OF 1964

LABOR STANDARDS

SEC. 13 (a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

(c) It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat.379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangement.

A SELECTION OF PROVISIONS

DRAWN FROM THE AGREEMENTS

SUBMITTED TO THE

AMERICAN TRANSIT ASSOCIATION

THE FOLLOWING PROVISIONS REFER

TO THE REQUIREMENTS OF SECTION 13

SECTION 13 (c)(1)

"...the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise....".

1.

All rights, privileges and benefits (including pension rights and benefits) of employees of the COMPANY represented by UNION (including employees already having retired) under existing collective bargaining agreements or otherwise, shall be perserved and continued.

2.

The collective bargaining agreement between parties dated _____, and now in effect by its terms until _____ is deemed by the parties adequate to preserve all rights, privileges and benefits of employees of the COMPANY within the meaning of Section 13(c) of the Act for the term of the Agreement. The collective bargaining rights of the employees of the COMPANY shall be preserved and continued. The COMPANY agrees that it will bargain collectively with the UNION and enter into collective bargaining agreements with the UNION so long as the UNION remains the authorized representative of employees of the COMPANY. Pension rights and benefits of employees of the COMPANY and those persons who have heretofore retired shall be preserved. Nothing in this Agreement shall be construed as an undertaking by the UNION or the employees it represents to forego any rights or benefits under any other agreement or under any provision of law.

3.

The rates of pay, rules and working conditions and all other rights, privileges and benefits (including pension rights and benefits) of employees of the COMPANY represented by the UNION (including employees having already retired) under existing collective bargaining agreements or otherwise, shall be preserved and continued.

SECTION 13 (c)(2)

"...The continuation of collective bargaining rights..."

1.

The collective bargaining rights of employees of the COMPANY represented by UNION including the right to arbitrate labor disputes as provided in applicable laws, policies, and/or existing collective bargaining agreements, shall be preserved and continued. The COMPANY agrees that it will bargain collectively with UNION as to those employees certified by the State Conciliation Service to be represented by said UNION and will enter into agreements with UNION relative to all matters of employee and employer relations, including wages, salaries, hours, working conditions, health and welfare benefits, pension and retirement allowances.

2.

The collective bargaining rights of employees of the COMPANY represented by the UNION, as provided in applicable laws and/or existing collective bargaining agreements, shall be preserved and continued. The COMPANY and the UNION agree that they will bargain collectively and will enter into any agreements which may be arrived at as a result of such bargaining relative to such matters of employee and employer relations, including wages, salaries, hours, working conditions, health and welfare benefits, pension and retirement allowances, as are or may be proper subjects of collective bargaining.

3.

The collective bargaining rights of employees of the COMPANY represented by the UNION, including the right to arbitrate labor disputes as provided in applicable laws, policies, and/or existing collective bargaining agreements, shall be preserved and continued.

SECTION 13 (c)(3)

"...The protection of individual employees against a worsening of their positions with respect to their employment..."

1.

The rights, privileges and benefits contained in the provisions of the Order of the Interstate Commerce Commission in Finance Docket No. 15920, New Orleans Union Passenger Terminal case, 282 ICC 271 of January 16, 1952, will apply to any employee whose position with respect to his employment is worsened as a result of the Project.

2.

The rights, privileges and benefits contained in the provisions of the Order of the Interstate Commerce Commission in Finance Docket No. 15920, New Orleans Passenger Terminal Case, 282 ICC 271, January 16, 1952, where not inconsistent with the provisions of this Agreement, will apply to any employee of the COMPANY represented by the UNION whose job is worsened with respect to his employment as a result of the Project, whether such worsening occurs before, during or after the Project; provided, however, that this provision shall not be interpreted to provide those benefits to any employee hired after the commencement of Project operations who is laid off or terminated for lack of work at the conclusion of the Project, or to any present employee whose position with respect to his employment is improved during the term of the Project and who is thereafter restored to his former position at the conclusion of the Project.

3.

No employee represented by the UNION and covered by the provisions of this Agreement shall be placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights or privileges pertaining thereto, at any time during his employment as a result of the Project, or any program of economies directly or indirectly related thereto.

4.

No employee covered by the provisions of this Agreement shall be deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his employment as a result of the Project or any program of economies directly or indirectly related thereto. An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing agreements.

SECTION 13 (c)(4)

"...Assurances of employment to employees of acquired mass transportation systems and priority or reemployment of employees terminated or laid off; and..."

SECTION 13 (c)(5)

..."paid training or retraining programs". [1/]

1.

No employee of the COMMISSION who is represented by UNION shall be laid off as a result of the Project, but shall be retained in service by the City of _____ or the COMMISSION, unless or until laid off for reasons unrelated to the Project or until his employment terminates on account of death, resignation, discharge for cause or retirement. The term "as a result of the Project" shall, when used in this Agreement, include events occurring in anticipation of, during and subsequent to the Project, so long as they result therefrom. Should the retention of employees pursuant to this Article, necessitate, in the opinion of the COMMISSION, the retraining of employees in order to qualify them for other positions, said retraining shall be provided by the City of _____ or the COMMISSION without cost to the employees involved and without reduction in compensation which would have been paid had said employees continued in their prior positions.

2. (a)

No employees in active service as of the date of this agreement, represented by UNION shall be laid off as a result of the Project, but shall be retained in service unless or until laid off for reasons unrelated to the Project, retired, discharged for cause, or otherwise removed by natural attrition. The phrase "as a result of the Project" shall, when used in this Agreement, include events occurring in anticipation of, during, and subsequent to the Project.

1/ Because of the close relationship between 13 (c)(4) and 13 (c)(5) most of the contracts consider both statutory requirements in one provision or group of provisions. For this reason they are being treated together.

Sections 13(c)(4) & (5) (continued)

2.(b)

In the event employees are terminated or laid off as a result of Project, they shall be granted priority of employment or re-employment to fill any vacant position on the COMPANY'S mass transportation facility for which they are, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or re-employment as aforesaid, COMPANY shall provide, or cause to be provided, such training or retraining at no cost to the employee and such employee shall be paid, while training or retraining as aforesaid, the salary or hourly wage of his former job classification or that classification for which he is training, whichever is higher.

3.

In the event employees of the COMPANY represented by the LOCAL UNION or by the PARENT INTERNATIONAL UNION through any of its other affiliated Local Divisions, are terminated or laid off as a result of the Project, such employees shall be granted priority of employment or re-employment to fill any vacant position on the COMPANY'S transit system in accordance with the then applicable collective bargaining agreement between the COMPANY and the UNION, for which they are, or by training or re-training can become, qualified. In the event training or re-training is required by such employment or re-employment, the COMPANY shall provide, or provide for, such training or re-training at no cost to the employee, and such employee shall be paid, while training or retraining, the salary or hourly wage of his former job or that of the job for which he is training, whichever is higher.

4.(a)

No employee covered by the provisions of this Agreement shall be deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his employment as a result of the Project or any program of economies directly or indirectly related thereto.

4.(a) - cont.

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing agreements.

4.(b)

The Company shall grant to any employee covered by this Agreement who is terminated or laid off priority of employment or re-employment to fill any vacant position in the COMPANY'S service for which he is, or by training or re-training can become, qualified. In the event training or re-training is required by such employment or re-employment, the COMPANY shall provide or provide for such training or re-training at no cost to the employee, and such employee shall be paid, while training or re-training, the salary or hourly rate of his former job classification or that of the classification for which he is training, whichever is higher.

THE FOLLOWING PROVISIONS ARE NOT REQUIRED

BY SECTION 13 BUT ARE COMMON TO MOST OF

THE AGREEMENTS WHICH WERE SUBMITTED

THE PARTIES

1.

This agreement shall cover employees of the COMPANY now or hereafter represented by the UNION and any other employees now or hereafter represented by the UNION or through its other affiliated local unions, who may be affected as a result of the PROJECT, as hereinafter referred to in the event the Department of Housing and Urban Development approves a final application of the City of _____ under the provisions of the Urban Mass Transportation Act of 1964, hereinafter referred to as the ACT, for a capital grant, hereinafter called the Project.

2.

This agreement is made by the COMPANY, a nonprofit corporation, organized pursuant to laws of the State of _____, herein called "Corporation" and acting pursuant to the authority granted in that certain operating agreement with The City of _____ on file in the office of the City Clerk as Document No._____ and the LOCAL UNION DIVISION _____ OF PARENT UNION, herein called "Union".

SUCCESSORS AND ASSIGNS

1.

This agreement shall be binding upon the successors and assigns of the parties hereto and no provision, terms or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made to manage and operate the mass transportation facility. Any person, enterprise, body or agency, whether publicly or privately owned, which shall undertake the management or operation of the transit facility, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

2.

This agreement shall be binding upon the successors and assigns of either the UNION or the COMPANY, and any successor of the UNION as bargaining representative for employees, or the COMPANY in the management and operation of the TRANSIT SYSTEM shall agree to be bound by the terms of this agreement and accept responsibility for full performance of these conditions.

In the event any provision of this agreement is held to be invalid or otherwise in violation of local law, such provision shall be renegotiated for the purpose of replacement under Section 13(c) of the Act. If such negotiation shall not result in a mutually satisfactory agreement, the parties may invoke the jurisdiction of the Secretary of Labor to determine a fair and equitable employee protective arrangement which shall be incorporated in this agreement.

3.

This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, sale, transfer, or assignment of either party hereto, or affected, modified, altered or changed in any respect whatsoever by any change of any kind of the ownership or management of either party hereto or by any change, geographical or otherwise, in the locations or places of business of either party hereto.

THE PURPOSE AND THE PROJECT CLAUSES

1. The purpose of the agreement:

The purpose of this agreement is to provide fair and equitable arrangements to protect the interests of employees represented by this UNION who may be affected in the event the Department of Housing and Urban Development approves a final application of the City of _____ under the provisions of the Urban Mass Transportation Act of 1964 ("Act") for a capital grant ("Project").

2. The Project:

Such Project to be assisted by Federal Funds in the amount of _____ contemplates the purchase by the Board of _____ _____ and the acquisition and development of a _____ acre site for the construction of _____ and _____.

3. The method of carrying out the Project:

The Project shall be carried out in such a manner and upon such terms and conditions as will not in any way adversely affect employees represented by the UNION. All transportation services to the Project shall be provided by employees of the COMPANY under, and in accordance with, the collective bargaining agreement now in effect between the COMPANY and the UNION and any amendment or successor agreement thereto.

4.

The Project shall be carried out in such a manner and upon such terms and conditions as will not in any way adversely affect employees of the COMPANY represented by the UNION.

INTERPRETATIONS OF
"AS A RESULT OF THIS PROJECT"

1.

The phrase "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project.

2.

The phrase "as a result of these Projects", when used in this agreement, includes events occurring in anticipation of, during and subsequent to these Projects, provided however, that fluctuations, rises and falls and changes in volume or character of employment brought about solely by causes other than these Projects (including any economies or efficiencies unrelated to these Projects) are not within the contemplation of, or covered by, or intended to be covered by this agreement.

ARBITRATION

1.

In the case of any labor dispute where collective bargaining does not result in agreement, the same may be submitted to a Board of Arbitration as provided in applicable laws and the existing collective bargaining agreement between the parties hereto. The term "labor dispute" shall include any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance or pension and retirement provisions, and any grievances or controversy arising out of or by virtue of the within arrangements for the protection of employees affected by the Project. Nothing in this paragraph shall be construed to enlarge or limit the right of either party to utilize, upon the expiration of any collective bargaining agreement, any lawful economic measures that are not inconsistent or in conflict with applicable law.

2.

In the case of any other labor dispute where collective bargaining does not result in agreement, the same may be submitted at the written request of either party to a board of arbitration, composed of three persons to be selected as hereinafter provided, one (1) to be chosen by the COMPANY, one (1) to be chosen by the UNION, and the two thus selected to select a third disinterested arbitrator; the findings of the majority of said board of arbitration to be final and binding on the parties thereto.

Each party shall appoint its arbitrator within ten (10) days after notice of submission to arbitration has been given. Should the two arbitrators selected by the parties be unable to agree upon the selection of the third aribtrator within ten (10) days from the date of appointment of the second named arbitrator, then either arbitrator may request the Secretary of Labor to furnish a list of 15 persons to be selected from the latest available "geographic list of members" of the National Academy of Arbitrators of which eight (8) shall be selected from states below the Mason-Dixon Line. The arbitrators appointed by the

parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, any claim, difference, or controversy arising out of or by virtue of any of the provisions of this agreement for the protection of employees affected by the Project.

3.

In the case of any labor dispute where collective bargaining does not result in agreement, the same may be submitted at the written request of either party to a board of arbitration, composed of three persons to be selected as provided by the agreement between the COMPANY and the UNION in effect on the date of this agreement. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits including health and welfare, sick leave, insurance or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the adjustment of grievances, and any claim, difference or controversy arising out of or by virtue of the within arrangements for the protection of employees affected by the Project.

4.

In the case of any dispute arising under or in connection with the terms and provisions of this Agreement, or in respect to anything not herein expressly provided for, but germane to the general subject matter of this Agreement, where collective bargaining does not result in agreement, the same may be submitted to an Adjudication Board at the written request of either party under Article 9 of the parties' existing collective bargaining agreement. This provision is not to be construed as being applicable to disputes arising from the negotiation of collective bargaining agreements.

AGREEMENT INDEPENDENTLY
BINDING AND ENFORCEABLE

1.

In the event this Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal Government and the applicant for federal funds, provided, however, that this agreement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms. Nor shall the collective bargaining agreement between the COMPANY and UNION merge into this agreement, but each shall be independently binding and enforceable by and upon the COMPANY and UNION, in accordance with their terms.

2.

This agreement shall not merge into the contract of assistance between the Federal Government and the applicant for federal funds, but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms. Nor shall the collective bargaining agreement between the UNION and the COMPANY merge into this agreement, but each shall be independently binding and enforceable by and upon the UNION and the COMPANY, in accordance with their terms.

APPENDIX A

SAMPLE AGREEMENT

AGREEMENT PURSUANT TO SECTION 13(c) OF URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

[TRANSIT AUTHORITY] and [LOCAL UNION] agree as follows:

ARTICLE I

COVERAGE

This Agreement shall cover employees of [Authority] who are presently represented by [local] in the bargaining unit as defined by the collective bargaining agreement between the [Authority] and the [local], and any other employees now or hereafter represented by the [local], or by its parent International Union [Transit Union, AFL-CIO], who may be affected in the event the Department of Housing and Urban Development approves an application for a capital grant (Project) filed by _____, under the provisions of the Urban Mass Transportation Act of 1964, as amended (Act). The Project, to be assisted by Federal Funds, contemplates the purchase of _____

This Agreement shall be binding upon the successors and assigns of the parties hereto and they shall agree to be bound by the terms of this Agreement and accept the responsibility for full performance of these conditions.

ARTICLE II

Compliance With Sec. 13(c) of the Act.

The Project shall be carried out in such a manner and upon such terms and conditions as will be fair and equitable and will not in any way adversely affect employees of the [Authority] now or hereafter represented by the [local] or by its parent International Union within the meaning of Section 13(c) of the Act.

ARTICLE III

RIGHTS AND BENEFITS

All rights, privileges, and benefits (including pension rights and benefits) of employees of the [Authority] represented by the [local] or by its parent International Union (including employees having already retired) under existing collective bargaining agreements or otherwise shall be preserved and continued.

The rights, privileges and benefits contained in the provisions of the Order of the Interstate Commerce Commission in Finance Docket No. 15920, New Orleans Union Passenger Terminal Case 282 ICC 271, January 16, 1952, where not inconsistent with the provisions of this agreement will apply to any employee represented by the [local] or its parent International Union whose position with respect to his employment is worsened as a result of the Project.

Nothing in this Agreement shall be construed as an undertaking by the [local] or the employee represented by the [local] to forego any rights or benefits under any other agreement or under any provision of law.

ARTICLE IV

COLLECTIVE BARGAINING RIGHTS

The collective bargaining rights of employees of the Company represented by the [local] including the right to arbitrate labor disputes, to maintain union security and check-off arrangements, as provided by applicable laws, policies, and/or existing collective bargaining agreements, shall be preserved and continued. The [Authority] agrees that it will bargain collectively with the [local] or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the [local] or arrange for such agreements to be entered into, relative to all subjects of collective bargaining which are or may be proper subjects of collective bargaining with a private employer.

Article IV (continued)

ARBITRATION

In the case of any labor dispute where collective bargaining does not result in agreement, the same may be su mitted to a board of arbitration as provided in applicable laws and the existing collective bargaining agreement between the parties hereto. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of grievances, and any claim, difference or controversy arising out of or by virtue of the within arrangements for the protection of employees affected by the Project.

ARTICLE V

LAYOFF PROTECTION

No employee in active service of the BOARD, as of the date hereof, represented by LOCAL 214, shall be laid off as a result of the PROJECT but shall be retained in service unless and until laid off for reasons unrelated to the PROJECT, retired, discharged for cause or otherwise removed by natural attrition or other justifiable reason. The foregoing phrase, "as a result of the PROJECT" shall, as used herein, include events occurring in anticipation of, during and subsequent to the PROJECT.

Any employee covered by this Agreement who is terminated or laid off for lack of work unreleated to these Projects shall be granted priority of employment or re-employment to fill any vacant position in the system for which he is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or re-employment, the [Authority] shall provide or provide for such training or retraining at no cost to the employee, and such employee shall be paid, while training or retraining, the salary or hourly rate of his former job classification or that of the classification for which he is training, whichever is higher.

ARTICLE VI

OPERATION

In the event of the approval of any of these Projects for Federal assistance, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal Government and the applicant for Federal funds, and shall become immediately effective, provided, however, that this Agreement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms. Nor shall the collective bargaining agreement between the parties merge into this Agreement, but each shall be independently binding and enforceable by and upon the parties in accordance with its terms.

In the event any provision of this Agreement is held to be invalid or otherwise unenforceable under State or local law, such provisions shall be re-negotiated for purpose of adequate replacement under Section 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, either party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their respective duly authorized representatives this _____ day of _____, 19___, at _____.

List of Section 13 Agreements

From Which Selected Provisions Were Taken

July 25, 1968

SECTION 13(c)(l)

1.

Alameda-Contra Costa Transit District

San Diego Transit Corp.

Transit Authority of the City of Sacramento

South Los Angeles Transportation Co.

Atkinson Transportation

Southern California Rapid Transit District

Englewood City Lines

Chicago Transit Authority

Detroit - Department of Street Railways

Transit Services Corp. of Metropolitan St. Louis

Niagara Frontier Transit System

Erie Metropolitan Transit Authority

Port Authority of Allegheny County - Transit Div.

Rhode Island Public Transit Authority

Memphis Transit Management Co.

2.

Seattle Transit Commission

3.

Southern California Rapid Transit District

Port Authority Trans Hudson Div.

SECTION 13(c)(2)

1.

Alameda-Contra Costa Transit District

South Los Angeles Transportation Company

Atkinson Transportation Company

Southern California Rapid Transit District

Englewood City Lines, Inc.

Transit Services Corp. of Metropolitan St. Louis

Memphis Transit Management Company

Chicago Transit Authority

Flint City Coach Lines

Flint City Coach Lines

Rhode Island Transit Authority

Port Authority of Allegheny County - Transit Div.

2.

Transit Authority of the City of Sacramento

Southern California Rapid Transit District

Detroit - Department of Street Railways

3.

Niagara Frontier Transit System

Port Authority Trans Hudson Division

SECTION 13(c)(3)

1.
San Diego Transit Corporation

South Los Angeles Transportation Company

Atkinson Transportation

Englewood City Lines

Southern California Rapid Transit District

Port Authority of Allegheny County - Transit div.

Memphis Transit Management Company

2.
Rhode Island Public Transit Authority

3.
Seattle Transit Commission

4.
Niagara Frontier Transit System

SECTIONS 13(c)(4) and 13(c)(5)

1.

Seattle Transit Commission

2. (a)

Alameda-Contra Costa Transit District

Chicago Transit Authority

Detroit - Department of Street Railways

(b)

San Diego Transit Corp.

South Los Angeles Transportation Co.

Atkinson Transportation

Southern California Rapid Transit Authority

3.

Memphis Transit Management Company

4. (a) & (b)

Niagara Frontier Transit System

THE PARTIES

1.

Detroit - Department of Street Railways

Flint City Coach Lines, Inc.

Transit Services Corp. of Metro. St. Louis

Erie Metropolitan Transit Authority

Memphis Transit Management

Transit Authority of the City of Sacramento

Chicago Transit Authority

Southern California Rapid Transit District

Englewood City Lines

2.

San Diego Transit Corporation

Note: All numbers correspond to the provisions as they appear in the body of the booklet.

SUCCESSORS IN INTEREST AND ASSIGNS

1.

San Diego Transit Corp.

Transit Authority of the City of Sacramento

Chicago Transit Authority

Erie Metropolitan Transit Authority

2.

Seattle Transit Commission

3.

Transit Services Corporation of Metro. St. Louis.

THE PURPOSE CLAUSE AND THE PROJECT

1.

Chicago Transit Authority

Detroit - Department of Street Railways

2.

Detroit - Department of Street Railways

3.

Niagara Frontier Transit System

4.

Englewood City Lines

Flint City Coach Lines

Memphis Transit Management Company

Transit Services Corp. of Metro. St. Louis

Erie Metropolitan Transit Authority

Chicago Transit Authority

Detroit - Department of Street Railways

INTERPRETATIONS OF "AS A RESULT OF THIS PROJECT"

1.

San Diego Transit Corporation

Transit Authority of the City of Sacramento

South Los Angeles Transportation Company

Atkinson Transportation

Southern California Rapid Transit District

Chicago Transit Authority

Detroit - Department of Street Railways

Transit Services Corporation of Metro. St. Louis

Erie Metropolitan Transit Authority

Memphis Transit Management Company

Englewood City Transportation

Niagara Frontier Transit System

Port Authority of Allegheny County - Transit Div.

2.

Flint City Coach Lines

ARBITRATION

1.

Alameda-Contra Costa Transit District

San Diego Transit Corporation

South Los Angeles Transportation Company

Atkinson Transportation Company

Southern California Rapid Transit District

Niagara Frontier Transit System

Erie Metropolitan Transit Authority

2.

Memphis Transit Management Company

3.

Englewood City Lines

Southern California Rapid Transit District

Chicago Transit Authority

4.

Transit Authority of the City of Sacramento

AGREEMENT INDEPENDENTLY BINDING AND ENFORCEABLE

1.

Alameda-Contra Costa Transit District

Chicago Transit Authority

Detroit - Department of Street Railways

Port Authority of Allegheny County - Transit Div.

2.

Southern California Rapid Transit District

Rhode Island Public Transit Authority

FINANCE DOCKET NO. 15920

NEW ORLEANS UNION PASSENGER TERMINAL CASE

Submitted December 20, 1951. Decided January 16, 1952

Order entered providing that the employees adversely affected by the transaction in this proceeding, consistent with the circumstances therein and in conformity with the decision of the Supreme Court of the United States in Railway Labor Executives' Assn. v. United States, 339 U. S. 142, shall be afforded the protection of the Washington agreement of May 21, 1936, subject to certain limitations or restrictions. Previous reports, 267 I. C. C. 760 and 763.

Appearances as in previous reports and, in addition, W. S. Macgill and Henry B. Curtis for applicants, and Edward J. Hickey, Jr., for intervening railway employee organizations.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

No exceptions to the report proposed by the examiner were filed. Division 4, on April 7, 1948, issued its report, certificate, and order herein, 267 I. C. C. 763, among other things, authorizing construction and acquisition of lines of railroad, permitting abandonment or abandonment of operation of lines of railroad, and authorizing and approving joint use or joint ownership of lines of railroad in Orleans and Jefferson Parishes, La., by the city of New Orleans, the Chicago, St. Louis & New Orleans Railroad Company, the Gulf, Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville & Nashville Railroad Company, Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, the New Orleans & Northeastern Railroad Company, the New Orleans Terminal Company,

the Texas & New Orleans Railroad Company, the Texas & Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, incident to the construction and operation of a union passenger terminal in New Orleans, La. Consideration therein was given to the adverse effect on employees which probably would result from a consummation of the transaction and the requirements of section 5 (2) (f) of the Interstate Commerce Act, as amended, in connection therewith, which provides:

As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Upon consideration of such problem adverse effect and of the foregoing provisions, division 4 said:

As the record shows definitely that employees will be affected adversely by the applicants' proposals, it is appropriate in this case that we require a fair and equitable arrangement to protect the interests of employees so affected. We think that the benefit of such an arrangement necessarily must extend to all of the railroad employees affected by exercise of the authorizations herein granted. But we also think that the fair and equitable arrangement contemplated by section 5 (2) (f) is measured by the specification therein of a protective period of 4 years from the effective date of our order approving a transaction within the scope of section 5 (2). As was decided in Chicago, M., St. P. & P. R. Co. Trustees Construction, supra, we have no authority to prescribe any other period.

We are of the opinion that a fair and equitable arrangement for protecting the interests of employees adversely affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9), inclusive, imposed by us in Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177 (197-201) which are similar to those prescribed in Chicago, B. & Q. R. Co., Abandonment, supra, and our approval and authorization herein will be granted subject to those conditions.

Condition 4 in Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177, 197-198, in part provides:

The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order.

The displaced employees referred to in this condition are those employees retained in the carrier's service but placed in a worse position with respect to their compensation or working conditions. However, the protective period indicated therein also applies to dismissed employees, that is, employees who lose their employment with the carrier involved, and who are afforded protection under condition 5 of the foregoing proceeding.

After service of the report and order of division 4 herein, a petition was filed by the Railway Labor Executives Association, protestant, hereinafter sometimes called the labor association, on behalf of the employees involved, requesting reopening, reconsideration, and modification of so much of the report and order as found and provided that the period of protection for the employees adversely affected by the transaction was limited to 4 years from the effective date of the order, the modification sought being that such protective period for each employee continue for a period of 4 years from and after the date when he is affected by the transaction. With the applicants consent the case was reopened for the limited purposes stated and thereafter, on reconsideration, by order of July 6, 1948, we denied the petition.

Failing to secure a modification of the order by us, the labor association sued the United States and this Commission in the United States District Court for the District of Columbia and asked that the objectionable portion of the order, as previously indicated, be set aside. The city of New Orleans and the various railroads involved were permitted to intervene as defendants. The case was heard by a three judge statutory court which granted the defendants' motions for summary judgment and dismissed the complaint. Railway Labor Executives' Assn. v. United States, 84 Fed. Supp. 178. An appeal was taken to the Supreme Court of the United States. That Court reversed the

judgment of the district court and remanded the case to the latter with instructions to remand it to this Commission for further proceedings in conformity with the opinion. Railway Labor Executives' Assn. v. United States, 339 U. S. 142. The Court, among other things, stated:

> We conclude, therefore, that the Commission, while required to observe the provisions of the second sentence of section 5 (2) (f) as a minimum protection for employees adversely affected, is not confined to the four-year protective period as a statutory maximum. The Commission has the power to require a fair and equitable arrangement to protect the interests of railroad employees beyond four years from the effective date of the order approving the consolidation. (Page 155.)

In compliance with the instructions, the district court on May 26, 1950, remanded the case to us and ordered set aside as contrary to law that part of our report and order holding that we had no statutory power under section 5 (2) (f) of the act to provide employee protection beyond 4 years from the date of the order authorizing the transaction; and we were directed to take such further action in the proceeding as, in our discretion, will provide a fair and equitable arrangement for employee protection consistent with the circumstances of the New Orleans passenger terminal project and in conformity with the opinion of the Supreme Court.

By order of June 29, 1950, we reopened the proceeding for reconsideration and such further action as would permit us to comply with the mandate, and assigned the proceeding for hearing on an unspecified date on the specific issues involved. The assignment of a date for the hearing was deferred upon request of the labor association, appellant in the court case, to permit an opportunity for negotiations with the railroad defendants for the purpose of reaching an agreement and entering a stipulation with respect to the protection to be provided employees, which would obviate the necessity for a hearing

and permit the termination of the proceeding. The record shows that conferences were held on the matter. However, on May 18, 1951, the labor association advised us that negotiations had failed. Thereafter a hearing was held at which the brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors were permitted to intervene in support of the position of the labor association.

The problem now presented is to determine what, if any, protective conditions in addition to those prescribed in the previous report are necessary to provide a fair and equitable arrangement for the employees who have been or will be adversely affected by the transaction consistent with the circumstances of the terminal project and in conformity with the opinion of the court. It is the position of the applicants that the conditions imposed by the original order effective May 17, 1948, are fair and equitable and in compliance with the statute, and that there has been no substantial change since that time requiring a modification thereof. They argue that the Supreme Court did not decide whether the arrangement prescribed by us was fair and equitable, inasmuch as the sole question for determination related to our statutory power under section 5 (2) (f) of the act. The position of the employee groups is that the conditions contained in the so-called Washington Job Protection Agreement of May 21, 1936, should be imposed as a fair and equitable arrangement for employee protection in this case, and that at the same time we should carry out the minimum requirements of section 5 (2) (f) of the act without affording any employee the right to receive duplicate compensation or benefits. To achieve this result they suggest that the so-called Oklahoma conditions contained in the original order of this Commission be retained and that a new provision be added that---

Any employee adversely affected prior to May 17, 1952, who has failed to receive, under the Oklahoma conditions, dismissal or displacement compensation equal to that prescribed by the Washington Agreement, shall continue to receive compensation under the terms of the Washington Agreement until the compensatory benefits therein provided for his particular period of service have been paid.

On May 21, 1936, most of the railroads of the United States, including all but one of the operating carriers involved herein, entered into an agreement, commonly known as the Washington agreement, which provided specific protection for employees thereafter adversely affected by any"joint action by two or more carriers whereby they unify, consolidate, merge, or pool, in whole or in part, their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities." As to displaced employees such protection applies from the date of adverse effect. These employees are those who lose their positions but are continued in service in other positions. They are guaranteed against loss in average monthly compensation, based on the last 12 months in which they perform service prior to their displacement, for a total period not exceeding 5 years. A coordination allowance is provided for dismissed employees from the date they are adversely affected which must be within 3 years after the effective date of the coordination. This allowance is predicated on the employee's average monthly compensation during the last 12 months in which he earned compensation prior to his loss of employment, and upon his length of service. An employee with 1 year and less than 2 years' service is given 60 percent of his average monthly salary on the basis indicated for a period of 6 months, which allowance progressively increases until an employee with an excess of 15 years' service receives 60 percent of his average monthly salary for a

period of 60 months or 5 years. A provision for lump-sum payment is contained with respect to employees with less than a year's service. The Oklahoma conditions differ in that they prescribe 100-percent protection for a maximum period of 4 years from the effective date of the Commission's order. If the actual consummation of the transaction authorized is delayed or postponed for all or any portion of the 4-year period following the effective date of the Commission's order, the period of protection after actual loss of employment is correspondingly diminished.

The employee groups point out that the Washington agreement by stipulation has been accepted by railroad carriers as a fair and equitable arrangement for the protection of employees in more than 30 cases in which section 5 (2) authorization was required. They are of the opinion that under the agreement the carriers signatory thereto are bound to afford the protection prescribed therein as a minimum, in the event that the protection prescribed under the statute should be less than that amount. The applicants argue that the Washington agreement was superseded by the enactment of section 5 (2) (f), and no longer is applicable to transactions requiring approval by us under section 5 (2) of the act. As stated in the previous report, it is not our function to decide that controversy. Our duty is limited to the requirements of the statute.

Originally it was estimated, as shown by the previous report, that upon completion of the terminal project, 1,022 employees would be dismissed from their present positions, and that 680 employees would be required to operate and maintain the new passenger terminal. Of those dismissed, it was estimated that there would be 9 bridge tenders and 108 crossing watchmen. Later estimates as to the effect on employees based on employment levels as of April 16, 1951, were submitted by the applicants at the further hearing.

They now estimate that the project will result in the elimination of 1,043 positions, including the positions of 7 bridge tenders and 10 crossing watchmen already eliminated. The completion date for the entire terminal project is scheduled for some time in the first quarter of 1953. During 1952 there will be 19 additional crossing watchmen dismissed. It is not anticipated that any of the remaining 1,007 positions will be abolished prior to the completion date of the project. The new terminal company is to recruit its employees from those employees dismissed on account of the project. At present it is estimated by the applicants that there will be 718 positions to be filled. However, not all the employees displaced will be eligible for new positions because some of the latter will not correspond to any old position, and in particular categories, such as clerks and policemen, more jobs will be created than will be abolished. After all the new positions are filled by the terminal company, it is estimated that there will be 372 employees who will have lost their positions, divided as follows: Enginemen 2, yardmen 14, machinists 7, sheet-metal workers 9, electrician 1, carmen 37, painters 3, unskilled labor 174, and crossing watchmen 125.

Based on the assumption that employment levels and labor turnover will continue as at present, the applicants estimate that upon completion date only 88 of the employees who will be without railroad jobs will have had service with the applicants prior to the Commission's certificate of approval of May 17, 1948. These will consist of 3 sheet-metal workers, 11 unskilled laborers, and 74 crossing watchmen. The applicants state that 195 of the employees who will be displaced entered the service between May 17, 1948, and April 16, 1951, and that the remaining 89 will be men hired between the latter date and completion date.

Estimates of cost have been submitted by the applicants based on various assumptions as to the conditions which may be prescribed. The Washington agreement applied without limitation or restriction to all employees dismissed, would require total payments of $913,198, or an average of $183,750 annually. Consideration was given neither to possible credits from earnings in other railroad employment nor to cost to the carriers where an employee might be retained at a lower rate of pay. To what extent such factors would affect the estimate cannot be determined. It should be pointed out that the employees heretofore dismissed have found other employment and have claimed no compensation. If it be assumed that the 19 employees to be dismissed during 1952 should receive compensation under the present Oklahoma conditions, they would have received on May 17, 1952, when the protection thereunder ends, an amount considerably less than they would be entitled to receive under the Washington agreement. Accordingly, it seems reasonable to assume that the total cost under the Washington agreement would not be increased by applying the Oklahoma conditions on the basis originally prescribed as a minimum with respect to employees affected within 4 years from the effective date of the order or prior to May 17, 1952.

Should the present Oklahoma conditions be extended beyond the completion date of the project and the period of protection for individual employees limited to the length of their service prior to the date of the Commission's order of approval, the cost would amount to $216,552 for 1 year and to $681,474 for 4 years beyond the completion date. Should the Oklahoma conditions be extended beyond the completion date and the period of protection made contingent upon the time worked prior to such date, the cost during the first year would amount to $949,766, and for a full 4-year protective period would amount to $2,645,000. A witness for the applicants stated that, prior to the hearing, it had been assumed that the interveners would request that the Oklahoma conditions be prescribed for the full protective period

computed from the date the employee is adversely affected. The date of adverse effect might be before, on, or after the completion date.

The applicants point out that the cost of the entire passenger-terminal project was originally estimated to be $37,000,000, whereas the estimated cost now is $43,000,000. In view of such increased costs, the applicants argue that to place a further financial liability upon them where not clearly necessary to provide a fair and equitable arrangement to protect the employees involved would be unduly burdensome, and inimical to the public interest. However, the cost of the project is being borne almost entirely by the city of New Orleans except to the extent that the other applicants will pay as rent for use of the new station the interest and principal on the portion of the total cost reflected in the bonds issued. The applicants whose employees are involved have not shown that they will be required to bear the increased cost of the terminal project.

The applicants contend that we must relate any conditions which we may prescribe under the first sentence of section 5 (2) (f) to the period of employment prior to the effective date of the order authorizing the transaction; that otherwise such conditions will be unlawful and will have the effect of rendering meaningless the exception written into the statute by Congress as a standard which we are required to include in our order of approval. After referring to the clause which limits the protective period to the length of employment prior to the effective date of the order approving the transaction, the Supreme Court said:

> This clause emphasized the separability of the second sentence, for it provided that "the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period ***" than that prescribed.
>
> The second sentence thus gave a limited scope to the Harrington Amendment and made it workable by putting a time limit upon its otherwise prohibitory

effect. There was no comparable need for such a restriction upon the first sentence. We find, therefore, that the time limit in the second sentence now applies to it and to it alone. As thus limited, that sentence adds a new guaranty of protection for the interests of employees, without restricting the Commission's power to require greater protection as part of a fair and equitable arrangement. This serves the purpose of the sentence to increase, rather than to decrease, the protective effect of the paragraph.

From the foregoing, it is concluded that the Court holds that the second sentence of section 5 (2) (f) is entirely separable from the first sentence thereof, and that the former imposes no limitation upon this Commission, except as a minimum, in prescribing a fair and equitable arrangement under the latter. The language of the Court is plain and unambigous. In spite of this separability of the first and second sentences of section 5 (2) (f) as found by the Court, the applicants still would have the second sentence provide a maximum insofar as protection to certain employees is concerned, even though the Court held that its only effect was to impose a minimum. In conformity with the decision, we may within our discretion impose conditions under section 5 (2) (f) without regarding as a maximum either the 4-year period, or the time worked by the employee prior to the effective date of the order. Previous cases cited by the applicants in which we have prescribed conditions pursuant to section 5 (2) (f) containing limitations either as to the 4-year period from the effective date of the order or as to time worked prior to such date were based upon an understanding of the law which the court has held erroneous.

In the applicants' opinion the Washington agreement would not provide a fair and equitable arrangement because (a) it would provide compensatory benefits for employees hired after May 17, 1948, and an unreasonably long period of protection for those in service prior to that time. (b) would provide no deduction for earnings in other employment except railroad employment, and (c) would be unreasonable and unfair. They attempt to differentiate

United States v. Lowden, 308 U. S. 225, where the Supreme Court held proper conditions imposed by us[1] for the protection of employees which were substantially the same as the Washington agreement, on the ground (1) that the project there involved was to be consummated promptly, and (2) was prior to the enactment of section 5 (2) (f) setting up the standards that the arrangement be fair and equitable and not extend beyond the period of the individual's service prior to the effective date of the order. The latter contention already has been discussed and shown to be invalid. As to the first, it is argued that the employees here have had long notice that their positions were in jeopardy or, if hired since the effective date of the order, were placed on notice at that time that such positions were in jeopardy. However, it is not shown that all new employees have been so advised.

The employee groups contend that the foregoing argument is unrealistic inasmuch as, with the exception of the crossing watchmen, none of the employees could have determined with certainty that their particular position would be in jeopardy and that if they had so assumed and sought other work many would have needlessly sacrificed valuable seniority rights, retirement benefits, and a good job; and that the impact of job loss is as acute to an employee of short service as it is to one of longer service, even though it is recognized that a longer period of protection is justified for employees of longer service because of their more restricted job opportunities. It is also true that had all the employees involved become concerned over their jobs and secured employment elsewhere, the efficiency of existing operations might have been seriously impaired. Aside from such factors, the employee groups point out that the contention that notice of job loss is protection within the meaning of section 5 (2) (f) was expressly rejected by the Supreme

282 I.C.C.

[1]Chicago, R. I. & G. Ry. Co. Trustees Lease, 230 I.C.C. 181.

Court. In this connection the Court said:

> Under the Commission's order in the instant case, employees displaced through the early elimination of grade crossings or otherwise may receive compensatory protection up to May 17, 1952, but employees displaced after that date will receive none. They will have had long notice that by 1954, they may be displaced. But that much "protection" against the adverse effects of the consolidation would have been available to them without sec. 5(2)(F). Neither such discrimination nor such insubstantial "protection" is consistent with the purpose or the history of the provision. (Page 154) (Italics supplied.)

The Supreme Court, in substance, has found that the Oklahoma conditions, as restricted with respect to the protective period insofar as the facts in this case are concerned, provide insubstantial protection, are discriminatory, and not consistent with the purpose and history of the provision requiring a fair and equitable arrangement. Accordingly, a finding herein that the Oklahoma conditions alone with the time limit therein prescribed, having in mind not only the 4-year maximum but also the limitation as to time worked prior to the effective date of our order, would provide a fair and equitable arrangement, would not be consistent with the circumstances in this case nor in conformity with the decision of the Supreme Court of the United States. It then is necessary to decide what type of conditions are necessary to meet the requirements of the statute. The employee groups suggest that a simple solution is to prescribe the terms of the Washington agreement which has been approved in principle by most of the major railroads of the country for use in just this type of proceeding, observing, of course, the protection under the present Oklahoma conditions as a minimum. The cost under this plan has been estimated by the applicants to be $913,198, as compared with a cost of $945,766 for the first year alone, should the present Oklahoma, conditions be extended for 1 year and the completion date of

the project substituted for the effective date of the original order. Such estimates are on the assumption that all the employees dismissed will be compensated. However, none of these dismissed thus far has claimed compensation. It is possible that the cost of applying the Washington agreement might be much less than indicated, and the limitation later discussed should further reduce payments thereunder.

Based on testimony given before the Senate committee, which considered the legislation from which section 5(2)(f) evolved, by a member of the committee of six who had been appointed by the President to study the transportation problem and recommend legislation[2], the statement of a member of the House committee which handled the legislation in debate on the floor[3], and the recommendation of this Commission with respect thereto[4], a conclusion is warranted that it was the general understanding and intention at the time the legislation was pending that employees would be protected by some plan embodying the basic provisions of the Washington agreement. The Supreme Court has made it clear that the second sentence of section 5(2)(f) which was substituted for the Harrington Amendment did not serve as a limitation on the purpose of the first sentence. From the beginning, we have patterned the conditions which we prescribed after the Washington agreement. Since the enactment of section 5(2)(f), the conditions prescribed by us differed from that agreement as to when the protection afforded was to begin, the duration thereof, and the amount of the annual allowance to be made because all such matters were regarded as being fixed by the statute. Under the circumstances

[2]Testimony George M. Harrison, hearings before Senate Committee on Interstate Commerce on S. 1310,2016,1869, and 2009, 76th Cong., 1st sess. 34 (1938).
[3]Seventy-sixth Cong. Rec., part 9, 76th Cong., 3rd sess., page 10,178, Representative Wolverton.
[4]Interstate Commerce Commission report on S. 2009, Omnibus Transportation Legislation, p. 67 (76th Cong., 3rd sess., House Committee Print) transmitted January 29, 1940.

here present, some additional protection for the employees involved must be afforded. In our opinion the Washington agreement, subject to the limitations later shown, would provide the fair and equitable arrangement contemplated by the statute.

One provision of the Washington agreement, to which specific objection has been raised by the applicants, has never had our approval. It provides, in effect, that the coordination allowance to which an employee is entitled in case of dismissal will be reduced by the amount of compensation he receives from other railroad employment, but not otherwise. We have consistently required that there be appropriate deductions for earnings in all outside employment. See Chicago, R. I. & G. Ry. Co. Trustees Lease, supra, Texas & P. Ry Co. Operation, 247 I.C.C. 285, Chicago, M., St. P. & P. R. Co. Trustees Construction, 252 I. C. C. 49 and 287, Chicago & N. W. Ry. Co. Trustee Abandonment, 254 I. C. C. 820 (not printed in fall), Oklahoma Ry. Co. Trustees Abandonment, supra, and Chicago, B. & Q. R. Co. Abandonment, 257 I. C. C. 700. Accordingly, all earnings from outside employment should be included in computing any employee allowances which may be provided herein. Condition No. 5 of Oklahoma Ry. Co. Trustees Abandonment, supra, which relates to compensation for dismissed employees contains the following pertinent provision:

> The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based.

The dismissal allowance, as used in the foregoing, has the same meaning as coordination allowance, as used in the Washington agreement.

Based upon the conclusions stated herein and consistent with the circumstances in this proceeding and in conformity with the decision of the Supreme Court of the United States in Railway Labor Executives' Assn. v. United States, supra, we find that a fair and equitable arrangement for protecting the interests of the employees adversely affected by the transaction herein will be provided by applying the terms of the Washington agreement of May 21, 1936, subject to the following limitations or restrictions:

(a) That employees adversely affected within 4 years from the effective date of the order approving the transaction shall receive as a minimum the protection afforded by conditions 4 to 9, inclusive, in Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177 (197-201), as prescribed in the report and order approving the transaction, for the period they are adversely affected prior to May 17, 1952 (4 years from the effective date of the order of approval), and any such employee so adversely affected who has received under such conditions total dismissal or displacement compensation less than that which he would receive by applying the Washington agreement, as limited, for the full protective period therein provided from the time he is first adversely affected, shall continue to receive benefits under the terms of the Washington agreement, as limited, until the total compensatory benefits provided therein for his particular period of service have been paid.

(b) That in applying the Washington agreement the coordination allowance provided therein for dismissed employees shall be reduced with respect to any employee who is otherwise employed to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his coordination allowance, exceed

the amount upon which his coordination allowance is based; such employee or his representative, and the carriers, to agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

The intent and effect of the foregoing findings are that all employees adversely affected by the transaction involved should receive the protection afforded by the Washington agreement, reduced as to dismissed employees to the extent that they receive compensation in other employment or under unemployment insurance laws; and that employees adversely affected prior to May 17, 1952 (4 years from the effective date of the order of approval) are to receive as a minimum the protection afforded by the Oklahoma conditions as prescribed in the previous report for the period they are adversely affected prior to May 17, 1952, but if the total amount of such compensation is less than they would receive under the Washington agreement, as limited, applied from the date of adverse effect, then they are entitled to the remaining benefits they would have enjoyed under the latter. While it is unlikely under the existing circumstances that the situation will arise, should the amount of compensation to which an employee is entitled under the original Oklahoma conditions applied to May 17, 1952, equal or exceed the amount to which he would be entitled under the Washington agreement, as limited, then he would be entitled to nothing under the latter.

An appropriate order will be entered.

COMMISSIONER CROSS did not participate in the disposition of this proceeding.

American Transit Association

815 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20006

(202) 223-5770