

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>JAMES R. ASHE, et al.,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 89-41-P-C</b>
	)	
<b>SPRINGFIELD TERMINAL RAILWAY</b>	)	
<b>COMPANY,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON DEFENDANT'S SUPPLEMENTAL  
MOTION FOR SUMMARY JUDGMENT**

This action results from certain lease transactions between Springfield Terminal Railway Company ("Springfield Terminal") and both Maine Central Railroad Company ("Maine Central") and Portland Terminal Company ("Portland Terminal"). The plaintiffs, former Maine Central or Portland Terminal employees, allege that the defendant, Springfield Terminal, violated the Maine Railroad Employee Equity Act, 26 M.R.S.A. ' ' 2071-75 ("Maine Act"), by failing to offer each of them a "first right of hire" in accordance with the priorities set forth in the Maine Act.<sup>1</sup> The court (Carter, C.J.) previously granted summary judgment against certain plaintiffs, denied it as to other plaintiffs and deferred judgment as to still other plaintiffs pending review by the Interstate Commerce Commission ("ICC") of an arbitrator's decision on federal labor-protective conditions, known as the

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<sup>1</sup> The Act provides, in relevant part, that "any . . . corporation . . . leasing or otherwise obtaining from a financially related entity the right to operate a rail line . . . in this State shall give a first right of hire to fill any subordinate official or nonmanagement position in the staffing of the new rail operation in . . . order of priority" therein designated. 26 M.R.S.A. ' 2072.

Harris Award, in a related proceeding. The court concluded that the Harris Award establishes federal priorities necessary to the determination of the plaintiffs' rights under section 2072. Order Affirming the Magistrate's Recommended Decision on Defendant's Motion for Summary Judgment (Docket No. 27); Recommended Decision on Defendant's Motion for Summary Judgment (Docket No. 25) ("Recommended Decision") at 12. The ICC subsequently affirmed the Harris Award, which is currently on appeal to the Court of Appeals for the District of Columbia.

Before the court now is the defendant's supplemental motion for summary judgment against the remaining plaintiffs on the following grounds: (1) their claims are not ripe for review until the D.C. Court of Appeals decides the ICC appeal and because any dispute over implementation of the Harris Award is subject to mandatory arbitration; (2) the Maine Act is preempted by the Interstate Commerce Act ("ICA") and the Railway Labor Act ("RLA"); (3) the Maine Act is an unconstitutional abuse of legislative power; (4) the Harris Award should not be applied as a priority requiring retroactive compliance; (5) even under the terms of the Harris Award, plaintiffs on furlough at the time of the lease transactions and other plaintiffs who admit receiving employment offers have no claim under the Maine Act and (6) certain plaintiffs have released the defendant from liability and others should be precluded for a variety of reasons. The plaintiffs respond that: (1) their claims are ripe because they do not turn on the disposition of the Harris Award; (2) the Maine Act is not preempted by any federal law; (3) the Maine Act is not an abuse of legislative power; (4) employees furloughed at the time of the lease transaction have valid claims under the Maine Act because they do not turn on the Harris Award and (5) most of the plaintiffs' claims are not invalidated for the reasons the defendant argues. The state of Maine has submitted a memorandum urging that the plaintiffs' claims are ripe because the Maine Act provides seniority hiring priorities determinative of the plaintiffs' rights from the date of the lease

transactions up to the effective date of the Harris Award. The State also argues that the Maine Act is not preempted by federal law and is not unconstitutional.

For the following reasons I find that the Maine Act is preempted by federal law and therefore the defendant's motion for summary judgment should be granted. Finding the issue of preemption dispositive, I do not reach the remaining issues.

## I. SUMMARY JUDGMENT STANDARDS

Fed. R. Civ. P. 56(b) provides that "[a] party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Such motions must be granted if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* at 73 (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

## II. FACTUAL CONTEXT

The court previously found the following facts. *See* Recommended Decision at 5-9. In 1981 Guilford Transportation Industries ("Guilford") purchased Maine Central and its subsidiary, Portland Terminal. In 1983 it also purchased the Boston & Maine Railroad Corporation and its subsidiary, Springfield Terminal. Springfield Terminal, Maine Central and Portland Terminal are all now

subsidiaries of Guilford. Maine Central first leased lines and trackage rights to Springfield Terminal in February 1987. Portland Terminal leased its Rigby Yard to Springfield Terminal in August 1987. At the time of the lease transactions a collective bargaining agreement between Springfield Terminal and its employees' union required Springfield Terminal to offer employment to Maine Central and Portland Terminal employees who were working on the leased lines at the time of the lease transactions. However, the agreement did not specify when such offers were to be made. In 1989 Springfield Terminal and the union entered into a new agreement which is explained in some detail in my prior recommended decision and is not necessary to disposition of the matter now before the court. *See id.* at 6-7.

On February 17, 1988 the ICC issued a decision addressing the proper level and method of implementation of labor-protective conditions applicable to the Springfield Terminal lease transactions.<sup>2</sup> ICC Finance Docket No. 30965 (Feb. 17, 1988). The order required that the lessee (Springfield Terminal) and the lessor railroads, as well as the employees (or their representatives) of all the rail carriers, participate in the formulation of an implementing agreement for all lease transactions whether or not such leases had actually been implemented. *Id.* at 5, 13. The order provided for the use of binding arbitration in the absence of any such agreement. *Id.*

Because the parties were unable to reach an agreement, they submitted the matter to arbitration resulting in an imposed implementing agreement ("Kasher Award"). In a decision dated

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<sup>2</sup> These conditions were a modified version of the so-called *Mendocino Coast* conditions as set forth in *Mendocino Coast Ry. -- Lease and Operate -- California W. R.R.*, 354 ICC 732 (1978), as modified at 360 ICC 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

January 5, 1989 the ICC affirmed in part and vacated in part the Kasher Award. *Review of Arbitral Award*, ICC Finance Docket No. 30965 (Jan. 5, 1989). The commission subsequently issued an order requiring further arbitration. *Review of Arbitral Award*, ICC Finance Docket No. 30965 (Dec. 19, 1989). On March 13, 1990 Arbitrator Robert O. Harris issued an award ("Harris Award") pursuant to the ICC's order. The Harris Award provided that lessor employees were entitled to obtain Springfield Terminal positions on their former lines generally in accordance with their seniority rights under the lessor collective bargaining agreements, with the exceptions that the Portland Terminal and Maine Central rosters were to be merged and employees furloughed at the time of the leases were to be placed on the bottom of the Springfield Terminal's seniority rosters. *Id.* at 2. Each of the parties petitioned the ICC for administrative review of the Harris Award. As noted earlier, the ICC has affirmed the award and it is now before the D.C. Circuit on appeal.

The action presently before this court is predicated on rights provided for under the Maine Act. *See* n.1, *supra*. The first two priorities established by the Maine Act are the following:

**1. Priority under federal law.** First, all employees who are required to be accorded priority under federal law, employee protection obligations imposed by law, regulation or contracts which require the new operator to select employees of the prior operator or existing or future collective bargaining agreements;

**2. Seniority rights.** Second, all employees, in seniority order for each craft of class, who hold or held seniority rights on the line to be operated when last operated by its prior operator.

26 M.R.S.A. ' 2072(1)-(2). The defendant is thus required by the statute first to offer positions on the line in accordance with any obligations imposed on it by federal law, regulation or contracts. Any positions remaining available after compliance with such federal-law priorities must be offered in accordance with the lessor railroad's seniority order for each craft pursuant to section 2072(2).

The Maine Act also provides for a private right of action in state court to enforce compliance with both federal and state hiring priorities. *Id.* ' 2704. Damages and attorney fees are available under the statute as well as treble damages for willful violations and expenses for retraining displaced employees for "new career opportunities." *Id.* ' ' 2704-05.

### III. PREEMPTION

The court previously declined to consider the defendant's constitutional challenges to the Maine Act, asserted in briefing which also raised the issue of preemption, *see* Order Denying Defendant's Motion for Summary Judgment (Carter, J.) (Docket No. 16), on the grounds that it should avoid such questions before it becomes necessary to decide them and because the factual setting was not then clearly enough defined to indicate whether such a determination was or would become necessary. *Id.* at 2. Since then discovery has been completed and the facts are now more clearly focused. At this point there remain the claims of numerous plaintiffs, many of which cannot be resolved short of trial because of the existence of disputed material facts. The parties agree that, if this court does not disturb its earlier conclusion that the Harris Award affects the plaintiffs' hiring priority rights for the period from the effective dates of the lease transactions to the date of the award itself, as well as thereafter, the only issue left for determination in this action is whether Springfield Terminal willfully violated the Harris Award, thereby entitling the plaintiffs to treble damages and attorney fees under the Maine Act.<sup>3</sup> *See* Report of Conference of Counsel and Order (Docket No. 46). Such sanctions are unavailable under federal law.

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<sup>3</sup> Although requested to do so by the plaintiffs, I decline to reconsider my earlier conclusion, adopted by the court, that the Harris Award determines hiring priority rights from the effective dates of the leases, including the period up to March 13, 1990, the date on which the award was issued. The Harris Award clearly establishes federal priorities which, according to the plain language of the Maine Act, determine the plaintiffs' rights. The scheme proposed by the plaintiffs and the State for applying the priorities as set forth in the Maine Act does not follow from the language of the statute. Citing no precedent for their approach, these parties essentially assert that it was the intent of the legislature in

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enacting the law to permit the State to assert its own hiring priorities while federal priorities, in the form of a mandatory implementing agreement, are in the process of being determined by the parties and, if necessary, arbitrators and the courts. However, the Maine Act declares that "a first right of hire" is initially given to employees according to federal priorities. 26 M.R.S.A. § 2072. In circumstances where, as here, the federal law mandates that federal hiring priorities be established, it cannot be said that pending the actual articulation of those priorities the Maine Act requires the new railway carrier employer to make initial offers -- which constitute the plaintiff's *first right of hire* -- according to state priorities instead. Therefore, I adhere to my earlier conclusion that the Harris Award and its progeny determine the hiring priority rights of all of the plaintiffs under the Maine Act, including such rights for the period up to the date of the award.

Whether there has in fact been a violation of the Harris Award, let alone a willful violation, cannot be determined prior to the D.C. Circuit's adjudication of the pending appeal. Thereafter, in order to give effect to the Maine Act in the case at bar this court almost inevitably would have to interpret the provisions of the federally-imposed implementing agreement. However, it is widely held that disputes over the interpretation or enforcement of such agreements are subject to mandatory arbitration under ICC jurisdiction. *See, e.g., Implementing Arrangement Arbitration Award*, Section 5, attached to *Implementing Agreement Arbitration Conducted Pursuant to Decision of the Interstate Commerce Commission*, Finance Docket Nos. 30965, et al., Robert O. Harris, Arbitrator (Mar. 13, 1990), Exh. 7 to Second Affidavit of Daniel J. Kozak; *see also Atkins v. Louisville & N. R.R.*, 819 F.2d 644 (6th Cir. 1987) (arbitration is mandatory under section 11 of the standard *New York Dock* labor-protective conditions, virtually identical to section 11 of the *Mendocino Coast* conditions applicable here); *Augspurger v. Brotherhood of Locomotive Eng'rs*, 510 F.2d 853, 860 (8th Cir. 1975) ("It is for the ICC to determine in the first instance whether its own order has been carried out").<sup>4</sup> In order for this court to respect the ICC's role in these matters, it must, at the least, defer adjudication of any aspect of the plaintiff's willful violation claims until all subsidiary questions of interpretation and enforcement of the Harris Award have been finally resolved through ICC-sponsored arbitration,

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<sup>4</sup> To hold otherwise would undercut "the central role of arbitration in our system of industrial self-government." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 219 (1985) (citation omitted). Finding a Wisconsin tort law providing damages for bad faith interpretation of a collective bargaining agreement preempted by section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), the Supreme Court remarked that "[p]erhaps the most harmful aspect of the Wisconsin decision [applying the state statute] is that it would allow essentially the same suit to be brought directly in state court without first exhausting the grievance procedures established in the bargaining agreement." *Lueck*, 471 U.S. at 219. The Court explained its reasoning: "Since the extent of [an employer's contractual duty to pay and its implied duty to act in good faith] ultimately depends upon the terms of the [collective bargaining] agreement between the parties, both are tightly bound with questions of contract interpretation that must be left to federal law." *Id.* at 216. *See also Jackson v. Liquid Carbonic Corp.*, 863 F.2d 111 (1st Cir. 1988), *cert. denied*, 490 U.S. 1107 (1989).

including ICC and court of appeals reviews, a process which is likely to result in lengthy additional delay.<sup>5</sup>

The parties are entitled to a more timely adjudication of their Maine Act claims and defenses. The prospect of a lengthy delay occasioned by mandatory deferral to the arbitration process, coupled with the virtual certainty that the court will not be able to adjudicate all remaining claims without reaching the preemption question, argues for a resolution of that issue now.

### A. Preemption Tests

The power of Congress to preempt state law is derived from the Supremacy Clause of Article IV of the U.S. Constitution. "The underlying rationale of the pre-emption doctrine, as stated more than a century and a half ago, is that the Supremacy Clause invalidates state laws that "interfere with or are contrary to, the laws of congress . . . ." *Chicago & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981) (quoting *Gibbons v. Ogden*, 22 U.S. 1, 92, 9 Wheat. 1, 211 (1824)). Since the Supreme Court's early incantation of the doctrine, several tests have been established for recognizing circumstances that require preemption:

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<sup>5</sup> Resolution of the pending case in this court would be further delayed because the ICA provides that railway combinations of the kind at issue here are exempt from state law *as necessary* to carry out those transactions. 49 U.S.C. § 11341(a). Whether exemption is necessary in this case would have to be determined in the first instance by the ICC and, thereafter, if necessary, by a court of appeals. See *Railway Labor Executives' Ass'n v. Guilford Transp. Indus., Inc.*, No. 91-153-P-H (D. Me. Apr. 16, 1992); 28 U.S.C. §§ 2321(a), 2342(5); see also *Brotherhood of Locomotive Eng'rs v. Boston & Me. Corp.*, 788 F.2d 794, 799 (1st Cir.) (Congress has vested the exclusive power to resolve appeals of such final ICC orders in the federal circuit courts of appeal), *cert. denied*, 479 U.S. 829 (1986).

Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. Pre-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation.

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The critical question in any pre-emption analysis is always whether Congress intended that federal regulation supersede state law.

*Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368-69 (1986) (citations omitted). Although courts must determine preemption on a case-by-case basis according to "the peculiarities and special features of the federal regulatory scheme in question," *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638 (1973), "[t]he Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes and has consequently presented recurring pre-emption questions from the time of its enactment," *Kalo Brick & Tile Co.*, 450 U.S. at 318. Thus, there is ample precedent to guide a preemption determination in this area of regulation.

## **B. The ICA**

Springfield Terminal contends that the Maine Act is expressly preempted by section 11341 of the ICA inasmuch as it occupies the field of labor-protective conditions for railroad lease transactions exempted by the ICC. The defendant also contends that the plaintiffs' claims under the Maine Act are preempted because they conflict with the ICC's balancing of interests under the ICA and constitute an impermissible collateral attack on its orders. Defendant Springfield Terminal Railway Company's Memorandum of Law in Support of Its Supplemental Motion for Summary Judgment ("Defendant's Memorandum") at 14-22. The plaintiffs and the state of Maine respond that the Maine Act does not conflict with federal regulation because it merely fills a gap in hiring priorities and supplies reasonable

sanctions for any related violations. Plaintiffs' Memorandum in Opposition to Defendant's Supplemental Motion for Summary Judgment ("Plaintiffs' Memorandum") at 14; Memorandum of State of Maine in Opposition to Defendant's Supplemental Motion for Summary Judgment ("State's Memorandum") at 14-19.

The starting point for statutory construction is "the language employed by Congress." *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (citation omitted). The ICA explicitly requires the ICC to impose fair labor-protective conditions on railway combinations:

When a rail carrier is involved in a transaction for which approval is sought . . . , the Interstate Commerce Commission shall require the carrier to provide a fair arrangement . . . protective of the interest of employees who are affected . . . . The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission . . . .

49 U.S.C. ' 11347.

Such labor-protective conditions routinely require development of hiring priorities. *Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248, 1249-50 (D.C. Cir. 1982) (The Commission typically imposes a set of protections requiring the carrier and its employees to reach an implementing agreement providing for employee selection and assignment). The Harris Award provides for hiring priorities in the case at bar.

Although section 11347 does not make any reference to state involvement in the balancing of interests or the protecting of labor, the jurisdiction and authority of the ICC thereunder, including interpretation and enforcement of the labor-protective conditions it imposes, are exclusive. 49 U.S.C. ' 11341(a). *See also Southern Pac. Transp. Co. v. Young*, 890 F.2d 777, 781 (5th Cir. 1989) ("It seems clear that Congress intended to vest exclusive primary jurisdiction over labor disputes on the

railways in the ICC . . ."); *B.F. Goodrich Co. v. Northwest Indus., Inc.*, 424 F.2d 1349, 1355 (3d Cir.) ("The Act therefore places sole responsibility for its enforcement on the Commission"), *cert. denied*, 400 U.S. 822 (1970). Indeed, the ICA prohibits the Commission from relieving a carrier of its obligation to protect the interests of its employees. 49 U.S.C. § 10505(g)(2). In the exercise of its exclusive jurisdiction the ICC must determine in each case what protections are fair to both the employees and the carrier.

While the Maine Act recognizes the supremacy of federal hiring priorities, it nevertheless supplies hiring priorities to supplement those of the implementing agreement and creates a separate enforcement mechanism in the form of a private right of action with certain sanctions unavailable under federal law. In light of Congress's explicit requirement that the ICC impose fair labor-protective conditions on every railway combination, the Maine law -- which the State and the plaintiffs argue is designed only to fill gaps left by federal priorities -- can only be seen as interfering with the congressionally-considered scheme. Given the fact that an implementing agreement determining hiring priorities must be fashioned in each case, it appears that a gap will never exist inasmuch as the hiring priority of each employee will in some fashion be determined. In other words, even where the ICC specifically denies hiring priority to certain employees, such denial does not create a "gap." However, even if somehow a gap can be deemed to exist, it is evident Congress intended that the ICC have the sole authority to fill it.

This reading of the language is supported by the Supreme Court's recent comments on the legislative intent underlying section 11347 of the ICA and the ICC's designated scope of responsibility in implementing it:

Recognizing that consolidations in the public interest will result in wholesale dismissals and extensive transfers, involving expense to transferred employees' as well as the loss of seniority rights,' the Act

imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible.

*Norfolk & W. Ry. v. American Train Dispatchers Ass'n*, 113 L. Ed. 2d 95, 109 (1991) (citing 49 U.S.C. ' ' 11344(b)(1)(D), 11347) (citation omitted). Here, the Supreme Court makes clear that Congress had in mind that the ICC administer railway combinations by balancing all the relevant competing interests. The explicit language "to the greatest extent possible" expresses the Supreme Court's opinion that through the ICA Congress entrusted the ICC with the full and exclusive authority for such balancing, leaving no room for any intrusion by the states. In doing so, the Supreme Court merely affirmed its prior ruling that "[i]n matters within its scope [the ICA] is the supreme law of the land." *Schwabacher v. United States*, 334 U.S. 182, 198 (1948).

The interference contemplated by enforcement of the Maine Act would inevitably affect the balance struck by the ICC, which alone is charged by Congress with determining what is a fair labor-protecting arrangement to accompany a rail combination. *Kalo Brick & Tile Co.*, 450 U.S. at 325 ("The judgment as to what constitutes reasonableness belongs exclusively to the Commission."). Any tinkering with the ICC's balancing-act by the state of Maine ipso facto would result in circumstances less fair than the ICA requires, and, in any event, is preempted because of the absolute delegation by Congress to the ICC of the responsibility to determine what is fair and reasonable.

Sound statutory construction also requires viewing the provisions of section 11347 in the context of the ICA as a whole. *Pedraza v. Shell Oil Co.*, 942 F.2d 48, 51 (1st Cir. 1991), *cert. denied*, 117 L. Ed. 2d 154 (1992). In context, the notion that Congress intended the ICC to have exclusive authority is bolstered by the comprehensive nature of the ICA and the accompanying responsibility delegated to the Commission to enforce the act. *See* 49 U.S.C. ' 10501(a). "The ICA's primary purposes are to ensure fair shipping rates, safety, fair wages and working conditions, and efficiency in

transportation, and to discourage monopolistic practices and labor strikes." *Deford v. Soo Line R.R.*, 867 F.2d 1080, 1088 (8th Cir.) (citing 49 U.S.C. ' ' 10101, 10101a), *cert. denied*, 492 U.S. 927 (1989). See *Schwabacher*, 334 U.S. at 197-98 (ICC must resolve any disputes arising out of a railway merger which affect the assets or liabilities of the carrier). The Supreme Court recently referred to railway mergers and combinations as an integral component of federal interstate transportation policy: "Beginning with the Transportation Act, consolidation of the railroads of the country, in the interest of economy and efficiency, became an established national policy . . . so intimately related to the maintenance of an adequate and efficient rail transportation system that the "public interest" in the one cannot be dissociated from that in the other." *Norfolk & W. Ry.*, 113 L. Ed. 2d at 101 (quoting *United States v. Lowden*, 308 U.S. 225, 232 (1939) (citation omitted)). The extreme complexity of balancing the many important interests as decreed by Congress is reflected by the ICC's opinion affirming the Harris Award: "We view this Award as a seamless web which must be examined in its entirety for the reasonableness and fairness of its overall effect. . . . Had any one element been found defective, we believe the entire Award would have had to be vacated because of the inextricable interrelationships between its various components." *Delaware & Hudson Ry. -- Lease and Trackage Rights Exemption -- Springfield Terminal Ry.*, ICC Finance Docket No. 30965 (Sub-No. 1), at 25-26 (Sept. 24, 1990) (citation omitted). It is hard to imagine under such circumstances that interference by the state of Maine would not unsettle the work of the ICC.

In an earlier interpretation of an ICA section which sets forth the ICC's responsibility for approving a carrier's abandonment of rail lines, the Supreme Court announced that the section must be "construed to make federal authority effective to the full extent that it has been exerted and with a view of eliminating the evils that Congress intended to abate." *Kalo Brick & Tile Co.*, 450 U.S. at 320 (quoting *Transit Comm'n v. United States*, 289 U.S. 121, 128 (1933)). Holding an Iowa law

preempted because it interfered with ICC-approved abandonment of rail lines, the Court relied on its earlier holding that "[a]mong those evils is [m]ultiple control in respect of matters affecting [interstate railroad] transportation,' because such control, in the judgment of Congress, has proved 'detrimental to the public interest.'" *Id.* (quoting *Transit Comm'n*, 289 U.S. at 127). The Court went on to explain that its past decisions have found that the ICC has exclusive and plenary authority over abandonments. *Id.*

In *Kalo*, the state law provided for damages against the rail carrier for failure to furnish cars to carry a shipper's goods when it abandoned the rail line. The Court found that "such a right to sue, with its implied threat of sanctions for failure to comply with what the courts of each State consider reasonable policies, is plainly contrary to the purposes of the [ICA]." *Id.* at 331. Reiterating the exclusivity of ICC authority, the Court stated that it is for the Commission to determine what conditions must be met for approval of an abandonment:

It would vitiate the overarching congressional intent of creating 'an efficient and nationally integrated railroad system,' to permit the State of Iowa to use the threat of damages to require a carrier to do exactly what the Commission is empowered to excuse. A system under which each State could, through its courts, impose on railroad carriers its own version of reasonable service requirements could hardly be more at odds with the uniformity contemplated by Congress in enacting the Interstate Commerce Act.

*Kalo Brick & Tile Co.*, 450 U.S. at 325-26 (citation omitted). *See also Modin v. New York Cent. Co.*, 650 F.2d 829, 835 (6th Cir.) ("The operation of an interstate railroad system would be needlessly complicated if varying rights . . . prevailed in the different states it touches"), *cert. denied*, 454 U.S. 967 (1981). With regard to the scope of the ICC's power, the Court stated:

The exclusive and plenary nature of the Commission's authority to rule on carriers' decisions to abandon lines is critical to the congressional scheme, which contemplates comprehensive administrative regulation of interstate commerce. In deciding whether to permit an

abandonment, the Commission must balance ``the interests of those now served by the present line on the one hand, and the interests of the carrier and the transportation system on the other." Once the Commission has struck that balance, its conclusion is entitled to considerable deference. . . . ``And, under the statute, it is not a matter for judicial redecision."

*Kalo Brick & Tile Co.*, 450 U.S. at 321 (citations omitted). The Court concluded that ``the Interstate Commerce Act precludes a shipper from pressing a state-court action for damages against a regulated carrier when the Interstate Commerce Commission, in approving the carrier's application for abandonment, reaches the merits of the matters the shipper seeks to raise in state court." *Id.* at 331-32.

In the present case, as is required in each carrier consolidation, *Norfolk & W. Ry.*, 113 L. Ed. 2d at 102, 109, the ICC has imposed labor-protective conditions that determine the hiring priorities of each plaintiff (including those specifically not granted priority status). Such action by the Commission ``reaches the merits" of the plaintiffs' claims as it will in every such case -- that is, federal law determines the priority, if any, to be given to each employee. Nothing remains for state regulation and, therefore, the state of Maine is prohibited from providing supplementary hiring priorities and an accompanying cause of action for violations of state and federal priorities.

In summary, Congress has expressed a clear intent through the ICA that the ICC have full and exclusive authority to balance all the relevant interests affected by a railway combination and to determine what hiring priorities are fair and reasonable. In addition, it is evident that Congress intended that the ICC have the sole power to interpret and enforce its own orders. Thus, the Maine Act is entirely superseded by the ICA.

#### IV. CONCLUSION

For the foregoing reasons, I conclude that the Maine Act is preempted by federal law. Accordingly, I recommend that the court **GRANT** the defendant's motion for summary judgment.

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 4th day of May, 1992.*

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*David M. Cohen  
United States Magistrate Judge*