

2017

**Teamsters Local 222 and John and Jane Does 1-23 Appellees/
Plaintiffs, Supreme Court No. 20170208-Sc vs. Utah Transit
Authority, Appellant/Defendant**

Utah Supreme Court

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IN THE
SUPREME COURT OF THE STATE OF UTAH

TEAMSTERS LOCAL 222 and JOHN and JANE DOE NOS. 1-23,
Appellees,
v.
UTAH TRANSIT AUTHORITY,
Appellant.

REPLY BRIEF OF APPELLANT

On appeal from the Third Judicial District Court, Salt Lake County,
Honorable Ryan M. Harris, District Court No. 140902884

Russell T. Monahan
COOK & MONAHAN, LLC
323 South 600 East, Suite 200
Salt Lake City, Utah 84102

Attorneys for Appellees

Troy L. Booher (9419)
Julie J. Nelson (9943)
Erin B. Hull (11674)
ZIMMERMAN BOOHER
Felt Building, Fourth Floor
341 South Main Street
Salt Lake City, Utah 84111
tbooher@zbappeals.com
jnelson@zbappeals.com
ehull@zbappeals.com
(801) 924-0200

Attorneys for Appellant

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UTAH APPELLATE COURTS

JAN - 3 2018

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ZIMMERMAN BOOHER
Felt Building, Fourth Floor
341 South Main Street
Salt Lake City, Utah 84111
tbooher@zbappeals.com
jnelson@zbappeals.com
ehull@zbappeals.com
(801) 924-0200

Attorneys for Appellant

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Introduction

The sole issue on appeal is whether the term “employees” in the Utah Public Transit District Act refers to supervisors, and therefore provides supervisors the right to bargain collectively. Utah Code § 17B-2a-813(2)(a).

In the opening brief, UTA demonstrated that the Utah Legislature in 1969 used the term “employees” in the Utah Public Transit District Act to refer to the same class of workers who had collective bargaining rights under federal law. As the Utah Legislature put it, the Utah Public Transit District Act established only those “rights, benefits, and other employee protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, . . . as determined by the Secretary of Labor” *Id.* § 17B-2a-813(1).

Because the Utah Public Transit District Act extended collective bargaining rights to those workers who had collective bargaining rights under federal law in 1969, the issue before this court hinges upon whether supervisors had collective bargaining rights under federal law in 1969. And as UTA demonstrated in the opening brief, supervisors had no collective bargaining rights under federal law in 1969, and, therefore, supervisors have no collective bargaining rights under the Utah Public Transit District Act. This avoids what the district court recognized as the anomalous result that UTA supervisors “may very well be the only supervisors in the United States with the right to organize and collectively bargain.” [R.287 at n.2.]

In the response brief, the Teamsters do not respond to this straightforward argument. Below is each point raised by the Teamsters and why it fails:

- The Teamsters assert that the issue is moot. [Resp. Br. at 8-10.] But the district court order continues to allow the UTA supervisors to hold elections to attempt to unionize, a right they would not have if this court reverses. The issue is not moot.
- The Teamsters assert that the Utah Public Transit District Act is state law, not federal law. [Resp. Br. at 12.] This is correct but beside the point. The Utah Legislature can enact a statute with the same scope as a federal statute. That is what happened here.
- The Teamsters assert that the Utah Legislature has authority to provide more protection than federal law. [Resp. Br. at 14.] This is correct but also beside the point. While the Utah Legislature has authority to provide more protection, it did not do so here.

In the opening brief, UTA next demonstrated – as an independent ground to reverse – that, even if the Utah Public Transit District Act uses the term “employees” as it is used in the Utah Labor Relations Act (“ULRA”), supervisors still have no right to bargain collectively. It is undisputed that the term “employees” under the ULRA has the same meaning as that term had in the National Labor Relations Act (“NLRA”). And while it was unclear for a number of years whether the NLRA provided collective bargaining rights to supervisors,

in 1947, in response to *Packard Motor Car Co. v. NLRB*, 330 U.S. 485 (1947), Congress enacted the Taft-Hartley Amendments and clarified that the NLRA never provided collective bargaining rights to supervisors.

Because the Taft-Hartley Amendments in 1947 operated as a clarification of the NLRA, rather than a substantive change to the NLRA, the NLRA has always excluded supervisors from its scope. And because the NLRA has always excluded supervisors from its scope, the ULRA also has always excluded supervisors from its scope. The clarification to federal law in 1947 informed the Utah Legislature that it did not need to amend the ULRA to exclude supervisors from its scope. Therefore, even if the Utah Public Transit District Act used the term “employees” as it is used in the ULRA, supervisors have no right to bargain collectively.

In the response brief, the Teamsters do not respond to this straightforward argument either. Below is each point raised by the Teamsters and why it fails:

- The Teamsters assert that UTA ignores controlling precedent by citing the dissenting opinion in *Packard*. [Resp. Br. at 22-23.] But *Packard* is not controlling. In clarifying the NLRA with the Taft-Hartley Amendments, Congress stated that the dissenting opinion correctly held that the NLRA has never provided collective bargaining rights to supervisors. The dissenting opinion correctly articulates the law.

- The Teamsters assert that legislative history is irrelevant to interpreting unambiguous statutes. [Resp. Br. at 26-28.] This is correct but beside the point. Under federal law in 1947, the legislative history of the Taft-Hartley Amendments was relevant to determining whether those amendments clarified or changed the law. The test for whether a statute is clarifying under federal law looks to whether Congress considered it to be clarifying, which makes legislative history relevant.
- The Teamsters assert that, under current Utah law, the Taft-Hartley Amendments would be deemed substantive changes, not clarifying amendments. [Resp. Br. at 29-30.] This is correct but beside the point. The question of whether the Taft-Hartley Amendments were clarifying is governed by federal law in 1947, not current Utah law.
- The Teamsters assert that UTA's efforts to have the Utah Legislature fix the problem created by the district court's order undermines UTA's position on appeal. [Resp. Br. at 30.] But those efforts were premised upon the erroneous order, not the correct interpretation of the statute. The lobbying efforts are irrelevant to the merits on appeal, but they do confirm that the issue is hardly moot.

This court should reverse.

Argument

1. The Issue Presented Is Not Moot Because the District Court's Order Allows UTA Supervisors to Attempt to Unionize at Any Time

The Teamsters assert that the issue is moot because the rail operations supervisors held a secret ballot election and voted not to unionize, and “[t]he Union’s loss of the election terminated the controversy between the parties.” [Resp. Br. at 8.] The Teamsters also assert “[t]here is no current organizing campaign with the Rail Operations Supervisors.” [Resp. Br. at 8.]

But these statements do not render the issue moot. An issue is moot only “if the requested judicial relief cannot affect the rights of the litigants,” meaning “the controversy is eliminated such that it renders the relief requested impossible or of no legal effect.” *State v. Steed*, 2015 UT 76, ¶ 6, 357 P.3d 547 (alteration and internal quotation marks omitted). The Teamsters cannot demonstrate that the supervisors will not again attempt to unionize under the right to do so declared in the district court’s order. [R.290,697-98.]

In fact, under federal law the supervisors could attempt to unionize at any time: “[n]o election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held.” 29 U.S.C. § 159(c)(3). Under Utah law, there are no restrictions on the frequency of a bargaining unit’s holding an election. The supervisors’ last election was held September 13, 2016. [R.675.] Under the district court’s current ruling, the supervisors could hold another election any day. [R.277-78,294.]

Because the supervisors could attempt to unionize under the district court's order, the controversy between the parties remains alive. To state it plainly, if this court reverses the order of the district court, then the supervisors will not be allowed to initiate a new election to unionize. The requested relief, therefore, will affect the legal rights of the litigants.

And the issue could not have become moot based upon the fact that the Teamsters are not currently pursuing an election. [Resp. Br. at 8.] The "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot." *Cty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (internal quotation marks omitted). Said differently, "a party should not be able to evade judicial review . . . by temporarily altering questionable behavior." *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). Thus, "[w]hen a party moots a case by voluntarily changing its own conduct, [a court should] view mootness arguments with suspicion because the offending party might otherwise resume that conduct as soon as the case is dismissed." *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 701 (10th Cir. 2009).

This court continues to have jurisdiction to adjudicate the issue presented on appeal because its decision will determine whether UTA supervisors continue to have the legal right to attempt to unionize. The issue presented is not moot.

2. The Utah Public Transit District Act Defines “Employees” as Federal Labor Law Defined that Term in 1969

In the opening brief, UTA first demonstrated that the Utah Legislature in 1969 used the term “employees” in the Utah Public Transit District Act to refer to the same class of workers who then had collective bargaining rights under federal law. [Op. Br. at 11-17.] Because the Utah Public Transit District Act extended collective bargaining rights only to those workers who had collective bargaining rights under federal law in 1969, the issue before the court hinges upon whether supervisors had collective bargaining rights under federal law in 1969. But it is undisputed that supervisors had no collective bargaining rights under federal law in 1969. Therefore, supervisors have no collective bargaining rights under the Utah Public Transit District Act.

In response, the Teamsters assert that Utah labor law controls. [Resp. Br. at 12-15.] On this point, all parties agree. As the Tenth Circuit noted in *Burke v. Utah Transit Authority & Local 382*, “the ‘legislative history [of the Urban Mass Transit Act] indicates that Congress intended collective bargaining agreements to be governed by state law applied in state courts.’” 462 F.3d 1253 (10th Cir. 2006) (alteration omitted) (quoting *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union*, 457 U.S. 15, 29 (1982)). UTA agrees.

But the issue is not whether Utah law governs. It does. The issue is whether Utah law adopted a term used in federal law. Instead of looking to federal law for the meaning of “employees,” however, the Teamsters assert that

the court should look only to a dictionary to conclude that an employee is any “person who works for another person or business in return for salary, wages, or other compensation.” [Resp. Br. at 16 (quoting The American Heritage Desk Dictionary).] The Teamsters’ argument ignores the fact that, when interpreting a statute, this court gives “effect to the legislature’s intent.” *Carranza v. United States*, 2011 UT 80, ¶ 8, 267 P.3d 912 (internal quotation marks omitted). And that intent is discerned not just from the isolated term in a dictionary definition, but that language in context. *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 9 & n.3, 248 P.3d 465.

In particular, when interpreting Utah statutes modeled on federal statutes, “[t]his Court has previously adopted federal interpretations for sections of the Utah Code which are identical to or copied after federal acts.” *W. Coating, Inc. v. Gibbons & Reed Co.*, 788 P.2d 503, 505-06 (Utah 1990). “A cardinal rule of statutory construction says that a legislature’s use of an established legal term of art incorporates the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.” *Utah Stream Access Coalition v. Orange St. Dev.*, 2017 UT 82, ¶ 21, ___ P.3d ___ (internal quotation marks omitted).

To interpret the Utah Public Transit District Act, then, this court should look to the Urban Mass Transportation Act on which the Utah statute is modeled. And as presented in UTA’s opening brief, the Urban Mass Transit Act uses the same definitions as the NLRA in 1964. [Op. Br. at 11-19.] And the NLRA

in 1964 expressly excluded “supervisors” as “employees” for collective bargaining purposes.

Furthermore, as argued in UTA’s opening brief, the Utah Legislature and courts have distinguished between “employees” and “supervisors” as a subset of employers, in both workers compensation and collective bargaining settings. [Op. Br. at 45-51.] The Teamsters respond that Utah has adopted a broad definition of “employee,” pointing to section 17B-2a-814 of the Utah Code and two cases. Neither section 17B-2a-814 nor the two cases change the result.

Section 17B-2a-814 provides that “[e]ach trustee, officer, and employee of a public transit district is subject to the provisions of Title 67, Chapter 16, Utah Public Officers’ and Employees’ Ethics Act.” The Ethics Act defines a public employee as “a person who is not a public who is employed on a full-time, part-time, or contract basis,” except for “legislators or legislative employees.” *Id.* § 67-16-3(12)(a). The same section defines “Legislative employee,” “Legislator,” and “Public officer.” *Id.* § 67-16-3(9), (10), (13).

The definitions in this section undercut the Teamsters’ argument that the dictionary definition of employee should govern all statutory references to the term “employee.” If there were no differences among individuals paid by the state, or its subdivisions, everyone would be an “employee.” And just as the Ethics Act differentiates between classes of individuals paid by the state and its

subdivisions, Utah labor law and case law differentiates between employers and employees. [Op. Br. at 45-51.] Section 17B-2a-814 is beside the point.

The two cases cited by the Teamsters are also off topic. First, *Weber County-Ogden City Relief Committee v. Industrial Commission of Utah* was a workers' compensation case in which the court determined whether a worker hired and supervised by the city, but paid by the state's treasury, was a city employee. 71 P.2d 177, 180-82 (Utah 1937). The issue was whether the employee was eligible for workers' compensation. The workers' compensation act includes a broad definition of "employee" to protect every worker who might be injured or killed in the course of employment. *Id.* at 183. For that reason, that act includes everyone, even the Governor:

[The statute] defines the words "employee," "workman," and "operative" to mean: "(1) Every elective and appointive officer, and every other person, in the service of the state, or of any county, city, town or district board of education within the state, serving the state, county, city, town or district board of education therein under any election or appointment, or under any contract of hire, express or implied, written or oral."

Id. at 183-84.¹ But unlike the statutes governing workers' compensation, the Utah Public Transit District Act distinguishes among employees. And because employees are distinguished from employers for purposes of collective bargaining, the broadest possible definition of employee cannot apply.

¹ The statute has some limitations, excluding employers with fewer than three employees and independent contractors. Utah Code § 42-1-40 (1933).

Second, the Teamsters' reliance on *Palmer v. Davis* is unavailing. 808 P.2d 128 (Utah Ct. App. 1991). This is another workers' compensation case. Ms. Palmer's minor son was injured by a co-worker while working as a ranch hand. *Id.* at 130-31. Ms. Palmer had signed a release of claims against other employees, but argued that the release did not preclude her claim against the co-worker because the co-worker was not an employee. *Id.* at 130. The court of appeals disagreed and held that the co-worker was an employee. *Id.* In doing so, it also relied on the broadest definition of "employee."

Black's Law Dictionary defines the word "employee" as "[a] person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is performed." *Black's Law Dictionary* 471 (5th ed. 1979). This definition was echoed by the Utah Supreme Court in *Western Casualty & Sur. Co. v. Marchant*, 615 P.2d 423, 426 (Utah 1980), in which the court stated that "[i]n general, it can be said that an employee is one who is hired for compensation, for a substantial period of time, to perform duties wherein he is subject to a comparatively high degree of direction and control by the one who hires him."

Id.

The Teamsters' use of these broad definitions from other statutes ignores the different context relevant to the interpretation of the Utah Public Transit District Act. Workers' compensation protects all workers, whether they be the president or the receptionist. As explained in the opening brief, labor relations

statutes distinguish between management and those workers they manage, i.e., employees and employers. [Op. Br. at 45-51.]

When the court interprets the Utah Public Transit District Act in context, supervisors are not employees with collective bargaining rights.² In that Act, the Utah Legislature extended to public transit workers only those rights they then had under federal law. It is undisputed that supervisors lacked collective bargaining rights under federal law in 1969. Thus, the Utah Public Transit District Act did not extend collective bargaining rights to supervisors. This court should reverse.

3. The Utah Public Transit District Act Does Not Adopt the Definition of “Employees” in the ULRA, but Even if It Did, the Result Is the Same

The Teamsters argue that this court should look to the ULRA—not the Urban Mass Transportation Act and the NLRA—to interpret the Utah Public Transit District Act. [Resp. Br. at 20.] For reasons outlined above, the Utah Public Transit District Act unambiguously adopts the same definition of “employees” as that term had under federal labor law in 1969. And at that time, federal labor law unambiguously excluded supervisors from the definition of “employees.”

² In passing, the Teamsters assert that the rail operations supervisors have a first amendment right to organize and participate in a labor union. [Resp. Br. at 18.] The cases they cite note that there is not an affirmative obligation on the government to listen to, respond to, or recognize the organization. The Teamsters, however, argue that section 17B-2a-813(2)(c)(i) requires UTA to bargain with any labor organization that represents a majority of employees in a particular unit. This is a circular argument that assumes the Teamsters are correct about the very issue before the court—i.e., whether supervisors are “employees.” The First Amendment assertions add nothing to the arguments before the court.

But even if the Utah Public Transit District Act adopted the definition in the ULRA, the Teamsters recognize that, because the ULRA was patterned on the NLRA, this court should look to the NLRA to understand the ULRA. [Resp. Br. at 21-22.] The Teamsters accuse UTA of relying on “dubious legislative history and minority opinions” in interpreting the NLRA, [Resp. Br. at 23], when in fact UTA is providing a more complete history of the NLRA.

First, Teamsters accuse UTA of “ignor[ing] the majority opinion” and focusing only on the dissent in *Packard Motor Car Co. v. NLRB*, 330 U.S. 485 (1947). [Resp. Br. at 23.] But in its opening brief, UTA presented a full description of the majority opinion in *Packard*. [Op. Br. at 26-27.] UTA also described the arguments of the dissent. [Op. Br. at 27-28.]

The Teamsters fail to recognize that UTA uses the dissent to “justify [its] position,” [Resp. Br. at 23], because it was the dissent’s interpretation of the term “employee” that Congress described as the correct interpretation in the Taft-Hartley Amendments to the NLRA. Pub L. No. 80-101, 61 Stat. 136 (1947). That is, the Taft-Hartley Amendments clarified that Congress never intended to define “employees” to include supervisors, just as Justice Douglas suggested in his dissent.³ Compare 29 U.S.C. § 152(3) (Supp. 1 (1947)) (original codification of Taft-Hartley Amendments to the NLRA excluding supervisors from definition of

³ Congress moved to clarify *Packard* almost immediately after its release. [Op. Br. at 29.] The Taft-Hartley Amendments were codified – over President Truman’s veto – only three-and-one-half months later. [Op. Br. at 34.]

“employee”), *with Packard*, 330 U.S. at 499 (Douglas, J., dissenting) (explaining that Congress did not intend to include supervisors in the definition of “employee”). The majority opinion in *Packard* is not controlling.

The Teamsters next assert that the majority position in *Packard* — that supervisors are “employees” — applies to the interpretation of the ULRA because courts before and since *Packard* have interpreted the term “employee” to have “no limit.” [Resp. Br. at 23-24.] But the cases cited by Teamsters are inapposite. *NLRB v. Skinner & Kennedy Stationery Co.*, 113 F.2d 667 (8th Cir. 1940), and *American Steel Foundries v. NLRB*, 158 F.2d 896 (7th Cir. 1946) both predate and are consistent with *Packard*. Their analyses of the term “employee” are not particularly meaningful given Congress’ clarification in response to *Packard* in the Taft-Hartley Amendments. As a result, neither case informs the question of how to interpret “employee” under the ULRA.

The post-*Packard* case cited by the Teamsters is also unhelpful because it does not concern supervisors. The Teamsters claim that *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995), “acknowledged the appropriateness of the expansive definition of employees under the Wagner Act.” [Resp. Br. at 24.] But *Town & Country* did not concern supervisors, but instead addressed the question of whether a worker could be a company’s “employee” if that worker was paid by a union to help the union organize. 516 U.S. at 87-88. In finding that such a worker could be an employee, the court cited *Packard* in a string cite of cases

supporting the proposition that the court had historically given the NLRA's definition of "employee" "a broad, literal reading." *Id.* at 91-92. The same string cite noted that the NLRA had been amended "to overrule . . . *Packard* by explicitly excluding . . . supervisory employees." *Id.* at 92. *Town & Country* has nothing to do with supervisors.

The Teamsters' final errors in interpreting the NLRA arise in their argument that the Taft-Hartley Amendments did not clarify the NLRA. [Resp. Br. at 26-32.] Specifically, the Teamsters argue that "a Court must find the statutory language ambiguous" before considering legislative history. [Resp. Br. at 26.] And because the language of the NLRA is "unambiguous," UTA's arguments regarding the import of the Taft-Hartley Amendments should be rejected. [Resp. Br. at 26.] But like the district court, the Teamsters fail to recognize that UTA does not rely on legislative history, but on *subsequent legislation* in arguing that the Taft-Hartley Amendments clarified that Congress did not intend supervisors to be "employees" in the NLRA. UTA made this clear in the opening brief. [Op. Br. at 36-39.]

The Teamsters also assert that "[n]othing in the actual language of the Taft Hartley amendments indicate that it was intended to clarify the Wagner Act." [Resp. Br. at 27.] But as UTA demonstrated in its opening brief, the Taft-Hartley Amendments qualify as clarifying amendments under the federal standard at the time for determining whether legislation is clarifying. [Op. Br. at 42-44.] Under

that standard, it is enough that the legislative history of that amendment indicates an intent to clarify, as the legislative history of the Taft-Hartley Amendments does: "[B]y this bill, Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer . . .'" H. R. Rep. No. 80-245, at 308 (1947). The Teamsters' assertion that the Taft-Hartley Amendments amended the language of the NLRA is beside the point. [Resp. Br. at 27.] Of course the Taft-Hartley Amendments amended the NLRA. The issue is whether the amendments clarified or announced a substantive change in the law. Under the federal test, they clarified.

The Teamsters also assert that the Taft-Hartley Amendments could not have been clarifying because "Congress waited until 1947 to alter the definition of 'employees.'" [Resp. Br. at 28.] They claim that "[w]hat prompted Congress to change the definition of 'employee' wasn't the Supreme Court's decision in *Packard*," but "the election of 1946 which resulted in the Democratic Party losing control of Congress for the first time in 16 years." [Resp. Br. at 28.] The Teamsters offer no support for this assertion, and it is in direct contradiction to the circumstances surrounding the passage of the Taft-Hartley Amendments and contemporaneous statements by members of Congress.

The NLRA was enacted in 1935. Pub. L. No. 74-198, 49 Stat. 449. At the time of its passage and immediately thereafter, the NLRB generally excluded

supervisors from bargaining units. [Op. Br. at 24-25.] Thereafter, the NLRB began interpreting the NLRA inconsistently, sometimes including supervisors as “employees,” and, at other times, excluding them.⁴ [Op. Br. at 25-26.] When the United States Supreme Court finally spoke on the issue in *Packard* and held that supervisors were “employees” under the NLRA, Congress responded immediately with the Taft-Hartley Amendments. As Senator Taft explained, “[i]t was not until 1945, after several changes in position, that the National Labor Relations Board itself by divided vote finally decided that supervisory employees were covered by the [NLRA]. This construction was recently upheld by the Supreme Court in the *Packard Motor Car* case.” S. Rep. No. 80-105, at 409-10 (1947). It is therefore *Packard*, not some change in the political makeup of Congress, that spurred Congress to clarify the NLRA with the Taft-Hartley Amendments.

The Teamsters also assert that the “use of subsequent legislation [in interpreting a statute] has also been rejected by the Utah Supreme Court.” [Resp. Br. at 29.] UTA addressed this argument in its opening brief, admitting that clarifying amendments are not controlling under Utah law. [Op. Br. at 40.] As

⁴ The United States Supreme Court in *Packard* recognized the confusion. Remarking on the “long record of inaction, vacillation and division of the [NLRB] in applying [the NLRA] to foremen,” the court said, “[i]f we were obliged to depend upon administrative interpretation for light in finding the meaning of the statute, the inconsistency of the Board’s decisions would leave us in the dark.” 330 U.S. at 492.

UTA explained, because the ULRA is copied from a federal law (the NLRA), and this court looks to that federal law to interpret the state law, federal law controls whether subsequent federal legislation (the Taft-Hartley Amendments) informs the interpretation of the NLRA. [Op. Br. at 40.] If the clarifying amendment at issue were a Utah state statute, Teamsters would be correct. But the clarifying amendment at issue is a federal statute, and under federal law, clarifying amendments are meaningful and apply retroactively. *United States v. Montgomery Cty.*, 761 F.2d 998, 1003 (4th Cir. 1985) (“[C]hanges in statutory language need not *ipso facto* constitute a change in meaning or effect. Statutes may be passed purely to make what was intended all along even more unmistakably clear.”).

Finally, the Teamsters assert that the clarified meaning of “employee” does not apply to the ULRA because “[k]nowing that the definition of employee under the Wagner Act included supervisors, the Utah Legislature declined to provide a ‘clarifying amendment’ such as Congress did with the Taft-Hartley Amendments.” [Resp. Br. at 29.] But the Teamsters fail to acknowledge that, after the Taft-Hartley Amendments clarified federal law, Utah had no reason to amend the ULRA to clarify that supervisors are not “employees.” No Utah court had interpreted the ULRA as the *Packard* majority interpreted the NLRA, so the Utah Legislature had no need to clarify a state statute whose federal counterpart had been clarified. Moreover, as UTA explained in the opening brief, Utah courts consistently distinguished supervisors from employees when interpreting Utah

labor laws before the ULRA was enacted, after the ULRA was enacted (but before the Taft-Hartley Amendments clarified the NLRA), and after the Taft-Hartley Amendments were enacted. [Op. Br. at 45-47.]

Conclusion

The district court erred in its interpretation of the term “[e]mployee” in section 17B-2a-813(2)(a) of the Utah Public Transit District Act.⁵ This court should vacate summary judgment and remand for the court to resolve the fact question of whether UTA’s rail operations supervisors are supervisors for purposes of collective bargaining. This court should also instruct the district court, if necessary, to order a secret ballot election rather than a card check.

DATED this 2nd day of January, 2018.

ZIMMERMAN BOOHER

/s/ Troy L. Booher

Troy L. Booher

Julie J. Nelson

Erin B. Hull

Attorneys for Appellant

⁵ In the Conclusion of the opening brief, UTA erroneously cited section 34-20-2 of the Utah Code as the relevant statute. (Op. Br. at 56.) UTA should have instead cited 17B-2a-813(2)(a).

Certificate of Compliance

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because this brief contains 4,651 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 13 point Book Antiqua.

DATED this 2nd day of January, 2018.

/s/ Troy L. Booher

Certificate of Service

This is to certify that on the 2nd day of January, 2018, I caused two true and correct copies of the Reply Brief of Appellant to be served via first-class mail, postage prepaid, with a copy by email, on:

Russell T. Monahan
Cook & Monahan, LLC
323 South 600 East, Suite 200
Salt Lake City, UT 84102
russ@cooklawfirm.com

Attorneys for Appellees

/s/ Troy L. Booher