AIRLINE LABOR LAW

The Railway Labor Act and Aviation after Deregulation

William E. Thoms, Frank J. Dooley

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and
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To Pamela Hermes and Sheila Deitz

Labor amoris omnia vincit

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Contents

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1

Why Airline Labor Law Is Different

Airline pilots' job responsibilities, training, and salary levels are comparable to other professionals. On the face of things, pilots seem to be very different from the typical unionized worker. Yet, most pilots and other aviation professionals are union members.

A labor-intensive industry, airlines are dependent on unionized pilots and other highly trained professionals to keep their planes flying and their customers satisfied. Airlines, like most of the mature industries in the United States, are heavily unionized. U.S. and Canadian airlines regularly and continually bargain with labor unions over the working conditions of their employees.

Deregulation of the commercial aviation industry took place with the passage of the Airline Deregulation Act of 1978.[1] However, the industry still is charged with a public interest and is heavily supervised by the government. For example,

- international air transportation is still subject to regulation by the Department of Transportation (DOT) with bilateral agreements with foreign nations under the advisement of the State Department;
- only U.S. citizens or corporations are allowed to operate domestic airline service within the United States;
- pilotage is very much a regulated profession. Commercial multi-engine jet certificates are required by the Federal Aviation Administration (FAA);
- aircraft must be certified as airworthy by the FAA, both by type and by individual plane;

- the air traffic control system is under the jurisdiction of the FAA. The FAA has complete direction of civilian use of airspace;[2]
- airports are under the jurisdiction of state and local governments. Their granting of access to airlines for arrivals and departures (slots) is a form of limitation of entry to the field;
- consumer protection responsibilities remain with the Department of Transportation. In particular, DOT has responsibility for denied boarding compensation, reporting on-time performance, misdirected luggage, and regulation of smoking aboard aircraft; and
- finally, airline labor-management relations are regulated by the National Mediation Board under the Railway Labor Act. This law governs the conduct of airlines and their employees both in establishing a collective bargaining contract and in its administration.

The overall purpose of this chapter is to review the background of airline labor law. After a brief overview of the Railway Labor Act (RLA),[3] the reasons for extending the Act's coverage to airline employees are considered. Next, to gain further insights into airline labor law, origins of air regulation are presented. The chapter concludes with a discussion of the principal differences between the RLA and the National Labor Relations Act.[4]

HISTORY OF THE RAILWAY LABOR ACT

Rail Labor Legislation Before 1926

Labor unrest was common in the railroad industry during the last quarter of the nineteenth century.[5] Between 1888 and 1920, five laws were enacted to deal with rail labor disputes.[6] Much of the philosophy and many of the mechanisms eventually adopted in the Railway Labor Act were first enacted in these laws. For example, the Erdman Act of 1898[7] introduced the policy of mediation and voluntary arbitration in railway labor disputes. A permanent Board of Mediation and Conciliation were created in the Newlands Act of 1913.[8] These early legislative solutions to rail labor problems eventually failed because decisions were not binding upon the parties.

Governmental involvement in rail labor regulation escalated as a result of World War I.[9] The demand for U.S. goods in war-torn Europe taxed the capacity of the nation's rail system. As rail service

deteriorated, the federal government assumed emergency control. From December 1917 to March 1920, the nation's railroads were operated as a consolidated system by the United States Railroad Administration.

As a result of this national operation, working conditions for railroad employees were greatly improved. "One of the first government acts was to establish a Railroad Wage Commission to investigate labor demands for higher wages."[10] Finding that wages in the industry were unduly low, the government raised wages and shortened hours. In addition, "railroad labor made impressive gains in its power of collective bargaining, in the standardization and nationalization of practices and policies, and in the development of union organization."[11]

After World War I, debate centered over the future of railroading. Some, including labor organizations, argued that the railroads should be nationalized.[12] Carriers and others countered that the railroads should be allowed to return to private ownership. The Transportation Act of 1920[13] was passed as a compromise between these polar positions. The railroads were returned to private ownership, although under more governmental control.

For example, the Act called upon the Interstate Commerce Commission (ICC) to create a plan for consolidation of the nation's railroads into a limited number of systems.[14] However, the ICC feared the effect on rail employment of closing switching yards. In addition, profitable railroads opposed the consolidation plans because of proposals that they be consolidated with unprofitable railroads.[15] Gradually, the Commission backed away from the Transportation Act's consolidation mandate.[16] Since this time, however, the ICC has been actively responsible for protecting the public interest in railroad mergers and consolidation.

Title III of the same Act provided a role for the government in settling rail wage and working condition disputes. The Act encouraged the parties to meet and confer and to resolve their own differences, free from government intervention. If unsuccessful, the case was to be turned over to the Railroad Labor Board. In addition to deciding unresolved cases between railroads and unions, the Board also was given exclusive jurisdiction over wage controversies. The Supreme Court held in *Pennsylvania Railroad Co. v. Railroad Labor Board*[17] that the Railroad Labor Board had no power to enforce its orders and must cease its attempts to do so. Lacking enforcement powers, the Transportation Act of 1920 did not meet its objectives.

History of the Railway Labor Act of 1926

O'DONNELL v. WIEN AIR ALASKA, INC.
551 F.2d 1141 (9th Cir. 1977)

ELY, Circuit Judge:

This case, and our disposition of it, can best be understood against the background of the history of the Railway Act, set forth in a typically comprehensive fashion by Mr. Justice Rutledge in *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711 (1946).[18] That opinion clarified the distinction between "major" and "minor" disputes in a manner that has since, of course, been generally applied.

Without attempting to reiterate or expand upon that detailed exegesis, the history and structure of the Railway Act may be summarized as follows: The Act was originally enacted in 1926, almost a decade before the National Labor Relations Act. The Railway Act represented a pioneer federal attempt to secure the peaceful settlement of employer-employee disputes, previously characterized by strikes, lockouts, and other disruptive forms of self-help. Understandably, the first curative efforts were directed to the railway and closely related industries, which were far and away the primary carriers of goods and passengers in interstate commerce. Strikes, lockouts, and other labor disturbances in the industry not only tended toward extreme bitterness, strife, and even physical violence, but also literally ground the national economy to a halt.

As Congress saw the situation in 1926, the principal cause of such strikes was the failure of labor and management representatives to agree upon labor contracts that were fair to labor and management alike. The courts were ill-equipped, in terms of expertise, available remedies, and speed, to effectuate speedy settlements of disputes arising in contract negotiations.

The Railway Act as originally enacted, therefore, set forth the rights and duties of carriers and their employees, including the employees' right to organize and bargain. While prohibiting certain types of agreements, it expressly permitted others and, perhaps most importantly, created procedures and federal administrative machinery to facilitate the selection of bargaining representatives and the reaching of agreements. So as to avoid the interruption of service while all these procedures were being undertaken, each step, commencing with conferences between labor and management and proceeding through arbitration and final award by the Mediation Board, was subjected to time limitations, purposely "long and drawn out." The federal courts were by necessary implication thus authorized to issue injunctions maintaining the status quo pending the exhaustion of these procedures.

The Railway Labor Act of 1926

The Railway Labor Act, the oldest of our national labor laws, relates to common-carrier railroad and commercial airline employees. Nationwide in scope, it is not subject to any state right-to-work laws. The basic purposes of the Act, as set forth in Section 2, are

1. to avoid any interruption to commerce,
2. to provide for the freedom of association of employees (the right to join a labor union),
3. to provide complete independence of organization by both parties to carry out the purposes of the RLA, and
4. to provide for the prompt and orderly settlement of "major" and "minor" disputes.

The Railway Labor Act divides labor-management disputes into two categories, major and minor disputes. Major disputes involve contractual issues such as rates of pay, work rules, or working conditions. Minor disputes are grievances arising from the interpretation of existing contract provisions.

Different procedures apply for major and minor disputes. The Act does not in itself settle major disputes or contract issues. Rather, "its underlying philosophy is almost total reliance upon collective bargaining for major dispute settlement."[19] Thus the parties are expected to resolve major contractual issues through collective bargaining, posturing, strikes, or lockouts.

The procedures of the Railway Labor Act are invoked only when the parties fail to reach an agreement. Minor disputes are not strikeable. They are settled by system boards of adjustment (or, in the case of railroads, a National Railroad Adjustment Board).

For major disputes, the Act created the National Mediation Board (NMB) to administer the act and to help the parties reach agreements. The NMB is an independent agency appointed by the President. It has jurisdiction to supervise the election of the bargaining representative (usually a union) of the employees and to oversee the bargaining process. If requested, the NMB also helps the parties mediate disputes.

Carriers are required to meet, confer, and make reasonable efforts to come to written agreements with labor organizations representing

their employees. Neither a carrier nor a union may interfere with the other party's choice of representative. Agreements before hiring to join or not to join labor unions are forbidden. However, union security clauses, providing for compulsory membership after a certain period of time, are allowed. Contracts signed between unions and carriers remain in effect unless changed specifically by the provisions of Section 6 of the Act.

The Railway Labor Act has not been substantially changed since 1934. However, there have been changes in bargaining between the unions and the carriers. Notable has been the abandonment of nationwide pattern bargaining for carrier-by-carrier settlements. The airline unions never did formally bargain on a nationwide basis, as did their counterparts in the rail and trucking industries. Instead, one contract settlement at a major carrier would become a model for the other airlines. The demise of pattern agreements has reduced the threat of nationwide strikes. Yet, there still is a danger that a strike on one carrier could spread to other airlines or railroads since there is no provision in the Railway Labor Act that prohibits secondary boycotts.

EXTENSION TO AIRLINES

Origins of Airline Regulation

Air service became a practical option to Americans after the Lindbergh transatlantic flight of 1927. Although the first scheduled air service was by the Tampa-St. Petersburg Airline in 1919, transcontinental air service did not begin until a decade later. At that time, airlines were viewed as an adjunct to rail transportation. A typical transcontinental trip would begin by boarding a sleeper at Penn Station in New York City. The Pennsylvania Railroad would take you overnight to Columbus, Ohio, whereupon an airplane would fly through the daytime skies to Albuquerque, New Mexico. From there, the Santa Fe would take you overnight to Barstow, California, where local air service was available to San Francisco or Los Angeles. The reason for this hop-and-skip service was that navigational aids were not available for night flying. The development of night beacons meant that air service could be instituted overnight.

In 1918, air mail service was instituted by the Army. The Kelly Act (the Air Mail Act of 1925) established the beginnings of the commer-

cial airline system. The Act permitted the Postmaster General to award contracts to private airlines for the movement of mail. The Air Commerce Act of 1926 vested jurisdiction over safety and the maintenance of airways and navigation facilities in the Department of Commerce. The McNary-Waters Act of 1930 established a formula for air mail payments based upon the amount of mail transported. Reports of collusion between the airlines and the post office led President Roosevelt to terminate all airmail contracts in 1933 and give the business back to the Army. However, a series of disastrous wrecks led Congress to reevaluate that decision. In 1938, the Civil Aeronautics Authority was established to regulate the airline industry.

The legislative history of the Civil Aeronautics Act of 1938 reveals that Congress recognized the air transport industry to be in its infancy. Congress believed that without regulation, the existing competitive environment could inhibit or impede its sound development.[20] The air mail legislation was believed to have imposed certain undesirable influences upon the industry. The Senate Commerce Committee expressed serious concern with the "intensive," "extreme," and "destructive" competition in which all transport modes were engaged.[21] The Committee felt that such an economic environment was having injurious effects upon the industry and its ability to provide adequately the service required to satisfy the needs of commerce, the public interest, and the national defense.

Congress sought to establish a regulatory structure similar to that which had been devised for other industries that had also been perceived as "public utility" types of enterprises. Congress believed that such a system would enhance economic stability and thereby contribute to the sound economic growth and development of air transportation. It would ensure service to small communities and the protection of smaller carriers. It would not be so strict a system of regulated competition that it would prohibit the entry of new carriers. The regulatory scheme would assure adherence to the highest standards of safety and would satisfy the needs of commerce, the public interest, and the national defense.

Among the problems faced by air carriers before 1938 was an inability to attract sufficient investment capital. It was argued that the order and stability ensured by public regulation would diminish this problem. Indeed, government regulation was viewed as fundamental to the creation of an economic environment of sufficient order and

stability to ensure the attraction of capital sufficient to maintain the requisite growth of the aviation industry.

The legislative history also reveals a concern that the past unfortunate economic experience of surface carriers might be repeated in the air transport industry. The Great Depression was an era of economic upheaval and uncertainty and had a high fatality level for businesses. Certain industries were deemed so fundamental to the existence of a sound national economy that the federal government intervened to regulate competition, restore order, and diminish the uncertainty that prevailed. Transportation was among those industries perceived as essential to recovery and therefore entitled to the benefits of "public utility" regulation. In 1935, Congress promulgated the Motor Carrier Act, which established federal regulation of motor carrier entry and rates and placed such jurisdiction in the ICC (which already held extensive regulatory authority over rail carriers).[22]

A representative of the National Association of Railroad and Utilities Commissioners testified that

> [a]ny important public-utility industry requires regulation in the public interest and will be regulated sooner or later.... The full purpose of regulation can be accomplished only by regulation from the beginning of the development of the industry.... Congress must establish such conditions that there may be an encouraged development of the aircraft business... and create conditions—and this is of paramount importance—which will avoid the wastes and losses which will be inevitable if the business is left to struggle to establish itself in open competition.[23]

Considering the economically catastrophic experiences of other transport modes, it was believed that regulation might help avoid such consequences for the air transport industry. A system of economic regulation was envisioned that would avoid the consequences of excessive competition. In fact, the legislative history repeatedly reveals that destructive competition was among the injurious activities to which the Act was addressed.

The Federal Aviation Commission, established by the Black-McKellar Act of 1934, contended that the orderly development of air transportation required two fundamental ingredients. First, in the interest of safety, certain minimum standards of equipment, operating methods, and personnel qualifications should be maintained. Second,

there should be a check in development of any irresponsible, unfair, or excessive competition such as had sometimes hampered the progress of other forms of transport. However, it was never maintained that competition among carriers should be prohibited.

Congressman Randolph contended that "unbridled and unregulated competition is a public menace." He cited "rate wars and cutthroat devices" as examples of "destructive and wasteful practices" that the air transportation industry faced. Other representatives emphasized that the legislation was intended to inhibit or prohibit monopolization in the industry.

Extension of the RLA to Airlines

In 1936, Congress extended the provisions of the Railway Labor Act to cover employees of air carriers engaged in interstate commerce. "The role of the federal government in dealing with labor problems in air transportation differs from that in connection with railroad labor in that it is confined to the settlement of labor disputes and does not deal with social security."[24]

In the spirit of the times, Congress decided that the traveling and shipping public had to be protected against work stoppages and interruption of airborne commerce. Thus the Railway Labor Act, already successful in railroading for a decade, was extended to airlines before the airline industry came under comprehensive regulation. The history of the statute reveals that air mail transportation was in the legislators' minds.

Many of the same unions active in the railroad industry were attempting to organize airline employees. The decentralized structure of airlines was similar to that of railroads. In addition, working conditions in many ways were similar. As railroad unions grew in power and influence, so did their counterparts on the airlines. The experiment was not extended to other modes. Motor carriers and water carriers are covered by the National Labor Relations Act (NLRA), which applies to all other industries except agriculture and government operations.

In general the coverage and procedures of the RLA is applied in the same manner for airlines as for railroads. The exception is Section 3, which deals with the National Railroad Adjustment Board. That body has no jurisdiction over airlines. Instead, the Act requires each air