

Settling Airline Labor Disputes

By JOSHUA M. JAVITS

When American Airlines' flight attendants struck the company in November, President Clinton personally intervened, convincing the parties to arbitrate their differences. Wayne Horvitz, writing on this page on Dec. 20, suggested Mr. Clinton would have done better to convene a Presidential Emergency Board, a kind of dispute resolution mechanism available under the Railway Labor Act.

Mr. Horvitz, however, does not discuss the problems with emergency boards and, indeed, with any government intervention in private labor-management disputes. With national railroad negotiations and major airline talks due this year, and with an activist administration in Washington, the issue of government intervention is center stage.

Emergency boards seem benign and potentially helpful: A neutral third party makes recommendations, which the parties can use to justify softening hardened positions. Still, the emergency board option presents problems.

For starters, a board does not actually settle a dispute; it merely makes non-binding recommendations and almost inevitably prolongs the conflict. Moreover, creating a board lessens the chance the parties will reach an agreement during negotiations. Labor and management tend to come closer together through collective bargaining because the alternative — industrial warfare — is so unpalatable. This fear is the primary motivation for reaching an agreement.

Moreover, if emergency boards are too readily available and, thus, anticipated, the parties will tend to sit back and let the board do their work. Collective bargaining gives each side a first-hand appreciation of the needs, interests and resolve of the other. Settlement, absent real bargaining, is anathema to the labor negotiation process.

Second, once third parties become involved, they tend to stay involved. At American Airlines, if an emergency board had been created but had not resolved the dispute, the president and/or Congress would have been lobbied by one side or the

other to take action. Moreover, disrupting the lives of 200,000 American Airlines passengers each day would have triggered a flood of phone calls to congressional offices demanding action.

Congressional intervention is even more likely when an emergency board has produced recommendations; Congress can easily convert them into a legislative settlement and impose it on the parties. The opportunity to lobby to "improve" the recommendations is also irresistible, bringing Congress further into a private dispute.

No president has created an emergency board for an airline disruption since 1966, when a 43-day strike against five major carriers shut down 60% of the industry. That conflict capped a long history of frequent airline emergency boards, which most participants — and Congress — considered unsuccessful.

The history of railroad labor conflicts over the past 30 years shows the near inevitability for emergency boards to be followed by congressional action. Most recently, four separate acts of Congress were needed in the four years from 1988 to 1992 to deal with rail disputes.

In many cases, collective bargaining in the railroad industry has become merely a formality; the real

negotiating takes place in the halls of Congress. With an emergency board report in hand, Congress is tempted to impose its recommendations, or something like them, on the parties. The result? The two sides avoid compromise during negotiations and use the political system to resolve disputes. Politicians are then persuaded to take sides.

And no matter how well-intentioned, any government action will be perceived as "taking sides." In the last national railroad dispute, a creative emergency board process was engineered by the parties themselves — 10 of 11 national rail union presidents personally negotiated and agreed to the process. But this did not prevent the hostility, political bloodletting and scapegoating that occurred when the unions felt they drew the short straw at the end of the process. Based on the results of that process, the Democratic Congress ended those rail strikes against the will of the unions.

The debilitating effect of emergency boards on collective bargaining is only justified by the more harmful national impact of a major rail shutdown. Under the Railway Labor Act, there must be a substantial economic threat "to interrupt interstate commerce to a degree

such as to deprive any section of the country of essential transportation service" before a president, with a go-ahead from the National Mediation Board, may convene an emergency board. The act's authors thought few boards would be created and expected them to deal with broad issues. They believed the RLA's voluntary arbitration provisions to be more useful.

The tough standard for creating a board seeks to avoid the politization and proliferation of these panels. It suggests restraint and the use of objective criteria in determining whether, and to what extent, the government should intervene.

If the legal standard for creating an emergency board — a real transportation emergency — is not met, should the president informally intervene? At American, perhaps ad hoc presidential action was preferable to the precedent of creating a board when an emergency did not exist. It is certainly questionable whether a short airline strike would have met the standard, especially since most of the dislocated passengers could have been accommodated on other airlines. Of course, the distinction between these forms of intervention is blurred if the president uses the threat of an emergency board to get the parties to "accept" arbitration.

But the real danger of personal presidential intervention is precisely that it is ad hoc, unpredictable and political. The uncertainty of whether the government will intervene in a specific case should be minimized by the use of objective criteria, to the extent possible. That way, the parties will know if the government is likely to act.

More important, virtually any government intervention will undermine collective bargaining, making the dispute more protracted and drawing the president and Congress into private conflicts. The least intervention is the best. Leave emergency boards for emergencies.

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