The Emergence of Airline Emergency Boards

Joshua M. Javits

President Clinton's dramatic decision to create an Emergency Board to stop a midnight pilot's strike against American Airlines last Friday made political sense. But as a policy, will it help labor relations, the economy or the airline industry?

The immediate question was: How could the President do nothing when he had in hand the power to rescue 45,000 potentially stranded passengers and 220,000 severely discommoded passengers per day, to keep over 100,000 employees from being put out of work, to avoid over $200 million per day of economic impact? Sounds, as George Stephanopolis put it like a "no-brainer," right? Actually, wrong. There are serious concerns that this intervention, the first Emergency Board created in the Airline industry in 30 years, will undermine the incentive of airline labor and management in the future to narrow their differences and reach voluntary agreement based on a mutual belief that if they don't they face an abyss of economic warfare–a strike or lock out with lasting bitterness or even mutual economic ruin (e.g., Eastern Airlines' 1989-91 strike). This has been a powerful incentive towards settlement and has been successful in the past.

What rationale would justify undermining this accepted labor relations calculus?

The answer lies in the greater economic and labor relations considerations embodied in the Railway Labor Act (RLA), which governs airline and railroad labor relations. Only because the RLA provides for it was the President able to intervene to halt the strike. He did not have that authority in the baseball strike, nor does he have the power in non-transportation labor disputes.

An RLA Emergency Board is just the last stage in a comprehensive labor relations scheme, the central goal and design of which is to avoid transportation shut-downs. It is a very different purpose than the vindication worker or union rights which is the central tenet of the National Labor Relations Act, governing labor relations in the remainder of the private sector. The RLA, unlike the NLRA, mandates a potentially endless negotiating process–direct negotiations, mandatory mediation, cooling off period, proffer of arbitration, and if all else fails, the option of an Emergency Board.

Other elements of the Act are designed to promote stability and predictability in order to further guarantee the avoidance of disruptions to commerce (i.e., labor contracts never expire, they merely become "amendable"; there is no union decertification procedure; tripartite arbitration boards must be created for grievance resolution.

Stability also means unionization: 65% of employees in the airline industry, and over 95% of employees in the railroad industry are organized. Organized labor voluntarily gave up the unencumbered right to strike in exchange for this stability, and no union wanted to change it when asked last year by the President's Commission on the Future of Worker Management Relations. In fact, it was the pilot's union that successfully lobbied to be placed under the RLA rather than the NLRA.

Against this background the National Mediation Board, which administers the RLA, determines whether to notify the President that a dispute "threatens substantially to interrupt interstate commerce to a degree such as to deprive any sections of the country of essential transportation service" and thus enables the President to create an Emergency Board. That ambiguous yet suggestive language surely justifies action where more than 1½ million travelers and hundreds of thousands of workers in a single week are directly impacted by a threatened shutdown.

Yet one must look beyond both labor relations and economic considerations to understand what was at the core of this dispute that justifies an Emergency Board. That is the joinder of a conflict dealing with cost structure brewing in the airline industry since the end of airline regulation in 1978. This incredibly critical and even marginal industry lost more money in 1989-1994 than the total profits it made in its entire previous 68 year history. That and the demise of Eastern, Pan Am, Braniff and other household name airlines finally led to serious cost containment and contraction at virtually all airline carriers. Pilot compensation and work rules are now the central concern of many airlines, even acknowledging the past two years of record profits. Who flies the new small regional jets is the other enormously important issue in this strike and for the industry.

Emergency Boards have resolved other historic conflicts in the past, such as the obsolescence of the firemen when diesel train engines were introduced in the 1950's, or the "professionalization" of the flight engineers when two-pilot cockpits were introduced in the 1960's.

This governmental "intervention" is relatively minor-a sixty day status quo period plus a non-binding report. It does not displace the salubrious effects of bargaining or labor management showdowns. It is provided for in the law and should be implemented when appropriate as here. It may stave off similar calls for Emergency Boards in the future by dealing with these issues constructively, creating a valuable substantive precedent as opposed to a potentially hurtful procedural precedent.

That the RLA provides for a method of dispassionate analysis of these issues while postponing and possibly avoiding economic warfare is a policy virtue, not merely political trick. It benefits the public, but more importantly assists labor and management to halt the rush

towards conflict, to recognize that economic and technological changes (rather than bruised egos) have led them to this point, and for everyone to take off the gun holsters and put on thinking caps.

Mr. Javits is President of Dispute Resolution Services, which provides neutral arbitration, mediation, and training services. Mr. Javits is a member of the National Academy of Arbitrators and was Chairman and member of the National Mediation Board from 1988 to 1993.