AIR LINE PILOT

Salute to Pan Am

A COLLECTIVE BARGAINING ANALYSIS

In the airline industry financial crisis, has the collective bargaining process been friend or foe?

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The airline industry is indeed in a financial crisis. During the last two years, the airline industry has endured almost $6 billion in losses, which is more than all the profits the airline industry earned throughout its entire history. Of the 11 major carriers that existed in the industry at the beginning of 1991, 6 are not just in crisis but in extremis, and some are dead. Of the 450,000 employees in the industry, about 57,000 have been laid off or terminated during the past year and a half.

The passage of the Airline Deregulation Act of 1978 dramatically altered the airline industry, and its ramifications have been played out ever since. From 1979 to 1986, numerous new-entrant carriers came into the industry bringing a tremendous amount of price and route competition. But at the same time, 150 airlines went into bankruptcy, and 50 airline mergers took place.

The period from 1986 to the present has been marked by industry consolidation, which has resulted in the formation of three international giants or "mega-carriers." These really should be called survivor carriers, because they are losing money, too; but they are certainly expected to survive the crisis. Those survivor carriers — American, Delta, and United — now control 54 percent of the airline market, based on revenue passenger miles (RPMs) flown (one RPM is one paying passenger flown one mile).

Recent additional developments that have exacerbated the problems of the weaker carriers and accelerated the consolidation in the few strong carriers include the recession, the Gulf War, and debt. The entire airline industry is overburdened with debt. In 1978, airline industry debt totalled about $8 billion while equity was about $6 billion. By 1990, total industry debt had ballooned to about $47 billion versus equity of $9 billion. Even in good years, servicing that debt would be difficult.

Meanwhile, the U.S. airlines that are the best positioned for the future have assets and attributes that make them almost invulnerable to serious competition from the other U.S. airlines.

In this volatile and extremely cyclical airline economic environment, 65 percent of the employees in the airline industry are unionized. Collective bargaining is pervasive. The Railway Labor Act (RLA), which was passed in 1926 and governs collective bargaining in the airline and railroad industries, has one central overriding goal: *to avoid interruptions in interstate commerce.*

The Act was virtually written by the railroad brotherhood and carrier representatives and was passed by Congress without many changes. It has been characterized as more like a collective bargaining agreement negotiated by the parties rather than a statute foisted on the parties by Congress. It was applied to the airline industry by amendment in 1936.

Both the parties involved and Congress intended the RLA to provide a process for resolving the three kinds of disputes that typically arise in labor relations: representation disputes, collective bargaining disputes, and grievance arbitration disputes.

The Act has an enormous emphasis on stability. Most importantly, the *status quo* — meaning prohibition against unions striking or carriers unilaterally changing pay, rules, or working conditions — is preserved throughout the long and involved collective bargaining process. That process lasts until the National Mediation Board (NMB), in its sole, virtually unreviewable discretion, determines that the parties should be released to use self-help. Self-help usually means, for a carrier, a lock-out or unilateral implementation of new wages, hours, and working conditions and, for the union, a strike.

Collective bargaining under the RLA is a rather insular process. It limits the disputes to the parties involved. It avoids the kind of litigation that is characteristic of the National Labor Relations Act (NLRA) and other labor relations statutes. Two of NMB's central functions — resolving representation disputes and aiding collective bargaining through mediation — allow the Board virtually unreviewable discretion. Complaints chal-

lenging the representation and collective bargaining activities of the Board are seldom successful because the federal courts largely defer to the Board.

What happens when a modern airline industry in financial crisis meets the intricate and gradual processes of collective bargaining under the RLA? The collective bargaining process and the needs of the airline industry are a good match in several ways.

First, the parties have reached agreements that respond to the circumstances of the carriers, and NMB has been instrumental in the process.

Second, the process provides stability to an unstable industry in an extremely uncertain world. Airlines today, given their slim, if any, profit margins, their high debts, and their cyclical ups and downs, for the most part cannot afford shutdowns. Central to understanding the economics of the industry is an understanding that airlines, like other modes of transportation, cannot inventory product — even keeping airplanes in storage has a high cost.

The processes of the Act increase the likelihood of settlement, which avoid shutdowns. The Act *requires* the parties to meet, to talk, to mediate, to "exert every reasonable effort to settle all disputes." The process keeps the parties working on resolving their disagreements and limits the involvement of the courts and their endless appeals processes. The length of time during which the parties are required to negotiate also may be long and drawn out to encourage the parties to make the accommodations necessary for settlements.

At the same time, NMB election rules tend to preserve continuity of union representatives. This also provides stability and makes agreements more obtainable.

What are the criticisms of the process? Where a carrier is weak and a concessionary agreement is clearly appropriate, the process might delay the carrier from obtaining vitally needed cost savings and, therefore, make the carrier more vulnerable to financial collapse. While this may be true, NMB has great discretion to operate quickly to make sure carriers stay afloat — for the benefit of the employees and the carrier, as well as for the traveling public.

Nonetheless, the Board's release of the parties to use self-help does not necessarily result in concessions that ensure carrier survival. Rather, a devastating strike might take place that would, in fact, lead to the carrier's demise. In addition, companies subject to the NLRA have also entered bankruptcy as a result of a labor dispute. Recent examples are the Greyhound and the New York *Daily News* strikes.

Critics point to another alleged vice of the RLA process — that carriers even in good times are insulated from challenging unions to rationalize excessive costs and inefficient work rules. Of course, one person's excessive costs and inefficient work rules are another person's decent living wage and tolerable working conditions. But in terms of the process, the trade unionists' counter argument is that unions are often, in fact, worn down by the elongated processes of the Act and not allowed to use their greatest weapon — the strike — as readily as they would — and do — under the NLRA and that therefore they settle more cheaply than they might otherwise. It is almost a truism that in good times, when the carriers are making money, unions who expect to make wage gains criticize the RLA process; and in bad times, carriers who need quick relief criticize it.

Another criticism is that the delays in collective bargaining occasioned by the workings of the Act breed bad labor-management relations. Of course, if a carrier does not survive, nice labor relations are irrelevant.

Given the relative security of the unions in the industry, they can and do make concessionary agreements and other accommodations where needed for the survival of a carrier. But as a practical matter, substantial delays in reaching collective bargaining agreements are not good for labor relations.

Delays are sometimes necessary, however, to permit good-faith bargaining and a thorough review of issues in a serious attempt to find solutions that both parties can live with. In those situations, delays have a much greater beneficial effect than they do a harmful effect, particularly in an industry that can ill-afford shutdowns at any time.

In these particularly vulnerable transportation service industries, having a system that encourages the parties to "go for your guns" whenever a dispute arises would be bad labor policy.

As to whether collective bargaining has been a friend or foe in the airlines' financial crisis, the answer is friend. In terms of purely economic *results*, economists who have studied the issue report that, in the airline industry, labor costs have not been the cause of the airlines' financial crisis to any significant degree. Analyses have shown just the opposite. Labor productivity has vastly increased since the 1978 passage of the Airline De-

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regulation Act, because the airlines have not been able to almost automatically pass on their costs to the traveling public as they were able to do when the Civil Aeronautics Board regulated them.

Also, since deregulation was enacted, the industry per capita compensation has actually fallen. Unit labor costs have also decreased and have represented a decreasing fraction of capacity costs. Between 1975 and 1989, the real median gross monthly earnings of the three major labor groups in the airline industry — pilots, mechanics, and flight attendants — have all decreased.

Labor costs per available seat mile, which is the standard measure of productivity in the industry, are much lower on U.S. airlines than on foreign carriers, by approximately 15 to 20 percent. Labor costs generally cannot be said to determine an airline's survival or the destiny of the industry.

Look at this contrast — labor costs for two mostly nonunion carriers — Continental and Delta.

Continental Airlines' labor costs averaged $34,000 per employee from 1984 to 1990. During that period, Continental lost $1.7 billion. By comparison, Delta Air Lines' average labor costs were $52,000 per employee during that same six-year period, and Delta registered $1.5 billion in net profits during that period. This suggests that labor costs do not determine profitability. Also, Pan Am, which received extraordinary employee concessions, was unable to survive.

The history of the past 12 years suggests that the collective bargaining process has been more friend than foe in the airline industry:

- The collective bargaining process protected weaker carriers from strikes that might have caused bankruptcies or liquidations. The weaker carriers that did go into bankruptcy or liquidation had much softer landings, and those still in bankruptcy are more likely to come out of it in absence of a crippling strike.
- The process allowed for all parties to adjust to the new conditions after deregulation. In the early and mid-1980s, the industry was able to adjust to the new competitive circumstance in the industry, driven in large part by the numerous new-entrant and low-cost carriers, such as People Express and New York Air.
- Management was able to adjust to the new competitive pressures without repetitive labor confrontations. Airlines had only two strikes between 1986 and 1992.
- The adjustments and changes that were made could always be blamed on NMB — a third party, a built-in fall guy or scapegoat. Unions, and also managements, are at least in part political organizations, and blaming agreements on a third party can be useful to the process.
- The alternative of allowing for more confrontations, which some people argue would have "rationalized" carriers' cost structures over time, would not necessarily have been a prescription for financial health. For example, Eastern Airlines, rather than getting the best it could in collective bargaining, sought an early release from the process. When it did obtain a release, Eastern could not fly through a strike despite its significant labor cost savings. Eastern went bankrupt and ultimately liquidated, resulting in great worker dislocation, creditors' losses, and difficulty for the south Florida area, where Eastern was the area's largest employer.
- Despite the financial upheavals the numerous mergers and buyouts caused in the industry — including those at major airlines such as Northwest and TWA, and the several attempted buyouts of United Airlines — labor stability was maintained, with great help from the protections afforded under the RLA.
- Even when airlines have made high wage settlements, such as in the current round of pilot negotiations at the five largest carriers, the economic disasters that strikes might have wrought in purely financial terms might not have been worth the price of keeping costs down. The proof of that is that the carriers were unwilling to take strikes. Furthermore, the process pushed the parties to compromise because collective bargaining itself has an intolerance for strikes.
- Finally, if situations in which labor costs were pushed significantly higher had led to confrontations, even a strike would not necessarily have kept costs lower. Rather, the carrier might have ultimately been forced to settle for even higher wages, in addition to losing revenue during the strike. Critics who assume that confrontation will lead to management "facing down" unions should be aware that the opposite might well occur.

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This article is adapted from a speech delivered before the New York State Bar Association's annual meeting of the joint corporate counsel and labor employment law sections, January 31.