

LABOR PROBLEMS IN THE AIRLINE INDUSTRY

WILLIAM V. HENZLEY*

INTRODUCTION

Federal supervision of the scheduled airline industry is so close and detailed,¹ that much of management's time is consumed in satisfying governmental rules, regulations, and directives. There is, however, one virtual no-man's land—the field of industrial relations—that is quite outside the scope of federal aviation regulation, as such.

Paradoxically, labor costs are the most expensive factor in producing air transport. Even the vast commitment of the industry for jet aircraft, estimated at \$2,800,000,000 for the five-year period 1958-62,² falls short of what the airlines will pay their employees during the same period. Indeed, if the 1958 payroll of \$800,000,000³ were to remain constant—a rather fatuous assumption—the total labor outlay for the five-year period would be at least \$1,000,000,000 more than that for jet aircraft. Moreover, not only is the absence of federal authority in the field of labor relations inconsistent with the Government's over-all regulation of every other phase of the airline industry, but, as will become apparent later in this article, the few federal efforts at intervention in this area, stemming from the depression-ridden days of the 1930's,⁴ may have served merely to aggravate the problem.

Of course, the airlines, long burdened with cumbersome government regulation of their other economic problems, do not view with relish the prospect of extension of federal regulation to the labor-relations field.⁵ Nevertheless, the program of self-

* Director, Air Transportation Research, School of Foreign Service, Georgetown University; Consultant, Air Transport Association of America; Contributing Editor, *Airlift Magazine*. Formerly Chief Transport Editor, *American Aviation Publications, Inc.*; Tariff Manager, Chicago & Southern Air Lines; Analyst, Civil Aeronautics Board. Contributor to periodicals of articles on airline development.

¹ Controlling legislation is provided by the Federal Aviation Act of 1958, 72 Stat. 737, 49 U.S.C.A. §§ 1301-542 (Supp. 1958).

² "The airlines are engaged in major investment program for new jet aircraft and related facilities. Total planned capital expenditures in conjunction with this program are estimated at \$2,800,000,000 over the next five years." Cherington, *The Status and Economic Significance of the Airline Equipment Investment Program*, H.R. REP. No. 430, 85th Cong., 2d Sess. 9 (1958).

³ "The industry's \$800,000,000 annual payroll amounts to almost half (46.1%) of the total expense of running the airlines." *Balance at the Bargaining Table*, an address by Stuart G. Tipton, President, Air Transport Ass'n of America, Boston, Mass., Sept. 24, 1958.

⁴ For some of the history of the unsuccessful labor attempts to get legislation enacted during this period, see, e.g., testimony of representatives of the Air Line Pilots Association, in *Hearings Before a Subcommittee of the Senate Committee on Interstate Commerce on S. 2496, A Bill to Amend the Railway Labor Act*, 74th Cong., 1st Sess. 5 (1935); see also, AIR LINE PILOTS ASS'N, *THE ALPA STORY* (rev. ed. 1957).

⁵ "We do not advocate the Government step in and require its approval before a trade union can alter its strike benefits. Certainly, Government is in this thing too far as it is. But where Government plays as big a part as it does in the regulation of the airlines, we urge its intelligent appraisal of the lop-sided bargaining strength which now exists in favor of labor. The Government must not impede airline efforts to provide for the development of balanced collective bargaining." Remarks of Stuart G.

help or "mutual aid" recently installed by several major airlines⁶ may indirectly conduce just this result. Certainly, if, owing to "mutual aid" and other measures taken by the carriers, the bargaining advantage shifts more markedly toward management, then employee groups conceivably may urge that the governmental bodies that have successfully enforced close regulation of other phases of airline operation also undertake regulation of airline labor relations. The dilemma for the airlines is thus quite serious, since the alternatives to self-help seem quite unattractive and unpromising.⁷ Consequently, although management does not desire expansion of federal control over its activities, it seemingly must risk this to escape even less palatable possibilities.

By way of further background, it should be recalled that the Civil Aeronautics Board, originally created under the Civil Aeronautics Act of 1938,⁸ still retains the supervision of the airlines' general economic problems under the Federal Aviation Act of 1958.⁹ Various technical and operational phases of airline operation, too, are similarly regulated by the Federal Aviation Agency, newly created by the 1958 Act. However, the field of collective bargaining between airlines and labor unions falls within the purview of neither agency; it rather comes under the Railway Labor Act of 1926, which Congress extended in 1936 to the then-infant airline industry.¹⁰ Significantly, the economic regulation of the industry for other than labor matters began in 1938—*after* the airlines had been subjected to the Railway Labor Act.

During the hectic 1930's, airline officials were so concerned with the problem of survival in its rawest sense that little mature consideration was given the few labor problems that did arise.¹¹ In such an atmosphere, the one airline union of that period, the Air Line Pilots Association, had little difficulty in obtaining a government floor for its members' salaries¹² and, with the help of the railway brotherhoods, in

Tipton, President, Air Transport Ass'n of America before Aviation Writers Association, National Press Club, Washington, D. C., Dec. 9, 1958.

⁶ Six major certificated United States air carriers proposed a program of self-help in an agreement filed with the Civil Aeronautics Board on Nov. 3, 1958. The agreement, often referred to as a "mutual aid" pact, calls for minimum financial aid to the member carrier shut down by a strike called under certain conditions—*e.g.*, failure by a union to honor recommendations of a presidential emergency board. The CAB approved the agreement, Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Order No. E-13899, CAB, May 20, 1959; and affirmed the ruling by denying petitions for reconsideration on Oct. 29, 1959.

⁷ The most talked-about major change in the management-labor field in the airline industry has been legislation to enforce compulsory arbitration. The airline industry is far from unanimous in the belief that compulsory arbitration is a solution to its problems. Inherently, labor unions resist such a move, which, defined bluntly, removes their right to strike.

⁸ 52 Stat. 973, 49 U.S.C. §§ 401-681 (1952).

⁹ 72 Stat. 737, 49 U.S.C.A. §§ 1301-542 (Supp. 1958).

¹⁰ 44 Stat. 577, as amended, 49 Stat. 1189, 45 U.S.C. §§ 151-63, 181-84 (1952).

¹¹ During consideration of amending the Railway Labor Act to embrace the airline industry, airlines appeared to pay little attention to the hearings in Congress. At one point in the hearings, the chairman asked: "Is there somebody here that is interested in the other side of this question?" No one answered. *Hearings Before the Subcommittee of the Senate Committee on Interstate Commerce on S. 2496, A Bill to Amend the Railway Labor Act*, 74th Cong., 1st Sess. 23 (1935).

¹² Certain wage formulae for determination of airline pilots' pay were established in *In the Matter of the Air Line Pilots' Wage Dispute* 2 Nat'l Lab. Bd. Dec. No. 83, at 20 (1934). This decision was incorporated in the then-existing legislation governing commercial airlines, the Air Mail Act of 1934, 48 Stat. 933; subsequently, when federal authority over aviation was vested in the Civil Aeronautics Authority

persuading Congress to extend the Railway Labor Act to aviation. The attitude exhibited by airline management during the 1930's, when the ALPA was securing these gains, has, however, changed. Indeed, the fall and winter of 1958 marked a turning point in commercial aviation, since the industry, as well as government and a large segment of the public, then recognized openly and frankly that industrial relations is a major phase of the air transportation business and must be dealt with as such. Labor, of course, had become aware of that fact over twenty years before—and had since then acted rather decisively on that basis.

I

1958, AIRLINE LABOR PROBLEMS REACH THE CREST

Whenever the airline industry has undertaken a re-equipment program—that is, whenever a new type of plane reflecting substantial technological advances has been placed in scheduled service—a period of labor unrest has ensued. For example, the early legislative activities of the ALPA in the mid-1930's accompanied the airline industry's switch to the now-famous Douglas DC-3 twin-engined transport. Then, at the close of World War II, when the airlines moved into the four-engined-aircraft era with the Lockheed Constellation and the Douglas DC-6, the ALPA and other unions sought to share, through increased wages and improved working conditions, in what they termed the "increased productivity" of the new large airplanes. Again, in the 1953-54 period, when the last word in piston-engined planes—*i.e.*, the Douglas DC-7—was introduced, a period of labor unrest ensued.

Early in 1958, it became clear that the vigor with which labor's position had previously been asserted would be magnified almost in proportion to the scope of the revolution in technology represented in the step-up of the airlines from piston to jet-powered aircraft.¹³ By the end of that year, the toll on operations taken by labor unrest was by far the heaviest that the airline industry had ever sustained.¹⁴

(or Board) under the Civil Aeronautics Act, it was incorporated as a floor for pilot pay scales that must be observed by certificated airlines; and it has since been carried over into the Federal Aviation Act of 1958, 72 Stat. 754, 49 U.S.C.A. § 1371(k) (Supp. 1958). Although the floor on pilots' salaries ordered by Decision 83 is far below current pay scales, basic features of the decision remain in effect, such as the 85-hour monthly limit on flying and the factors which go into determination of salaries, such as hourly pay, mileage pay, etc.

¹³ The first pure jet aircraft ordered by the United States scheduled airlines were due for delivery and service in late 1958. Jet-age contract disputes were evident in late 1957 and highlighted in early 1958, when the pilots union shut down a major airline for over three months.

¹⁴ The following strikes occurred in the airline industry in 1958:

<i>Carrier</i>	<i>Date of Walkout</i>	<i>Duration</i>	<i>Union</i>
Eastern	1-31-58	½ day	Machinists (IAM)
Western	2-21-58	108 days	Pilots (ALPA)
Central	4- 7-58	10 days	Machinists (IAM)
Eastern	5-12-58	33 hrs.	Machinists (IAM)
Pan American	7-15-58	4 days	(TWU)
American	9-19-58	23 hrs.	(TWU)
Northeast	9- 3-58	1 day	Machinists (IAM)
Pan American	9-19-58	1 day	B.R.C.
Capital	10-15-58	37 days	Machinists (IAM)

A total of fifteen strikes had occurred, ranging in duration from one-half day to 108 days. "Although the national rate of idleness due to strikes was only 2/10ths of one per cent," said the Air Transport Association in a January 13, 1959 press statement, "the man-days lost in the airline industry was 20½ times greater than the national average."

Issues dominating these labor disputes were: (a) higher wages for flying or maintaining new jet-powered aircraft, and (b) what should be the qualifications of the "third crew member" on jet aircraft—a jurisdictional dispute between pilots and flight engineers.¹⁵ Intertwined with these issues was an explicit labor fear that the speed and capacity of the jets are so great in comparison to even the largest modern piston-engine planes that fewer aircraft, hence fewer employees, would be required by the airlines. This fear, in turn, produced charges—almost an echo of those heard in recent railroad labor disputes—that the unions were using, or seeking to use, "featherbedding" to offset technological progress.¹⁶

The "third man" dispute between pilots and flight engineers is perhaps the best example of the airline industry's jet-age labor problem, and it can be profitably examined in some detail.

Existing federal regulations¹⁷ require that an individual possessing an engineer's license or certificate serve on commercial airliners with a maximum certificated gross weight of 80,000 pounds or more.¹⁸ Since all commercial air transports in this country must have a pilot and a copilot, these regulations really demand that there be a third man in the complement of flight crew members. The ALPA, collective bargaining representative for commercial airline pilots and copilots, insists that the third crew member on new turbo-prop or jet aircraft must, in addition to present

Lake Central	11-23-58	13 days	Stewardesses (ALSSA)
West Coast	11-21-58	3 days	Machinists (IAM)
TWA	11-21-58	16 days	Machinists (IAM)
Eastern*	11-24-58	38 days	Machinists (IAM); Flight Engineers (FEIA)
American	12-20-58	21 days	Pilots (ALPA)

* Eastern shutdown involved two simultaneous strikes, the machinists and flight engineers walking out on identical dates.

SOURCE: Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Brief on Behalf of American Airlines *et al.*, CAB, Jan. 5, 1959, app. D, table 3.

¹⁵ The so-called "third man" dispute in the airline industry is sometimes likened to the railroads' dispute over a fireman in a Diesel-powered engine. Railroads contend that since there are no fires to be tended in such an engine, labor contracts calling for continued use of a fireman on Diesels is "featherbedding." See, *e.g.*, address of Daniel P. Loomis, President, Association of American Railroads, Annual Meeting of the National Association of Shippers Advisory Boards, St. Louis, Mo., Feb. 11, 1959. Actually, the airline dispute is not identical in nature to the railroads' problem, although both appear susceptible to "featherbedding" criticisms. In the airline industry, there was no doubt that a third crew member would be used on jets; thus, there was no issue of dropping an employee position for reasons of advanced technology. In cases where the issue appears to have been "settled," the airlines have agreed to maintain the flight engineer and add another pilot, making a cockpit crew of four.

¹⁶ "Featherbedding, which hangs like an economic albatross around the neck of the nation's railroads draining them of \$500 million yearly, must be wiped out." Loomis, *supra* note 15.

¹⁷ Civil Air Regulations, 14 C.F.R. §§ 35.6, 40.263, 41.73 (1957), issued by the CAB, Oct. 5, 1948.

¹⁸ All jet aircraft ordered by United States scheduled airlines exceed 80,000 lbs. in gross weight. Excluded from the rule requiring a third crew member are all twin-engined aircraft.

requirements, be qualified as a pilot.¹⁹ Four certificated air carriers (Braniff, Capital, Delta, and Panagra) currently employ the pilot-qualified third crew member; and two other carriers (Continental and United) are in the process of converting from mechanic-qualified engineers to pilot-qualified engineers. The remaining airlines with aircraft of a size sufficient to require a third crew member under the regulations utilize mechanic-qualified engineers.

The Flight Engineers International Association serves as the collective bargaining agent for the mechanic-qualified engineers, except those employed by Northwest Airlines, who are represented by the International Association of Machinists. The FEIA's view has been that the third crew member on the new jet aircraft must possess "a thorough mechanical training and background [which] cannot be provided by a pilot-flight engineer. . . ."²⁰ Furthermore, the FEIA maintains that airframe-and-engine (A & E) licenses should be required of the third crew member in addition to the flight engineer's certificate currently required by government regulations.

The AFL-CIO has, in appropriate charters, recognized both unions, the ALPA and the FEIA, as representing their respective crafts. Which union represents the "third man" on individual airlines, however, is subject to certification by the National Mediation Board, this, in turn, to be dictated by the wishes of a majority of the employees involved for the particular airline.²¹ Thus, on those airlines where mechanic-qualified engineers occupy the third seat, the Board has certified the FEIA as the appropriate bargaining agent; and where pilot-qualified engineers are used, the ALPA has usually been certified.²²

During the 1958 disputes, the question, therefore, was whether all airlines, in the operation of jet aircraft, should employ as the third crew member one qualified for pilot duties and represented by the ALPA, or whether those airlines currently employing mechanic-qualified engineers represented by the FEIA might continue to do so. A total victory for the ALPA would have resulted in the use of its pilot members in the third seat of all commercial jet aircraft. For the FEIA, a total victory would have consisted in the continued use of its mechanic-engineer members as third men for commercial jet aircraft operated by those companies with which this union had collective bargaining agreements before the dispute arose.

Obviously, those airlines that had contracts with the ALPA for pilots and copilots

¹⁹ "Be it further resolved that the Board of Directors at the 14th Convention adopt as mandatory ALPA policy, that no Turbo-prop or Jet Turbine powered aircraft will be operated unless and until it is manned at all the flight stations by a qualified pilot in the employ of the company as a pilot, and BE IT FURTHER RESOLVED that crew members shall be known as Captain, First Officer, Second Officer, Third Officer, Fourth Officer, etc., and under no circumstances will such pilots be referred to as Flight Engineer, Navigator, Radio Operator, etc. . . ." *The Air Line Pilot*, May 1958, p. 14.

²⁰ EMERGENCY BOARD No. 120, REPORT 12 (1958).

²¹ 44 Stat. 577 (1926), as amended, 49 Stat. 1189 (1936), 45 U.S.C. §§ 152, 182 (1952).

²² In such cases, there need not be a specific certification of the ALPA to represent flight engineers. Instead, there may be certification of the ALPA to represent flight crew members, with the scope clause of the contract between the ALPA and the company involved embracing the duties of the third crew member or flight engineer.

and with the FEIA for flight engineers were caught squarely in the middle of the jurisdictional dispute. Should a company side with the ALPA position, there was a distinct threat that the FEIA would strike—at least as to jet aircraft and possibly as to all the company's airplanes. And if a company, instead, sided with the FEIA, then it faced the distinct possibility of being grounded by an ALPA strike.²³

President Eisenhower, at the request of the NMB and after several unsuccessful attempts to settle the disputes through mediation, created presidential emergency boards to make recommendations on issues, including the "third man" dispute, involving the two unions and Eastern, Trans World, and American.²⁴ Emergency Board No. 120, created on January 21, 1958, dealt with the contract dispute between Eastern and the FEIA; Board No. 121, created a week later, considered the dispute between the same airline and the ALPA. The same three men sat on both boards;²⁵ the two disputes were generally considered simultaneously in so far as the "third man" issue was concerned; and the two boards issued simultaneous reports on July 21, 1958, in which they recommended that the disputes be settled in compromise fashion.²⁶

First, the third seat on pure jet aircraft, it was suggested, should be occupied by pilot-qualified personnel, but mechanic-engineers should be afforded an opportunity to obtain pilot licenses and thereby qualify for "third man" duties;²⁷ secondly, the third seat on turbo-prop planes should be occupied by mechanic-qualified engineers. This represented a complete victory for the ALPA as to pure jets and a stalemate as to other types of aircraft, including, prop-jets. Moreover, despite the "compromise" label given these recommendations, it should be noted that in the Eastern dispute, the boards seemed to accept the ALPA's over-all position by adopting its views as to safety requirements, the need for "harmony in the crew," and the "decelerating need for mechanic-qualified personnel in the cockpit of new jets."

²³ "Each organization [ALPA and FEIA] has put the carrier on notice that its members will not operate the airlines, or at least not the turbine-powered equipment shortly to be received, unless its position is recognized." EMERGENCY BOARD NO. 121, REPORT 3 (1958). Subsequent events proved this observation to be correct. The FEIA struck Eastern in November 1958, and the ALPA struck American in December 1958, with the disputed crew position in issue in both disputes.

²⁴ Such emergency boards normally consist of three men but may consist of only one man and, in fact, may consist of any number of individuals the President may decide to appoint. Statutory authority for creation of such boards rests in § 10 of the Railway Labor Act of 1926, 44 Stat. 586, as amended, 49 Stat. 1189 (1936), 45 U.S.C. §§ 160, 181 (1952). Emergency boards recommend; they do not rule or decide. Board No. 121 said: "After all, we are not a forum in the nature of a court. We make no binding decisions or rulings. We may merely report and recommend." EMERGENCY BOARD NO. 121, REPORT 5 (1958).

²⁵ David L. Cole, Paterson, N. J., chairman; Saul Wallen, Boston, Mass., member; and Dudley E. Whiting, Detroit, Mich., member.

²⁶ As to the "third man" issue, the wording of both reports was identical. Of course, portions dealing with separate wage and rules issues were different in both reports.

²⁷ "But, and this is exceedingly important, under the program we recommend, the jobs for flight engineers will not be restricted to piston and turboprop airplanes. For those who can and are willing to do so, we propose that sufficient pilot training be offered at the carrier's expense to qualify them for jobs on any aircraft, including the turbojets." EMERGENCY BOARD NO. 120, REPORT 23 (1958).

Emergency Board No. 123²⁸ was created on March 27, 1958, to recommend a solution to a contract dispute between TWA and the FEIA which was largely concerned with future contingencies. The parties were not at odds about occupancy of the third seat on new TWA jets by mechanic-qualified engineers;²⁹ but, the possibility that government regulations affecting third-seat occupancy might be changed, together with other future uncertainties, produced a need for a presidential emergency board that could recommend specific contract wording.³⁰

The resulting report, centering as it did on contract wording to meet future contingencies, cannot properly be construed as a specific decision as to whether the third seat should be occupied by a pilot-qualified or a mechanic-qualified flight engineer. Still, there were more than a few who felt that by omission, this report tended to weaken the report in the Eastern dispute, in which pilots had been strongly favored as the third man. Emergency Boards Nos. 120 and 121 had considered safety a paramount factor in inclining toward a pilot-qualified engineer; Board No. 123 did not stress this factor.³¹ Therefore, it could be argued that either the reports in the Eastern dispute had exaggerated the safety problem, or else that Board No. 123 had been lax in accepting without protect the company's decision to employ mechanic-engineers in the third seat of jet aircraft.³² This all proceeds, however, on the questionable assumption that the emergency boards were charged with responsibilities for other than the settlement of labor disputes and that the boards had the authority to consider safety factors, instead of leaving them to airline officials and the CAB.

Emergency Board No. 124³³ was appointed June 19, 1958, to consider the dispute between American and the ALPA. Unlike Eastern, which had simultaneous disputes with the ALPA and the FEIA, and unlike TWA, which had a dispute with FEIA and no jet-age contract with ALPA, American had signed a five-year jet contract with the FEIA. Board No. 124 never ruled on the issues between the parties, but instead simply directed the carrier and the union to resume negotiations.

²⁸ Dudley E. Whiting, one of the three-man contingent which made up Emergency Boards Nos. 120 and 121, cases involving Eastern, was the sole member of Board No. 123 handling the TWA-FEIA dispute. This was according to a stipulation of the parties which, among other things, provided that Whiting be authorized to consult with the other two men who served on Boards Nos. 120 and 121.

²⁹ On April 2, 1958, TWA issued a statement of policy which read, in part: ". . . In view of all factors, it has been determined that present Company policy will be to use mechanic engineer qualified individuals to perform the flight engineering functions on TWA jet aircraft, when the federal regulations require a separate crew member to perform this function and do not require such individual to possess pilot qualifications."

³⁰ "The failure of the parties to reach agreement upon a scope clause thereafter, and particularly in these proceedings, is not due to any basic difference in objectives but is due to their consideration of future contingencies, no matter how remote they appear, and their desire for the utmost protection in such cases." EMERGENCY BOARD NO. 123, REPORT 2 (1958).

³¹ That safety, as such, was not a factor in EMERGENCY BOARD NO. 123, REPORT (1958) is apparent from this statement: "These recommendations are an appropriate basis for a fair and reasonable agreement which will achieve the greatest possible job security in a changing era." *Id.* at 4.

³² In light of the Board membership, see notes 25 and 28, *supra*, this argument is somewhat weakened.

³³ James J. Healy, Boston, Mass., chairman; Benjamin C. Roberts, New York State Board of Mediation, member; and Maynard E. Pirsig, Dean, University of Minnesota Law School, member.

There were, however, several public pronouncements by officials of both American and the ALPA in which widely-differing views were offered concerning the merits of the Board reports on the "third man" issue in the Eastern dispute.³⁴

A few general observations can be offered concerning the entire emergency board procedure utilized for these airline disputes. First, it should be recalled that neither party is bound to accept the recommendations of an emergency board; instead, the only requirement is that all maintain the status quo for thirty days after the board has served its report. Moreover, although the President appoints these boards after certification of a dispute to him by the NMB, the report submitted by a presidential emergency board is not approved by the President; it merely furnishes him with the board's recommendation for a settlement.³⁵ Sometimes public opinion will crystallize in favor of a settlement along the lines recommended by a board, and this may occasionally be strongly persuasive. Clearly, though, an emergency board has no direct regulatory authority like that of the CAB—a fact the importance of which cannot be overemphasized.

Second, an emergency board is charged with the settlement of a particular dispute between particular parties. This *ad hoc* mission is quite different from the prescription of general rules for an industry. Yet, in so far as safety factors were urged by the pilots in support of their positions in the "third man" controversy, the attention of the emergency boards was directed to a problem of industry-wide scope, a problem that went beyond solution of a single labor contract dispute. Safety and related matters would appear to be within the purview and competency of the CAB and the Federal Aviation Agency, rather than an emergency board. However, one board has argued that since these regulatory agencies have no authority over labor disputes, to the extent that "such a dispute creates difficulties which may have an impact on safety in operations, some agency other than the CAB must take a hand in correcting the problem."³⁶ This contention suffers, however, in that it does not

³⁴ Selected comments from press release statement, July 28, 1958, by American Airlines President, C. R. Smith: "The recommendation . . . involving Eastern . . . does not, in our opinion, fit the situation of an entirely separate dispute involving comparable personnel of American Airlines. . . . American has an agreement with the FEIA which has yet nearly five years to run. I am sure that it is not the intention of the Emergency Board that the airlines will cease to respect their obligations to unions which represent their employees."

The ALPA, in a news release dated July 21, 1958, said the recommendations of the emergency boards in the Eastern case "required the most serious consideration because of the eminent qualities of the Board members and their long and detailed study of the problem." C. N. Sayen, ALPA President, was quoted in the same release as noting that the report "now becomes in effect the recommendation of the President of the United States and therefore carries great weight and must be carefully considered."

In an Aug. 1, 1958 release, Sayen, referring to American Airlines President Smith's statement above, said Mr. Smith was "whistling in the dark." In effect, Sayen accused American of advocating lesser safety standards for its jets than recommended by the emergency boards in the Eastern case.

³⁵ Thus, there have been incorrect references to the status of the reports of Emergency Boards Nos. 120 and 121 as reflecting the approval of the President of the United States. This grew out of an admitted press conference error, and the President's press secretary later clarified the matter for newsmen. The President did not (and does not) approve an emergency board's recommended solutions to a labor dispute.

³⁶ "It should also be mentioned that the CAB has no jurisdiction over labor disputes, and that to the extent that such a dispute creates difficulties which may have an impact on safety in operations,

indicate why the CAB cannot promulgate regulations to dispose of genuine safety problems. For instance, if safety is really threatened by use of third men who are not pilot-qualified—as the board in the Eastern dispute seemed to believe—should not the CAB by directive require the use of pilot-qualified flight engineers? And, in the absence of such directive, should not the emergency boards omit alleged safety matters from their inquiry?

Third, in determining what precedential weight, if any should be given to emergency board recommendations, one must always keep in mind how different one airline's situation may be from another's, and the fact that a solution suitable for one may be totally infeasible for another. For instance, at the time of its dispute, American was already bound by a five-year contract with the FEIA. Obviously, in some respects, it did not have the same freedom of choice as did Eastern, which had no long-term contract with either of the unions involved. To assume, therefore, that the "compromise" recommended in the Eastern dispute would be appropriate for American might be quite unrealistic. In short, a strong case can be made for the view that an emergency board's recommendations deserve almost no weight as precedent.³⁷

Fourth, even if each case is to be decided on its own merits, those companies without the benefit of an emergency board report have sometimes been at a disadvantage. For example, Western was shut down for over three months by a pilots strike in which the "third man" issue was involved, but the NMB refused repeated requests to certify the case to President Eisenhower for creation of an emergency board. Somewhat similarly, National was shut down for forty-five days by a pilots strike in 1957, but no emergency board was created, and the eventual strike-settling contract left open the "third man" dispute. While it cannot be proved conclusively, the length of these two strikes in comparison with those in which emergency boards were created would suggest that the boards have effected a quicker settlement of airline labor disputes than would otherwise have been the case.³⁸

II

THE OVER-ALL AIRLINE LABOR PICTURE TODAY

A. The Unions in the Industry

Thirty-one labor unions represented employees of the nation's certificated airlines as of March 1, 1959. Only ten of those are so-called "independent locals," the other

some agency other than the CAB must take a hand in correcting the problem. This supports the view that a specially appointed emergency board should reasonably be expected to inquire into such matters." EMERGENCY BOARD NO. 120, REPORT 11 (1958).

³⁷ The emergency board must seek to solve a labor dispute rather than establish rules of general applicability. In this framework, its value as a precedent is questionable. Indeed, the member of the one-man board in the TWA-FEIA dispute did not rely on the recommendations as to the "third man" which had been expressed by the three-man Emergency Boards Nos. 120 and 121, on which he had been a member, and with whose other members he was free to consult. See notes 25, 28, and 32 *supra*.

³⁸ See also the table in note 14 *supra*.

twenty-one being national in scope. Included in the latter group is James R. Hoffa's Brotherhood of Teamsters, which recently won a certification vote to represent the stock clerks of Pan American.³⁹ Of the industry's 149,000 employees as of July 31, 1958, some 82,000, or fifty-five per cent, were organized.⁴⁰ Significantly, airline employees enjoy the highest average wages in the entire field of American transportation and far exceed the national average wage.⁴¹

The three largest unions, as determined by the number of airline employees represented, are the International Association of Machinists, representing 27,913 airline employees; the Transport Workers Union, 15,354; and the Air Line Pilots Association, 14,354.⁴² Interestingly, the total number of personnel of the country's largest airline, American, is some 7,900 less than the total airline membership of the IAM. Since 1946, the three top unions in terms of airline employee representation rank in the same order in the number of strikes called against the industry: IAM, nineteen strikes; TWU, eleven; ALPA, eight.⁴³ ALPA strikes, averaging sixty-one days per strike, have been longer, however, than those of the other unions. The nineteen IAM walkouts averaged twenty-five days, and the eleven TWU strikes averaged only three days each.

B. The Procedure for Bargaining

Under the Railway Labor Act, a party to an existing collective bargaining agreement who desires a change therein must give notice to the other party at least thirty days prior to the termination date of the contract. Required by section six of the Act,⁴⁴ this notice is often termed a "section 6 notice," and it formally opens the "negotiation" stage. Within ten days after receipt of such a notice, the parties must agree on the time and place to begin the negotiating conferences; and within thirty days after receipt of the original notice, the actual negotiating conferences must begin.

When negotiations prove unsuccessful, either party may request the services of the NMB, consisting of three members appointed by the President subject to Senate

³⁹ On Feb. 25, 1959, the Teamsters won an overwhelming vote to represent all of the stock clerks of Pan American World Airways. Formerly, the stock clerks were represented by the IAM. In the representation election, 861 employees were eligible to vote; a total of 530 favored the Teamsters, 218 voted for the IAM, and the remaining 41 votes were scattered.

⁴⁰ Unofficial estimate made as of July 1958 by Air Transport Association of America.

⁴¹ The average wage in the airline industry in 1956 (the latest year for which comparison is available) was \$5,474. It probably exceeded \$5,800 in 1958. Average wages for 1956 in other areas were:

Railroads	\$5,081.	All Transportation	5,032.
Highway	5,166.	All Industry	4,021.
Water, Pipe, etc.	5,158.		

SOURCE: AVIATION FACTS AND FIGURES 102 (1958).

⁴² Unofficial estimates made as of July 1958 by Air Transport Ass'n of America.

⁴³ Tabulation taken from Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Brief in Behalf of American Airlines *et al.*, CAB, Jan. 5, 1959, app. D, table 3.

⁴⁴ 44 Stat. 582 (1926), as amended, 49 Stat. 1189 (1936), 45 U.S.C. §§ 156, 181 (1952).

approval, which implements the Railway Labor Act. Alternatively, the Board may proffer its services voluntarily. Once the Board's services are invoked or accepted, however, the dispute has entered the "mediation" stage, and the parties must maintain the status quo at least until the Board has officially withdrawn its services. The Act requires that the Board "promptly put itself in communication with the parties . . . and shall use its best efforts, by mediation, to bring them to agreement."⁴⁵ Should mediation fail, the Board seeks to get agreement by both parties to submit the unresolved phases of their controversy to arbitration. If this proposal is rejected by either side, the Board may withdraw its services entirely or may, under certain conditions of national import, submit the controversy to the President for his appointment of an emergency board.

The Railway Labor Act, especially at its inception and occasionally since then, has been referred to as "model labor legislation."⁴⁶ But after the serious disturbances in the airline industry in 1958, there was widespread misgiving concerning the efficacy of the Act for modern commercial aviation needs.⁴⁷ In fact, top officials of the airline and of the industry's labor unions have met in an unprecedented closed-door conference with Secretary of Labor Mitchell to discuss possible legislative revision of the currently applicable labor dispute procedure.⁴⁸ Compulsory arbitration, however, apparently is not favored by any of the parties.⁴⁹

C. Fundamental Problems

But even the most extensive changes in labor dispute and collective-bargaining procedure for the airline industry will not wipe out overnight two fundamental problems—one, the nightmare of management, and the other, of labor. From management's standpoint, the overriding problem is its lack of strength to negotiate

⁴⁵ 44 Stat. 580 (1926), as amended, 49 Stat. 1189 (1936), 45 U.S.C. §§ 155, 181 (1952).

⁴⁶ Testimony of Frances Perkins, then Secretary of Labor: ". . . the Railway Labor Act embodies the fullest and most complete development of mediation, conciliation, voluntary agreement and arbitration that is to be found in any law governing labor relations. . . ." *Hearings Before the Senate Committee on Commerce and the Senate Committee on Education and Labor, on S. 3078, Amending the Merchant Marine Act of 1936*, 75th Cong., 2d Sess. 968-69 (1938).

⁴⁷ Secretary of Labor Mitchell remarked as follows in a Jan. 4, 1959 press statement: "Whether changes in the Railway Labor Act are needed is a matter on which I have an open mind. . . . I do believe, however, that in view of the recent strike activity, a reappraisal of the Act is in order. Consequently, I intend to convene shortly a meeting of top representatives of labor and management in both the railroad and airline industries to solicit their views and advice as to whether the Railway Labor Act needs any amendment and, if so, in what respects."

⁴⁸ "Secretary Mitchell met with top representatives of labor and management in the airline industry today and solicited their advice and recommendations with regard to possible amendments to the Railway Labor Act. There was full discussion of this matter and the Secretary stated that he wished carefully to consider the advice he received before he determined upon what amendments, if any, he would recommend to the Act. There was also a full discussion of the general industrial relations problems of the industry and at the close of the meeting it was agreed that another meeting will be held shortly." Dept. of Labor Press Release, Feb. 9, 1959.

⁴⁹ "Spokesmen for airline managements and unions have joined in rejecting proposals for compulsory arbitration of airline labor disputes, it was learned today. Their views were made known to Labor Secretary Mitchell at a day long conference. . . ." United Press International, Feb. 11, 1959.

at the collective-bargaining table;⁵⁰ from the unions' standpoint, it is the effect on employment of the industry's rapid technological strides.⁵¹

Discussion of each of these problems often suffers from excessive reliance on a panoramic view. Management's difficulties are usually analyzed on a total industry basis, with sight more often than not being lost of the individual components of the industry. Similarly, all unionized employees are treated as "labor," even though wide disparities exist in the functions, responsibilities, compensation, and strength of the 82,000 employees involved. To compound confusion, when precedent is sought, the whole, and sometimes sordid, history of railroad labor problems is lumped into one "railroad precedent" and applied indiscriminately to the airline industry.

Just as the presence of a large number of small unions in the airline industry has created some difficulties, so does the existence of many small carriers. There are over fifty certificated airlines in the United States scheduled airline system, ranging from small territorial helicopter and local-service airlines to the large domestic and international trunk carriers. The pilots for the smallest are represented by the same union which represents the pilots for the largest airlines; and the strength of that union, the ALPA, is geared to meet the economic strength of the largest carriers.⁵² When so powerful a union pits itself against any but the largest airlines, its preponderant power is overwhelming. Indeed, so precarious is the financial situation of many smaller airlines that an ALPA strike threat, as distinguished from an actual strike, is often sufficient to accomplish the union's purpose. The small line simply cannot afford a prolonged shutdown. Nor, in fact, can many of the larger carriers.⁵³

⁵⁰ "The basic problem is one of imbalance in labor-management relations. Unions with which the airlines bargain have become so strong and have achieved such unity of collective action that, individually, the airlines have steadily been losing the economic capacity to deal with the unions on terms approaching equality." Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Brief in Behalf of American Airlines *et al.*, CAB, Jan. 5, 1959, p. 4. "To minimize labor conflict in the airline industry, to arrive at industrial peace with justice in the interest of the public, it is imperative that conditions in this field be modernized to permit a better balance at the bargaining table. Only in this way can true collective bargaining prevail." *Balance at the Bargaining Table*, an address by Stuart J. Tipton, President, Air Transport Ass'n of America, Boston, Mass., Sept. 24, 1958.

⁵¹ A united labor front to meet jet-age problems was urged and explained this way by a top union official: "This united front should be formed to meet the Number One need of airline workers in the dawn of the jet era—a shorter work week. Without a shorter work week, countless thousands of airline workers stand to lose their jobs. If we are not farsighted enough to seek a united front of airline unions now, upon our shoulders will rest most of the responsibility for the loss of those jobs, and the resulting havoc which awaits those workers and their families." Michael J. Quill, President, Transport Workers Union of America, Editorial, TWU Express, Jan. 1959.

⁵² The ALPA is quite ready to do battle with the large carriers. Of 8 strikes by ALPA since 1946, 5 have been against the so-called "Big Four" airlines.

⁵³ "Thus, the situation was one in which the financial integrity of the carriers was seriously threatened and their capacity to serve the public greatly impaired by a series of major strikes. . . . The four carriers involved [Capital, TWA, Eastern, and American] sustained a combined loss of operating revenues amounting to more than seventy million dollars, and this in revenue which can never be recouped since transportation is a perishable commodity which cannot be stockpiled." Guy L. Farmer in Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Transcript of Oral Argument, CAB, Jan. 14, 1959, pp. 9-10.

A strike threat has a potency in aviation far greater than it does in industry generally. In many businesses, a strike threat produces a spurt in sales as the public stocks up on the product which may become unavailable if the strike occurs. If the strike does not occur, the employer may actually have gained additional revenue. If it does, however, the stockpiling greatly limits, or averts, any ultimate loss. Airline travel, however, cannot be stockpiled in this way. Moreover, a publicized threat to strike results in immediate uncertainty and inconvenience to the public which is quickly translated into a loss of business for the company. Actually, while staying within the letter of the Railway Labor Act, which may at a particular time make an actual strike unlawful, the union can, by indirection, exact a substantial economic penalty from the employer.⁵⁴

It does not seem a coincidence that one of the three most powerful unions—the ALPA—resorts most frequently to the strike threat.⁵⁵ And there is strong evidence that this tactic is used most frequently against the smaller airlines, such as local-service and territorial carriers. Then, after the union has gained acceptance of its demand by a smaller carrier, it uses this gain to win a similar concession from the rest of the industry. Moreover, it is of considerable help to the union in a contract dispute with a major line to be able to publicize the fact that this large carrier is “behind” other segments of the industry in its treatment of its employees—the basis for this assertion being, of course, the union’s earlier success against the weaker airlines. This, of course, forms the jet-age version of the familiar “whipsaw” technique.

Obviously, the relative strengths of management and labor determine whether this version of the “whipsaw” is successful; but in a contest with employees receiving salaries as high as \$33,000, annually,⁵⁶ management’s posture is noticeably weak. On the other hand, this lack of strength does not characterize management’s relations with airline labor as a whole. If, then, management further girds its loins in order better to cope with the more powerful segments of labor, what will be the reaction of the less powerful segments, now represented by the smaller airline unions? These unions, although often affiliated with powerful unions, usually get little more than general guidance or advice from their big brothers. Faced with a management that has been geared to do battle with large organizations like the

⁵⁴ “Since a widely-publicized strike threat results in immediate uncertainty and inconvenience to the public and produces a direct loss in business to the company (one major airline estimates a 10% loss in business after each such threat), it occupies a unique role in such as the airline industry. In impact, it differs from an actual strike only in degree—both cause a permanent loss of business. Repeated strike threats to a single company, not a rare occurrence, can prove more damaging financially to that company in some instances than an actual strike of limited duration.” AIR TRANSPORT ASS’N OF AMERICA, RECENT DEVELOPMENTS IN AIRLINE LABOR-MANAGEMENT RELATIONS 5 (1959).

⁵⁵ Of 45 actual strike threats, as measured by the setting of strike dates apart from those that resulted in strikes, during the period 1946-58, 29 were set by the ALPA; 8 by the IAM; 2 by the Air Line Agents Ass’n; and 1 each by three other unions. Six Carrier Mutual Aid Pact Approval Proceedings, No. 9977, Brief on Behalf of American Airlines *et al.*, CAB, Jan. 5, 1959, app. D, table 4.

⁵⁶ Senior pilots flying jet aircraft the maximum 85 hours per month can earn up to \$33,600 a year under new jet-age pilot contracts.

ALPA, will these smaller unions seek to improve their own relative bargaining position by harkening to the overtures of those who would exploit this situation?

The chaos in airline labor relations has proved tempting to the Teamsters and has encouraged their infiltration into the industry. As previously noted, the Teamsters were certified as bargaining representatives for Pan American's stock clerks. In the November 1958 strike by Lake Central Airlines' stewardesses, the picket line, ignored by virtually all others, was observed by the Teamsters. In the flight engineers' dispute which shut down Eastern in late 1958, the relatively small FEIA received certain financial support from the Teamsters.⁵⁷ Although both management and numerous airline unions decry this development, its growth is becoming increasingly rapid and ominous.

CONCLUSION

The advent of jet aircraft has exacerbated many of the problems of airline labor relations. Small airline unions, beset by fears of technological unemployment or dislocation, will probably consolidate in order to protect their position. Accordingly, the Teamsters may make substantial inroads unless union-management friction can be minimized or the larger airline unions attempt to forestall this penetration of the air industry. Management, meanwhile, will continue to look to such measures as "mutual aid" to meet with such powerful unions as the ALPA, the IAM, and the TWU on more equal terms. If management is successful in this endeavor, however, some labor quarters may invite greater government intervention in, and perhaps even outright regulation of, airline labor relations.

The existing dispute-settlement procedure prescribed by the Railway Labor Act has not been notably successful as translated to the airline industry, although the use of emergency boards under the authority of the Act has apparently sometimes shortened strikes. Nor is compulsory arbitration a meaningful alternative. The matter should, therefore, be given serious study by all concerned, with a view toward formulating and effecting the changes that experience has indicated are necessary. During the 1930's, airline labor relations took step one when the Railway Labor Act was made applicable to commercial aviation. Now, as part of the dynamic jet age, step two must be taken. This must not be done lightly, selfishly, or carelessly. The industry is too vital to the future of our country.

⁵⁷ Also, in Feb. 1959, the Teamsters established a picket line at Newark Airport in an attempt to gain recognition as the representative for certain employees of the Flying Tiger Line who are currently represented by the IAM.