

Profile of an Airline Emergency Dispute

“Allied Pilots ground American Airlines; President Clinton creates emergency board.” So read a headline in February 1997. What was the authority the President used to create this Board, how did the Board function, and what did it resolve? These are some of the questions addressed in this article.

BY MICHAEL H. CIMINI

On February 15, 1997, President Clinton established an emergency board to investigate an unresolved dispute between American Airlines and the Allied Pilots Association.¹

The Allied Pilots (APA) represented American’s pilots. According to press reports, three major issues separated the parties at that time—wages, stock options, and job security issues:

- *Wages*—the union proposed an 11.1-percent increase in base pay over 4 years, while the carrier offered a 6.1-percent increase over the term of the contract.
- *Stock options*—the union asked for options on 7.25 million shares of company stock at \$10 below market value in lieu of retroactive pay for the 3½ years that the pilots did not receive pay increases; the carrier offered 5.75 million shares at market value.
- *Job security*—the union

demanded that of the new 50- or 70-passenger “regional” jet aircraft that American Airlines (AA) wanted to buy, all be flown by its members. And the union was willing to help; it said it would agree to “competitive” wage rates for flying these planes. The carrier insisted that up to 67 of the new aircraft be flown by pilots employed by its regional subsidiary, American Eagle, whose average pilot pay was \$40,000 compared to \$120,000 for American Airlines’ pilots.

Parties to the dispute

American Airlines, a unit of ARM Corp., is the Nation’s second largest air carrier, with scheduled service to 189 cities, mostly throughout North America, the Caribbean, Latin America, Europe, and the Pacific. Coupled with its regional affiliate, American Eagle, the carrier serves 350 cities, with a workforce of 90,000 employees and a fleet of 845 aircraft. American Airlines alone has 2,200 daily departures, and averages daily revenues of \$44.4

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million. Its major hubs are located at Dallas-Fort Worth, Chicago, Miami, and San Juan.

The American Eagle system is really four commuter airlines, known collectively as the "Eagles": Executive Airlines, Inc.; Flagship Airlines, Inc.; Simmons Airlines, Inc.; and Wings West Airlines, Inc. These small regional carriers operate 208 turbo prop aircraft and feed passengers and cargo to American Airlines' hub cities from 160 cities which cannot support large jet aircraft.²

The Allied Pilots Association is an independent union representing American Airlines' 9,430 pilots, who fly as captains, first officers, and second officers. The union was founded in 1963 and is headquartered in Arlington, Texas. The APA has bargained for AA pilots since July 9, 1963, when it was certified to represent them.

History of the dispute

At the time of negotiations, there was "bad blood" between American Airlines and the Allied Pilots as a result of problems that had been brewing for more than 10 years. These problems began in 1983, when the carrier talked the Allied Pilots into agreeing to a lower pay scale ("B-scale") for newly-hired pilots. American pledged, in return, that employment opportunities would abound. And they did, until the 1991 recession and the Gulf War forced the carrier to furlough hundreds of pilots.

Then, although a strike was averted in 1991 when the parties agreed to arbitrate several thorny, unresolved issues, AMR Corp. angered pilots when it accused them of conducting a sick-out in an advertisement (open letter of apology) run in several newspapers across the country. Unrest increased when the carrier closed hubs in San Jose and Raleigh-Durham, and made joint marketing agreements with low-cost carriers that gave them access to American Airlines' gates.

The parties' relationship was further strained during the flight attendants' 5-day strike in 1993.

American Airlines and the Allied Pilots exchanged initial contract proposals on June 30 and July 1, 1994. They began contract talks 1 day later. As part of its strategy to remain competitive, American asked its pilots to accept work rule and pay concessions totaling \$300 million annually. During negotiations, the carrier convinced APA's then president, Richard LaVoy, to agree to arbitrate any issues remaining unresolved after 120 days of contract talks. The union's executive board, however, rejected the agreement, and LaVoy was voted out of office.

These events set the stage for a contentious round of bargaining. As a result, contract talks dragged on for 18 months, during which time the parties only reached agreement on a number of minor issues, such as alcohol testing. On January 16, 1996, the union requested the mediatory services of the National Mediation Board (NMB), the Federal agency that administers the Railway Labor Act. A few days later, the NMB placed the request in its docket and assigned a Federal mediator to handle the dispute. Mediation sessions began on February 12.

On September 2, the parties reached a tentative 4-year agreement that would have permitted American Eagle pilots to fly newly purchased regional jets in exchange for several job protection features. According to the carrier, the pact guaranteed that no American Airlines' pilots would be furloughed. It also limited the number of regional jets (capped at 67) that American Eagle could fly, and restricted the total amount of flying that American Eagle could perform. Other terms provided wage increases of 3 percent in August 1997 and 2 percent in August 1999, plus options on 3 million shares of stock at \$10 below market value at the time of signing and an additional 2.75 million shares at market value in August 1998; strengthened

successor and asset sale restrictions; and expedited arbitration procedures.

On January 8, 1997, the union announced that its members had rejected the tentative contract, even though top union officials and the bargaining team recommended that the pact be accepted. The rank-and-file cited deficiencies in terms relating to the economic package, including the continuation of the "B-scale" wage rates, and job security as the major reasons for the vote.

Sixty-one percent of pilots voted against the tentative agreement. This stunning defeat was orchestrated through a sophisticated grassroots campaign led by disgruntled pilots based in Miami, who conducted a high-tech rebellion against the tentative agreement and the union bargaining committee using modern communication techniques—the Internet and fax-to-present their views to their fellow union members. They also developed their own World Wide Web site, with elaborate charts designed to illustrate why the tentative agreement should be rejected. The dissident pilots feared that they would lose their jobs if American Airlines purchased regional jets and turned over trips as long as 1,000 miles to its commuter affiliate, whose pilots were represented by another union and who were paid a lower wage.

In its report, the emergency board captured the derailment of the contract, as follows:

The issue of regional jets gained momentum within pilot ranks after the tentative agreement was negotiated when the Chairman of AMR wrote a letter to a Miami pilot which, to the pilots, seemed to imply that neither the Chairman nor American's chief negotiator cared who flew the small jets so long as the costs were Eagle-equivalent costs, not American costs. The pilots concluded from the letter that an exclusive right to fly the small jets was obtainable in bargaining if APA pressed hard enough. The team that had negotiated the tentative agreement received a vote of 'no confidence' and was replaced.³

Major Contract Issues At A Glance

Major issues in the contract dispute between AA and APA as reported by the parties just before Emergency Board No. 233 was established.

American Airlines	Allied Pilots Association
<p>WAGES Offered increase of 3 percent in 1997, and 2 percent in 1999.</p> <p>JOB SECURITY Proposed buying 67 small jets to be flown by American Eagle pilots.</p> <p>STOCK OPTIONS Offered 5.75 million shares at market value.</p>	<p>WAGES Asked for increases of 3 percent in each of the first 3 years and 2 percent in the last year.</p> <p>JOB SECURITY Wanted to have American Airlines' pilots fly all commuter jets.</p> <p>STOCK OPTIONS Asked for 7.25 million shares at \$10 below market value.</p>

As a result of the contract rejection, the union placed a new set of demands on the table, and the carrier said all issues that had been tentatively settled were now open.

On January 10, having reached an impasse in mediated negotiations, the NMB proffered arbitration, which was rejected by the carrier. The NMB then formally notified the parties that its mediatory efforts were unsuccessful and formally released them from mediation, triggering a 30-day "status quo" period, during which the union was barred from striking and the carrier from locking out the pilots or making changes in the terms and conditions of employment.

Given the gravity of the dispute, the NMB wanted the parties to continue negotiations during the cooling-off period. Pursuant to Section 5 of the Act, the NMB re-entered the case on February 10, and began conducting "public interest" mediation. These mediation sessions involved both single-party and joint meetings, often with the mediators shuttling back and forth between the parties in an effort to find consensus. After 4 days of marathon bargaining with very little progress, the union called a strike

for 12:01 a.m., February 15.

In the final hours of the meetings, a mediator's proposal for settlement of the dispute was lost in the rhetoric of strike talk. The "hypothetical deal" suggested by the mediator would have allowed American Eagle pilots to fly the regional jets in exchange for labor protective provisions for American Airlines' pilots, plus modest "sweeteners" in wages and stock options. The proposed pact contained, among other items, labor protective provisions specifying that 85 percent of all regional jet flights be shorter than 1,000 miles, and 85 percent of flights operate into or out of an American hub or major airport, ensuring that these flights would feed passengers to larger jet aircraft. The proposal also would have required American to cut growth of its commuter affiliate if the number of American Airlines' pilots fell below 8,500, and would have set an absolute floor at 7,300 positions. In addition, the deal would have continued the B-scale, but would have granted pilots wage increases totaling 6.6 percent over the term of the agreement, plus options on 5 million shares of stock at \$10 below market value at the time of the

signing and an additional 1 million at market value in August 2,000.

Creation of the emergency board

Just minutes after union President James Sovich instructed local strike leaders to shut down the carrier, President Clinton signed an executive order creating the emergency board. The President appointed Robert O. Harris and Helen M. Witt, former chairpersons of the National Mediation Board, and Anthony V. Sinicropi, a University of Iowa professor and arbitrator, as board members.

American Airlines and lawmakers from several States throughout the country reportedly had lobbied hard for the establishment of an emergency board.⁴ American Airlines' President Donald J. Carty said, "The prospect of a strike, with all of its devastating consequences, was very real, and we congratulate the President for recognizing this and using the powers of his office to erase the strike threat and impanel an Emergency Board." The carrier had publicly released an internal study that estimated the effect of a 60-day strike on the U.S. economy at \$4.75 billion. The U.S. Depart-

ment of Transportation estimated a strike would cost the U.S. economy \$200 million a day and strand up to 40,000 of American's 200,000 daily passengers.⁵

Except for a long-forgotten dispute between Wien Air Alaska and the Air Lines Pilots Association in 1979, this was the first time an airline emergency board had been established in 31 years. White House officials issued a statement explaining that the decision to establish a board was based solely on economic reasons: American's dominant position in several major air markets throughout the country, and the timing of the dispute, i.e., it would occur during one of the busiest travel times of the year. Nor did the White House want the action to appear to set a precedent, whereby a President would routinely intervene in labor disputes.⁶ White House Counsel Bruce R. Lindsey, who was the President's liaison with management and union negotiators, said, "I don't want people to believe that an impasse and the appointment of a (presidential) board is a step along the way of negotiations. It is really a failure of labor negotiations, not a step along the way."⁷

The emergency board held closed hearings on February 27 and 28, March 3, 4, and 5, during which time the panel heard testimony and arguments and received briefs and exhibits. After the hearings, emergency board members met informally with the parties to try to resolve the dispute. Additional meetings were held between Chairman Harris and the parties in an effort to narrow the issues in dispute.

During the hearings, American asked the emergency board to recommend the following financial terms: Wage increases of 3 percent in 1997 and 2 percent in 1999; stock options on 3 million shares at \$10 below market value at the time of signing, and an additional 2.75 million shares at market value on August 31, 1998; continuation of the B-scales; an emergency board-

recommended process for negotiating rates for new aircraft not yet in service (Boeing 737 and 777), with an interest arbitration provision; and changes in the pension plans to accommodate changes in pension laws so as to protect pension benefit levels.

The APA proposed wage increases of 3 percent each in 1997, 1998, and 1999, and 2 percent in the year 2000; stock options on 7.25 million shares at \$10 below market value in exchange for a pay freeze from August 31, 1993 through August 31, 1997; a 5-year gradual phase-out of the B-scale; and the negotiation of pay rates for new aircraft not yet in service. In addition, the union proposed work rule concessions it valued at \$212 million over 5 years.

As for the regional jet issue, American proposed that the parties adopt amendments to the scope clause found in the tentative agreement. (The scope clause establishes the pilots' contractual rights to perform certain work.) The carrier also agreed to:

- No furloughs for American Airlines' pilots on the seniority list as of the date of contract signing.
- Limitations on length of commuter flights.
- Limitations on routes flown and development of new routes.
- Continued use of American Airlines' pilots to fly main line (non-commuter) routes where the carrier can make a fair return on investment.

The union asked the emergency board to recommend that American Airlines' pilots fly all jets operated by either American or American Eagle; that regional jets be used to fly main line routes, rather than

commuter routes; and that the number of regional jets be limited to 20 percent of American's fleet. In addition, the union proposed a preferential hiring arrangement for American Eagle pilots, whereby at least 1 of every 2 pilot job openings at American Airlines would be filled by American Eagle pilots. They also proposed that the parties adopt cost neutral work rules; establish the position of first officer on a regional jet (or comparable aircraft) as the new entry-level pilot position at American Airlines; and use interest arbitration as the final step in negotiations for the first successor agreement on regional jets.⁸

Emergency board report

On March 19, the emergency board released its report. Based upon the record, the panel made the following recommendations dealing with compensation issues:

- Wage increases of 3 percent in August 1997, 2 percent in August 1998, and 1.5 percent in August 1999.
- Stock options on 5 million shares priced at \$10 below market value.
- A phase-out of the B-scale.
- Negotiations over pay rates for new equipment.
- A contract termination date of August 31, 2000.

The question of who would fly regional jets was a thorny issue, not easily resolved. As the emergency board stated in its report:

These aircraft are not regarded simply as replacements for short-haul commuter turboprops but rather, because they have cruising ranges of up to 2,000 nautical miles, as an efficient and profitable commuter alternative for such main line purposes as accessing new markets

and providing hub capacity relief. AMR intends to replace aging Eagle turboprops with regional jets in order to maintain market share, develop new routes and strengthen the feeder and connector systems already in place. But regional jets capable of carrying more passengers faster, farther and more efficiently than turboprops, could threaten the job security of American Airlines pilots if used for the development of routes by the Eagles which otherwise would be American routes. There could be a resulting loss of American pilot positions, and the shrinking of American Airlines.⁹

The emergency board recommended the parties adopt amendments to their scope clause that were accepted as part of the tentative agreement reached in September 1996, plus a few other restrictions to protect American Airlines' pilots. Under that tentative contract, the parties had agreed to limit the use of regional jets; restrict the expansion of American Airlines' commuter service; forego any new comprehensive marketing agreements,¹⁰ and limit the carrier's right to furlough pilots. The new restrictions which the emergency board recommended were as follows:

- If American Airlines' fleet falls below 628 aircraft, the Eagles have to remove from service one regional jet for every two American Airlines' aircraft below 628.
- If the number of American Airlines' pilots is between 7,300 and 8,342, the number of turbo prop and regional jets would be frozen; and if the number falls below 7,300, American Airlines would terminate its commuter affiliate arrangements.
- Eighty-five percent of all regional jet departures must be

limited to no more than 1,000 nautical miles.

- Eighty-five percent of all departures must be into or out of eight hubs/major airports (DFW—Dallas/Fort Worth; ORD—Chicago; MIA—Miami; SJU—San Juan; SFO—San Francisco; LAX—Los Angeles; and LGA and JFK—New York).
- New contract language in the scope clause that would permit the union to enforce an arbitration award through injunctive relief.

Settlement

The parties reached an agreement in principle several days before the emergency board released its report, following several days of contract talks mediated by emergency board chairman Robert O. Harris. The parties then began meeting to work out the final contract language so that the agreement could be presented to the union's executive board on March 21.¹¹ Tentative pact was approved by the union's 18-member board on April 4. After a 2-week "road show," in which union leaders explained the terms of the proposed agreement, union members were sent mail ballots, which were tabulated on May 5. The rank-and-file approved the tentative agreement by a vote of 5,661 to 2,507.

Overall, the union received several sweeteners in the negotiated settlement compared to recommended terms in the emergency board's report. These gains included greater wage increases, more stock options, and enhanced labor protection provisions.

Economic terms of the new 5-year contract included a 9-percent wage increase over the term of the

agreement; 5.75 million shares in stock options at \$83.7375 per share (\$10 below market value on the date of signing); and a phase-out of the B-scale. Other terms called for the maintenance of pension benefit levels; restrictions on the carrier's right to amend the pension plan; and pay rates for flying new Boeing 737 and 777 aircraft.

The regional jet issue was resolved, although it took about 20 contract pages on the scope of work belonging to AA pilots to do so. Following the emergency board recommendations, regional jets will be flown by American Eagle pilots in exchange for American Airlines' agreeing to several labor protection provisions for American Airlines' pilots.

Contract language governs employment opportunities at American Airlines for commuter pilots and employment opportunities at the Eagles for furloughed American Airlines' pilots. Under terms of the agreement, roughly 1 out of 2 new hires at American will be offered to qualified captains flying commuter jets. The contract also contains a "flow-through" provision, whereby furloughed American Airlines' pilots can displace captains flying for the Eagles. The accord includes additional labor protection provisions, along the lines recommended by the emergency board, that restrict the number of regional jet departures, the mileage of regional flights (to 550 miles), and the use of regional jets if the number of active American pilots falls below a certain level.

Other contract language makes the agreement binding upon any successor company; provides protection in case of the sale of "substantial" assets; and calls for arbitration of any grievance alleging a violation of the scope agreement and enforcement through injunctive relief. □

Appendix. Legal framework of the Railway Labor Act

Originally, the RLA, which was passed in 1926, dealt only with labor disputes in the railroad industry; but a number of events during the mid-1920s and the 1930s in the airline industry resulted in its inclusion under the act. The Air Mail Act of 1925 authorized the Postmaster General to award air mail carrier contracts; the Air Commerce Act of 1926 empowered the Department of Commerce to encourage air commerce and to promote the growth of airports, airways, and other facilities; the Watres Act of 1930 authorized the Postmaster General to direct, combine, and strengthen the U.S. air transportation system; and the Air Mail Act of 1934 required air carriers to comply with compensation levels and working conditions prescribed by National Labor Board Decision No. 83 as a prerequisite for securing air mail contracts.

Simultaneously, there were industrial relations developments which culminated in legislation in 1936. As technological changes occurred during the 1931-33 period, aircraft cruising speeds increased substantially; thus, air carriers sought a modification of their pilot's pay formula from a monthly base plus mileage pay to a monthly base plus hourly pay (flight hours flown). Concerned about the wage and hours issues, the Air Line Pilots Association (ALPA), which represented the carriers' pilots, announced its intention to strike. When the carriers proceeded to institute the new pay system, ALPA sought relief from the National Labor Board (NLB), then the Federal agency responsible for resolving such disputes. The NLB issued Decision 83 soon thereafter, incorporating the proposals of both the carriers and the union (base pay, hourly rates, and mileage pay).¹²

From its inception, ALPA had

attempted to persuade Congress to include the air transportation industry under the RLA. On April 10, 1936, Congress placed the airlines within the scope of the RLA by an amendment to the Act. (The 1934 Amendments to the Railway Labor Act, Congress of the United States, U.S. 48 States 1185, ch. 691, 73rd Cong. (1934), Sec 2.)

Purposes of the act

The general purposes of the Railway Labor Act, as contained in section 2 of the act, are:

1) To avoid any interruptions to (railroad and airline) commerce or the operation of any carrier engaged therein;

2) To forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization;

3) To provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of the act;

4) To provide for the prompt and orderly settlement of all disputes concerning pay, rules, or working conditions; and

5) To provide for the prompt and orderly settlement of all disputes growing out of grievances or the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Procedural aspects of the act

The RLA requires the parties to follow step-by-step procedures that govern their actions from the initial notice of an intention to change the

terms of an agreement to the last step which leaves the union free to strike or the employer to institute a lockout. The procedures are complex and time consuming. (See chart.) They are set in motion upon the serving by either party of a "Section 6" notice of intended change in their collective bargaining agreement. A "status quo" period prohibits strikes, lockouts, or changes in the terms and conditions of employment until:

- The parties reach agreement, or
- A period of 10 days has passed after the termination of discussions without a request for or proffer of the NMB's assistance, or
- All requisite procedures of the act have been exhausted.

The parties are expected to negotiate until an agreement is reached or an impasse develops. If an impasse is reached, one or both parties can request the mediatory services of the NMB, or the Board can proffer its services. If mediation is unsuccessful in producing an accord, the NMB may proffer arbitration, which is voluntary but binding if accepted by both parties. If arbitration is refused by either party, the Board is required to formally notify them of its failure to reconcile their differences. A "status quo" period is in place, and no unilateral alteration in the terms of the collective bargaining agreement is permissible for 30 days from the date of notice unless, in the interim, arbitration is again proffered and is agreed upon or an emergency board is established under Section 10 of the act.

Action under this section is taken if, in the opinion of the NMB, an actual or imminent strike/lockout arising out of an unresolved dispute "threatens to substantially interrupt interstate commerce." The Board notifies the President who may establish, as a last resort under the act, an emergency board to examine

the nature of and to make recommendations to resolve the issues in dispute. Again, a status quo period is in effect from the time the emergency board is appointed until 30 days after it releases its report.

Generally, emergency boards delay the issuance of a formal report as long as voluntary settlements are

impending or probable. Beyond that, the emergency boards may prolong the emergency procedures to resolve the disputes by means of mediation. Even after the recommendations are made public, the NMB, under Section 5 of the act, may reenter the case and extend the use of its mediatory services.

—ENDNOTES—

¹ His authority for taking this action rests with Section 10 of the Railway Labor Act (RLA) of 1926, as amended. (See the appendix.)

² American Airlines' press releases, February 14-17, 1997, and *Sun Sentinel*, February 15, 1997, p. 12A.

³ *Report to the President by Emergency Board No. 233*, Washington, DC, March 19, 1997, p. 18.

⁴ *The Wall Street Journal*, February 18, 1997, p. A2.

⁵ *The Washington Post*, February 15, 1997, p. A16.

⁶ George P. Schultz, Secretary of Labor in the Nixon administration, has been credited with es-

tablishing the labor policy in 1969 that Presidents should not establish emergency boards for single-carrier airline disputes. (See Cullen, Donald E., "Emergency Boards under the Railway Labor Act," chapter VI in *The Railway Labor Act at 50*, ed. Charles M. Rhemus, Washington, DC: National Mediation Board, 1997, p. 174.) Except for the Wien Air Alaska emergency board, which was really mandated by Section 44 of the Deregulation Act of 1978, future Presidents held firmly to this policy.

⁷ *The Wall Street Journal*, February 18, 1997, pp. A2, A24.

⁸ Interest arbitration is arbitration of a dispute over the renegotiation of the terms of a contract.

⁹ *Report to the President*, pp. 17-18.

¹⁰ An American Airlines' comprehensive marketing agreement includes at least three elements: (1) Any American Airlines frequent flyer program; (2) a joint marketing arrangement; and (3) the lease or transfer of gates from American Airlines or one of its affiliates to a domestic air carrier (other than a commuter airline) that began operations after the Deregulation Act of 1978 was passed.

¹¹ The supplemental agreement covering scope was signed by American Airlines, the APA, American Eagle carriers, and the Air Line Pilots Association, which represented the American Eagle pilots.

¹² National Labor Board, *Decisions*, Pt. II, 1934, p. 20.

