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In The Fog of The Information War, The Most Learned Prevail

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Undoubtedly, many of us do not view the race to the bottom in the regional industry as a war. Airline managements may beg to differ. By any metric, regional managements are winning the war on quality of life, wages and benefits, even in a time of record profits by their mainline partners. In the second quarter of 2014, American Airlines Group Inc. posted the highest quarterly profit in the company's history. At nearly the same time, concessions were taken from AAG's regional partners. With much turnover in the regional sector and at Air Wisconsin, a wellspring of new pilots has made its way into our ranks. Last year, Air Wisconsin attrition levels were 200 pilots, or 27% of the total pilot group. With staggering attrition, we must keep our sights on assisting the new pilots in an understanding of how collective bargaining works and our specific bargaining history.

If you are anything like me, you never received any formal education into the workings of labor unions. This missing link is rather large institutional oversight in my opinion, especially as a graduate from an aviation college. Anecdotally, I have discovered that many of the pilots among our ranks share my experience. This is not to say that the pilot group is uninformed on labor issues and labor history. The informed among us are autodidacts, or put another way, self-taught labor experts. That being said, it is supremely important that we understand labor history and bargaining.

Mostly for the benefit of the new Air Wisconsin pilot, the following paragraphs will cover the basics of the Railway Labor Act, Air Wisconsin's bargaining history, common corporate propaganda tools, current bargaining progression, and strike provisions. Why is all of this important to know? An overused and tired, but relevant and timeless quote by George Santayana sums it up most skillfully, "Those who cannot remember the past are condemned to repeat it." If we are ever fortunate to break and remain free from the chains of any form of subjugation, we need to remember the lessons from our collective history. Put more commonly, if we want to have an ability to make the most informed decisions as a pilot group, an understanding of the following paragraphs is a great start.

The Railway Labor Act

Enacted in 1926, the Railway Labor Act (RLA) was jointly drafted by railroad

managements and labor and is considered the first of the modern labor laws in the United States. The RLA was written to minimize the possibility of strikes, which achieves the public policy goal of avoiding the adverse effect of disruption to the free flow of commerce. Shortly after the RLA's passage, it was recognized that there are many parallels between airlines and railroads and to the subsequent implications of disruptions to commerce. The airlines were included under the RLA in 1936 by a congressional modification of the law.

With the public interest in mind, the RLA makes it exceedingly difficult for labor groups to strike. Of course, the RLA also ensures the right of the employees to choose a bargaining representative, collectively bargain, and it assists in the prompt settlement of "minor" and "major" disputes through various mechanisms that will be discussed below.

Minor vs. Major Disputes

The Act achieves the policy goal of continuous, uninterrupted commerce through a few different provisions. First, the Act requires that any dispute that falls under the definition of a "minor dispute" must be resolved through arbitration and enjoins (prohibits) striking in such disputes. A minor dispute is a dispute that arises out of an "arguable" interpretation or application of existing collective bargaining agreements. In a minor dispute, there is a very low legal standard for what constitutes an "arguable" interpretation of the Collective Bargaining Agreement (CBA). As such, managements can act on a novel interpretation and face, at worst, the RLA arbitration process. The consequence of creative management interpretations is more likely to result in a grievance hearing and a possible settlement before ever reaching arbitration. In either event, the collective bargaining agreement suffers a constant assault year after year, resulting in a watered-down contract over time. This provision, in effect, ties labors' hands behind its back and drags it into the ring for a brawl with a 600-lb. gorilla.

Secondly, in prevention of strikes and for the lubrication of commerce, the Act protracts the bargaining process through the pas de deux (a dance duet) of bargaining. The very action of bargaining for new agreements is defined as a "major dispute" under section 6 of the Railway Labor Act (section 6 of the RLA is in contrast to section 6 of our CBA, which is titled "moving expenses"). Put another way, a major dispute is a dispute arising out of the formation of agreements that delineate the rates of pay, rules, and working conditions. Moreover, it is also considered a major dispute when one side unilaterally changes rates of pay, rules, and working conditions. After a very lengthy bargaining process, with multiple means for dispute resolution, the pilot group may ultimately be released for strike; this is pending National Mediation Board release, and the President doesn't intervene to prevent the strike. This process will be discussed in greater detail.

How are airlines and companies expected to behave under the RLA during a major dispute? Section 2 of the RLA requires that the airline and the representative of its employees (ALPA) "exert every reasonable effort to make and maintain agreements" about rates of pay, rules, and working conditions. Throughout the process of bargaining agreements, both sides must bargain in good faith.

Bargaining in Good Faith

There are strict requirements of both parties in the bargaining process to put forth a "good faith" effort. Good faith bargaining is bargaining in such a way that is likely to result in an agreement. Good faith bargaining is opposed to surface bargaining (an element of bad faith bargaining), which occurs when a party goes through the motions of negotiations without a sincere desire to reach an agreement.

In part, good faith bargaining requires the parties to:

1. Agree to an effective bargaining process,
2. Meet, consider, and respond to proposals made by each of the parties,
3. Respect the role of each parties representative, and not to appeal directly to the employees, and
4. Not do anything to undermine the bargaining process or the authority of the other party's representative.

Examples of bad faith bargaining include:

1. Making obviously unreasonable bargaining demands, such as refusing to give into small, industry standard practices,
2. Unilaterally changing the rates of pay, rules, and working conditions when negotiations are not deadlocked, and
3. Rejecting proposals summarily

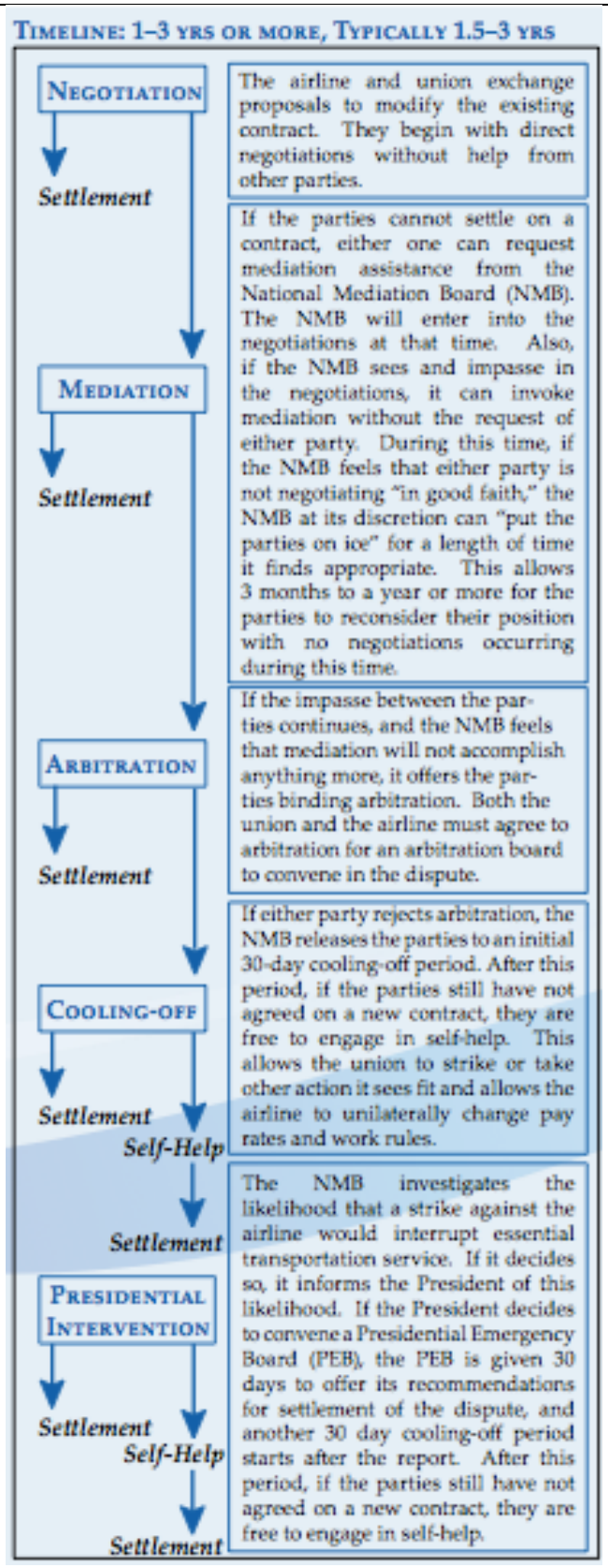
To summarize, a major dispute is a dispute involving changing rates of pay, rules, and working conditions through the bargaining process and has requirements to bargaining in good faith. A minor dispute is a dispute arising out of the interpretation or application of existing agreements and must be arbitrated for a resolution to the dispute. Classifying a dispute as major (strike capability) or minor (arbitration only) defines the rights of the pilot group and there has been much litigation over the two classifications. There is a bias in the RLA in favor of arbitration, as long as company actions are even "arguable" under our CBA.

The National Mediation Board (NMB)

The NMB is a federal creation and is a result of a 1934 amendment to the Railway Labor Act. It is an independent U.S. Federal-government agency with the mandate of facilitating management-labor relations within the railroad and airline industries. A three-member board heads the NMB. Each member is individually nominated by the President and confirmed by the Senate. The NMB has a number of tools at its disposal in which to accomplish its goals. One such tool (among many others) is the mediation process. During the course of section 6 negotiations, either labor or management may request mediation assistance from the NMB. Reasons for seeking mediation assistance range from a stalling of negotiations, to being used as a dilatory (delaying) tactic to slow down the process. One last thing concerning the NMB; it contains no law enforcement functions. The parties litigate purported violations of the Railway Labor Act in the federal courts system. This is in contrast to the National Labor Relations Board, which governs other industries not under the RLA and has some enforcement functions against, for example, unfair labor practices.

The Long Road to Strike

Before we can consider a strike, the Master Executive Council and the negotiating team must exhaust many opportunities for dispute resolution. The path to strike includes the initial negotiations process, mediation, binding arbitration (only if both parties agree), a 30-day cooling off period, and finally a strike or other self-help action. Before a strike can occur, the National Mediation Board (NMB) must release the parties and the timing of the release is the sole discretion of the board. Even if the parties are released POTUS (currently Barack Obama) can intervene and enjoin the strike. Below is a helpful flow chart explaining the long path to strike. It was included in a past Wiss-Key article drafted by our esteemed Jeff Pruett and does an excellent job of explaining the process.


TIMELINE: 1–3 YRS OR MORE, TYPICALLY 1.5–3 YRS
NEGOTIATION
The airline and union exchange proposals to modify the existing contract. They begin with direct negotiations without help from other parties.
Settlement
MEDIATION
If the parties cannot settle on a contract, either one can request mediation assistance from the National Mediation Board (NMB). The NMB will enter into the negotiations at that time. Also, if the NMB sees and impasse in the negotiations, it can invoke mediation without the request of either party. During this time, if the NMB feels that either party is not negotiating "in good faith," the NMB at its discretion can "put the parties on ice" for a length of time it finds appropriate. This allows 3 months to a year or more for the parties to reconsider their position with no negotiations occurring during this time.
Settlement
ARBITRATION
If the impasse between the parties continues, and the NMB feels that mediation will not accomplish anything more, it offers the parties binding arbitration. Both the union and the airline must agree to arbitration for an arbitration board to convene in the dispute.
Settlement
COOLING-OFF
If either party rejects arbitration, the NMB releases the parties to an initial 30-day cooling-off period. After this period, if the parties still have not agreed on a new contract, they are free to engage in self-help. This allows the union to strike or take other action it sees fit and allows the airline to unilaterally change pay rates and work rules.
Settlement
Self-Help
Settlement
PRESIDENTIAL INTERVENTION
The NMB investigates the likelihood that a strike against the airline would interrupt essential transportation service. If it decides so, it informs the President of this likelihood. If the President decides to convene a Presidential Emergency Board (PEB), the PEB is given 30 days to offer its recommendations for settlement of the dispute, and another 30 day cooling-off period starts after the report. After this period, if the parties still have not agreed on a new contract, they are free to engage in self-help.
Settlement
Self-Help
Settlement

Espionage, Doublespeak, Propaganda, Terrorism, and Disinformation: Not Just For Governments

Released in 1937, The La Follette Civil Liberties Committee report was an inquiry by the National Labor Relations Board (NLRB) into the extent and the scope of union busting activities taken by big business in the United States. The report discovered that no less than 2,500 corporations engaged in antiunion espionage, trickery, and other malfeasance. Furthermore, the La Follette report found corporate labor spying activity "to be a common, almost universal practice in American industry." That being said, it takes no stretch to imagine the extent of treacherous machinery in place today, aided by the modern computing and technological advances. With that in mind, it is of the utmost importance that we take the investigative journalist's critical and skeptical eye to any rumor or to company communications. As aptly stated by Mark Crispin Miller, in the forward to the seminal work "*Propaganda"*, by Edward Bernays,

"The investigative journalist is the propagandists' natural enemy, as the former serves the public interest, while the latter tends to work against it."

Recent doublespeak that your negotiations team has encountered has been the apparent reopening of the "concession stand," which was met with great dismay and disapproval from our Negotiations Chairman, Mark Lockwood and longtime Committee member, Bob Burgess. In our March 2015 mediation session, the company proffered a proposal with significant concessions to the tune of approximately $1.6 million per year, while nary more than a year ago, the company promulgated a memo to us that they were no longer seeking concessions. Did we completely miss a policy change? Why all of the flip-flopping?

Our Bargaining History

Our bargaining history is rife with recent examples what could only be, at best misinformation and, at worst, blatant and willful propagation of false information. In September 2003, the company announced that a "fully effective" code-sharing agreement with United Airlines had been reached as a result of concessions from all employee groups. The concessions that the pilots were dished out in 2003 under LOA #8 were based on information from the company that (1) The 2003 United Express Agreement (UEA) was a long term agreement that secured a future, and (2) that all of the cost savings from pilot concessions would flow directly to United.

As history demonstrated, the UEA was not a fully effective agreement, a fact that we relied upon as true when agreeing to concessions. Flying under the United Express banner ended shortly thereafter. Instead of returning to the negotiating table after the breach of the LOA, the company made a decision to retain all of the savings as a result of the concessionary agreement. The ensuing successful arbitration from this breach (also known as the "Holden Award," named after the arbitrator in the case, Lawrence Holden or "Case No. ARW-05-02) ended up a hollow victory for the pilots. Here are some quick facts about ARW-05-02:

- AWAC retained $68 million resulting from the termination of the UEA
- Our position was that a portion of that money should have returned to the

pilots.

- Lawrence Holden instituted the process of "last, best offer arbitration," which is where the parties present a final offer for the arbitrator to choose. This type of arbitration is designed to get the parties to settle beforehand, due to the uncertainty and risk of the outcome of last, best offers.
- ALPA was seeking $11,475,067 in damages, plus interest. This was our last, best offer.
- Air Wisconsin's last, best offer was $2,500,000.
- $2,500,000 is only 5% of the $68 million retained by Air Wisconsin.
- The pilots were awarded the Company's last best offer of $2.5M.
- As a result of winning additional flying under the US Airways banner, Holden said, "one might ask what is a fair and just remedy for the pilot group now, in retrospect, what has occurred since the breach of the 2003 pilot agreement (LOA #8)." What wasn't taken into account were the huge quality of life effects, such as negative effects on schedules and commuting to the East Coast.
- The evidence the company put forth for reduction in wages and financial effects of the LOA 8 were taken at face value. The company never opened its books, but a decision was made on what might as well have been a pinky swear of integrity.
- The evidence in this case that the company put forth was admittedly "not perfect" in the words of Lawrence Holden.

Current Negotiations

During the March 23-26, 2015 mediation session in Dallas, TX, we were able to achieve two tentative agreements (TA) on section 13 (Leaves of Absence) and section 26 (General). With those two TAs in the books, that leaves the more contentious sections regarding hard economics, scope, and R & I on the docket. Our next mediation is scheduled for June 22nd, 2015. After almost six months, and after our late June session, we will only have met twice so far in 2015. At this rate, we are on par to meet with the company close to the meager 10 days we bargained with the company in 2014. As you may well know, we have been in negotiations for 1670 days, more time than it would take to earn a J.D./M.B.A. and longer than a single U.S. Presidential term in office.

In the time we have been bargaining, any one of our pilots could have made an about face for greener pastures and completely changed careers. Once again, it begs the question, "do we have a future here?" Although we can collectively breathe a sigh of relief that we will have some unknown level of flying under the American banner until early 2018, how are we going to continue to attract pilots to come here with but a few short years left on our doomsday clock? With abundant better opportunities for secure employment within the regional sector, what is going to attract and maintain new pilots as our current ranks leave in droves? An industry-leading contract is one means for maintain a steady flow of pilots, but it will prove to be merely a band-aid solution in the long term.

Incredible Industry Opportunity

As we all know, there are many opportunities for advancement to the legacy and major carriers. Although these are exciting times for career advancement, we must keep in mind that the regional sector currently flies the lion's share of the domestic market. As a result, it is our duty to bargain for those who want to make a career here and assume that we are going to spend our own careers at the regional level. The hiring tap could easily turn off tomorrow with the arrival of some adverse event (e.g., economic downturn or another 9/11-type event).

In the meantime, enticements at the regional level are currently growing, numerous, and diverse. As time progresses, the enticements at the regionals will likely get more and more lucrative. I believe we are only seeing the beginning of the wave of signing bonuses, retention bonuses, flow programs, or other programs yet to be developed. Currently, Endeavor Air is offering an $80,000 retention plan, spread out over a four-year period. CommutAir is now offering four paid hotels per bid period to commuters and industry-leading first year pay. Piedmont is transitioning to new aircraft and a true flow-through agreement with American. Are we going to continue to be able to staff on the merits of our current agreement? Equally important is a "fully effective," and stable Jet Services Agreement (JSA) with a mainline partner.

It's Time

LOA #8 was bargained in approximately three weeks. We understand the danger in a hastily-agreed contract; however, 4.5 years is an excessive amount of time to bargain. The Company believes that given enough time that they can bend us to their will and we will give up the good things in our contract like our retirement and health care with the HOPE that maybe someday the Company will be more secure. Lack of career security necessitates a good pilot contract at Air Wisconsin, not the other way around. It's time for Air Wisconsin to face the music and give the pilots a contract that they deserve and one that will ensure Air Wisconsin's success in an increasingly competitive market for new pilots.

Air Wisconsin pilots expect more from our management team. It's been long enough.