

# RLA

## NEGOTIATIONS UNDER THE

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*Editor's note: The May 2012 issue of Air Line Pilot included "The Balance of Power," an opinion piece by Capt. Joe Doniach (United). Air Line Pilot asked ALPA's director of Representation, Bruce York, and director of Government Affairs, Michael Robbins, to add their thoughts to the important issues raised in this article.*

The opinion expressed by the author—that declining pilot (and other airline employee) earnings are the result of an airline regulatory framework that favors management—is one that ALPA members and other employees frequently express.

The author's view is that the Airline Deregulation Act of 1978 lowered barriers to new entrants, eliminated regulation over routes and fares, and opened the airline industry to an unhealthy level of competition that forced companies to seek employee concessions. It was also his opinion that the Railway Labor Act (RLA) unfairly favors management by prolonging negotiations and taking away employees' right to strike.

### **The Airline Deregulation Act of 1978**

ALPA shares many of Doniach's concerns about the effect of the Airline Deregulation Act of 1978. Lowering entrance barriers and permitting airline operations without rigorous oversight of financial ability, safety programs, and training was, in some cases, a recipe for

disaster. The competitive environment fostered by the Act challenged long-established airlines like Braniff, Pan Am, and TWA but offered new opportunities for airlines like American, Delta, Southwest, United, and others to expand, hire, and become more profitable.

ALPA has always tried to remedy lax government and regulatory oversight and has recently boosted its work in this area even more by engaging regularly with lawmakers and regulators who are focused on safety and operational standards. Although the FAA historically has been responsible for safety issues, Congress has taken a more active and

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visible role due to increased public awareness in this area. As just one example, ALPA has argued successfully for increased airman qualifications and airline hiring standards.

ALPA agrees with the author that it's not likely that air travel will be "reregulated" in the pre-1978 sense. That's why working with members of Congress and government regulators to help "level the playing field" and ensuring that only qualified industry participants enter the market are critical to the success of the U.S. airline industry.

### **The Railway Labor Act**

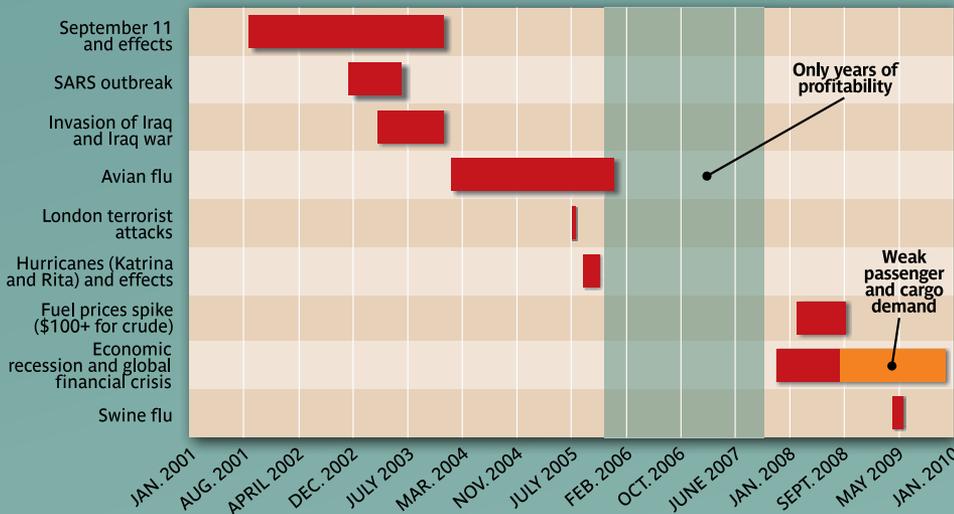
Over the past 25-plus years, it's been difficult to draw black-and-white conclusions about the effect of the RLA on employee wages. Most important, it's impossible to talk about contract results between 2000 and 2012 without analyzing how the U.S. Bankruptcy Code has influenced negotiations since most negotiations between 2002 and 2006 were conducted under that law and not the RLA.

However, it's also hard to draw conclusions about the RLA itself as bargaining results depend so much on, and can't be divorced from, other factors, including the way the RLA is administered by the National Mediation Board (NMB) and the U.S. president, the political makeup of Capitol Hill, the economy, fuel prices, technological change like the development of small jets, and, perhaps most important, critical external events like 9/11 that affect airline travel and airline profits.

In short, both employers and airline employees might argue that the RLA favored the other depending on the time period examined. It may surprise some ALPA members that employers approached Association pilot leaders in the 1960s to engage in industrywide bargaining rather than continue negotiations employer-by-employer. Why was that? ALPA had been so successful in "whipsawing" employers and gaining improvements in one contract, then seeking the same improvements in the next negotiation, that companies wanted to have one standard contract. ALPA, based on its success record, of course declined.

Looking back at the 15-year period before 9/11, that successful single-

# INDUSTRY CHALLENGES OVER THE PAST DECADE



employer pattern bargaining trend generally continued. At times, financial stress at individual airlines resulted in selected bargaining setbacks. Overall, however, during the period between 1985 and 2001, pay rates increased substantially, retirement and insurance benefits were enhanced, work rules were tightened, and scope/job security provisions added layers of sophistication to the basic clauses that were introduced in ALPA contracts in 1983. This positive period of pattern bargaining was capped by the very successful contract settlements at Northwest (1998), United

(2000), and Delta (2001), and even two pay parity arbitrations at US Airways, which produced combined pay raises of more than 34 percent in one year. ALPA negotiations were still ongoing to get all contracts close to

those high levels. At the close of 2000, employers were the ones arguing that they didn't like the way the RLA worked.

A short time later, the country and the airline industry were forced to deal with the tragic events of 9/11. But industry economics were already turning south when that catastrophe occurred, and other external events, it seems, continued to work against profits and positive trends in negotiations. President George W. Bush, soon after assuming office, announced that he would not permit strikes in the airline industry. The accompanying chart shows the many external factors that contributed to the low number of airline passengers and financial uncertainty during the

2001 – 2005 period.

The bargaining cycle during which bankruptcy and restructuring agreements were negotiated—2001 – 2008 (plus the current American and American Eagle negotiations)—unfortunately resulted in a reversal of fortunes of the earlier period. Pay and benefit patterns dropped in negotiations after the industry's financially weakest airlines filed for bankruptcy protection and sought contract concessions using the provisions of Section 1113 of the U.S. Bankruptcy Code to pressure pilots and other employees. United followed the same path a short time later after the Bush administration declined to provide Air Transportation Stabilization Board financing that Congress had already allocated.

Unfortunately, ALPA negotiators were thrown into bargaining at the weakest airlines first under the strict time lines and supervision of the U.S. Bankruptcy Code. Bankruptcy judges, using the threat of contract rejection, pushed the parties to settle quickly. This stark contrast to earlier periods—when the NMB governed the process, ALPA coordinated negotiations to gain results at stronger airlines first, and ALPA controlled the time line—resulted in settlements that were unfavorable and unwelcome. Those outcomes really were not a direct result of the RLA, nor was the NMB generally involved.

Once airlines emerged from bankruptcy, ALPA negotiators got out from under the supervision of bankruptcy judges. Airlines returned to profitability again, and bargaining resumed the more

customary experience and results. The 2006 FedEx Express contract settlement set the stage for upward progress. In 2008, the Delta – Northwest merger provided an earlier-than-expected opportunity to negotiate a new contract. The joint collective bargaining agreement increased hourly pay rates nearly 17 percent for “South” pilots and an even higher percentage for “North” pilots, boosted defined-contribution plan contributions, and gained pilots a 6 percent ownership stake in the merged company, among other improvements. The Alaska 2009 contract settlement supported the Delta pattern by increasing pay between 12 and 27 percent and by refocusing attention on enhanced benefit programs. Later in 2009, Hawaiian pilots negotiated pay increases that improved and buttressed the patterns at Delta and Alaska. Very substantial improvements were also obtained in contract settlements at Spirit and AirTran in 2010, among others.

It's not a coincidence, and the chart shows that these improvements occurred largely during a period of industry profitability. The post-bankruptcy era bargaining cycle has been much more like the positive bargaining cycles that preceded bankruptcy and restructuring events.

So what determines whether negotiations under the RLA are successful? First, a profitable company is an essential element in making progress under the RLA, the National Labor Relations Act, or anywhere else. Second, bargaining under the RLA is premised on the creation of “uncertainty”—the NMB's administration of the RLA and White House decision-making can't take options off the table. Both parties have to understand that they may not get what they want if negotiations don't progress. White House announcements that “there won't be any strikes” remove company motivation to bargain. Third, union negotiators must plan and execute negotiations carefully. The NMB is left with few options to move mediation forward when too many issues are left to resolve during the late stages of negotiations. Master executive council strategic plans that highlight key priorities and realistic time lines and approaches are critical for achieving contract goals. 🌐

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