INFORMATION BRIEF
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Airline Mergers and Labor Integration Provisions Under Federal Law

The proposed merger between Northwest Airlines and Delta Air Lines has raised questions about how a merger would affect airline employees. Several federal provisions govern this area. This information brief provides background on these issues and explains the provisions of the laws that apply in this area.

Overview

Three key federal provisions govern labor management relations when air carriers merge and integrate their workforces. The provisions are:

- the Railway Labor Act;
- the Allegheny-Mohawk Labor Protective Provisions; and
- Public Law 110-161.

The Railway Labor Act provides the basic guidelines for air carriers and the negotiation and mediation procedures for employers and labor organizations when the "status quo" is changed. It also lays out the methods for resolving disputes over collective bargaining agreements.

Labor Protection Provisions (LPPs) were formalized by order of the Civil Aeronautics Board (CAB) in 1972 during the merger of Allegheny Airlines and Mohawk Airlines. The CAB order gave several protections for employees adversely affected by an airline merger.

A new federal law (Public Law 110-161), enacted in December 2007, directs that two of the Allegheny-Mohawk LPPs must be followed when airlines merge.

Railway Labor Act

The basic guidelines that apply to air carriers are contained in the Railway Labor Act (RLA) (amendments added in 1936 apply the railway legislation to air carriers). The RLA specifies negotiation and mediation procedures that employers and labor organizations must complete before they can change the status quo, as well as the methods for resolving both "minor" and "major" disputes over collective bargaining agreements. The RLA also allows employees to sue in federal court to challenge an employer's violation of the act.

Under the RLA, a "minor" dispute is a dispute arising from interpretation or application of collective bargaining agreements. If negotiation between the affected parties cannot resolve a minor dispute, the issue is submitted to binding arbitration under the National Mediation Board (NMB). Strikes are not allowed over minor disputes.[1]

A "major" dispute is one that arises when there is an attempt to create collective bargaining agreements or to alter the terms of existing agreements. Labor organizations are ultimately allowed to strike, or employers may impose a lockout or hire replacement workers only after negotiation, mediation, and "cooling off" options have been exhausted.[2]

National Mediation Board

The NMB is the federal panel created under the RLA to conduct union representation elections and to supervise the mediation of labor contract negotiations. The three-member panel is appointed by the president; one member must be from a political party that is not the same as the president's. The board employs professional mediators to facilitate the negotiations.

Collective Bargaining Agreements

The RLA also grants employees the right to organize and bargain collectively and provides that it is "unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier…to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization…"[3]

As part of the process, the NMB defines the "craft" or "class" of employees eligible to vote on whether to form a union or to decertify a union. An employee organization seeking to be the exclusive representative of a class or craft must secure support of 35 percent of the entire craft or class in order to get the NMB to call an election. In an election, a union must win a majority of votes from the entire class or craft—rather than just a majority of those voting. A majority vote of a craft or class is also required in elections to decertify a union.

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[1] 45 U.S.C. § 156.

[2] Ibid.

[3] 45 U.S.C. § 152.

Under the RLA, collective bargaining agreements do not have expiration dates; rather, they have amendable dates specified in the agreements. Until a change occurs through an agreement negotiated by both parties, through a new agreement resulting from binding arbitration, through a change in the status quo as the result of decertification of the union, or through a change that comes as a result of "self-help" remedies (i.e., a strike by the employees or a lockout or the hiring of replacement workers by the employer), the provisions of the original agreement remain in effect.

Thus, the proportion of unionized and nonunionized workers in particular job classes or crafts obviously plays a major role in determining how the collective bargaining agreements of unionized sectors of the workforce are affected by an airline merger. This is a major issue in the pending NWA-Delta merger because a largely unionized Northwest workforce is being absorbed by a generally nonunionized Delta workforce in virtually all crafts and classes. Only the airline pilots are represented by the same union (the Airlines Pilots Association or ALPA) under both carriers.

After a merger, the mediation board has the authority to rule on whether merged employee groups in a class or craft are comparable and, thus, whether a single bargaining unit applies.

The Mediation Process

Direct negotiations are the first step in the mediation process under the NMB and may be initiated by one or both of the parties involved by sending a notice of intent to change an existing contract. During the direct negotiation phase, the sides may negotiate without a mediator. If direct negotiations are not successful in resolving differences, the parties may request formal mediation by the NMB. After entering into formal mediation, the NMB decides when a resolution of differences cannot be achieved, and it is the NMB that releases the parties from mediation.

When the NMB concludes that additional mediation activities will not result in an agreement, the NMB may "proffer arbitration." If the parties accept the board's arbitration offer, the outcome is binding.[4]

If either party rejects the proffer of arbitration, the board imposes a 30-day "cooling off" period during which the parties continue to negotiate. If at the expiration of the 30-day period no agreement has been reached, either party is free to move to "self-help" actions. This means that the union is free to strike and the carrier is free to impose its last offer, impose a lockout, or hire replacement workers.

[4] How "binding is binding" is unclear. After the merger of US Airways and America West Airlines, the NMB arbitrator merged the two pilot groups into a single combined list. Both pilot groups were represented by ALPA. US Airways had a much more senior pilot group than did America West. US Airways, however, due to financial difficulties had large numbers of senior pilots on involuntary furlough at the time of the merger. The US Airway pilots clearly wanted a date-of-hire driven seniority list, while the America West pilot group favored proportional representation. The arbitrator ultimately ruled in favor of proportion-based integration. The merged pilot group subsequently voted for a new bargaining agent, the US Airline Pilots Association (USAPA), and is currently attempting to overturn the arbitrator's ruling.

If the self-help activities pose a threat that in the board's judgment may deprive any part of the country of essential transportation service, the president can intervene by activating a Presidential Emergency Board (PEB) to investigate and report on the dispute. The presidential board has 30 days to develop a settlement proposal and present it to the parties for consideration. After the presidential board delivers its proposal, another 30-day cooling-off period goes into effect. If either party rejects the president's proposal, both must wait another 30 days before reverting to their "self-help" activities. Ultimately, Congress has the authority to legislate a settlement.

Labor Protective Provisions and the Allegheny-Mohawk Merger

Labor Protective Provisions (LPPs) were routinely applied by the Civil Aeronautics Board (CAB) in the 1950s and 1960s in airline mergers. The LPPs were formalized as a set of standards in the board's 1972 order in the merger of Allegheny and Mohawk airlines.[5] That order granted several protections for employees adversely affected by an airline merger. The protections included a monthly displacement allowance for employees whose compensation was reduced, a dismissal allowance for employees who lost their job, reimbursement for relocation expenses, and compensation for other losses suffered as a direct result of the merger. In addition, the Allegheny-Mohawk order required that seniority systems be integrated in a "fair and equitable manner" and provided mediation and arbitration to resolve disputes over LPPs. The LPPs, however, required that any adverse impact had to be the result of the merger. Further, the "fair and equitable" standard was generally regarded to have been met if the procedure (rather than the outcome) was fair.

The CAB retreated from LPPs in the early 1980s after the industry was deregulated and began using them on a selective rather than general basis. Since 1985, when the CAB expired and its jurisdiction was transferred to the Department of Transportation under the auspices of the Federal Aviation Administration (FAA), LPPs have been generally rejected.

Recent Federal Legislation

A new federal law, Public Law 110-161 enacted in December 2007, directs that two of the Allegheny-Mohawk labor protective provisions must be followed when air carriers merge. The law imposes sections 3 and 13 of the Allegheny-Mohawk order. Section 3 specifies that:

> "insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and representatives of the employees affected. In the event of failure to agree,

[5] Published at 59 C.A.B. 45.

> the dispute may be submitted by either party for adjustment in accordance with section 13."[6]

Section 13 of the Allegheny-Mohawk order directs that when a dispute or controversy cannot be settled by the affected parties within 20 days, either party may refer it to an arbitrator selected from a panel of seven names furnished by the NMB. The parties involved select the arbitrator by alternately striking names until one remains. The selected arbitrator must render a decision within 90 days unless the parties agree to extend that time limit. The salary and expenses of the arbitrator are shared equally between the employer and employee group or individual employees. The arbitrator's decision is final and binding. The involved parties may agree on an alternative method for dispute resolution or an alternative procedure for selecting an arbitrator.

The new federal law, however, provides that if the same collective bargaining agent represents the combining classes or crafts at the newly merged airline, then that collective bargaining agent's internal policies regarding integration will supersede the Allegheny-Mohawk provisions. This is an important distinction for the pilots in the proposed Northwest-Delta merger. Since both pilot groups are represented by the same union, they are allowed to resolve the issue among themselves.

For other unionized employees who are combining with nonunion employees or employees of another union, the provisions of their collective bargaining agreement related to integration or successor clauses apply only if they do not contradict the "fair and equitable" standard and arbitration procedures of Allegheny-Mohawk. The role airline management would have in integration discussions under these circumstances is unclear.

For more information about labor issues, visit the employment and labor area of our web site, www.house.mn/hrd/issinfo/emp_lab.htm.

[6] Ibid.