Who Wants To Play To Win?

"*Aut viam inveniam aut faciam.*"
(I will either find a way, or make one.)

-Hannibal (addressing his generals that insisted the Alps were impassable.)

FACT: The National Mediation Board's mission statement is to minimize work stoppages.[1] This mandate has been twisted into "preventing" work stoppages in large, network carriers.

United Airlines pilots have been strung along for 4 years. They have asked for release from mediation.

Denied.[2]

American Airlines pilots have been strung along for 5 years. They have asked the court to decide who has authority over their contract - the NMB or Federal Bankruptcy Court. If the NMB, the contract cannot be abrogated; if the court, the union would be free to strike upon abrogation.

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[1] National Mediation Board, *NMB and RLA Fact Sheet*, March 19, 2010, page 1, www.operationorange.org/NMBfact.pdf

[2] UAL/CAL pilots have generated an AIP with UCH management as this went to publication. OPERATION ORANGE has not been reliably briefed on how the NMB may or may not have influenced UCH. We will update this posting with more information as it becomes available.

Denied both counts. They are under the NMB for purposes of enjoining self-help, and under the court for purposes of abrogation. No matter where they turn, they lose.

Delta Air Lines pilots gave up scope in a rushed negotiation, partially out of fear they would be subject to the same fate as their peers at United and American have experienced with the one-sided nature of the RLA. The principle fear grenade lobbed into the midst of the Delta pilots was the ability for management to drag out negotiations via the RLA. The margin of passage was due, in large part, to this fear. What would they have received if not having to dodge the intentional "can kicking" permitted management by the RLA?

FACT: Management and government fear strikes and will pay handsomely to prevent them.

Spirit pilots secured very significant improvements when they struck in the face of threats of being liquidated. The Obama Administration allowed them to strike because of their small size. Reliable sources tell us that United and American pilot association leaders have been told they will never be allowed to strike, which accounts for the pace of negotiations and the falling pay and working conditions.

Alaska Airlines pilots secured improvements when management was told the pilots would be released. It is this fear of a work stoppage that motivates management - nothing else. If you think you have leverage outside of a work stoppage, you don't. You may be able to trade for small items (like Delta pilots recently demonstrated), but you will never have enough of an advantage to repair the damage inflicted by bankruptcy courts.

FACT: Line pilots know their best opportunity to secure better pay and working conditions is to withhold services and have voted in overwhelming margins to authorize strikes, whenever their pilot associations have asked.

United Airlines pilots voted 99% to strike, with 94% participating.

Air Canada pilots voted 97% to strike with 97% participating.[3]

Delta Air Lines pilots gave up scope to avoid the issue.

American pilots have not been asked for a strike vote, but 95% voted "NO CONFIDENCE" when their pilot association put the question to them.

FACT: Through the use of injunctions, management has turned the RLA into an instrument of their own design.

FACT: Pilots can't strike. Many of today's pilot associations have already been told they will never be allowed to strike.

FACT: Pilots can't slow down. Management will be in court the next day, armed with piles of statistical data, showing the pilots are conducting an unauthorized work action. The courts will reliably enjoin such slow downs and force the union to drive its membership to work harder, faster, and less safely. (US Airways)

FACT: Contractually provided sick leave is subject to the approval of management, not the pilots. (United).

FACT: Pilot associations can't tell their membership to refuse **voluntary** overtime. (Delta)

Does anyone doubt the RLA (and the Canadian legal equivalent) is a significant tool for management to use to keep labor from exercising their legal right to secure improvements in their working conditions? Was this the intention of the authors, or is this the result of applying a law never designed for the deregulated era of commercial aviation?

The NMB has not released one major pilot group to self-help since 1998 (Northwest), and the current NMB is as good as it is going to get. The next

[3] Air Canada pilots were forced into arbitrating away their scope protections, which is another way of saying they had their scope provisions removed from them at the point of a gun. There is nothing consensual about being forced into binding arbitration, where the results are already known. This occurred on July 30, 2012. Please support ACPA pilots in any effort to regain what was stolen from them under color of law.

president will be appointing NMB members that will favor management in an even more overt and blatant manner. As long as the law allows this, they are going to do it.

United Airlines pilots said they would strike by a margin of 99 to 1. American Airlines pilots, if asked, would probably return a similar number. Air Canada pilots do not fall under US law, but serve as another indicator of the general level of unrest at top-tier airlines. At the time the vote was taken, Air Canada pilots were going through what all major network carriers in the US have either gone through or are going through, it is reasonable to believe the results from Dallas, Miami, Chicago, and New York would mirror those from Toronto, Montreal, Denver, San Francisco, and Washington.

Work stoppages are the only means by which airline employees can bring about leverage to improve their working conditions and pay. Management knows this and has paid off the government to ensure that does not happen. Strikes have steadily declined during the era of pilot pay decline. There were 47 strikes in the 1950s, 36 in the 1960s, 43 in the 1970s, 17 in the 1980s, and ONLY 6 in the 1990s. No pilot group has been able to strike a major carrier in the past decade. Remember, the NMB's mandate is to minimize strikes, **not to ensure fair and equitable negotiations**, and they are doing a very good job. Just ask AMR management about how they admitted in open court that they were intentionally "kicking the can" during negotiations, and had no intention of ever negotiating a contract with their pilots.

What did the federal bankruptcy court do? Nothing. No $45,000,000 fine. No injunctions. No chastising. No directive for AMR management to prominently display on their website the mandate for all senior managers to negotiate in good faith, as defined by the APA. Not even a weakly worded rebuke for openly abusing the RLA and causing APA to incur exorbitant expenses for a futile effort.

The Court rewarded AMR management with the implicit guarantee the court would smash the pilot contract to dust.

FACT: This isn't going to get better. It is time to change tactics.

Unless pilots can have a definable ability to withhold their services, they will never have the ability to temper the aggressive nature of airline management traipsing through federal bankruptcy court for no other reason than looting employee compensation. Management and government only fear one thing, and if the RLA prevents pilots from deploying that option, the managerial-government axis have nothing to fear.

What is a pilot association leader to do? No matter where he turns, the Railway Labor Act has him cornered. No matter what he does, the courts will pick and choose the laws that suit the purposes of managers, who have done little to improve the condition of their carriers, other than cut, burn, slash, and loot them too the applause of government regulators and federal bankruptcy court, to say nothing of their own personal bankers.

Here is an idea that OPERATION ORANGE has been promoting since its inception: forget fighting for your career on a contract-by-contract basis; **ATTACK THE RLA!!!**

If you were in the infantry, and your men were pinned down by a line of enemy machine gun nests, would you keep sending wave after wave into it, knowing they will be cut down? No! You would call in an air strike and take out the problem.

The same thing applies here. The contracts are not your problem - the law is your problem. **Fix the law - fix your profession**.

FACT: No federal court can enjoin peaceful exercise of the FIRST AMENDMENT.

FACT: The RLA can not prevent pilots from withholding their services while they peacefully protest the regulatory paradigm governing their profession.

FACT: There is not an exemption to the FIRST AMENDMENT for airline pilots.

The FIRST AMENDMENT was installed in 1791 to prevent the government from restricting our ability to influence their activities. **There is no exemption for airline pilots**. Congress can no more pass a law preventing pilots from peacefully assembling in a manner and time of their choosing than they can proscribe that all first officers must be Roman Catholic or not eat pork for religious concerns. The RLA is a construction of Congress and, by definition, cannot abridge the ability for pilots to peacefully assemble to petition the government for redress, nor quash the ability for a pilot association to print materials supporting that effort. No MEC Chair can be muzzled if he were to provocatively speak out against the RLA and various bankruptcy laws.

If the pilot associations were to call for a nationwide political protest of the current regulatory paradigm (RLA, 11 USC §1113, part 117, etc.), those actions would fall outside the jurisdiction of the RLA, and squarely under the FIRST AMENDMENT. Management could rush off to federal court for injunctions, and they will come up empty handed, **since judges cannot enjoin peaceful exercise of the FIRST AMENDMENT**. If this effort was coordinated across all pilot associations, the resulting political force would be unstoppable.

If Heppner, O'Malley, Bates, Pierce, et al, were to ask their membership to conduct an aggressive Congressional lobbying effort, backed by an escalating show of force, the law would get changed.

If they don't, the law will never get changed and we can all continue to accept the current paradigm as the norm for our careers. Scope, pay, retirement, working conditions, and basic dignity will all erode until the federal government will open US flying to foreign pilots and foreign carriers.

The courts cannot enjoin your union leadership from calling for a change in the law, and using the same rights afforded to all Americans to force the issue in the halls of Congress.

Here is a suggested way to bring pressure to Congress for legal change:

- All the major pilot associations conduct a joint-press release about how they are seeking changes in the RLA and Chapter 11 of the US bankruptcy code. The history of the Lorenzo era, along with the post-911 era use of the "bankruptcy gambit" are used as the pretext for change.

- The leadership asks their membership to engage in directly lobbying Congressional committees that cover commercial aviation, airline labor, and their own local Congressional delegation.

- If Congress is unresponsive, or only offers token change, ballots are sent to the membership, asking for permission to conduct a "petitioning for redress stand-down." This stand-down would be for all members to use their FIRST AMENDMENT rights, secured to all Americans, to "peaceably to assemble, and to petition the Government for a redress of grievances." It is important to phrase it in those words.

- If the "petition ballots" come back in numbers similar to strike ballots, that will get the attention of Congress.

- In the unlikely event Congress remains unmotivated, a date is set and the membership is prepared for a stand-down. They need to be issued a uniform symbol of their resolve, such as a ribbon, or ID underlay. We like the color orange, but any universally agreed upon design will do.[4] It is important to do it across all the airline associations, and unlike a strike, there is no threat of a competing airline taking your flying.

The longshoremen used this tactic in the 1950s and it was upheld by the US Supreme Court as lawful political activity. The longshoremen refused to load ships with grain that were destined for the Soviet Union to protest government policy relating to the USSR.[5]

[4] OPERATION ORANGE grants ALPA, APA, USAPA, IPA, & SWAPA limited use of its trademarked "SOS Morse Code" logo in conjunction with any well coordinated political endeavor to change the regulatory paradigm over pilot contract negotiations and implementation.
[5] Hopkins, George E., *Flying The Line Volume II*, pg 27, Air Line Pilots Association, International. OPERATION ORANGE was not able to independently verify Hopkins' account of the Longshoreman political protest.

ALPA's staff attorneys had crafted the idea of a SOS for purposes of protesting, or petitioning for government action as early as the 1970s. Their justification was entirely constitutional, as long as the intent was to morph government policy, and not to strike individual employers over pay and working conditions, which was (and still is) covered by the Railway Labor Act. The problem with the SOS attempt of 1972 (skyjacking was the issue) was ALPA's failure to adequately prepare both the leadership and membership on what a SOS entails, since political protesting goes against the grain of the typical airline pilot's personal ethos. That was 40 years ago, and coming off the best 10 years in professional development for airline pilots. After 30 years of management's "bankruptcy gambit," the ground is very fertile for sowing the seeds of political engagement to change the regulatory paradigm.

If we all hang together, we won't hang separately. 40,000 major airline pilots all walking off the job at the same time is enough to get the laws changed, provided changing the law is the goal.

- A one day stand-down could be scheduled, just to let everyone know we are serious and have the resolve to pull it off. An indefinite stand-down would be subsequently scheduled.

If the members are willing to strike in percentages of 95%, or higher, only to attain modest and ephemeral contractual improvements, it should not be difficult to replicate that for purposes of changing the laws so as to break this cycle of legal abuse.

Management will likely be in abject panic over the entire episode, as soon as they are denied court injunctions. They will be calling their Congressmen to give the pilots what they want, just to get the planes moving again.

It is a bold idea, and one that many of our leaders are not equipped to handle. They can't go after contractual improvements under a legal paradigm that prevents improvements because everything is conducted on management's timeline and desires. They know they can't strike, and without striking, there are no contractual improvements. One wonders why our association leaders continue to engage in this futile dance?

The time has come to adopt a new strategy. Ultimately, Congress has the authority to write a pilot contract under the RLA. They have the authority to write any federal regulations they wish, including every aspect of our "FAIR TREATMENT OF EXPERIENCED PILOTS ACT - PART 2" legislative draft. They can restrain the length of pilot contracts to 36 months, and force the NMB to offer binding arbitration at the 36 month mark, releasing the parties if one should decline the proffer.

Our leaders need to decide if they wish to give their membership what they want (the ability to withhold services to secure better working conditions), or do they wish to continue to appear busy and placate pilots with pleas of impotence.

The ability to give the membership what they want is right there in the first 45 words of the Bill of Rights.

The other option is to give their membership what they want, and legally attack the RLA under the unassailable protection of the FIRST AMENDMENT. It is a game changer and one that needs to be explored.

When you grow weary of waiting for the impossible, please contact your pilot association leadership, and demand to know why they are not thinking more strategically and attacking the laws that are used to attack our contracts. Ask them if they are content to allow "business as usual." If not, ask them to support legislative change and unite with the other associations/MECs in getting meaningful change.

The next time association leadership is up for election, this question should form the basis for any vote. If today's leaders do not pack the gear to fight to win, perhaps it is time to install leadership that does.

Ask them to support OPERATION ORANGE.

The career you save will be your own.

For more information, visit OPERATIONORANGE.org