January 1987

Deregulation: Home Run or Strike Out for Labor Relations

Ray Grebey

Follow this and additional works at: https://scholarship.law.berkeley.edu/bjell

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z382K72

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Employment & Labor Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Deregulation: Home Run or Strike
Out for Labor Relations

PRESENTATION OF RAY GREBEY†

Most of the discussion on regulation and deregulation as it applies to the airline industry has been formulated at the university or academic, intellectual level. This has been true since the time when Charles Adams of Harvard accepted the chairmanship of the first regulatory commission in the United States, called the Sunshine Commission, to regulate railroads in Massachusetts in 1869. He wrote profusely on the economics of regulation. Incidentally, Mr. Adams' form of regulation in the 1870's reduced the number of railroads in the state—not in the nation mind you, but in the state—from sixty-two to eleven railroads.

Subsequent federal regulators chose in the main an approach to regulation diametrically opposite to Mr. Adams' approach, with the possible exception of one Alfred Kahn, who came off the hill at Cornell one hundred years later and joined the Civil Aeronautics Board ("CAB"). Kahn, like Adams, looked more to the future with a personal preference for policy making, and policy making versus legal process is evidenced by his comments.

Kahn said, in short, that the requirements of legal due process—interposing the heavy hand of government between an idea and its application in the marketplace—are directly antithetical to competition in the free market.

As an airline employee caught up in the turmoil of Kahn's actions in the airline industry, the only advantage I might possess in talking about this situation is the advantage of having been an observer and having been directly involved. I will therefore offer what can be characterized as subjective observations from the field of battle, and it is a battlefield. Hopefully these observations will produce comment, debate and reaction that will permit you to reach your own thoughtful conclusions.

These subjective observations from the field will be primarily directed toward the impact of, respectively, regulation and deregulation on the industrial relations system in the airline industry, with an emphasis on the collective bargaining process.

† Senior Vice President, Industrial Relations, Pan American World Airways, Inc.; B.A., Kenyon College, 1949; M.B.A., University of Chicago, 1956.
There is a wide spectrum of other areas in which we might look for similar studies, ranging from trucking to banking, to now the very strong movement for further deregulation of airlines in western Europe. But those subjects will be left to future discussions.

Central to all of my observations regarding the current situation is the undeniable ability or inability—I’m not sure which—of the stakeholders, labor and management alike, to anticipate, plan for and manage change. Change is a force that is inevitable and common to all of our endeavors, but it seems to have been ignored by the principal stakeholders.

The observations I will offer from our field of battle will be separated into three categories: a description of the pre-change environment; significant changes in the reaction of the stakeholders; and the perceived short-term impact of industrial relations, or putting it another way, my predictions concerning the next two years. That’s a rather insane thing to do out here so close to Hollywood—Sam Goldwyn always said, “I never make predictions, especially about the future”—but I will still give it a try.

Let’s first take a look at the pre-change environment, if you would. The way in which institutions or individuals conduct their business activities and respond to change, as you know, is greatly influenced by their origins, their history and the trend of events over time. So in order to understand, even superficially, the current state of airline industrial relations, we should go to the beginnings.

The regulation of the airline industry for the “public good” was viewed as being no different than the earlier regulation of the railroads, the dominant transportation industry at that time. Differences were largely ignored or just unknown. Thus work rules, methods of payment and the structure of trade union representation were adapted and, to a large degree, just transferred from railroads to the airline industry. This established the parameters of the industrial relations system. The parties did not establish those parameters themselves.

Excerpts from a 1934 Senate Commerce Committee Report on the legislation which brought regulation to the airline industry tends to confirm my observations. The Senate Committee stated that “[t]he bill provides for the usual system of economic regulation [according to] the recognized and accepted principles of the regulation of public utilities, as applied to other forms of transportation.”

Airlines were considered to be a public utility. This language suggested that the committee regarded the airlines, like railroads or electric utilities, as a natural monopoly industry. Thus, a mistake in economic

assumptions seems to have formed the foundation for the bill that brought regulation to the U.S. airline industry.

The bill specified three prime stakeholders in the industrial relations system, with employees being an obvious omission: the government regulators, the airline management, and the trade unions. The government regulators set the tone, the style and the general method for conducting business. In the main, airline management and union officials acted alike, emulating their government models.

The government regulatory process became a complex balancing act. It seems obvious that regulators were constantly drawn into the management process, including the industrial relations system, even at the lowest levels of airline management. In 1960, Jim Landis treated this problem in a report to President John F. Kennedy, citing "the inordinate delays as a characteristic of the CAB's proceedings."\(^2\)

Landis denounced the agency's failure to do "forward planning of the type necessary to promote air commerce to its desired level of efficiency, and added that the Board's regulatory efforts were frustrated by the courtroom-style\(^3\) routine, which in fact still prevails today in system Board-regulated grievance settlements. The courtroom style routine prevented sensible resolution of issues. The Board's usual pattern, Landis said, was one of lengthy cross-examination, a wasteful manner of establishing many of the basic facts inherent to resolving problems.

That, again, was in 1960, from the liberal forces. I guess you might call Mr. Landis and Mr. Kennedy liberals in 1960.

I spoke recently with a friend who is a lawyer intimately involved in this regulatory process and he provided some additional insights. He pointed out the inconsistent and difficult role of the regulatory judge, an administrative judge created by legislation, who would one day sit with an airline chief executive officer to learn the needs of the business and to gain understanding and to receive input so that the next day, in a quasi-judicial proceeding, he could set policy and render decisions as a part of the agency's due process. The regulatory official pursued this course of action as it was the only source of information for making CAB policy decisions.

The same lawyer reported that where union interests were involved, the same approach was followed, thus involving appropriate union officials in preparation for "due process adjudicatory proceedings." This atmosphere of the lay arrangement and accommodation through administrative due process had its impact on airline management. I would like to comment on what I think has been the impact on management, and

\(^3\) T. McGRAW, supra note 1, at 264.
also what I think has been the impact on trade unions in the airline industry.

First I will address the impact on management. Critical management decisions were delayed or deferred to government officials. The game was played by all stakeholders according to the regulatory rules. The process of collective bargaining was no exception. Thus, the industrial relations system was built on a cornerstone of third-party rule, discouraging lasting, direct relationships between unions and management.

One long-involved observer, Dr. John Dunlop of Harvard, suggests the impact of this environment may not be easily reversed in the current airline situation:

One of the most fundamental changes affecting labor relations arising from deregulation is the necessity for a quite different type of management. Managing in a deregulated set of markets requires different skills, policies and organization from a regulated environment. A much greater emphasis needs to be placed on marketing and rapid responses to the shifts in demand, and to the initiatives of our competitors. Route structures and their variability, the type of equipment and the management of assets is likewise likely to be changed under deregulation. The quest of employees and their labor organizations for stability and security is likely to be more difficult to achieve in a fully market-oriented industry than it was in a regulated industry. These readjustments may be difficult and take time.

Experience suggests to me that there are relatively few managers likely to be successful in both types of market. Deregulation is likely to mean a rather wholesale change and reorganization of the management. Such changes tend to be disruptive of established labor-management relations, at least until new patterns and relationships can emerge and until mutual understanding of the new market environment is appreciated [by both management and labor].

Alfred Kahn commented on the effects of regulation on airline management. He said, "I am reasonably persuaded that if we are to make genuine progress toward effective competition, we have to institute some system of automatic discretionary entry into the marketplace." Only in that way would airline executives be forced to think like other managers in American business.

So much for the effects on management as judged by outside experts. What about the effect on trade unions in the airline industry? On the union front, regulation altered and in many ways substituted itself for more traditional approaches to collective bargaining. For example, collective bargaining and dispute resolution was managed and controlled by

---

SYMPOSIUM: DEREGULATION

the National Mediation Board. The size and composition of a carrier's workforce were set by government through minimum crew standards. Safety and hours of work, with the accompanying complex work rules, were set by regulation. Wages were not a significant bargaining issue as increased costs were passed on to the consumer in the form of higher fares.

There was little or no concern on the part of unions or management over the impact of collective bargaining on labor markets or product market competition. As a result, there was no negotiation of national or industry-wide contracts, which is a very, very important source of trade union strength. On the other hand, representation was granted on a system-wide basis—versus location or plant basis as is traditional under the National Labor Relations Act—by the National Mediation Board.

National or industry patterns were set without regard to local markets and/or cost considerations or the business strategies of the individual companies. Costs were obviously passed through to the consumer by regulated pricing decisions, that is until 1977 and the emergence of Alfred Kahn.

In many ways the government agencies substituted for the unions, acting in the unions' traditional role of regulating labor markets, as described by Sidney and Beatrice Webb so long ago. Unions deferred to the CAB their traditional role of shaping product market competition by influencing labor costs through effective collective bargaining, as described as long ago as 1919 by John R. Commons.

The last available published statistics illustrate this observation. For instance, wages and total compensation rose more rapidly in the airline industry than for general U.S. industry. From 1975 to 1980, for instance, the airline industry wages went up over 50%, while U.S. industry wages in general went up approximately 40%. Second, airline employment increased more rapidly. From 1975 to 1980 airline employment went from 290,000 to 339,400 employees.

However, these gains for labor were not enjoyed by the other stakeholders and contributors in the business enterprise. Airline labor benefited with average compensation for employees increasing at a rate greater than the national Consumer Price Index. The airline consumers

6. S. WEBB & B. WEBB, INDUSTRIAL DEMOCRACY (1914 ed.).
10. INDUSTRY WAGE SURVEY, supra note 8, at 3.
indeed benefited by having airline fares held sharply below general inflation, even though prices were still being passed through as a result of increased costs.

Airline investors, the third leg of the stool, gained less than the other two groups. For example, operating profit margins for the airline industry averaged 1.5% per year from 1969 to 1979. The average profit dropped from about 4% in 1969 to less than 1% in 1979. So there was an unequal distribution of the economic shares of the enterprise.

At the same time, airline costs continued to rise dramatically through 1980. For example, costs in 1971 rose 5.5% over 1970. 1974 costs rose 12.8% over 1973. In 1977 costs rose 10.2% over 1976. In 1980 costs rose 20.2% over 1979. These are magnificent quantum increases in operating costs.

Additionally, the airline industry entered the 1980's and deregulation with high debt burdens, high debt-to-equity ratios, high interest rates, and a slowing rate of productivity increase from technological change, while fuel costs reached an all-time high. One cent in fuel cost means nine million dollars to Pam Am. When fuel drops from 89¢ to 64¢ a gallon, you can figure out what that differential is. We began deregulation when fuel prices were the highest in the history of the fuel market.

Since 1975 the winds of change have been sweeping over the horizon with ever increasing force, and they are still blowing like a hurricane. Let’s see what the reactions of the stakeholders have been.

Wages and benefits as a percent of operating costs have declined from 45.3% in 1970, to 43.6% in 1975, to 39.4% for the industry in 1980, the last available published figures.

Union membership, except for the Air Line Pilots Association, has declined, and total employment has declined from the 1980 levels to which I mentioned it had grown, with one exception: from 1978 forward, employment has grown in the new entrant, nonunion airline carriers.

The airline industry profits have been erratic, with certain carriers in significant financial troubles while others have gained strength and others have merged to survive.

Another reaction is that nonunion carriers have established efficient work practices. Lower wage cost and prices in the marketplace, in the short run at least, have had a profound effect upon the route structures

13. Id. at 33.
and marketing efforts of the major domestic air carriers, even though the new entrants only carried 10% of all domestic passengers in 1981. The work rules and cost change impact have been dramatic.

The battle of the low cost carrier is just about to be brought to a conclusion. Joe Leonard, for instance, at Eastern, said just two months ago that compared with low cost carriers, Eastern's labor costs were much higher than those against whom they flew directly. The current financial struggle of a low cost carrier, People Express, which lost a fortune in the first quarter, may be signaling that this short run phenomenon is ending. However, whether it is ending or not, the battle has started and it will have a lasting impact on the deregulated industry.

Deregulation in 1978 is often cited as the reason for the many changes, major and minor, in the airline industry. That deregulation is a prime factor cannot be denied. However, standing alone, deregulation may have had a slower or less dramatic impact on the airline industry but for the convergence of other economic events that I have referenced.

It is suggested that even without deregulation, change was a certainty. It is suggested that other factors working in conjunction with deregulation created the totality of the impact experienced, including the changes provoked in the industrial relations system and the collective bargaining process. They were what John Dunlop has called a "cluster of interrelated events."

For example, let me just quickly go back over a few of them. At the time of deregulation, the industry found itself with heavy debt burdens, record high interest rates for capital expansion and an absence of dramatic technological advancement in aircraft. The two-person cockpit crew and a more efficient engine is just now beginning to become a reality in major block hours of flying. Actual block hours—that is, the actual hours flown by pilots, which has an impact on airline productivity—at the time of deregulation dropped rather than increased, by numbers which represent a dramatic decline on an already reduced work schedule.

At the same time the political climate changed. I don't think I need spend any time on the dramatic changes influenced by the Reagan administration, the PATCO strike, a national economy experiencing a significant economic downturn, high unemployment, and most significantly as it applied to the airline industry, a trend toward local and/or regional employer-by-employer labor wage settlements recognizing local labor markets and individual business needs. These were the antithesis of the system-wide bargaining structures and patterns of bargaining that typified the regulated airline industry for over forty years and remain in the airline industry because of the National Mediation Board.

Further, in the switch to deregulation, the drafters of the legislation
and those responsible for implementation gave little or no thought to the effects of their actions on labor markets, the industrial relations system or the process of collective bargaining. Labor and management dialogue, for which the CAB had been the conduit, ceased to exist. The parties were left to go their own way with no structure in place. The exception was the regulation of safety, where the FAA retains strong government control.

Significant in the face of all this change is the past and present inability of management and unions alike to anticipate, plan for, and achieve the orderly management of change. It appears that one reason for this inability to plan for and manage change may have been the behavior of labor and management representatives themselves. Their steadfast and emotional opposition to deregulation now appears to have been so intense and so complete that there was no discussion of the merits of alternatives and the "what ifs" if deregulation were to become a reality. There were no joint discussions, no labor-management positions jointly offered, no development of an industrial relations system and no hierarchy for higher level communications. One can only ask why.

Certainly the transition to deregulation, as abrupt as it may have seemed, could have been no surprise to either labor or management. John Meyer called for the action in a paper in 1959. In 1975 Senator Ted Kennedy held hearings with all of the hoopla and bandwagon and publicity he could get in Boston, which clearly foretold the future. Alfred Kahn began his action in 1975 when he joined the CAB, but as late as 1981 airlines were acting as if they had not been deregulated.

One obvious result is that the fabric of the industrial relations system in the airline industry is now but a gossamer web at best. Problems are met not through dialogue and problem solving but, in the main, at the bargaining table, where confrontation is more common than not.

Time to react has run out. Thus the collective bargaining process is being used to compress time. Action is demanded now. Changes are not a result of long term planning. Action is more revolutionary then evolutionary. In this effort to collapse time, the actions and reactions of the parties on both sides of the bargaining table are exaggerated and become emotional crises.

Bill Lindner, the former head of the Transport Workers Union, described this situation to me better than I think anyone else has. He said, "Collective bargaining wasn't designed for what we're going through now. It's more like trying to put a sailboat into reverse. It doesn't

work.\textsuperscript{16}

So what has been the impact of our putting this sailboat into reverse? How will this cluster of interrelated events manifest itself in the short term?

Though it may be foolhardy, let me offer some predictions. The collective bargaining process, in my judgment, will continue to be crisis oriented, and there will continue to be industry confrontation and turmoil at least through the fall of 1988. Events will not allow the parties a leisurely adjustment to change. Time will be of the essence, for the question is survival or nonsurvival.

Industry-wide contracts, which are a strength of trade unionism, will not emerge, and carriers will seek more and more solutions tailored to regional operations and local markets. Only the Machinists and the Air Line Pilots Association appear to be making a concerted effort to challenge this trend to local bargaining and to pursue national collective bargaining in terms of national markets.

Inter-union rivalry is as intense as I have ever seen it in my career, and will remain intense between carriers. This rivalry, as seen on the properties of TWA, Eastern, and over the last two years, Pan Am, will become more intense on a broader front where corporate mergers and/or acquisitions take place.

On the other hand, in my judgment, union mergers will not be a significant factor contributing to stability. Different collective bargaining solutions will, in the main, reflect business strategies and financial strengths of the carriers, as opposed to the way bargaining solutions were found under regulation. This certainly is nothing new. Corporate labor management relations and collective bargaining are nothing more than a mirror image of the corporation's management structure and business strategies.

Whatever the solutions will be, they will all emerge from economic crisis. You can see this over the past two to three years, ranging from Continental's chapter 11 approach, to the trade-offs of job security for work rule concessions at Pan Am and American Airlines, to straight wage cuts at Republic, to questions of snap-back or don't pay snap-back for wages promised at Pan Am and TWA and Eastern, to joint memberships on boards of directors. We have joint memberships at Pan Am and it works quite well; Western Airlines has a similar arrangement and it is working in an exemplary fashion. Another idea is the outside board member appointed by the Western Conference of Teamsters. At Eastern, however, where they have five labor members on the board of directors, it appears to have resulted in total disaster. I can't predict for you what

\textsuperscript{16} Conversation with William J. Lindner, former International President, Transport Workers Union, Mar. 1985.
labor members on boards of directors will do. I can only say that crisis decisions in an economic environment will be resolved differently and this lack of coherence will continue for the next two years.

Also, let me suggest that government regulation or involvement will grow. For example, just last year the Department of Transportation gave four hundred regulatory rulings in ten months in a nonregulated industry. The issues of crew manning and certainly of safety will be in the public eye and engender further government intervention and regulation.

At the same time, I think unions will move away from having government regulation as a substitute for collective bargaining, and try to return to the old way of doing things. This was made very clear to us in the arguments made by all unions involved in a Department of Transportation hearing on the Pam Am sale of its Pacific routes to United Airlines.

On the other hand, the National Mediation Board, within the limits of its forty-year-old charter and legal constraints, will be more inclined to let the parties bargain and release them to solve their problems. Thus, it won't take two to three years to reach a decision and negotiate new arrangements as it has in the past. Examples of this trend and change in the NMB are the United Airlines, Pan Am, TWA and Eastern negotiations over the last eighteen months. Nonetheless, the National Mediation Board, while speeding things up, will be more involved in the collective bargaining process than the National Labor Relations Board is, and it will continue to exercise its role to manage and control.

A very significant but often unmentioned factor is the reaction to foreign competition. It will become, I think, an even greater force as foreign carriers are allowed to fly into U.S. cities and the internal United States. This will affect very seriously the trunk carrier businesses and strategies of the traditional U.S. carriers.

Also, U.S. carriers who fly overseas will seek to reduce their labor costs on international routes. Though not a popular issue, this will be a factor in collective bargaining, as demonstrated in the recent Pan American, World Airways and United Airlines negotiations.

There will also be a continuing absence, unfortunately, of fore-planning dialogue between unions, management and government. This will exist until the climate simmers down and some of the key players from the old system retire and new relationships are established that don't depend on government as a clearinghouse. It is a time-consuming process, and as John Dunlop has said, there will be unintended consequences, some of them affecting labor relations in the airline industry.

What might some of these be? I think the most important of those will be the creation of holding companies and subsidiaries within airline organizations, so that in the long term these nonairline operations will create significant internal corporate pressures on the airline divisions to turn a profit and yield a reasonable return on investment. New standards of measurement for airline operations will be forced on the airline managers within the conglomerate.

Starting now, I think unions will slowly but surely move to manage the change that has overwhelmed them, probably more quickly than management. An example of their awareness of the need for this shift in the way they do business and represent workers was articulated in a report to the AFL-CIO in their 1985 convention entitled “The Changing Situation of Workers and Their Unions.”18 There have been further reports coming out of the January meeting at Bal Harbor and the AFL-CIO executive committee that tend to confirm unions’ attention to the changing needs of the American worker.

Finally, as many have predicted, there will be fewer major airline carriers as a result of the mergers and acquisitions and the forces of free competition. That might cause a subsequent problem here in Los Angeles. I don’t know who is going to fill up all the billboards going out Century Boulevard, but there are going to be fewer airlines advertising in the next five years.

The marginal performers will not survive. This doesn’t augur well for stability in the employer-employee relationship in the short term. One thing is for certain: the strong carriers that emerge and survive this time will do so largely as a result of their management strengths, including the ability to anticipate and manage change. This will be true more than it was in the 1930’s, when the major carriers emerged from the granting of federal subsidies for airmail routes. Those subsidies in effect established Eastern, TWA, American and United Airlines.

In the long term, stability and predictability will return to airline collective bargaining and an industrial relations system will emerge. People will talk and they will look ahead and they will solve problems. That will be when all of the forces described here reach equilibrium. I don’t know when equilibrium will exist. I’m not sure I will be able to identify it, it will be such a dramatic change.

In conclusion, permit me to offer a final observation from the field of battle and make one suggestion. In the current environment, labor and management representatives are spending most of their time reacting, trying to make some sense of what is going on around them, and most of the time the parties view events from two very different perspectives.

The fundamental problem, it seems to me, is the inability of all involved to bring the perspectives closer together. This is a product of the inability to anticipate, plan for, and recognize the need for change.

None of us has the right to stand aside in this turmoil and become a part of the crowd that asks “What happened?” We have no excuse for that. We all know what’s happening, we all know there will be more change, and we must deal with it.

Therefore, I would like to suggest that an effort be made to establish a dialogue, to create an industrial relations system to talk about change, seek solutions and alternatives and identify common goals.

Admittedly, the principal players in today’s head-to-head collective bargaining process which compresses time and exaggerates emotions may not be properly suited for the calm, rational and reasonable objective inquiry that a long-standing industrial relations dialogue requires. But there is room for the stakeholders from both labor and management to begin to establish a higher order of dialogue and the lasting relationships that lead to thinking about and influencing change. Change must be consistent with the interests of both labor’s and management’s respective constituencies, including the employees whom unions represent and the employees and corporate entities represented by management.

Maybe something akin to the Business Roundtable approach could be established for airlines. Since airlines are now players in a deregulated marketplace, maybe the Business Roundtable might ask an airline to join them as a respectable part of American business. The Roundtable has worked well for management and unions alike, at the highest level of corporations, in the AFL-CIO, and in government. I believe it could work in the airline industry if the stakeholders take the initiative.

It may not calm today’s troubled waters or resolve today’s tough bargaining issues, but such an effort would mitigate the turmoil of inevitable future change.

II

QUESTIONS AND ANSWERS

In 1981, 1982 and 1983 at Pan American, the union leadership, in cooperation with the company, convinced the employees of the necessity of voting in concessionary agreements. That was done through union leadership and cooperation. Yet in 1985, union leadership decided to take a confrontational and adversarial approach, to take a bitter strike in order to get contracts in line at Pan American. How long do you think a service intensive industry can last with those sorts of adversarial relationships?

Mr. GrebeY: No service intensive industry can sustain itself for a long time unless its employees support it.

Of course, the reason that Pam Am, like Eastern and others that
had snap-back arrangements, chose not to honor those agreements and in fact broke previous commitments—and that’s exactly what it was, a clear and blatant breaking of prior commitments—was because when those commitments were made people denied the economic forces I talked to you about and they promised everything would be right when they knew damn well it wouldn’t be, both union officials and management alike.

I think you saw nothing different in Detroit in the first round of bargaining, and if I may be so bold as to say so, I think you see some of that going on at General Motors again right now.

One of the advantages I guess we have, is that although we have poor employee morale in some areas and we have adversarial relationships, those problems are not indigenous just to Pan Am. They are universal in the industry and we’re all struggling with them. It is our hope, as everyone knows, that we’ll come out of it ahead of everyone else, and we’re determined to do so.