CHAPTER 8

INDUSTRY SPECIFIC ARBITRATION ISSUES: THE AIRLINE INDUSTRY

I. INTEREST ARBITRATION IN THE AIRLINE INDUSTRY: FRIEND OR FOE OF COLLECTIVE BARGAINING?

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The primary purpose of the Railway Labor Act (RLA) is to avoid disruption of rail and air transportation through the orderly resolution of labor-management disputes, mainly through collective bargaining. The Air Line Pilots Association (ALPA) is proud of negotiating several hundred collective bargaining agreements (CBAs) with only a few disruptions to the carriage of passengers and cargo. While ALPA has always championed vigorous collective bargaining as the most effective means of addressing workplace issues, the union has a long and reasonably comfortable history and accommodation with *voluntary* interest arbitration, and a much more limited experience with mandatory interest arbitration in the form of presidential emergency boards established under the RLA. This paper will focus on ALPA's experience with voluntary interest arbitration as an adjunct to, rather than a substitute for, the collective bargaining process, and it will address a current effort to mandate interest arbitration in lieu of traditional bargaining.

ALPA's Experience With Voluntary Interest Arbitration

Delta Airlines

Voluntary interest arbitration provisions appear in many ALPA contracts. Generally they deal with specific issues, such as pay rates

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and rules applicable to the introduction of a new aircraft type prior to the time when the agreement is amendable. A recent example is reflected in the provisions of the current agreement between ALPA and Delta Air Lines, Inc., which provides for the following:

1. Advance notice to the union of the planned introduction of a new aircraft model.
2. Negotiation for an agreement on rates of pay and work rules for the new model.
3. A period of time for submission of the dispute to final and binding arbitration before a five-member System Board of Adjustment (SBA).
4. Criteria to be used by the SBA for reaching its determination (e.g., pay and work rules applicable to the most comparable aircraft models).
5. A time limit for the SBA decision.
6. Provision for rates of pay and work rules while the SBA is pending.
7. Pilot training for the new model.
8. Effective date of new negotiated or arbitrated rates of pay.

The focus of these provisions is plainly on resolving the dispute through negotiations. The fallback is to interest arbitration. If bargaining fails to produce a satisfactory pay rate, the Delta agreement provides the arbitration panel clear guidance on the standards to apply in determining an appropriate award while confirming management's ability to introduce the aircraft into service. This is a significant change from the prior ALPA-Delta contract, which precluded management from placing a new aircraft type in service before reaching agreement on applicable pay rates. Indeed, many will recall that Delta parked new B-777 aircraft and threatened to cancel all orders for that equipment type when the pilots held firm that the aircraft could not be flown until pay rates had been negotiated. Eventually, the parties worked out their differences at the bargaining table, new industry-leading rates were established in a mid-term letter agreement, and the "Triple 7" is now an integral part of Delta's fleet.

Air Wisconsin

Another example of the limited interest arbitration process tied to new aircraft is found in the current agreement between ALPA

and Air Wisconsin Airlines Corp. This agreement provides that the company will notify the union of its intent to introduce new aircraft. The agreement provides for negotiation, mediation, and arbitration by a single mutually selected arbitrator. The arbitrator is given only three days from the close of the hearing to issue the award, although the time period may be extended by mutual agreement.

Here, too, the emphasis is evidently on expeditious resolution of the pay rate issue through bargaining, before the new aircraft is to be placed in service, with interest arbitration as a backstop. Standards and comparative factors are not defined, and so the parties would have to agree to—or, by default, the arbitrator would have to determine and apply—factors customarily considered in such cases.

Western Airlines

Along these lines, in the 1980s, ALPA and Western Airlines maintained an elaborate interest arbitration process for use when bargaining failed to produce an amended agreement. The concept was premised on the fact that the parties had a mature and comprehensive agreement and the recognition that Western's fragile financial condition in the years immediately following airline deregulation necessitated avoidance of lengthy, contentious bargaining that could result in a strike. It operated like a funnel. The parties were each limited to bringing not more than 20 specific issues, or "items," to the bargaining table in the initial, "direct" phase of the process. The scope of each issue was defined by illustration, e.g., "(Example: wages would include all components of pay which comprise monthly pilot's pay based on monthly cap hours yield; work rules on a specific subject would be a separate issue; each individual improvement to the pension plan, or vacations would be a separate item.)" After a specific period of negotiations, the parties were compelled to drop unresolved items, if any, and bring but 10 items each into the next phase—mediation. Again, after a further specified period of mediation, the parties were compelled to whittle down their lists of unresolved issues and bring just five items each into binding interest arbitration. The resulting award would constitute the complete amendment to the contract.

When this process was adopted in 1982, the pilot leadership recognized that the five-item limit could operate as a significant

restraint on achieving dramatic improvements across a broad spectrum of contractual provisions. In the wake of industry deregulation and the government-ordered grounding of all DC-10 aircraft, both of which had a disproportionate effect on Western, the pilots were willing to trade off some potential upside gains for greater protection against downside risk. After all, how badly could their contract be raided if only five specific provisions could be cut or even eliminated?

The amendment procedure governed negotiations in 1984. By then, the composition of the pilots' Master Executive Council (MEC) had changed, and a more aggressive and demanding leadership set the tone for negotiations. Management viewed the pilots' demands as far in excess of Western's ability to pay, the talks broke down, and the limited issues amendment process was invoked.

Ben Aaron was selected as neutral chairman, and he granted all of management's requests and rejected all of the pilots' requests. However, Western was not able to take advantage of the award to achieve management's primary objective—a reduction in pilot staffing—because the contract contained three separate and distinct provisions that had to be met before a furlough could occur. To create surplus pilots, the carrier had to propose the elimination, or at least significant modification, of at least seven separate provisions, since each "rig" and each of the furlough bars was deemed a separate "item."

The five-item restriction left Western with a hollow victory. It looked good in the win column but did nothing to address the company's financial distress. The only practical solution was further negotiations, doubtless contemplated by Professor Aaron when crafting his award. Interestingly, MEC politics being what they were—that is, the members were unwilling to acknowledge publicly that they had to bargain their way out of an untenable situation—the post-award negotiations were conducted in secret, and the resulting accord was promulgated as a management offer in lieu of the arbitrator's decision. It was a balanced proposal that addressed both sides' interests, and was promptly ratified by the MEC.

Alaska Airlines and American Eagle Airlines

The current CBAs covering pilots at Alaska Airlines and at American Eagle Airlines include comprehensive interest arbitra-

tion processes tied to the contract amendment process. While the Eagle clause dates from 1997, the Alaska provision goes back to 1976, and even that is predated by comprehensive interest arbitration agreements concluded by ALPA with Overseas National Airways in 1976 and with Braniff Airways in 1979.

The ALPA-Alaska Airlines process has been in effect for 25 years. There have been several arbitrations arising under that process, but only one—a proceeding chaired by the late Larry Seibel—actually awarded substantive provisions pursuant to each party's five-item list. The other decisions have been essentially *rights* arbitrations, interpreting and applying the terms of the amendment process itself. These have dealt primarily with the provision's complex formula for determining adjustments to pilot pay. Just one resort to interest arbitration in at least nine rounds of negotiations over 25 years should indicate that the process encourages resolution through collective bargaining. Nevertheless, as a pendulum swings back and forth, over the years the Alaska Airlines pilots and their management have alternately threatened to eliminate the interest arbitration process and return to the familiar RLA amendment procedures of unlimited openers, mediation, and potential self-help.

In the summer of 2000, the American Eagle pilots overwhelmingly rejected a bargained tentative contract amendment and resorted to interest arbitration. The 1997 Eagle agreement expressly provided that the parties could open negotiations with an unlimited number of proposed changes, and that all bargained agreements would be preserved in the event the parties failed to achieve an overall settlement, so that the ensuing interest arbitration process would address no more than 10 issues (five from each side). The process thus contemplated that bargained amendments were sacrosanct, subject neither to any ratification process nor to adjustment through interest arbitration.

The parties were about to commence negotiations utilizing interest-based techniques in the early spring of 2000 when the local pilot leadership suddenly insisted that any resultant tentative agreement must be subject to membership ratification. Eagle's response was predictable: Management acquiesced to the injection of membership ratification, but insisted that, if ratification failed, the bargained changes would evaporate, and any contract amendment would result exclusively from the five-issue limited interest arbitration process. Eagle was not disposed to grant the

pilots two bites of the apple. For whatever reason, the local pilot leadership accepted these terms.

A comprehensive tentative contract was reached in amicable and efficient bargaining over the next three months. Although the settlement would have provided major improvements for the pilots, including several industry-leading provisions, it was emphatically turned down by a wide majority of the pilot membership. The resulting interest arbitration was conducted before a distinguished panel of National Academy members, George Nicolau, Richard Bloch, and Richard Kasher. Their award was reminiscent of the aforementioned decision by Ben Aaron in the Western Airlines case: All of the carrier's requests were granted, and almost all of the pilots' requests were denied. There is, however, one glaring difference: American Eagle management had no desire or incentive to bargain a different result after the award issued. In arbitration, there are winners and there are losers, and this time the pilots came in second.

It should be noted, however, that the Eagle pilots' opportunities for contract gains in interest arbitration were constrained not only by the limitation to only five specific requests, but also by the specific standards set forth in the contract language that tied the arbitrators' hands. Specifically, the ALPA-Eagle agreement provides that

> The Interest Arbitration Board will be limited in its award to the open issues, and the award must be within the limits set by the offers or positions of the parties, and must embody and reflect the industry average of the regional carriers included in the pay indexing formula set forth . . . [elsewhere in the agreement].

Because the arbitration board accepted management's argument that the Eagle pilots were already at or above industry average in many contract provisions, the board evidently considered themselves hamstrung to award further improvements.

Federal Express

One last episode is worth examining because it illustrates a significant difficulty with the interest arbitration process under the RLA. In 1995, after lengthy and contentious negotiations for an initial CBA covering pilots, the National Mediation Board (NMB) proffered arbitration to ALPA and Federal Express Corp. (FedEx). Doubtful of the members' ability to engage in effective self-help,

the union leadership was disposed to accept the proffer. The problem, however, was that the RLA provides minimal guidance on the conduct of interest arbitration, and the pilots were deeply concerned that FedEx management would frustrate and protract negotiations over the details regarding the conduct of the arbitration process. The recent experience of the American Airlines flight attendants—where months and months were consumed working out the mechanics of the interest arbitration process, and many more months were exhausted in preparation and presentation of the case—weighed heavily against accepting the proffer.

Recognizing the realities, ALPA tried a novel approach. The union accepted the NMB's proffer on the condition that a satisfactory agreement regarding the conduct of the interest arbitration could be negotiated in a timely manner. Not surprisingly, FedEx cried foul and implored the NMB to treat ALPA's conditional acceptance as a rejection of the proffer. The NMB agreed and initiated a 30-day "cooling off" period. The parties reached a tentative contract settlement in the ensuing "supermediation," but that was rejected by the membership, and ALPA was soon displaced by an independent pilots' organization. (As a historical note, ALPA is once again the representative of the pilots flying for FedEx, having merged with the FedEx Pilots Association effective June 1, 2002.)

Lessons Learned

From ALPA's experience with voluntary interest arbitration in connection with the collective bargaining process, several guidelines emerge:

1. The Federal Express (and the American Airlines flight attendants') experience teaches that the agreement covering interest arbitration should be negotiated before it is needed. Parties who can't settle the contract at the table are probably not disposed to drafting a mutually satisfactory arbitration agreement in an expeditious manner.
2. The Alaska Airlines experience points out that the standards and criteria in interest arbitration agreements may be quite complex and may themselves lead to significant disputes requiring arbitral resolution. Formulating practical and sensible standards is crucial. And since the framework of the process may be in effect for a long period of time—perhaps for many years, as

is the case with Alaska Airlines and American Eagle—the parties should examine the standards from time to time to make sure they are current with evolving industry and economic conditions and that they are relevant to the employer's current business and financial circumstances.

3. The Western Airlines experience shows that neither side may be satisfied with the arbitrated result, or the decision may be unworkable, and that negotiators may be needed to rescue the contract from the award.
4. The American Eagle experience teaches that a party can be trapped by the bargained standards without a prompt or practical way to escape the award's clutches.
5. Finally, in all cases, experience teaches that when the parties resort to interest arbitration, the negotiators are pushed to the sidelines and the litigators take charge. Bargaining is over, and each party seeks victory. That may have a substantial negative impact on any positive relationships that developed during the bargaining process.

ALPA Merger Policy

ALPA is no stranger to interest arbitration. For many decades, ALPA has maintained a unique, internal, institutionalized process for integrating pilot seniority lists that potentially concludes with interest arbitration. Properly referred to as the union's "Merger and Fragmentation Policy," it is more commonly known simply as the "ALPA Merger Policy." It is a formal procedure that ensures a certain result—an integrated system seniority list—in a fairly expeditious manner. The preamble concisely sets forth the objective:

> The role of ALPA in seniority integration is solely to provide the process by which the affected pilot groups on ALPA airlines arrive at the merged seniority list for presentation to management, through their respective merger representatives, using arbitration if necessary. Responsibility for the merged seniority list falls upon the respective merger representatives with ALPA National in a neutral position on the merits. It must be understood that what appears to be truly "fair and equitable" often differs depending upon the eyes of the beholder and that there may be no consensus of what is "fair and equitable." This policy does not preclude two or more ALPA pilot groups from entering into discussions and / or reaching an agreement without invoking this process.

As indicated in the preamble, nothing prohibits the involved pilot groups from engaging in voluntary negotiations with a view

toward resolving the seniority dispute among themselves. In such a case, ALPA is happy to accommodate the groups by offering the services of a neutral facilitator, at ALPA expense, as well as the assistance of experienced ALPA staff. Many pilot seniority lists have been merged in a prompt, orderly, and harmonious fashion utilizing these services. For example, following ALPA's selection as the representative of the pilots of all four American Eagle carriers in 1996, the merger representatives from each of the pilot groups were able to prepare a combined system seniority list using a neutral facilitator and staff from ALPA's Economic and Financial Analysis Department. Such negotiated integrations have not gained the notoriety of the hotly contested arbitrated cases, but the involved pilots avoided costly assessments to cover legal fees, and they appear uniformly satisfied with the results.

Once formally invoked, merger policy timelines are quite specific, and the entire process should be concluded in 150 days. The process starts with sharing and verification of relevant employment data among the involved pilot groups, including resolution of any disputes regarding such data, and proceeds through two phases: "negotiations" and "mediation-arbitration." While the former phase can be conducted exclusively by each side's designated pilot advocates (called merger representatives), if there are difficulties, the president has the power to "appoint a neutral facilitator to assist the merger representatives in arriving at a fair and equitable solution." The policy further recommends that outside legal counsel be precluded from direct negotiations until it is agreed that a solution cannot be reached.

The policy contains a specific set of criteria to be adhered to in resolving the seniority dispute. These include the following goals:

1. preserve jobs,
2. avoid windfalls to either group at the expense of the other,
3. maintain or improve pre-merger pay and standard of living,
4. maintain or improve pre-merger pilot status, and
5. minimize detrimental changes to career expectations.

If "negotiations" do not produce an integrated list, then the process moves to the next phase, mediation-arbitration. The ALPA maintains a list of about 25 neutrals, virtually all members of the National Academy of Arbitrators, to help the parties choose a suitable, experienced, and available arbitrator. The mediation phase, if it does not produce an acceptable resolution, should at

least define the issues for determination in the final step, arbitration.

Each pilot group is represented by outside counsel of their choosing, and at their expense. The arbitrator is assisted by two non-voting "pilot neutrals," one selected by each of the involved pilot groups from a list of at least 50 volunteers. The ALPA Merger Policy contains some significant rules regarding the award:

> The Award of the Arbitration Board shall be final and binding on all parties to the arbitration and shall be defended by ALPA. The Award shall include any agreements reached at the mediation step. The Arbitration Board will include in its Award a provision retaining jurisdiction until all of the provisions of the Award have been satisfied for the limited purpose of resolving disputes which may arise between the pilot groups with regard to the meaning or interpretation of the Award.

Over the years, many seniority disputes have been resolved through application of the ALPA Merger Policy. The policy has not been static, but has evolved and been adapted to changing conditions within the industry and the union. Also, while the policy presents an alternative to voluntary negotiations over the seniority dispute, it requires that the involved pilot groups nonetheless seek to resolve their issues through negotiations, including mediated discussions, before final resort to arbitration.

Compulsory Interest Arbitration

To date there has been minimal governmental intervention in the collective bargaining arena on the airline side as compared to the rail side, but all of that could change if some in Congress and some airline executives have their way. On August 2, 2001, Senator John McCain (R-Ariz.), on behalf of himself, Senator Trent Lott (R-Miss.), and Senator Conrad Burns (R-Mont.), proposed Senate Bill 1327, the Airline Labor Dispute Resolution Act. This proposed bill could make interest arbitration of airline labor disputes mandatory in essentially all cases. If it is passed, the proposed Act could virtually destroy free collective bargaining in the airline industry. Some of the more relevant elements of S. 1327 follow:

1. The Act would be invoked when the Secretary of Transportation declares that an "air transportation emergency" exists, upon finding that a labor dispute between an air carrier serving a "hub airport" and a union threatens to curtail operations at

the hub and "thereby cause injury to the economy of that region," to foreign commerce, or to the balance of payments, or threatens the national security or foreign policy of the United States.

2. Following the Secretary's declaration, if the representatives of the parties to the dispute could not mutually agree to a panel of three neutral arbitrators, the American Arbitration Association (AAA) would recommend 11 National Academy of Arbitrators (NAA) members, and the representatives of the parties would engage in an alternate strike procedure until three neutral members were left to serve on a panel, along with one partisan panel member selected by each side to complete the panel.
3. Following appointment of the panel, each party would be required to submit a written detailed bargaining history, a list of all open issues and the party's position on each, and "[t]he complete, written terms of the party's final offer on those issues, including the text of the party's proposed agreement on the changes in rates of pay, rules and working conditions."
4. Within 30 days of these written submissions being provided to the panel and following an opportunity (at least 15 days) for the parties to make oral and written presentations to the panel, *the panel would then be required to select the complete offer made by one of the parties,* based on the following specified factors:
   a. the parties' stipulations;
   b. the financial condition of the air carrier and its ability to incur changes in labor costs while continuing, among other things, to "maintain its competitive market position" and "return a reasonable profit, consistent with historic margins and rates of return, for its shareholders";
   c. the rules and working conditions at comparable air carriers "in light of market conditions for those services";
   d. "[s]uch other factors as are normally and traditionally taken into consideration in the determination of rates of pay, rules and working conditions through collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties";
   e. the cost of living, including the Consumer Price Index (CPI); and
   f. the existing CBA, historical CBAs between that management and employee group, and the history of the negotiations leading to the impasse.

Union Opposition, Management Support

Airline management groups favor the McCain-Lott bill (or legislation similar to it). The unions are opposed, because the McCain-Lott bill changes the landscape of airline labor relations in favor of management. For example, *Aviation Daily* reported on March 20, 2002, that "Delta and its peers would support some type of mandatory arbitration, 'perhaps even the "last best offer" approach' used by police officers and firefighters" and quoted Delta Airlines CEO Leo Mullin as saying that "Arbitrators would only choose one offer, 'not bargain between offers'. . . ."

As another example, *Aviation Daily* reported on April 11, 2002, that Fred Reid, Delta's president, "called for a new procedure in the collective bargaining process providing for mandatory arbitration, similar to that used for firefighters and police officers. Under such a system, both parties would make a last, best offer to arbitrators who would then choose one of the offers. This would have the effect of 'incentivizing both parties to be reasonable,' he said."

ALPA's Opposition to S. 1327

In the same *Aviation Daily* article of April 11, 2002, a spokesman for the International Association of Machinists (IAM), Joseph Tiberi, said that IAM "would be totally opposed to arbitrating disputes in this way. [Tiberi] said it would take away the right of union members to vote on any agreement that is reached, and would 'stifle the voice of the employees' in the process." The ALPA certainly agrees with the IAM on this. We consider the McCain-Lott bill anathema to free collective bargaining.

The proposed McCain-Lott bill is repugnant to the concept of collective bargaining. It undermines worker rights in the most fundamental ways, by removing airline employees' right to (1) take collective action in the form of a strike and (2) vote on what will be their union contract. The right of airline employees to organize, bargain collectively, and use collective action has been recognized and enshrined in American law for over 70 years. While it is understandable that people would prefer to avoid the inconvenience of strikes, this is not a sufficient reason to mandate the arbitration that is proposed.

While it is true that police officers and firefighters have generally been prohibited by law from striking, their work is fundamentally

different from that of airline pilots and other airline workers. Police officers and firefighters are prohibited from striking and forced to interest arbitration because without them, cities literally could burn down and crime could rule the streets. The same public policy reason does not obtain for airline employees. Life and limb are not put at risk because airline service to a hub airport is curtailed. There is no legitimate public policy reason to mandate arbitration in order to prevent the reduction of airline service to a hub airport as proposed in the McCain-Lott bill.

Is the economic harm or threat to the national security or foreign policy of the United States less if stock markets or banks are shut down than if operations at one hub airport are curtailed? Should financial sector workers therefore also be prohibited from striking? Imagine the harmful effects on U.S. business (and leisure), as well as American interests abroad, if major television, radio, or newspapers outlets in the United States become unavailable. Should television, radio, and newspaper workers' unions therefore also be required to submit their disputes to binding arbitration? The theory behind the McCain-Lott bill is flawed, valuing the luxury of on-demand air travel over the rights of workers and the American ideal of free collective bargaining.

The scope of the proposed legislation, furthermore, is overly broad and subjective. Basically, any time there is a labor dispute between an air carrier serving a "hub airport" and a union, the Secretary of Transportation could declare an "emergency" because the dispute "threatens to curtail operations at the hub." Furthermore, the criteria: "cause injury to the economy of that region" or "to foreign commerce or the balance of payments, or threatens the national security or foreign policy of the U.S." are not quantified in any way. For example, even one fewer airplane arriving at an airport could be claimed to cause *some* injury to the economy of the region. After all, at least some of the passengers could be expected to pay for meals, hotels, and rental cars in the region. In addition, the determination of whether a loss of service at a hub airport threatens "the national security or foreign policy of the U.S." in all but the most exceptional circumstances would be a highly subjective, even political, question.

Another area for concern in the McCain-Lott bill is the requirement that the panel select "the offer in the entirety [of one of the parties] concerning rates of pay, rules and working conditions." This requirement so severely limits the discretion of the arbitration panel as to be an invitation to disaster. The McCain-Lott bill

prevents the panel from providing the traditional function of arbitrators. There is no ability for the panel to formulate creative solutions to the dispute put before it, or to formulate any solution at all, which means a panel may have no ability to order the fairest or most appropriate resolution to a dispute.

Moreover, if the apparent theory of the proposed legislation (that the requirement that the panel select the entire offer of one party on all issues before it will lead to reasonable final offers) fails, a panel could very well be forced to approve an outrageous or unworkable contract provision or an unreasonable and unworkable contract. For example, how is a panel to decide between an offer of one party that fully meets the stated decision factors on eight or nine items but is completely unacceptable on one or two items, versus the offer of the other party that only does a mediocre job of meeting the decision factors on all 10 items? The McCain-Lott language limiting the panel to one party's entire offer unduly risks forcing the panel to order unsatisfactory results.

Baseball has adopted a "last, best offer" form of arbitration, but that is only for one issue—an individual player's compensation. The quantitative nature of a single compensation issue is better suited to an either / or requirement than a group of nonquantitative items or a mixture of quantitative and nonquantitative issues. Proposing to use a "last, best offer" system for exceptionally complex issues like pilot scheduling and job security is like proposing to reduce attorney bar exams to true / false questions. Requiring a panel to choose one party's entire offer in this context eviscerates the principle of arbitrator discretion.

Another objection to the proposed legislation is that the standards by which the panel is to decide a dispute favor management. Consider the second standard, that the panel must consider the financial condition of an air carrier and its ability to incur changes in labor costs while continuing, among other things, to "maintain its competitive market position" and "return a reasonable profit, consistent with historic margins and rates of return, for its shareholders." This standard prohibits a redistribution of profits from owners to workers, a legitimate goal of unions in labor negotiations. Furthermore, this standard is not counterbalanced by a similar standard advancing the economic concerns of airline workers. Only the economic interests of airline management are being addressed, not the economic interests of the workers. The sixth standard, which references cost of living and the CPI, would only affect wages from being eroded by inflation, not advance work

rules, benefits, retirement, or other aspects of employees' financial well-being. This contrasts markedly with the arbitration panel's obligation to factor in the return of profit to the air carrier.

Consider also the third standard in the McCain-Lott bill—that the rules and working conditions at comparable air carriers be considered in light of market conditions for those services. The second and third standard, taken together, could be argued to require that, if an economic downturn occurred that reduced the demand for an airline's services, the airline would be entitled to demand from a panel the right to "maintain its competitive market position" and "return a reasonable profit, consistent with historic margins and rates of return, for its shareholders" completely at the expense of the pay and quality of life of airline's workers. As drafted, the proposed legislation could lead to outrageous results.

In sum, S. 1327 would undermine union democracy (by taking away employees' right to vote on their contracts) and remove one of organized labor's strongest weapons (economic action, particularly in the form of the strike) and replace it with an arbitration panel with standards designed to result in pro-management resolutions (based on the second and third decision criteria) or simply unsatisfactory resolutions (based on the requirement that one party's entire offer be selected). The McCain-Lott bill would restructure airline labor relations and create a very uneven playing field. The ALPA finds nothing in it worthy of support. On the other hand, the *voluntary* interest arbitration arrangements discussed earlier in this paper can be a stimulus to, or at least an adjunct to, the collective bargaining process. The question about whether interest arbitration is a friend or foe of collective bargaining depends directly on the degree to which the parties are coerced into the process as a substitute for bargaining.

II. CONDUCTING INTEREST ARBITRATION IN THE AIRLINE INDUSTRY

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Interest arbitration is an elusive juxtaposition of terms. "Interests" are personal and subjective. Arbitration entails the adjudica-

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