Conclusion

In conclusion, I believe that the role of the NMB should be one of active involvement in negotiations, and it should control the process to avoid calamities and to avoid the involvement of external institutions. Above all, the Board must develop the necessary expertise about the parties' relationships and problems to propose solutions at appropriate times. Only in this way can the Board bring the parties back to free, open, and successful collective bargaining negotiations over the next several years, in what may well be very turbulent and contentious times.

II. AIRLINE ARBITRATION IN A CHANGING ENVIRONMENT—THE PILOT PERSPECTIVE

ANDREW SHOSTACK,* BRUCE YORK,** AND SETH ROSEN***

Economic Turbulence, Employee Concessions, and the Labor Relations Aftermath

The airline industry experienced severe economic turbulence from 2001 to 2006 after a period of relative financial health and calm skies. Between 1997 and 1999, the airline industry enjoyed net profit margins between 4.3 and 4.7 percent.[1] In 2000, U.S. passenger and cargo airlines recorded a $2.5 billion net profit, or a 1.9 percent margin.[2] By August 2001, however, skies had darkened

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[1]Air Transport Association, *ATA 2007 Economic Q&A and Industry Update* (last modified Jan. 20, 2007) <http://www.airlines.org/economics/review_and_outlook/ATA2007EconOutlookQandA.htm>. According to the Air Transport Association, "[p]ut in perspective, these rates, which were a deregulated (post-1978) airline industry "high-water mark," compared unfavorably to the range of 5.4 percent to 6.7 percent enjoyed by the average U.S. business over the same three years." *Id.*

[2]*Id.*

and the industry projected a loss of $2 billion for that calendar year. The change was due to slower economic growth; declines in high-yield traffic generated by business passengers; and increasing difficulty boosting fares, which had been raised six times in the previous year.[3] From 2001 to 2005, the industry sustained $35 billion in cumulative net losses[4] due to increased and intense competition, reduced demand for air travel, the shutdown of the air traffic system following the September 11 terrorist attacks, lingering security concerns, worry about conflict in the Middle East and Severe Acute Respiratory Syndrome (SARS), and significantly higher fuel prices.[5]

Airline management began cutting costs aggressively and repeatedly demanded employee concessions. Legacy carriers sought cost reductions of $19.5 billion between the end of 2001 and the end of 2003, and actually achieved $12.7 billion in savings.[6] During the period from 2001 to 2005, almost half of U.S. certificated carriers filed for bankruptcy court protection.[7] Airline employees shouldered much of the cost cutting through either voluntary renegotiation of existing collective bargaining agreements or the imposition of new terms and working conditions as part of the bankruptcy restructuring process. In fact, over the last five years airline labor has contributed $11 billion of concessions in the form of pay cuts, work rule changes, and benefit reductions.[8]

Not only were pay, work rules, and benefits slashed, jobs were cut and downgraded as carriers grounded aircraft, eliminated marginal operations, and tried to shrink to profitability. In 2000, the total number of full- and part-time employees working for Department of Transportation (DOT) Form 41 carriers

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[3]Air Line Pilots Association, Economic and Financial Analysis Department.

[4]Air Transport Association, *ATA 2007 Economic Q&A and Industry Update* (last modified Jan. 20, 2007) <http://www.airlines.org/economics/review_and_outlook/ATA2007EconOutlookQandA.htm>.

[5]*See* Commercial Aviation—Legacy Airlines Must Further Reduce Costs to Restore Profitability, No. GAO-04-836, at 2 (Gov't Acct. Off. 2004).

[6]*Id.* at 3.

[7]Only 22% of industry capacity operated in bankruptcy at the time of the National Academy meeting, down from the 46% in 2005. *State of the Airline Industry: The Potential Impact of Airline Mergers and Industry Consolidation: Hearings Before the Comm. on Commerce, Science, and Transp.,* 108th Cong. 1 (2007) (statement of Andrew B. Steinberg, Assistant Secretary for Aviation and Int'l Affairs, U.S. Dep't. of Transp.).

[8]*State of the Airline Industry: The Potential Impact of Airline Mergers and Industry Consolidation: Hearings Before the Comm. on Commerce, Science, and Transp.,* 108th Cong. 2 (2007) (statement of Andrew B. Steinberg, Assistant Secretary for Aviation and Int'l Affairs, U.S. Dep't. of Transp.).Clearly, airlines have employed the bankruptcy process in terminating pension plans, thereby shifting the burden to the Pension Benefit Guaranty Corporation (PBGC). Airline pensions now represent at least 38% of PBGC claims, but ironically, airlines paid just 2.6% of the premiums. *Id.* at 3.

was 732,049.[9] By the end of 2003, that same group of employees shrunk to 609,401.[10] The impact on pilots at nine major U.S. carriers reflected this reduction in force with the loss of approximately 10,000 jobs between 2000 and 2005.[11]

The industry seems to be climbing out of this steep dive. For 2006, the eight largest U.S. airlines earned a pre-tax income of $1.6 billion, excluding unusual items.[12] 2007 is projected to be profitable with pre-tax income of more than $4 billion on operating revenues exceeding $150 billion.[13]

Although financial results are more positive and company balance sheets have largely recovered, the damage to employees is long-lasting as bankruptcy-era contracts have long durations and Railway Labor Act (RLA) negotiations can be "almost interminable."[14] The labor relations process has also been profoundly affected and shows little prospect of quick recovery. Employee morale has plummeted and anger has increased to levels not seen before. Phil Comstock, President of the Wilson Center for Public Research, reports that pilot polling uniformly highlights these trends:

> Pilots at almost every airline we have polled in the past two years are demanding that their union strictly enforce the contract. They are also demanding that their union seek to deter contract violations as well as prosecute grievances aggressively. There has been a sharp increase in the number of pilots calling on their union to use informational picketing to compel contract compliance.[15]

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[9]Bureau of Transportation Statistics, *Number of Employees—Certificated Carriers—Year End Data 2000* (Visited Jan. 3, 2007) <http://www.bts.gov/programs/airline_information/number_of_employees/certificated_carriers/2000emp.html>.

[10]*Id.*

[11]Comparing the total number of reported pilots in 2000 to 2005 for Alaska Airlines, America West, American, Continental, Delta, Northwest, Southwest, United, and US Airways. *See* Bureau of Transportation Statistics, *P10—Annual Employee Statistics by Labor Category 2000* (Visited Jan. 3, 2007) <http://www.bts.gov/programs/airline_information/number_of_employees/labor_category/html/2000.html>; Bureau of Transportation Statistics, *P10—Annual Employee Statistics by Labor Category 2005* (Visited Jan. 3, 2007) <http://www.bts.gov/programs/airline_information/number_of_employees/labor_category/html/2005.html >.

[12]Air Line Pilots Association, Economic and Financial Analysis Department.

[13]*State of the Airline Industry: The Potential Impact of Airline Mergers and Industry Consolidation: Hearings Before the Comm. on Commerce, Science, and Transp.*, 108th Cong. (2007) (statement of Senator John D. Rockefeller). See also *2006 Summary/2007 Outlook: The Industry Returns to Profitability* (Calyon Securities Inc. 2007), at 2, which projects profits of $5.7 billion for the airline industry in 2007.

[14]*Detroit & T. S. L R. Co. v. Transportation Union*, 396 U.S. 142, 149 (1969).

[15]Comstock, *Work-Related Views of Flight Attendants and Pilots Since 9/11*, Address Before the Airline Industry Council, Labor and Employment Relations Association (June 16, 2005), at 8.

This backdrop should concern both employees and management. Successful airline operation and premium passenger service depends heavily upon satisfied and motivated employees. Dispute resolution processes—both in the negotiation and arbitration arenas—must function efficiently and effectively to promote employee satisfaction and underpin long-term airline success.

The Statutory History and Framework for Arbitration

Employees file grievances to remedy contract violations and, more generally, to rectify real and perceived work place issues and concerns. Contrary to its originally intended operation, the airline grievance and arbitration process is too backlogged to operate efficiently and often moves slowly even when a dispute gets submitted to the System Board for resolution.

The RLA provides the statutory framework for final and binding resolution of contract grievances in the railway and airline industries. As one of our colleagues has written, this framework was not the "product of one great burst of Congressional creativity," but rather comes from a series of failed statutory attempts that finally resulted in a process deemed fair by both labor and management after significant compromises.[16]

In order to easily understand today's rail and airline dispute resolution processes, it's helpful to retrace RLA history starting with the Arbitration Act of 1888. This Act considered arbitrable only those rail disputes threatening to disrupt interstate commerce. Moreover, the decisions were neither binding nor enforceable other than through the court of public opinion.[17] Not surprisingly, in the 10 years that this Act existed, labor strikes were common and arbitrations were virtually nonexistent.[18]

The Erdman Act of 1898 provided for mediation of disputes threatening a railroad's business. If mediation failed, the Commissioner of Labor offered voluntary arbitration before a three-member arbitration panel, comprised of one union member, one employer member, and a third neutral chosen by the two.[19] Unlike the Arbitration Act, the Erdman Act made the panel's award final

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[16]Cohen, *Grievance Resolution and the System Board of Adjustment*, 1 ALI-ABA (April 6–8, 2006).

[17]The Railway Labor Act 13, ed. Leslie (1995) [hereinafter, The Railway Labor Act].

[18]*Id.* at 14.

[19]*Id.* at 15–16.

and binding.[20] However, when labor sought mediation of their grievances, management refused government intervention.[21] This resulted in 105 rail strikes between 1898 and 1906.[22] But following that and despite ADR's nascency, between 1906 and 1913, a pair of mediators addressed 61 disputes under the Act and resolved more than three quarters of them—26 through mediation, 10 through mediation and arbitration, and 6 through arbitration.[23]

In 1913, Congress enacted the Newlands Act that enhanced the mediation features of the Erdman Act. Improvements included a permanent government board of mediators, and authority for the mediators' intervention into labor disputes affecting the public interest (or really interstate commerce).[24] If mediation failed, the mediators "induce[d] the parties to submit their controversy to arbitration" under the Act.[25] In a six-year period, 148 disputes were handled by this government board and in only three cases was mediation rejected.[26]

The railroad industry came under governmental control in 1917 as the United States declared war against Germany. In an effort to manage the movement of troops and supplies, the President appointed a Director General of Railroads who stabilized labor unrest by recognizing labor unions, processing grievances, increasing wages, and creating written work rules.[27] Importantly, Congress created Railway Boards of Adjustment that considered wage and other disagreements "not promptly adjusted by the officials and the employees on any one of the railroads operated by the Government."[28] Each Board had an equal number of union and employer members and, upon deadlock, the Director General issued a final adjudication.[29] Out of more than 3,500 cases, the Director General decided only a handful.[30]

Once the railroads reverted to private operation following the war, Congress tweaked the dispute resolution mechanism via the Transportation Act of 1920. This Act encouraged conferences

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[20] *Id.* at 16.
[21] *Id.* at 18.
[22] *Id.* at 18. *Quoting Hearings on S. 2306 Before the Senate Comm. on Interstate Commerce*, 69th Cong., 1st Sess. 183.
[23] Railway Labor Act, at 18. *Citing* Wolff, The Railroad Labor Board 7 (1927).
[24] Railway Labor Act, at 19.
[25] *Id.* at 20.
[26] *Id.* at 21.
[27] *Id.* at 27–30.
[28] *Id.* at 30.
[29] *Id.* at 31.
[30] *Id.* at 32.

between the parties as the first step in dispute resolution.[31] If these conferences failed, a new federal agency, the U.S. Railroad Labor Board, could issue decisions.[32] This setup proved unworkable for several reasons but principally because resolution of deadlocks reached during conferences was not compelled.[33]

Having witnessed and suffered labor relations dysfunction under various regulatory schemes during the previous 40 years, both labor and management decided to participate actively in the creation of the Railway Labor Act of 1926.[34] Among other things, the RLA provided a statutory framework for collective bargaining and established procedures for the orderly resolution of contractual disputes.[35] Again, the parties were encouraged to enter into dispute resolution conferences and, if those failed, to submit disputes to local, system, regional, or national Boards of Adjustment comprised of an equal number of partisan members.[36] When these Boards deadlocked, the federal Board of Mediation attempted to mediate the dispute. When its efforts were unsuccessful, the Mediation Board urged the parties to arbitrate remaining issues.[37] Although clearly a step in the right direction, the Adjustment Boards weren't mandatory nor was there provision for compulsory arbitration to break deadlocks.[38]

Congress enacted several important amendments to the RLA in 1934. First, a new federal agency, the National Mediation Board (NMB), took the place of the Board of Mediation.[39] Second, recognizing the need for a workable dispute resolution process,

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[31] *Id.* at 36.
[32] *Id.* at 37.
[33] *Id.* at 42. Another reason why the Act fizzled in the eyes of labor was that the Railroad Labor Board terminated all national railroad agreements, directed the parties to negotiate new agreements, and when that failed, imposed their own terms and conditions of employment. *Id.* at 38–40.
[34] *Id.* at 45.
[35] *Id.* at 46.
[36] *Id.* at 47.
[37] *Id.* at 47–48. This Act also established the process for the President to convene an Emergency Board. *Id.* at 49.
[38] Mr. Eastman, Federal Coordinator of Transportation, at the time testified before Congress and stated, "Another difficulty with the present law, even where an adjustment board has been established, is that, although its decisions are final and binding upon both parties, there can be no certainty that there will be a decision." *Hearings Before Senate Committee on Interstate Commerce on S. 3266,* 73d Cong., 2d Sess., 17. Similarly, the Chairman of the United States Board of Mediation described this problem under the Act by stating: "The provision in the present act for adjustment boards is in practice about as near a fool provision as anything could possibly be. I mean this-that on the face of it they shall, by agreement, do so and so. Well, you can do pretty nearly anything by agreement, but how can you get them to agree?" *Hearings Before the Senate Committee on Interstate Commerce on S. 3266,* 73d Cong., 2d Sess., 137.
[39] Railway Labor Act, at 54.

Congress created a National Railroad Adjustment Board (NRAB) consisting of 36 partisan members with jurisdiction over contract grievances.[40] Third, and perhaps most important, RLA amendments provided for the appointment of neutral referees who could break deadlocks and issue final and binding awards.[41] Finally, NRAB decisions (with or without the neutral) could be enforced in court, except insofar as they contained monetary relief.[42] This last nuance would be corrected in subsequent amendments.

Labor supported and endorsed the 1934 amendment. In it, labor's right to strike over contractual disputes was sacrificed to obtain a functioning dispute resolution mechanism. Mr. George Harrison, President of the Brotherhood of Railroad Clerks, stated, "[g]rievances are instituted against railroad officers' actions, and we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies. . . ."[43] He went on to say that if Congress instead opted for some "hodgepodge arrangement" other than that proposed, labor would not accept it as they felt there was a "measure of justice by the machinery" suggested in the 1934 amendments.[44]

Federal Coordinator of Transportation, Joseph B. Eastman, recognized labor's compromise when he stated that "[t]he willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill."[45]

Over the following years several additional amendments strengthened the RLA's dispute resolution arrangement. Efforts by the Air Line Pilots Association resulted in the developing airline industry being included under the Act in 1936.[46] This amendment also gave the NMB the authority to create a National Air Transport Adjustment Board. The NMB has never created an Adjustment

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[40] *Id.* at 52.
[41] *Id.* at 52.
[42] *Id.* at 52.
[43] *Hearings Before the Senate Committee on Interstate Commerce on S. 3266,* 73d Cong., 2d Sess., 33.
[44] *Hearings Before the Senate Committee on Interstate Commerce on S. 3266,* 73d Cong., 2d Sess., 35.
[45] *Hearings Before House of Representatives Committee on Interstate and Foreign Commerce on H.R. 7650,* 73d Cong., 2d Sess. 47.
[46] Railway Labor Act, at 55.

Board for the airline industry.[47] Instead, airline disputes are processed carrier by carrier before individual airline System Boards of Adjustment.

1966 amendments to the RLA sought to reduce NRAB grievance backlogs by creating Public Law Boards comprised of one union and one management representative. Upon deadlock, an arbitrator was added to the Board and able to issue a final and binding award.[48] Congress also mandated that decisions of the NRAB would be final and binding even when monetary damages were awarded.[49]

Today, grievances at railroads and airlines are processed by first requiring the parties to confer about the dispute. If resolution is not reached, then typically a Board of Adjustment, comprised of equal numbers of partisan representatives of management and labor, hears the matter. If the Board deadlocks, most grievance processes call for a neutral arbitrator/member who sits with the Board that hears the dispute *de novo* and issues a final and binding award.

Substantial efforts, compromise, and tinkering led to the development of existing dispute resolution processes. Have these efforts resulted in processes that promote successful dispute resolution and contribute to a constructive labor relations environment?

The Existing Arbitration Process Doesn't Adequately Address Employee Issues and Concerns

After almost 128 years of legislative iterations designed to resolve grievances in the rail and airline industries, one would expect these systems to work efficiently and effectively. Yet, from the airline pilots' perspective, the process is not continuing to evolve in a positive way and serious problems exist.

When they were needed in the past,[50] ALPA-represented carriers often utilized four-member System Boards of Adjustment with two management and two pilot representatives hearing disputes and trying to reach a decision. System Boards not infrequently made decisions across "party lines"—at least where the overall labor relations environment at such carriers was constructive—

[47] *Id.* at 57.
[48] *Id.* at 59.
[49] *Id.* at 59.
[50] Delta Airlines, for example, had a long history of resolving virtually all disputes before they reached the System Board level.

and avoided the need to employ neutral members.[51] Arbitration hearings that took place were often conducted more efficiently, and frequently avoided extensive brief writing and delay. In fact, it was common for ALPA and airline management to schedule a week of cases where one or more disputes were heard each day during that week.[52]

More recent examples of this approach are very limited. Instead, Board members typically reaffirm decisions made during previous steps in the grievance process and deadlock over the dispute. Rather than solve problems, advocates too often turn the initial steps of the dispute resolution system into an opportunity to obtain "discovery" of additional facts and legal arguments even before the neutral joins the Board.

Unfortunately, the failure to resolve disputes during earlier stages of the process means that more and more disputes are submitted to System Boards that require the presence of a neutral. Sizable grievance backlogs have now become the norm rather than the exception. "Legalization" of the process means that cases routinely do not finish in one or two days. Costs for administering grievance systems have skyrocketed.[53] System Board decisions often are rendered years after the grievance was filed. These circumstances cause the entire process to be viewed negatively and contribute to overall dissatisfaction with the arbitration process specifically. The unflattering perception of the arbitration process is, unfortunately, also adding fuel to the fire of dissatisfaction with the labor relations process more generally.

Are There Constructive Alternatives?

The NMB recognizes that additional steps are required to further the agency's general labor relations goals in this difficult period. It has identified alternative dispute resolution as one such step:

> To promote the amicable resolution of disputes between carriers and employees by providing quality conflict prevention and resolution services, including both traditional mediation and alternative dispute

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[51] United Airlines was an example.

[52] Western Airlines was an example.

[53] ALPA's costs for grievance process administration include not only staff time and expenses, but also transcripts, facility charges, arbitrator hearing fees and expenses, arbitrator cancellation fees, and pilot representative flight pay loss. The combined costs total many millions of dollars spent each year.

> resolution, while encouraging an atmosphere of harmony that will facilitate future bargaining in the airline and railroad industries.[54]

The NMB has expanded its ADR services beyond the agency's statutory confines by providing a wide range of voluntary programs over the last few years. The Board now offers training in interest-based negotiation, facilitated problem solving, and design and implementation of Adjustment Board processes. The Board's mediators also participate in grievance mediation, facilitated problem solving, and online dispute resolution.

Airline industry participants have begun to accept and subscribe to these additional Board services. In 1997, the NMB opened one ADR case. In 2002, the Board opened 48 such cases, and last year 68 cases were opened.[55] Labor and management are utilizing these programs at: Airborne Express, Allegheny Airlines, American Airlines, ASTAR, Chautauqua Airlines, Continental Airlines, Horizon Airlines, Mesa Airlines, United Airlines, UPS, and US Airways.[56]

The more extensive ADR services offered by the NMB buttress ALPA's concern that additional steps are required to help work through this period. The NMB alternatives are also consistent with RLA legislative history and seem to demonstrate that disputes are more likely to be resolved if disputants participate fully in and have control over the outcome and solutions (perhaps under a facilitator's supervision).

A 2003 study by Professor Cynthia Cohen and Professor Murray Cohen looked at six different types of ADR—individual negotiation, represented negotiation, mediation, mediation/arbitration, arbitration, and peer review. The professors likewise determined that where disputants had more control over the process and the outcome—namely negotiation, mediation, and mediation/arbitration—higher levels of outcome satisfaction were noted.[57] Conversely, where disputants wield less control over the resolution process and the outcome, satisfaction with the result waned. Stated bluntly, the professors concluded that arbitration was viewed as the least favorable method of resolving disputes.[58]

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[54] National Mediation Board Strategic Plan, 2005–2010, at 3 (Nat'l Med. Bd. 2005).

[55] National Mediation Board Fiscal Year 2006 Annual Performance and Accountability Report, 74 (Nat'l Med. Bd. 2005).

[56] National Mediation Board Strategic Plan, 2005–2010, at 11 (Nat'l Med. Bd. 2005).

[57] Cohen & Cohen, *Relative Satisfaction With ADR: Some Empirical Evidence,* 57 DISP. RESOL. J. 37, 39–40 (Nov. 2002–Jan. 2003).

[58] *Id.*

ALPA experience over the past few years generally supports the efficacy of different ADR methods in terms of overall levels of member satisfaction. Although not an exhaustive list, a few of the methods utilized by the Association are discussed below.

- **Grievance Mediation:** This approach used an informal, non-adversarial, interest-based format to explore and discuss a range of solutions to pending disputes. Cases were pre-selected for consideration by the parties who were authorized to reach agreement on solutions without further approval from governing bodies or membership. The following language, or language similar to it, has been used in collective bargaining agreements or letters of agreement as the framework for these talks:

  > Both parties acknowledge the importance of having participants at the Mediation Conference who have complete authority to resolve the grievances. In addition, every effort will be made to ensure that there are Association and Company Representatives present at each Mediation Conference who are knowledgeable of the subject matter pertaining to the grievances to be considered at the Conference.[59]

  Facilitators (including NMB-assigned mediators) have assisted in the parties' discussion and sometimes offered recommendations to resolve the dispute. If disputes are not resolved, the airline Board of Adjustment still retains jurisdiction and a different neutral, if needed, is selected to render a decision. This process has been used at America West Airlines, ATA, Hawaiian, and United Airlines.
- **Mediation/Arbitration:** When used at America West Airlines, ATA, and Hawaiian this method employed one person to serve as both mediator and arbitrator (generally a National Academy member). The mediator/arbitrator received short pre-hearing statements (as opposed to lengthy briefs) that identified the purported contract violation, applicable contract language, and each party's position. When mediation was unsuccessful, the neutral put on his or her "arbitrator's hat" and issued a final and binding decision. The decision typically announced just the result rather than recount facts, positions, argument, and analysis.

[59]Hawaiian Airlines Pilots' Agreement, §16.C.4. (2005).

Parties have responded positively to this initiative and report that the ability to inform the neutral fully about the issues involved, shape solutions and the outcome, and not lose the opportunity for a final and binding decision from the arbitrator, is desirable. Participants have also cited the efficiency and cost effectiveness of this process.

- **"Small Claims Court" Arbitration:** This colloquial reference to a system set out in the US Airways pilot collective bargaining agreement seeks efficient and inexpensive consideration of less weighty issues.[60] In this format the neutral sits with one partisan member from each party to adjudicate cases mutually selected by the parties. Each party presents the dispute with the help of only one witness and must complete the case-in-chief within 40 minutes with an additional 5 minutes allotted for rebuttal and closing arguments. No transcripts or briefs are permitted and the board issues a short award without opinion. Benefits of this process include the ability to present many grievances at one session, lower costs, and the issuance of a timely award. Parties have also observed that the absence of cross-examination lessens animosity that often results in a contentious and legalistic approach.
- **"Special Master" Process:** At America West Airlines the parties agreed to resolve all outstanding disputes after completion of a collective bargaining agreement in 2003. This was accomplished by first negotiating a total sum of money for the Special Master to award upon a finding that a contract violation occurred. The parties next selected an arbitrator to serve as Special Master. Approximately 350 individual grievances were consolidated under roughly 30 umbrella claims. For each grievance, the parties submitted position statements limited to five pages and any supporting evidence that enabled the Special Master to make a decision and issue a short written award. All outstanding grievances were decided over approximately eight months.

Several consistent themes emerge from experience with these ADR methods. First, the parties are required to talk openly with one another rather than remain close-mouthed and positional. Second, neutrals take a more hands-on approach by opening

[60]US Airways Pilots' Agreement, Accelerated Arbitration Letter of Agreement between US Airways, Inc. and the Air Line Pilots Association (Aug. 11, 2002).

opportunities for dialogue, guiding the parties, and seeking solutions. Third, these processes typically are more efficient and save money. Fourth, resolution is typically reached closer to the time that grievances are filed and parties can communicate with constituents about a process that works—even if they are not fully satisfied with the result. Finally, the parties generally maintain greater control over the process and have greater satisfaction with the outcome. ALPA believes that more practice with these alternatives will result in more success with them.

Can National Academy Members Play a Role?

ALPA believes that National Academy members can and should play a more active role and hopes that they will in the future. NAA members can use their stature, experience, and good offices to: urge parties to explore every opportunity for settlement; facilitate and lead problem-solving discussions on individual cases rather than suggest that "we hear the evidence"; offer to use cancelled sessions to hear other cases to help clear grievance backlogs; and employ methods outlined above that facilitate real discussion, problem-solving, constructive decision-making, and sharing of responsibility for success. In short, ALPA hopes that National Academy members, with their typical grace and tact, and under the right circumstances, will use every effort to seek effective and efficient use of dispute resolution resources rather than simply hear and decide cases.

The words of NAA past-President Rich Bloch clearly articulate these concerns and suggestions:

> However uneasy the parties are in one another's company at times, the industrial relationship continues. The process of arbitration itself is, by now, honed and polished to a fine point. We know how to do that. But our skills at alternative dispute resolution within the grievance procedure short of arbitration, or at modifying existing processes to accommodate changing realities, are considerably less developed. Too often, that's simply because the parties haven't explored other possibilities. But the industrial based marriage, like the other kind, needs innovation and experimentation to keep it vibrant. . . .
>
> There is room in this dispute resolution process to better utilize and, indeed, to expand the use of its neutrals. My case for better exploitation of the possibilities begins with the observation that arbitra-

tion, however effective, is almost always less preferable than anything the parties can cook up by themselves.[61]

The realities of the airline labor relations process have changed dramatically in the aftermath of economic turbulence and massive employee concessions. There is no better time or place to explore other forms of dispute resolution, and the parties to the process would benefit greatly from assistance. NAA member talents are indispensable to this process.

III. The Role of the Neutral in Airline Labor Relations: Challenges and Approaches to Dispute Resolution

Jeff Wall*

Economic and labor challenges facing the U.S. airline industry lead some observers to consider existing dispute resolution processes and practices inadequate. Recommendations for change necessarily implicate the role of the neutral—whether as mediator, arbitrator, or some combination thereof. Although airline labor relations can benefit from process improvements and the judicious influence of neutrals, more critical are the parties' own commitments to their relationships and shared interests. Genuine commitment from labor and management is essential to the success of the neutral, whose role should include advancing cultural change.

Business and Labor Relations Challenges

The airline industry and workforce have suffered tremendously in the past six years. The terrorist attacks, recession, low-cost

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[61]Richard Bloch, *Arbitration in a Litigious Society: Arbitration, Innovation, and Imagination—Escaping the Missionary Position,* in Arbitration 2003: Arbitral Decision-Making: Confronting Current and Recurrent Issues, Proceedings of the 56th Annual Meeting, National Academy of Arbitrators, ed. Coleman (BNA Books 2004), at 9.

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