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AIRLINE LABOR PROTECTIVE PROVISIONS: AN ECONOMIC ANALYSIS

HERBERT R. NORTHRUP*

LABOR PROTECTIVE provisions (LPPs), as utilized in the railroad and airline industries, generally provide that employees whose jobs are lost, downgraded, or transferred as a result of merger, acquisition, or transfer of significant assets are entitled to compensation for as long as five years. Other provisions relate to seniority, relocation of place of work, etc. LPPs have been utilized in railroad mergers and related situations as a result of either government orders or labor agreements for more than fifty years and in analogous airline controversies since at least 1950.

The railroad industry has experienced declining employment since 1920 except for a sharp upsurge during World War II. The airline industry, to the contrary, has seen its employee count rise almost continually since shortly before World War II through 1980, except for cyclical declines, then decrease into 1983 before overcoming the loss by early 1986. Both railroads and airlines were restrictively regulated prior to the late 1970s. Now railroads are somewhat deregulated and airlines are substantially deregulated, except in matters concerning safety.

Throughout this period, Congress has not sought to impose LPPs on industry generally. Instead, Congress

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has deemed it wise to allow management, and, where present, unions to prescribe the conditions under which layoffs occasioned by mergers, company takeovers, or indeed any adverse impact upon employment will occur and be mitigated. In the regulated railroad and airline industries, however, the Interstate Commerce Commission (ICC) and the Civil Aeronautics Board (CAB), acting on broad grants of power from Congress, regularly and almost automatically imposed LPPs as a price for approving mergers, acquisitions, and certain other business transactions.[1] In 1979, after the advent of deregulation, the CAB particularly altered its policy, determining that LPPs would be mandated in the future only "where necessary to prevent labor strife that would disrupt the nation's air transportation system."[2] The Board did order LPPs in at least four subsequent merger cases, however, reasoning that unions had not had sufficient time to respond to the changed circumstances.[3] The Department of Transporta-

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[1] An excellent history of the use of LPPs in the railroad and airline industries prior to deregulation is found in S. B. ROSENFIELD, LABOR PROTECTIVE PROVISIONS IN AIRLINE MERGERS (1981). Prior to deregulation, the CAB did not impose LPPs in a few cases where the cost was so high as to negate benefits or where losses to employees were slight or temporary. *See* American - Pan Am Route Exchange, Employee Conditions, 74 C.A.B. 977, 979 (1977) (LPPs not imposed because CAB found no systemwide impact on employees as a result of route swap); Frontier Airlines, Temporary Suspension of Service, 58 C.A.B. 864, 869-70 (1972) (LPPs not imposed on Frontier because the imposition of LPP would reduce the financial benefits to Frontier from the suspension); Slick Airways, Suspension of Service, 26 C.A.B. 779 (1958) (LPP not imposed because the purpose of the suspension was to reduce Slick's losses and give it a reasonable opportunity to resume service, and LPP would reduce the effectiveness of this strategy).

[2] *See* Braniff South American Route-Transfer Case, 102 C.A.B. 103, 127 (1983) (the CAB limited LPPs to circumstances where they were necessary to mitigate labor strife that would adversely affect air transportation as a whole); Dallas/Ft. Worth - London Case, 100 C.A.B. 182, 196 (1983) (LPPs not imposed because possibility of service disruption as a result of labor strife was unlikely); National Airlines, Acquisition, 84 C.A.B. 408, 475 (1979) (CAB imposed LPPs because a sudden change in policy would be unfair to labor organizations, but stated that in the future LPPs would only be imposed when required by special circumstances); *see also* Green, *Labor Protective Provisions in the Airline Industry, 1950-1985*, in *ALI-ABA Course of Study Materials: Airline Labor and Employment Law* 6933 at 285-87 (1985).

[3] *See* Western Air Lines, Control by AFSI, 93 C.A.B. 545, 568 (1982)(LPPs imposed because CAB recognized that it was equitable to provide some period dur-

tion (DOT), which took over some functions of the now defunct CAB,[4] has affirmed that it will not impose LPPs except in the most extraordinary situations,[5] and it has not done so to date.[6] The courts have endorsed the DOT's policy as consistent with congressional policy.[7] The conference report accompanying the Airline Deregu-

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ing which labor and management may negotiate merger protections); Seaboard Acquisition by Tiger Int'l, 86 C.A.B. 29, 117 (1980) (LPPs imposed because labor parties were not on notice of the CAB's new policy in time to bargain for their own merger protection); Airwest, Acquisition by Republic Airlines, 86 C.A.B. 1971, 1976 (1980) (LPPs imposed because of insufficient time for labor and management to negotiate new terms in light of CAB's new LPP policy); *National Airlines*, 84 C.A.B. at 474 (imposed LPPs because labor had not had fair notice of a change in policy); *see also* TXI - Continental Acquisition, Labor Provisions, 89 C.A.B. 223 (1981) (Texas International, the acquiring company, voluntarily accepted the standard LPPs).

In the following cases, all decided after deregulation, the CAB declined to impose LPPs as a condition of merger: Transamerica Airlines Acquisition of Cent. Am. Int'l, Inc., C.A.B. Order No. 84-7-60 (July 19, 1984); C.A.B. Order No. 84-10-5 (Oct. 12, 1984); C.A.B. Order No. 84-12-126 (Dec. 28, 1984); Braniff-Pacific Southwest, Agreement Exemption, 100 C.A.B. 720, 726 (1983) (LPPs not imposed because the imposition of LPPs could actually increase the risk of labor strife); Great N. Pilots, Petition, 86 C.A.B. 2226, 2229 (1980)(LPPs not imposed because parties did not allege special circumstances sufficient to justify intervention); Capital Control by Batchelor, ALPA Petition, 86 C.A.B. 2122, 2124 (1980) (LPPs not imposed; CAB stated that LPPs are extraordinary measures used only when problems threaten the stability of systemwide operations).

[4] Congress terminated the CAB and transferred its functions to the Department of Transportation effective December 31, 1981. 49 U.S.C. § 1551 (1982).

[5] *See* Midway - Air Florida Acquisition Show Cause Proceeding, D.O.T. Order No. 85-6-33 at 6 (June 11, 1985) for a concise statement of DOT policy that has since been reiterated in several cases.

[6] The DOT has declined to order the imposition of LPPs in the following cases: American Airlines, Inc. and ACI Holdings, Inc., D.O.T. Order No. 87-3-80 (Mar. 30, 1987) (American's takeover of Air California); NWA-Republic Acquisition Case, D.O.T. Order No. 86-7-81 (July 31, 1986) (Northwest acquired Republic); Texas Air-Eastern Acquisition Case, D.O.T. Order No. 86-10-2 (Oct. 1, 1986) (Texas Air acquired control of Eastern); Texas Air Corp. and People Express, Inc., D.O.T. Order No. 86-10-53 (Oct. 24, 1986) (Texas Air's takeover of People Express); Pacific Div. Transfer Case, D.O.T. Order No. 85-12-1 (Dec. 2, 1985) (United's purchase of Pan American's Pacific routes).

[7] *See* Braniff Master Executive Council of the Air Line Pilots Ass'n Int'l v. CAB, 693 F.2d 220, 227-29 (D.C. Cir. 1982) (a general instruction to consider wages and working conditions cannot be read as a congressional command to the CAB to impose LPPs routinely); Air Line Pilots Ass'n Int'l v. CAB, 643 F.2d 935, 940 (2d Cir. 1981) (the Airline Deregulation Act does not require the CAB to consider the labor implications of a carrier's proposal).

lation Act of 1978 states that congressional policy provides:

> The 'public interest' standard in section 408(b) of the Federal Aviation Act of 1958 is retained in the new section, but that standard must now be interpreted in light of the intent of Congress to move the airline industry rapidly toward deregulation. The foundation of the new airline legislation is that it is in the public interest to allow the airline industry to be governed by the forces of the marketplace.[8]

Meanwhile, in the railroad industry, the Reagan administration successfully opposed including a LPP in the 1986 legislation providing for the sale of Conrail to the public.[9] Furthermore, the ICC has declined to impose LPPs in sales of trackage by a major rail carrier to small carriers (short lines) which, because of low overhead and highly productive, nonunion labor, can use such trackage profitably.[10] To alter these policies, both the airline and the railroad unions[11] have sought for several years to make LPPs mandatory in most major business intercarrier transactions. Congress failed to include bills to this effect in the Airline Deregulation Act of 1978.[12] In 1982 Congress again refused to enact such bills for the airline in-

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[8] H.R. REP. No. 1779, 95th Cong., 2d Sess. 73 (1978).

[9] *Agreement Reportedly Reached on Scrapping Labor Protection from Conrail Sale Measure*, 195 DAILY LAB. REP. (BNA) at A-10-11 (Oct. 8, 1986)[hereinafter *Agreement*].

[10] Machalaba, *Many New Railroads Are in Business for the Short Haul*, Wall St. J., Dec. 24, 1986, at 5, col. 1. The Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), decreased economic regulation in the railroad industry. 49 U.S.C. § 10505(g)(2) (1984 & Supp. 1987) provides, however, that the ICC may not "relieve a carrier of its obligation to protect the interests of employees" with respect to matters generally coming within the framework of LPPs. *See* McDonald, *Airline Management Prerogative in the Deregulation Era*, 52 J. AIR L. & COM. 869 (1987).

[11] Two of the largest of these unions, the Brotherhood of Railway and Airline Clerks and the International Association of Machinists and Aerospace Workers, represent a major group of employees in both industries.

[12] A different protective measure was included in the deregulation law providing for prior employment rights to employees laid off as a result of merger and for financial assistance to displaced workers. Litigation concerning these provisions was finally concluded in 1987, but the measure remains dormant as described *infra* text accompanying notes 32-37.

dustry.[13] Then, in the 2nd session of the 99th Congress, two bills passed the House of Representatives. The first bill, H.R. 4838, would have mandated LPP coverage for all airline mergers, acquisitions, or transfers of significant assets. The second bill, H.R. 5300, would have provided that after the sale of Conrail to the public, any employees adversely affected by the sale or abandonment of rail lines would be covered by a LPP. The Senate rejected both provisions and also voted down attempts to include such legislation in the continuing budget resolution.[14] Interestingly, pilots from Trans World Airlines (TWA), People Express, and Frontier Airlines opposed H.R. 4838 during the Senate's consideration of the bill "either because it could have imperiled merger or wiped out their seniority preferences."[15]

Despite such cracks in their solidarity, the airline and railroad unions again have sponsored LPP legislation. H.R. 3332, the railroad proposal, would extend LPPs not only to the sales and abandonments which might result now that Conrail has been sold to the public, but also to all railroad sales and abandonments, including those to short lines, which the ICC now exempts from instituting LPPs. Both H.R. 1101,[16] which the House of Representatives passed by a voice vote on June 22, 1987, and S. 943, which is almost identical to H.R. 1101, pertain to airlines and contain the exact language as did H.R. 4838. H.R. 1101 was also included as part of H.R. 3035, which passed both the House and the Senate in October 1987. H.R. 3332 was included in the Senate version as well (see Appendix A).

This study first examines the nature of LPPs, and then

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[13] *Senate Rejects Airline Employee Protection Measure*, 157 DAILY LAB. REP. (BNA) at A-8-10 (Aug. 13, 1982).

[14] *Senate Refuses to Enact Measure to Protect Seniority in Air Mergers*, 191 DAILY LAB. REP. (BNA) at A-10-11 (Oct. 2, 1986) [hereinafter *Senate Refuses*]; *see* Stuart, *Accord Near on Conrail Sale*, N.Y. Times, Oct. 8, 1986, at D4, col. 2; *Agreement, supra* note 9 and accompanying text.

[15] *See Senate Refuses, supra* note 14, at A-11.

[16] *See infra* Appendix A for a reproduction of H.R. 1101 and notes thereon.

traces their background, development, and application to the airline industry. The main part of the study then follows, in which the costs of LPPs to the airline industry are estimated under various realistic scenarios, and the benefits of LPPs to different classes of labor are examined. The final section deals with pertinent economic considerations, particularly the potential impact of the costs of LPPs upon carrier policies and employment.

I. THE NATURE OF LPPs

A fruitful way to understand the nature of LPPs is to examine H.R. 1101, which, as noted, is almost identical to S. 943. H.R. 1101 is a very short bill, since its effective provisions are largely implemented by reference to other laws, rulings, and actions. It would amend section 408 of the Federal Aviation Act of 1958[17] by requiring that:

> In any case which the Secretary [of Transportation] determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.

"Transactions" covered pursuant to this paragraph, by reference to section 408 of the Federal Aviation Act, include not only mergers and acquisitions involving two or more airlines, but also any transaction between two airlines which involves the transfer of airplanes or other assets comprising a substantial proportion of airline

[17] 49 U.S.C. app. § 1378 (1982).

properties. The CAB has historically defined a "substantial proportion" as ten percent or more of a carrier's total property value.[18] If, however, any party outside the airline industry were to acquire an airline, H.R. 1101 would not apply. To put the matter in a practical context, not only would United Airlines' failed attempt in 1986 to take over Frontier Airlines have fallen within the purview of H.R. 1101, but also its prior purchase of twenty-five Frontier aircraft would have triggered the need for LPPs if Congress had enacted H.R. 1101. If Frontier had sold the aircraft to a surplus plane dealer, however, who in turn sold them to United or to another airline, H.R. 1101 would not have reached the transaction unless it was demonstrated to be a subterfuge to avoid the coverage of H.R. 1101.

The 1985 battle for the control of TWA provides another illustration of the far-reaching but eclectic jurisdiction which H.R. 1101 would establish.[19] If Texas Air had been the successful bidder for TWA, H.R. 1101 would have required a LPP. Since Carl Icahn, who won control of the airline, was from outside the industry, he would have had no such obligation in his successful takeover of the airline under H.R. 1101.

Just as the jurisdiction of H.R. 1101 is apparent only by reference, so, likewise, the nature and scope of the LPPs it would require are not found in the bill. There appears to be general agreement, however, that the bill would require provisions identical, or nearly so, to the provisions

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[18] The ten percent requirement necessary to bring the transaction within the purview of section 408 of the Federal Aviation Act and its predecessor legislation was determined in Pan American-Panagra Agreement, 8 C.A.B. 50, 55 (1947). Section 408(a)(1) of the Federal Aviation Act refers only to a "substantial portion" of a carrier's property as coming within regulatory purview. 49 U.S.C. § 1378(a)(1) (1982). Thus, the ten percent criterion could be modified administratively.

[19] For a discussion of the 1985 battle for TWA, see Application of TWA for the Institution of an Investigation on its Prospective Continuing Fitness under Section 401(r) of the Federal Aviation Act in the Event Carl C. Icahn Secures Control of TWA, D.O.T. Order No. 85-6-16 (June 10, 1985); Texas Air Corp. and Trans World Airlines, D.O.T. Order No. 85-8-48 (Aug. 16 1985); Texas Air Corp. and Trans World Airlines, D.O.T. Order No. 85-8-50 (Aug. 19, 1985).

first ennunciated by the CAB following the 1947 sale to United of Western's Denver-Los Angeles route.[20] The CAB continued to institute these provisions in almost every case during the regulation era. The provisions evolved into virtually final form,[21] first in the takeover of Capital by United in 1961[22] and then in the Allegheny (now USAir) merger with Mohawk Airlines in 1972.[23] The

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[20] The CAB approved the transfer of Western's route No. 68 to United in *United-Western, Acquisition Air Carrier Property*, 8 C.A.B. 298 (1947). At that time the Board declined to attach any employee protective provisions to the sale. In 1948, the CAB ordered the proceeding be reopened to determine whether any employees of Western had been adversely affected as a consequence of the transfer of route No. 68. United-Western, Acquisition of Air Carrier Property, 11 C.A.B. 701, 702 (1950), *aff'd sub nom.* Western Air Lines v. CAB, 194 F.2d 211 (9th Cir. 1952). The Board found it "clear that a portion of the employees who suffered adverse consequences would not have suffered them if Western had not transferred the route and the equipment necessary to operate it." *Id.* at 706. The Board determined that it had implied authority to impose employee protective provisions upon the transfer. *Id.* at 707.

[21]

> The Board first imposed labor protective provisions in United-Western, Acquisition Air Carrier Property, 11 C.A.B. 701 (1950), *aff'd sub nom.* Western Air Lines v. CAB, 194 F.2d 211 (9th Cir. 1952). In that case and in the following North Atlantic Route Transfer Case, 12 C.A.B. 124 (1950), the Board adopted several features of the so-called Burlington Formula, developed by the Interstate Commerce Commission, with certain modifications considered appropriate. In the Braniff-Mid-Continent Merger Case, 15 C.A.B. 708 (1952), the Board incorporated certain features of the Washington Agreement of 1936, an agreement resulting from nationwide collective bargaining in the railroad industry, again with modifications considered appropriate. Thus, the Board's labor protective provisions have been selectively developed on a basis consisting of two formulas carefully worked out in the railroad industry. In the Delta-Chicago and Southern Merger Case, 16 C.A.B. 647 (1952), certain changes were made which have been retained in subsequent cases. Finally, in the Flying Tiger-Slick Merger Case, 18 C.A.B. 326 (1954), a revision was made to clarify the Board's intention on a certain point.

United-Capital Merger Case, 33 C.A.B 307, 323 n.71 (1961).

[22] United-Capital Merger Case, 33 C.A.B. 307 (1961).

> In general, it will be see that we have adhered very closely to the provisions imposed in the last five cases, in accordance with our view that it is undesirable to make changes in the standard provisions which have been imposed in preceding cases unless required by experience indicating need for such changes or by the particular factual circumstances of the case being decided.

Id. at 323-24.

[23] Allegheny-Mohawk Merger Case, 59 C.A.B. 19 (1972). "Since the 1961 *United-Capital Merger Case*, the Board has consistently applied the same set of labor

provisions apply to dismissals and displacements which occur within three years from the effective date of the orders and include the following benefits:

1. *Seniority Integration*. This is to be accomplished "in a fair and equitable manner, including, where applicable, agreement through collective bargaining," with arbitration required if no agreement is reached.

2. *Maintenance of Pay*. This provides that regardless of the job and job pay to which the employee is assigned as a result of the actions covered by LPPs, such affected employees may not have their compensation reduced as long as they are unable to use seniority rights to obtain a comparable position in the same location.

(a) Employees who are placed in lower-rated jobs receive the difference in pay between their former and present jobs as a "displacement allowance."

(b) Employees entitled to such payments are termed "displaced employees," even though they are not displaced in the ordinary sense of the term. "Displacement allowances" are determined by dividing the last twelve months total compensation of the employee by twelve and paying the employee each month the amount by which that sum exceeds the employee's current monthly salary. If an employee works more hours in the current job than in the previous one, the extra time compensation at the rate of the new job is paid. Only voluntary absence can result in reduction in compensation below the previous job rate.

(c) Displacement allowances are triggered immediately upon job changes which reduce compensation.

(d) Displacement allowance protection extends for a period of four years from the date of the employee's dis-

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protective provisions." *Id.* at 31. *See* Kahn, *Collective Bargaining on the Airline Flight Deck*, in COLLECTIVE BARGAINING AND TECHNOLOGICAL CHANGE IN AMERICAN TRANSPORTATION 472-73 (1971); Note, *CAB and Labor Jurisdiction*, 33 J. AIR L. & COM. 334, 335 (1967); *see also* S. ROSENFIELD, *supra* note 1, for a detailed study of the United-Capital LPP provisions without a cost analysis.

placement. Thus, this liability could still be in effect seven years after the LPP was imposed.

(e) Employees with less than one year of service are not covered by displacement benefits, but are eligible for five days pay, at the straight-time rate per working day of the position last occupied, for each full month in which he or she performed such service. This amount must be paid in a lump sum.

3. *Dismissal Allowances*. This provides a very elaborate, generous, and long-lasting system of unemployment compensation for dismissed employees covered by LPPs. The dismissed employees receive a monthly payment equivalent to sixty percent of their average monthly compensation for the previous twelve months prior to being dismissed. This allowance is paid for a period varying from six months to five years, depending upon the affected employee's seniority. Employees who receive this allowance are subject to recall to service, provided the recall does not require a change in place of residence. If the job to which the employee is recalled pays less than the employee's previous job, the employee is eligible for the displacement allowance. For employees who receive other employment or unemployment compensation, the dismissal allowance is reduced to the extent that any unemployment insurance benefits exceed the amount on which the dismissal allowance is based.

This provision applies to all dismissals covered by LPPs over a three-year period commencing with the effective date of the merger. Thus, this liability could be enforced up to eight years after the effective date of the merger.

4. *Fringe Benefit Guarantees*. During the "applicable period" of the LPP, i.e., the period of eligibility for allowances stated above, a covered employee may not "be deprived of benefits attaching to his previous employment." The employee, therefore, retains the old benefits during the displacement or dismissal period. The carrier's liability, once again, could be in effect up to eight years later.

5. *Severance Pay*. Employees eligible for a dismissal allowance may instead resign. They are then entitled to severance or separation pay equal to three to twelve months of their last twelve months average monthly compensation. Employees with less than one year of service who are not eligible for a dismissal allowance receive five days pay for each full month in which they worked, if they were dismissed as a result of the merger. This carrier obligation lasts for three years.

6. *Moving Expenses*. Employees covered by LPPs who are required to move in order to accept an assigned job are entitled to full moving expenses for themselves and their families. If the employee owns a home and cannot sell it for "fair value," the carrier must either compensate the employee for the difference between the value of the home and its selling price or purchase the home. If the employee is under contract to purhase a home or holds an unexpired lease on a home, the carrier must protect the employee from all loss. This carrier obligation lasts for three years.

7. *No Requirement to Work Out of Class*. Employees cannot be deprived of any LPP benefits because they decline to accept a position out of their craft or class.

8. *Pre-Acquisition Actions and Notice*. Any change in the workforce which anticipates the action that triggers the LPP is covered by the LPP. Carriers are required to give forty-five days notice to employees of all proposed changes in the employees' status.

These requirements, as set forth in various CAB orders, are extraordinarily detailed and are not found in any legislation or administrative ruling affecting any industries other than railroads and airlines. Both unionized companies and nonunion managements in industry generally often institute various provisions for employees adversely affected by mergers and acquisitions, even though LPPs are not mandatory. Likewise, airlines often institute provisions similar to LPPs in situations in which LPPs are not mandatory. A diligent search of literature has, however,

uncovered no parallel to H.R. 1101 in industry generally, in terms of either the liberality, the coverage, or the duration of the benefits. Before examining what possible costs are involved by the imposition of LPPs as proposed by H.R. 1101, and what would be the consequences thereof, it is pertinent to examine briefly how and why LPPs evolved.

II. BACKGROUND AND DEVELOPMENT OF LPPs

From their inception, railroads and their labor relations were regulated apart from industry generally. The once overriding significance of the railroads as freight carriers, the fact that they were clearly within the constitutional scope of interstate commerce and therefore subject to congressional regulation, the early rise of railroad unions to economic and political power, and the government takeover of the railroad system during World War I all enhanced this approach. After World War I, efforts were made to consolidate the railroad system. These efforts led to an interest in job protection for railroad employees, especially since the 1920s saw the beginning of the secular decline in employment in the railroad industry.

LPPs were first legislated with the Emergency Railroad Transportation Act of 1933, which was designed to promote consolidation and to eliminate unnecessary duplication of services. Section 7(b) of this act, however, froze

> into their jobs all railroad employees actively employed in May, 1933, who might be affected by reason of action taken pursuant to authority contained in the Emergency Railroad Transportation Act of 1933. . . . Again, for a variety of reasons, not the least of which was this 'job freeze,' no significant consolidations took place under this legislation.[24]

With the 1933 emergency law scheduled to expire, un-

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[24] Rehmus, *Collective Bargaining and Technological Change on American Railroads*, in COLLECTIVE BARGAINING AND TECHNOLOGICAL CHANGE IN AMERICAN TRANSPORTATION 144 (1971).

ions sought special LPP legislation. The carriers, hoping to negotiate more favorable terms, found themselves under intense pressure from the Franklin D. Roosevelt administration, so they acceded to the unions' demands for a LPP agreement. The so-called Washington Agreement was signed on May 21, 1936, between twenty-one railroad unions and carriers representing eighty-five percent of the nation's railroads. It covered "coordination," or "joint action by two or more carriers whereby they unify, consolidate, merge, or pool" any part of their separate facilities or operation. Thereafter, the Interstate Commerce Commission (ICC) expanded the Washington Agreement, applying it to leases of one carrier's facilities, abandonments, etc. The Transportation Act of 1940 affirmed the ICC's authority in this regard.[25] The Washington Agreement provisions, as interpreted and ordered by the ICC, have served as a model for the LPPs required by the CAB in the airline industry.

A. *Application to Airlines*

When the railroad industry was in deep decline, Congress adopted the policy of treating transportation employee relations differently from the employee relations of industries in general. Congress then transferred this policy to the fledgling and growing airline industry. Thus, in 1936 Congress placed the airlines under the Railway Labor Act, even though the act's basic procedures were developed in practice in railroad labor relations, and labor relations in airlines were still in the formative state. In addition, the Civil Aeronautics Act of 1938,[26] section 401(1), wrote into law Decision 83 by the National Labor Board of the National Industrial Recovery Act. This gave airline pilots the highest minimum wage law in the nation,

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[25] *Id.* at 144-48; *see* R. J. ABLES, *The History of and Experience under Railroad Employee Protection Plans, Studies Relating to Railroad Operating Employees*, REPORT OF THE PRESIDENTIAL RAILROAD COMMISSION 107-91 app. vol. III (1962) for a more detailed study.

[26] Ch. 601, Pub. L. No. 75-706, 52 Stat. 973 (1938).

if not in the world, and made compliance with the Railway Labor Act a condition of being a certificated carrier. These provisions have been continued in subsequent legislation. The CAB adopted LPPs as a condition of approving mergers, sales of assets, and other transactions between or among airlines. The Civil Aeronautics Act of 1938 provided no explicit directive for such action, but the courts agreed that it was within the inherent power of the CAB.[27]

The Airline Deregulation Act of 1978 continued special protection for airline employees and unions as a national policy.[28] This legislation effectively outlawed the airlines' Mutual Aid Pact.[29] As a result, airlines are the only industry in which employers may not have such a pact. This weakens management's bargaining power. Nothing in the law proscribes similar combinations among unions, and frequently they do form alliances.[30]

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[27] Section 408 of the Federal Aviation Act allows the CAB to approve mergers, acquisitions and route transfers "upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe." 49 U.S.C. § 1378 (1982). In Western Air Lines v. CAB, the court held that the CAB may condition its approval of transactions on provisions for the protection of employees. 194 F.2d 211, 213-14 (9th Cir. 1952). The court stated that "[a]lthough there is no express statutory grant of power to impose conditions which will lessen the adverse impact of a merger upon employees of the merged companies, such power is implicit as one necessary to the performance of the [CAB's] duty to condition approval with due regard to terms which are just and reasonable in the interest of the public." *Id.* at 215; *see* Kent v. CAB, 204 F.2d 263, 265 (2d Cir.), *cert. denied*, 346 U.S. 826 (1953) (the CAB's power to impose LPPs is implicit as one necessary to the performance of the Board's duty to condition approval with regard to terms which are just and reasonable in the interest of public).

[28] Pub. L. No. 95-504, 92 Stat. 1705 (1978) (codified as amended in 49 U.S.C. §§ 1301-1552 (1982)).

[29] 49 U.S.C. § 1382(c)(1982). A Mutual Aid Pact is an agreement between air carriers that provides that any participating carrier will receive payments from the other participating carriers for any period during which that carrier is undergoing a labor strike. *Id.* § 1382(c)(3)(A).

[30] On August 12, 1986, for example, it was announced that seven unions "are working on a joint strategy for their role in United Airlines' planned takeover of Frontier Airlines." *7 Unions Map Frontier Plan*, N.Y. Times, Aug. 12, 1986, at D6, col. 3. On January 12, 1987, Teamster Airline Division Director William Genoese said "the union remains committed to organizing at Continental and is 'trying to put a consortium together with other unions' including the Air Line Pilots Association to organize at Continental and other carriers owned by Texas Air Corporation." *Ballots from 1983 Vote at Continental Unsealed; Teamsters Lose Bid to Represent*

The Airline Deregulation Act also established an employee protection plan (EPP) which contains provisions for assistance payments to employees who are laid off or furloughed as a result of bankruptcy or a fifteen percent or more reduction in force.[31] Litigation delayed the implementation of this section until March 1987.[32] Congress has never provided an appropriation to effectuate it, however, and is apparently not likely to do so before October 22, 1988, when, by its terms, the provision expires.[33]

Still another provision of the Airline Deregulation Act gives airline employees who were employed on or before October 24, 1978, and furloughed after four years of employment with a certificated carrier, the right, on or before October 24, 1988, to preferential employment by any airline seeking new employees.[34] Nevertheless, such furloughed employees retain seniority rights on the carrier that laid them off.[35] The Act requires the Secretary of Labor to maintain a national list of eligible employees.[36] Litigation and administrative delays prevented the implementation of this section, also. This section was implemented on January 31, 1986, but it suffered a two month suspension because of litigation. It was re-implemented it on June 9, 1986. Meanwhile, expanding airline employment has obviated both its need and its utilization.[37]

Ground Employees, 7 DAILY LAB. REP. (BNA) at A-1 (Jan. 12, 1987). Such inter-union cooperation in the industry has occurred for many years.

[31] 29 C.F.R. § 220.10 (1986).

[32] Alaska Airlines, Inc. v. Brock, 107 S. Ct. 1476 (1987). In *Alaska Airlines* the U.S. Supreme Court addressed the issue whether the legislative veto written into section 43 of the Airline Deregulation Act, which provided for an employee protection provision, rendered the entire provision invalid. *Id.* at 1479. The Court ruled that the legislative-veto provision was severable from the remainder of the EPP program. *Id.* at 1477.

[33] 49 U.S.C. § 1552(j) (1982).

[34] *Id.* § 1552(d)(l).

[35] *Id.*

[36] *Id.* § 1552(d)(2).

[37] *See* Airline Employee Protection Program, 29 C.F.R. § 220 (1986), *reprinted in* 226 DAILY LAB. REP. (BNA) at E-1-12 (Nov. 22, 1983); *DOL Resumes Job Listing Program to Aid Workers Who Lost Jobs After Air Deregulation*, 108 DAILY LAB. REP. (BNA) at A-4 (June 5, 1986).

B. *Rationale for LPPs*

The CAB enunciated its rationale behind the imposition of LPPs in numerous rulings. In *United-Western, Acquisition Air Carrier Property*,[38] the first case involving this issue in 1950, the CAB reasoned that some benefits of the route transfer from Western to United would be "at the expense of some of the employees of the companies involved."[39] It quoted the United States Supreme Court, saying that "the national interest in the stability of the labor supply available" was important, and "an obvious national interest in taking steps to see that route transfers and mergers which are in the public interest should not be prevented or delayed by labor difficulties arising out of hardships to employees incident to such route transfers or mergers."[40] The CAB routinely reiterated such contentions in subsequent cases.[41]

These arguments were grounded on two basic considerations. The first consideration, clearly borrowed from the railroad industry, provided that laid-off employees would have little chance of reemployment. The second consideration, inherent in a regulated industry in which competition was strictly limited, was the belief that no competitor could take up the economic slack. The first rationale failed to recognize that the airline industry, unlike the railroad industry, was an expanding industry in which, despite cyclical setbacks, employment tended upwards throughout its history. Deregulation, of course, demolished the second rationale. Since deregulation, any airline can enter any domestic market, and this has become the norm whenever traffic justifies such action. Thus laid-off employees from a failed or declining carrier may have opportunities with a new or expanding one.[42]

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[38] 11 C.A.B. 701 (1950), *aff'd sub nom.* Western Airlines v. CAB, 194 F.2d 211 (9th Cir. 1952).

[39] *Id.* at 708.

[40] *Id.* (quoting United States v. Lowden, 308 U.S. 225 (1939)); *see* KAHN, *supra* note 23, at 473.

[41] *See* S. ROSENFIELD, *supra* note 1, for a careful summary of these arguments.

[42] No emergency board has been appointed pursuant to the statutory provi-

Following deregulation, therefore, the CAB announced in the *National Airlines, Acquisition Case*[43] that it would order LPPs only where required by "special circumstances."[44] Although the CAB did not implement this policy fully, the DOT, which took over some of the duties of the defunct CAB, has, as already noted, vigorously maintained this position. The DOT pointed out in several cases that the imposition of LPPs could cause the purchasing carrier to veto the transaction. This would result in the loss of jobs for the employees of the merging carrier, which was in extreme financial difficulty and likely to cease operation without the transaction.[45] In other cases, the DOT pointed out that the parties had reached a merger agreement and LPPs were unnecessary.[46] This carefully enunciated policy has drawn the ire of the air transport unions and has caused them to encourage the introduction into Congress of H.R. 1101 and S. 943, as well as three bills in

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sions of the Railway Labor Act in an airline case since the mid 1960s, because sufficient competition exists to limit the impact of strikes. Actually no strikes have occurred since deregulation that can be attributed directly to mergers. The Johnson administration adopted this policy of not appointing emergency boards in airline cases after a strike in 1966 which shut down five airlines but caused no major disruption in commerce. An emergency board was appointed in the Wien Air (Alaska) case in 1978, but this was a special case mandated by the 1978 deregulation statute at the request of the Air Line Pilots Association. *See* Northrup, *The New Employee-Relations Climate in Airlines*, 36 INDUS. & LAB. REL. REV. 167, 172-73 [hereinafter *New Employee-Relations Climate*]; FORTY-FIFTH ANNUAL REPORT OF THE NATIONAL MEDIATION BOARD FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1979 at 28-29.

[43] 84 C.A.B. 408 (1979).

[44] *Id.* at 475. "LPPs will no longer be imposed as a matter of course, or because tradition dictates their use." *Id.*

[45] *See* Southwest Airlines-Muse Air Acquisition Show Cause Proceeding, D.O.T. Order No. 85-6-79 at 33 (June 2, 1985) (Southwest indicated it would not complete the original transaction if LPPs were imposed; Muse was in serious financial difficulties and needed the transaction to continue operation); Midway-Air Florida Acquisition Show-Cause Proceeding, D.O.T. Order No. 85-6-33 at 3 (June 11, 1985) (Midway would not proceed with the acquisition if LPPs were imposed, which would result in the denial of jobs to Air Florida employees).

[46] NWA-Republic Acquisition Case, D.O.T. Order No. 86-7-81 at 22 (July 31, 1986)(private decision-making adequately protected the employees' interests); Pacific Div. Transfer Case, D.O.T. Order No. 85-12-1 (Dec. 12, 1985) (LPPs unnecessary because United made clear it was willing to discuss such issues with employees).

earlier Congresses, H.R. 5930 and S. 2666 in 1982, and H.R. 4838 in 1986, all of which failed to be enacted into law.[47] As discussed below, one reason for opposition to LPPs is that they provide special treatment for airline employees. A second reason is, of course, the cost, which apparently has not been estimated carefully heretofore for the airline industry and has been estimated in only a few case studies for the railroad industry.[48]

III. Estimating LPP Costs

The lack of cost data regarding LPPs is not surprising. Perfectly accurate cost data can be developed only after the fact. Projections are subject to error because changes in traffic flow, new competition, and a host of other factors can alter such projections. Nevertheless, reasonably reliable estimates can be made by utilizing realistic assumptions concerning employee furloughs, displacements, and moves that might be required in the case of mergers of various sizes. To accomplish this, three hypothetical situations have been constructed. It has been postulated that, as a result of a merger, three possible scenarios may occur: the closing of a carrier's major hub, of one of its medium-sized hubs, and of one of its small hubs.

A. *Three Scenarios Defined*

None of these hypothetical hubs replicate exactly an existing one. Rather, they reflect actual situations that could

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[47] *See supra* notes 13-14.

[48] *See* R. Ables, *supra* note 25, for the railroad studies, which covered the pre-1960 era. An unpublished study of the United-Capital airline merger of 1961, made in 1966 by a Wharton School group under the present author's direction, contains limited data on the costs of relocation, training, and extended fringe benefits. Thus, United's estimated one-time merger costs for LPP purposes were $4.3 million. By 1963 it had, however, lost two million dollars on homes involved in relocation, and spent over one million dollars in training and over one million dollars on extended fringe benefit coverage, in addition to the cost of displacements and dismissals. *See* Northrup, *Management and Merger: A Study of the 1961 Merger of Capital Airlines and United Air Lines* 161-62 (1966) (unpublished study, Wharton Industrial Research Unit).

occur in a number of areas. For example, the large hub scenario could take place at the Chicago, Atlanta, Los Angeles, or New York airports. The medium-sized hub might be at Miami, St. Louis, San Francisco, or Detroit. The small hub could be found in Salt Lake City, Washington D.C., or Nashville. Many other hubs would fit into these categories which are not rigidly defined. It should be emphasized that when a hub is reduced or eliminated, so are its spokes. The short flights that bring passengers into a hub for connections become uneconomic when long haul connecting flights no longer exist. Hence, the data in each of the three scenarios reflect this fact.

TABLE 1
SYSTEM STATISTICS

		Activity Reduction					
Statistics	Base Number	Large Hub	Percent	Medium Hub	Percent	Small Hub	Percent
Daily ASMs	4,314,511	1,294,353	30	862,902	20	431,451	10
Daily Departures	1,385	499	36	180	13	125	9
Monthly Block Hours	73,909	23,651	32	13,304	18	8,130	11
Monthly Pilot Hours	195,875	59,740	30	38,198	20	21,584	11
Monthly Flight Attendant Hours	294,521	80,994	28	69,426	24	26,029	9

Assumptions

- Each succeedingly larger hub is a multiple of the smallest hub in daily activity on daily ASMs, i.e., the large hub has three times the daily activity of the small hub.
- ASM = available seat mileage.

TABLE 2
SUMMARY OF HEADCOUNT REDUCTIONS

Employee Group	Original Complement	Large Hub Reductions	Per-cent	Medium Hub Reductions	Per-cent	Small Hub Reductions	Per-cent
Pilots	3,699	1,124	30	740	20	406	11
Flight Attendants	5,530	1,549	28	1,327	24	498	9
Station and Line Maintenance	14,966	5,388	36	1,946	13	1,347	9
All Other	13,805	4,142	30	2,767	20	1,381	10
Total	38,000	12,199	32	6,780	18	3,632	10

Assumptions

- Pilot reductions are based on reduced monthly Pilot hours.
- Flight Attendant reductions are based on reduced monthly Flight Attendant hours.
- Station and Line Maintenance reductions are based on reductions in Daily Departures.
- All other reductions are based on the reduction in daily ASMs.

TABLE 3
PILOTS

Equip-ment	Utiliza-tion	Pilot Hour Reduc-tion	Pilot Reduc-tion	Pilot Hour Reduc-tion	Pilot Reduc-tion	Pilot Hour Reduc-tion	Pilot Reduc-tion
B-727	53	26,041	491	14,329	270	17,990	339
DC-10	50	7,158	143	19,815	396	-	-
DC-9	54	20,469	379	2,009	37	2,245	42
B-757	55	6,072	111	2,045	37	1,349	25
Total		59,740	1,124	38,198	740	21,584	406

Assumptions

- Flying is reduced by aircraft type as reflected in the table above.
- Crew reductions are based on individual block hour reductions by type of aircraft.
- Pilot utilization is based on planned monthly pilot hours divided by headcount required on the monthly pilot bid.

TABLE 4
FLIGHT ATTENDANTS

Base	Utilization	Flight Attendant Hour Reductions	Flight Attendant Reductions
Large	52.3	80,994	1,549
Medium	52.3	69,426	1,327
Small	52.3	26,029	498

Assumptions

- Flight Attendant hour cut backs are based on reductions for a mix of aircraft and do not fall proportionally with block hour reductions, i.e., an hour of flight on a DC-10 has seven Flight Attendants compared to an hour on a B-727 which has four Flight Attendants.
- Flight Attendant utilization is based on planned monthly flight attendant hours, divided by the headcount required on the monthly flight attendant bid.

TABLE 5
STATION HEADCOUNT REDUCTION

Hub	Mgmt.	Agent	Cleri-cal	Skycap	Ramp Service	Cleaner	Mechanic	Stock Clerk	Facility Service	Total
Large	412	1,441	132	107	1,933	342	898	85	42	5,388
Medium	152	568	69	93	659	259	108	9	30	1,946
Small	127	460	27	14	527	45	141	5	2	1,347

Assumptions

- The Station Headcount Reduction is based on total reductions in departures at the hub stations specified and the associated reductions in departures at downline stations.

TABLE 6
ALL OTHER REDUCTIONS

Employee Category	Number of Employees	Large	Medium	Small
Base Maintenance	3,290	1,025	667	342
Reservations	4,661	1,453	945	485
SATOs	149	-	-	-
CTOs	301	94	60	32
Non-Management Staff	1,769	551	358	183
Management Staff	3,272	1,019	663	339
Foreign Employees	363	-	74	-
Total	13,805	4,142	2,767	1,381

Assumptions

- These categories of employees have been directly related to ASMs.
- The reductions specified are in direct proportion to the ASM reductions reflected in the closure of each hub.
- SATOs = Scheduled Airline Ticket Offices.
- CATOs = City Ticket Offices.

The basic data for the three scenario hubs are set forth in Tables 1-6. Table 1 shows that the assumptions provide for each succeedingly larger hub to be a multiple of the smallest hub in daily activity based upon available seat miles (ASMs). The balance of the data in Table 1 comprises estimates of departures, block hours, and pilot and flight attendant hours that are consistent with the ASMs. The numbers and percentages under each hub show the number and percentage of each hub's reductions for a given level of reduced activity. (A more detailed explanation of the assumptions and methodology utilized in constructing the hubs and costs is found in Appendix B.)

Table 2 summarizes the headcount reduction by various groups resulting from the closing of the various hubs, while Tables 3-6 break down the same data by employee classification. In these tables, assumptions also have been made regarding the aircraft in use. For simplification, only four aircraft types are assumed, but those chosen reflect varying cockpit and flight attendant complements so that the assumptions involve realistic situations.

It is quite clear from Tables 1-6 that considerable change would occur in all three hubs as a result of a shutdown of our mythical merged carrier's operations in any

of the three projected scenarios. This is, of course, what proponents of H.R. 1101 claim could happen and why they advocate compulsory governmental imposition of LPPs in such situations. The examination of the costs and the implications of LPPs which follows, however, raises serious questions about the viability of LPPs as job saving instruments.

B. *The Wage-Cost Factor*

Any analysis of the costs of LPPs must commence with airline wages and salaries, which are among the highest in industry. Table 7 provides a summary of contractual wage data for 1986 based upon the top rate of the "A" scale, as compiled by the Airline Industrial Relations Conference (AIR Conference). The complete data are available from the AIR Conference. Figure 1 supports the statement concerning the comparatively high wage and salary scale of airline employees—sixty-nine percent higher than the U.S. industry average—utilizing 1985 average wage data compiled by the Air Transport Association from figures supplied to the DOT by the airlines. Although the high average wages are, of course, affected by six figure pilots' salaries, Table 7 shows clearly that all grades of employees are generously compensated.

TABLE 7
AVERAGE AIRLINE WAGE BY EMPLOYEE CLASSIFICATION BASED ON TOP RATE OF "A" SCALE-1986

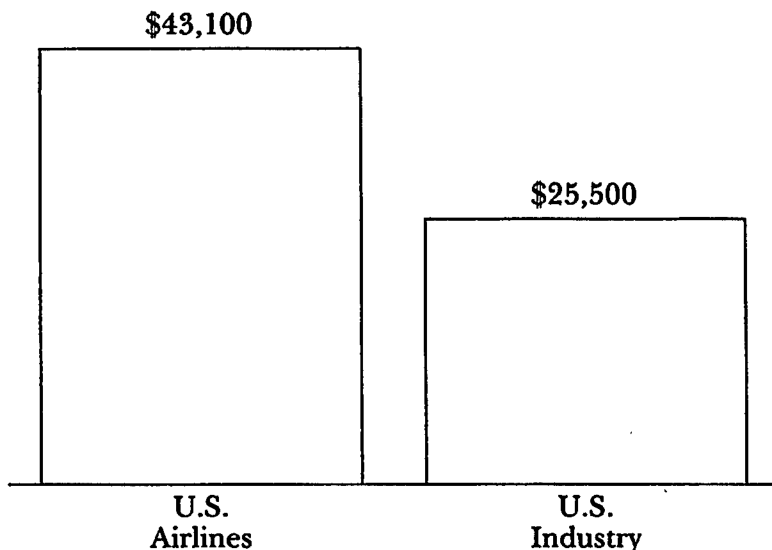
Employee Classification	Average Annual Rate of Pay	Employee Classification	Average Annual Rate of Pay
Agent and Clerical		Flight Attendants	$ 27,913
Secretary	$22,131		
Clerk	18,020	Pilots[a]	
Skycap	16,469	Captain	
Switchboard Operator	19,622	DC-10	$101,676
Computer Operator	26,247	B-757[b]	112,956
Accounting Clerk	19,541	B-727	96,048
Crew Scheduler	29,714	DC-9	84,516
Reservation Sales Agent	26,335		
Station Agent	27,134	1st Officer	
Teletype Operator	28,148	DC-10	70,560
		B-757[b]	76,716
Dispatchers		B-727	66,876
Dispatcher	$44,323	DC-9	57,672
Assistant Dispatcher	32,284		
		2nd Officer	
Ground Crews		DC-10	59,400
Mechanic	$32,926	B-757	N/A
Stock Clerk	27,394	B-727	57,132
Ramp	27,373	DC-9	N/A
Fuelers	27,435		
Cleaners-Aircraft	24,294		
Cleaners-Facilities	21,798		

Source: Airline Industrial Relations Conference

a. Pilot/flight attendant pay is an average annualized yield based on 75 hours per month. This average includes the major and national carriers, but of course is not a general average as set forth in Figure I and Table 8.

b. B-757 average wages are not as representative since there were only two airlines using this type of aircraft when the data were collected.

FIGURE 1
U.S. SCHEDULED AIRLINE INDUSTRY
COMPENSATION PER EMPLOYEE
1985



In 1985, the average compensation for 355,000 airline employees was 69% higher than the U.S. industry average.

COMPENSATION OF U.S. AIRLINE EMPLOYEES
1985

	Total Workforce	Workforce Excluding Pilots	Pilots (incl. Co-pilots & Flt. Engineers)
Compensation (incl. fringes, i.e. social security, unemployment, insurance and pension).	43,100	35,500	105,950
Wages (excl. fringes)	34,950	28,800	85,700

Airline employees are among the world's most highly compensated. This is the result of collective bargaining and labor contracts in which the unions have negotiated higher wages.

Source:
Air Tranport Association
July 1986

The high wages paid to airline employees are attributable both to the effects of regulation and to the service na-

ture of the airline passenger business. As Bailey, Graham, and Kaplan point out, "regulation's lack of price competition encouraged service competition and reduced carriers' incentives to control costs. In the 1960s when fares did not fall as rapidly as costs, labor costs rose at the same time service competition was increasing."[49] These authors then summarize the reasons why carriers under regulation failed to control labor costs.

First, during regulation carriers could not expand freely by entering new markets, nor could they reduce prices to take business from competitors. Moreover, inefficiency was insulated because the CAB determined fares based on average costs and often bolstered inefficient carriers by awarding them new routes. The CAB would merge a carrier on the verge of failure with a prosperous carrier that coveted its routes before the CAB would permit the merged carrier to fail. For example, United took over Capital in 1961, and Delta acquired Northeast about ten years later. In both mergers the viability of the acquired carrier was in serious doubt. Under such circumstances, Bailey, Graham, and Kaplan state that "CAB regulation substantially reduced the long-run payoff from achievement of a lean, efficient airline."[50]

Opposition to union demands for uneconomic wages and conditions had a minimum return for other reasons. Generally, the carriers could pass high labor costs along as higher fares. Then, too, strikes in service businesses are very costly because the product cannot be warehoused. Business lost during a strike is lost forever, and permanent losses may occur if potential passengers become accustomed to traveling on a competitive airline. In addition, key airline employees are highly specialized and licensed, making operation during a strike very risky and even fatal if a serious accident occurs. Therefore, the airlines under regulation generally sought accommodation

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[49] E. BAILEY, D. GRAHAM & D. KAPLAN, DEREGULATING THE AIRLINES 95-96 (1985).

[50] *Id.* at 96.

with unions on union terms. The unions could push up wages and successfully demand uneconomic, or "featherbedding," make-work without fear of low-cost, nonunion competitor companies taking the established carriers' business at the expense of jobs of union members. As a result, trunk airline wages on the major airlines rose much more rapidly between 1967 and 1981 (when the impact of deregulation began to be felt) than did wages in the nonfarm manufacturing sector. Indeed, "[i]f airline wages had just remained competitive with the manufacturing sector of the economy, pay per unit of output for the trunk airlines would be 30 percent lower today."[51]

These high wages extend to all airline employee classes. For example, in 1980 airline employees in such jobs as keypunch operators earned thirty-one to eighty-two percent more than their counterparts in other industries. Positions such as pilots, mechanics, and flight attendants, which are less comparable to jobs elsewhere, are also paid considerably in excess of any reasonably comparable work, leading to the conclusion that airline employee unions have been very successful in capturing a considerable share of the industry's increased productivity.[52]

Table 8 adds further emphasis to the cost significance of wages and salaries in the airline industry. This table also demonstrates that, contrary to much discussion, employment has increased 15.3 percent during deregulation, from 313,522 in 1978 to 361,375 in 1986. Although employment did decline between 1980 and the first quarter of 1984, it did not decline below the 1978 figure. This drop was most likely more attributable to the severe recession and to the strike of the Professional Air Traffic Controllers' Organization (PATCO), which restricted carrier expansion, than to deregulation.[53] A careful study of

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[51] *Id.* at 101.

[52] *Id.* at 102.

[53] For an analysis of the labor situation during this period, see *New Employee-Relations Climate, supra* note 42, at 167-81; *see also* Northrup, *The Rise and Demise of PATCO*, 37 INDUS. & LAB. REL. REV. 167 (1984).

airline deregulation by Morrison and Winston concluded "that deregulation has not had an adverse effect on industry employment."[54] Meanwhile, during deregulation, average annual airline compensation per employee has risen from $28,127 in 1978 to $42,218 in 1986, an increase of 50.1 percent, while the employee cost index rose from 179.6 to 269.6, also a 50.1 percent upward change. (The fact that average annual wages per employee declined slightly in 1986 is undoubtedly a function of heavy hiring of new employees who begin at entry wages, retiring of highly paid senior employees, and substituting of two-engine aircraft which have two pilots for three-engine aircraft which carry three pilots and have higher flight crew wages.)

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[54] S. MORRISON & C. WINSTON, THE ECONOMIC EFFECTS OF AIRLINE DEREGULATION 46 (1986).

TABLE 8
AIRLINE INDUSTRY
LABOR COST INDEX
MAJORS AND NATIONALS[a]

	Total Cost ($ Millions)	Average Number of Employees	Average Compensation Per Employee (Annualized)	Cost Index (1972=100)	Percent of Total Cash Operating Expenses
1970	3,865.69	297,875	12,978	82.9	46.0
1971	4,104.37	288,418	14,231	90.9	46.1
1972	4,580.77	292,562	15,657	100.0	46.9
1973	5,172.87	309,112	16,735	106.9	45.8
1974	5,621.11	302,683	18,571	118.6	41.6
1975	6,014.79	295,905	20,327	129.8	40.9
1976	6,710.08	300,581	22,324	142.6	41.4
1977	7,685.35	303,266	25,342	161.9	41.5
1978	8,818.54	313,522	28,127	179.6	41.7
1979	10,355.18	344,490	30,059	192.0	38.9
1980	11,600.33	350,654	33,082	211.3	35.2
1981	12,413.41	341,848	36,313	231.9	34.7
1982	12,578.72	321,748	39,095	249.7	35.0
1 QTR 83	3,268.14	314,823	41,524	265.2	37.0
2 QTR 83	3,313.35	319,456	41,487	265.0	36.0
3 QTR 83	3,397.58	322,402	42,153	269.2	35.1
4 QTR 83	3,369.61	313,465	42,998	274.6	36.3
1983	13,348.68	317,536	42,038	268.5	36.1
1 QTR 84	3,383.47	316,634	42,743	273.0	36.1
2 QTR 84	3,420.89	322,632	42,412	270.9	34.7
3 QTR 84	3,472.79	329,420	42,169	269.3	34.3
4 QTR 84	3,370.76	326,045	41,353	264.1	34.2
1984	13,647.90	323,683	42,164	269.3	34.8
1 QTR 85	3,546.06	325,362	43,595	278.4	35.9
2 QTR 85	3,654.11	332,315	43,984	280.9	35.3
3 QTR 85	3,660.73	345,646	42,364	270.6	33.8
4 QTR 85	3,714.71	345,553	43,000	274.6	34.7
1985	14,575.61	337,219	43,223	276.1	34.9
1 QTR 86	3,789.41	351,014	43,182	275.8	35.3
2 QTR 86	3,776.88	358,617	42,127	269.1	35.6
3 QTR 86	3,886.55	369,834	42,036	268.5	36.4
4 QTR 86	3,803.75	366,037	41,567	265.5	37.3
1986	15,256.59	361,375	42,218	269.6	36.2

SOURCE: Compiled by Air Transport Association.

[a] Majors include American, Continental, Delta, Eastern, Flying Tiger, Northwest, Pan American, Piedmont (being acquired by US Air), Transworld (TWA), United, and US Air. Nationals include Alaska, Aloha, Hawaiian, Midway, and Southwest.

We are thus dealing with employment in an industry that continues both to expand and to pay steadily rising, very high wages at the top rank of American industry. The airline industry has mitigated some of these costs by

decreasing compensation as a percent of total cash operating expenses from 41.7 percent in 1978 to 36.2 percent in 1986. Elimination of restrictive work rules and more effective labor utilization have added to efficiency.[55] Nevertheless, employee compensation in the industry is among the highest in the world, and 36.2 percent of cash operating expenses remains a very substantial cost burden. The estimated costs of what a LPP would entail in each of the three scenarios, as set forth below, clearly demonstrate this fact, and reflect the already high compensation in the industry.

C. *Costs of LPPs—Three Scenarios*

Given the assumed data for impact of a merger that would eliminate each of three hubs, as set forth in Tables 1-6, and the real data concerning wages found in Tables 7 and 8 and Figure 1, we are now ready to estimate costs at each of the three hubs. The costs are figured on the basis of the key requirements of the standard LPP as described in the summary above. Assumptions utilized in figuring costs are set forth with the relevant data tables, and Appendix B contains more detailed explanations.

1. *Dismissal and Displacement Costs*

This is the largest cost item. The LPPs guarantee wages for a period of four years to persons displaced to lower rated jobs. Fringe benefits are also guaranteed concurrent with the dismissal/displacement benefit period. Dismissal allowances equal sixty percent of wages and salaries and continue for a period of up to five years depending on the dismissed employee's seniority. Tables 9-11 show how this adds up. For the large hub, the cost equals $286,350,399. For the medium hub, the cost equals $120,883,804, and for the small hub, the cost equals $64,731,423. Table 12 sets forth the special

[55] *Id.* at 43-46; *see New Employee-Relations Climate, supra* note 42.

assumptions under which these conclusions were determined.

TABLE 9
LPP
DISMISSAL AND DISPLACEMENT
LARGE HUB

Employee Group	Number of Eligible Employees	Dismissal Costs	Projected Actual Employee Moves	Employee Moves Resulting in Displacement	Displacement Costs	Total LPP Costs
Management	0	$ 0	301	0	$ 0	$ 0
Pilots	1,124	29,851,114	1,822	2,058	112,164,825	142,015,939
F/As	1,549	10,954,839	1,549	0	0	10,954,839
Agents	1,441	12,142,521	1,282	112	5,525,596	17,668,117
Res. & CTOs	1,547	10,823,814	774	67	3,173,124	13,996,938
Non-Mgmt.	551	2,673,003	0	0	0	2,673,033
Clerical	132	582,252	0	0	0	582,252
Skycaps	107	629,647	0	0	0	629,647
Mech. and Base Maint.	1,923	19,748,674	1,354	812	27,612,442	47,361,116
Cleaners	342	2,642,398	209	42	82,004	2,724,402
Stock Clerk	85	1,264,334	90	9	43,931	1,308,265
Facilities Ser.	42	302,187	36	0	0	302,187
Ramp Service	1,933	43,042,364	537	215	3,091,300	46,133,664
Total	10,776	$134,657,177	7,954	3,315	$151,693,222	$286,350,399

F/As = Flight Attendants.
CTOs = City Ticket Offices.

TABLE 10
LPP
DISMISSAL AND DISPLACEMENT
MEDIUM HUB

Employee Group	Number of Eligible Employees	Dismissal Costs	Projected Actual Employee Moves	Employee Moves Resulting in Displacement	Displacement Costs	Total LPP Costs
Management	0	$ 0	176	0	$ 0	$ 0
Pilots	740	5,913,477	1,142	2,141	72,938,717	78,852,194
F/As	1,327	8,274,189	1,027	0	0	8,274,189
Agents	568	2,976,457	555	48	2,368,113	5,344,570
Res. & CTOs	1,005	6,194,133	503	44	2,083,843	8,277,976
Non-Mgmt.	358	1,663,547	0	0	0	1,663,547
Clerical	69	304,359	0	0	0	304,359
Skycaps	93	495,373	0	0	0	495,373
Mech. and Base Maint.	775	6,828,525	216	54	1,836,295	8,664,820
Cleaners	259	1,919,302	208	42	82,004	2,001,306
Stock Clerk	9	68,706	345	104	507,641	576,347
Facilities Ser.	30	204,930	78	0	0	204,930
Ramp Service	659	5,649,067	198	40	575,126	6,224,193
Total	5,892	$40,492,065	4,748	2,473	$80,391,739	$120,883,804

F/As = Flight Attendants.
CTOs = City Ticket Offices.

TABLE 11
LPP
DISMISSAL AND DISPLACEMENT
SMALL HUB

Employee Group	Number of Eligible Employees	Dismissal Costs	Projected Actual Employee Moves	Employee Moves Resulting in Displacement	Displacement Costs	Total LPP Costs
Management	0	$ 0	75	0	$ 0	$ 0
Pilots	406	2,581,827	812	1,576	40,050,287	42,632,114
F/As	498	1,950,168	299	0	0	1,950,168
Agents	460	2,231,460	392	34	1,677,413	3,908,873
Res. & CTOs	517	2,816,055	244	23	994,561	3,810,616
Non-Mgmt.	183	807,213	0	0	0	807,213
Clerical	27	119,097	0	0	0	119,097
Skycaps	14	49,973	0	0	0	49,973
Mech. and Base Maint.	483	4,255,713	282	71	2,414,388	6,670,101
Cleaners	45	315,810	0	0	0	315,810
Stock Clerk	5	38,170	0	0	0	38,170
Facilities Ser.	2	13,662	0	0	0	13,662
Ramp Service	527	4,271,845	111	10	143,781	4,415,626
Total	3,167	$19,450,993	2,215	1,714	$45,280,430	$64,731,423

F/As = Flight Attendants.
CTOs = City Ticket Offices.

TABLE 12
ASSUMPTIONS FOR TABLES 9-11

Displacement

- All fringe benefits are included in displacement costs, except for medical insurance. It is assumed that medical insurance is not a payroll related fringe benefit and will remain constant, no matter what the payroll cost variations.
- Facilities services (cleaners/janitors) remaining after the termination are absorbed by the system and no displacement occurs.
- Station agents do not "bump" or displace a reservation agent. Both groups of agents are assumed to move from full- to part-time agents based on a system-wide percentage of part-time agents to all agents of 8.7%.
- Actual pilot moves are assumed to result in a series of bumps, reflecting the seniority hierarchy and the number of changes necessary to get each remaining pilot into the proper slot.
- Flight attendant displacement allowance is insignificant and not included. The real difference includes the pay differentials between a few regular

flight attendants and those that receive first flight attendant pay premiums.
- The ground crew employee moves are assumed to cause varying amounts of displacements in the system in relation to the number of moves and how well the system can absorb them. In 100 moves, it is assumed the system can absorb 90%, with only 10 displacements; in 1000 moves only 50% will be absorbed resulting in 500 displacements.

Dismissal

- Current employment levels are assumed to remain static; i.e., no changes in numbers or seniority of employees. The closing of a hub occurs on January 1st, with all employees having at least 1 year of seniority at the time and eligibility for a minimum of 6 months dismissal allowance.
- The dismissal allowance includes all fringe benefits, with the exception of medical insurance, in proportion to the 40% reduction in salary that is the basis for the dismissal allowance calculation. Medical insurance is included at a fixed cost rate per employee.
- All termination benefits extend concurrently so that severance/furlough is paid first and the dismissal allowance is paid next. Both benefit times together do not exceed the duration allowed as the dismissal allowance maximum in the Labor Protective Provisions - 5 years.

These extraordinarily high costs may seem unrealistic to someone not familiar with the airline industry. If one considers how downsizing is practiced in the industry, however, it becomes clear that these scenarios are based upon practical models. For example, the airline might alter its equipment mix. Pilots are compensated on the basis of the size and speed of the aircraft, among other variables. Therefore, if DC-10 pilots are moved to DC-9s, their higher DC-10 pay rate is maintained by the LPP requirements. Moreover, DC-10s carry a three-man flight crew, and DC-9s carry a two-man crew. The three DC-10 crew members then bump down, and those they bump exercise their seniority over others, until the most junior personnel are dismissed. All those downgraded in the process receive displacement allowances, and those dismissed receive dismissal pay.

The same process governs all other employee classes. Senior personnel bump into lower positions, and the downward exercise of seniority continues, causing the displacement of the most junior personnel. Huge displacement allowances and dismissal payments result. Moreover, because the airlines employ a substantial number of women, many two-breadwinner family personnel are involved. Employees receive sixty percent dismissal pay with taxes reduced from full pay and have no obligation to work for up to five years. Dismissal pay permits a more

relaxed home life, eliminates the need for paid child care, and allows spouses to work intermittently on the side on a cash basis. These factors weaken the incentive to obtain another job and thereby to reduce the carrier's liability.

Interestingly, our data show that the mechanics and base maintenance operations have the highest displacement and dismissal costs. There are many grades of this class, and the numbers required are directly related to the equipment utilized. Downsizing results in a plethora of bumps, triggering displacement allowances and dismissal payments in large amounts. Mechanics have skills appropriate for many industries and most could likely find nonairline industry jobs, although perhaps not at the high compensation rates paid by the airlines.

Although the LPP costs for displacement and dismissal allowances as shown in Tables 9-11 are high, they are probably underestimated. For one thing, they do not include the training costs and reduced productivity which inevitably result from a series of such seniority exercising. Except for pilot training costs, which are estimated and discussed below, no estimates could reasonably be made for these very real costs. Yet, anyone cognizant of the industrial process knows that employees in unfamiliar jobs require training and are less productive for a period while they grow familiar with and competent in new positions. Moreover, in a service business like the airlines, unfamiliarity with job details by employees in a new position can materially affect customer satisfaction and future business.

Another reason why the estimated costs in Tables 9-11 may understate actual costs is that the assumptions listed in Table 12 are necessarily restrictive in order to permit easier calculations. Bumping is restricted to one level moves, and pilot length of service is very conservatively estimated. A real situation would probably not replicate these very limiting and cost-reducing assumptions.

2. *Pilot Re-Training*

Table 13 shows estimated pilot training and retraining costs. Pilots need retraining whenever they are transferred to new equipment. The extent and cost of such training depend upon several factors including the pilot's previous experience, the nature of equipment, and Federal Aviation Authority (FAA) rules. As a result, the size of the hub is not the only guiding variable. The extent of

equipment, route changes, etc., may be even more significant. Nevertheless, a larger hub does mean that more people are displaced, thus involving more training and greater costs. If data for the cost of training and retraining nonpilot employees could be developed, the hub size would undoubtedly become a more dominant factor, because equipment size and routes would then not necessarily be the significant factors. Pilot retraining and training costs of over twenty million dollars for the large hub, about thirteen million dollars for the medium one, and nearly eight million dollars for the small one emphasize the significance of the carrier's liability.

TABLE 13
PILOT RETRAINING RESULTING FROM DISPLACEMENT

	Total Pilot Reduction	Total Pilot Retraining	Total Retraining Costs
Small Hub	406	1,689	$ 7,628,463
Medium Hub	740	3,075	12,928,235
Large Hub	1,124	4,807	20,321,504

Assumptions:

- There is a 40:60 ratio of those pilots who need initial training to those who need retraining. This ratio, which is believed to be realistic, is utilized.
- Training costs include pilot pay plus a cost of living allowance of $1.40/hr. for 24 hrs/day, plus $30/day for a hotel.
- DC-10 initial training per crew includes the cost of one day of actual flight time of $5,600 for fuel, maintenance and landing rights.
- With the amount of retraining required it is necessary either to shut the airline down or reduce the size of the workforce by multiple bids. This necessitates multiple retraining and causes the number of retrainings to exceed the size of the workforce.

3. *Severance Costs*

Table 14 estimates the severance costs for the three hubs, and Table 15 lists the assumptions underlying the estimates. Again these assumptions are conservative, especially in regard to management seniority and vacation pay, but the amounts are substantial with $32.8 million for the large hub, $13.3 million for the medium hub, and $6.3 million for the small hub.

TABLE 14
SEVERANCE COSTS

Hub	Class of Employee	No. of Employees	Severance Expense	Earned Vacation Payoff As a Result Of Severance	Severance And Vacation Expense
Small Hub	Facilities Service	2	$ 1,592	$ 1,592	$ 3,184
	Ramp Service	527	521,977	521,977	1,043,954
	Stock Clerk	5	4,592	4,592	9,184
	Mech. & Base Maint.	483	530,527	530,527	1,061,054
	Airline Service	45	37,116	37,116	74,232
	Agents	976	591,353	591,353	1,182,706
	Clerical	27	13,068	13,068	26,136
	Non-Management	183	88,572	88,572	177,144
	Skycaps	14	4,984	4,984	9,968
	Pilots	406	426,099	410,633	836,732
	Flight Attendants	498	262,298	262,298	524,596
	Management	466	672,040	672,040	1,344,080
	Total Emp. Reduction	3,632	$ 3,154,218	$ 3,138,752	$ 6,292,970
Medium Hub	Facilities Service	30	$ 23,880	$ 23,880	$ 47,760
	Ramp Service	659	699,807	699,807	1,399,614
	Stock Clerk	9	8,262	8,262	16,524
	Mech. & Base Maint.	775	850,950	850,950	1,701,900
	Airline Service	259	229,167	229,167	458,334
	Agents	1,572	1,080,025	1,080,025	2,160,050
	Clerical	69	33,396	33,396	66,792
	Non-Management	358	186,126	186,126	372,252
	Skycaps	93	44,310	44,310	88,620
	Pilots	740	1,732,180	1,063,498	2,795,678
	Flight Attendants	1,327	921,073	921,073	1,842,146
	Management	815	1,175,348	1,175,348	2,350,696
	Total Emp. Reduction	6,780	$ 6,984,524	$ 6,315,842	$13,300,366
Large Hub	Facilities Service	42	$ 35,767	$ 35,767	$ 71,534
	Ramp Service	1,933	3,520,459	2,691,267	6,211,726
	Stock Clerk	85	100,989	100,989	201,978
	Mech. & Base Maint.	1,923	2,542,825	2,542,825	5,085,650
	Airline Service	342	319,073	319,073	638,146
	Agents	2,980	2,262,014	2,262,014	4,524,028
	Clerical	132	63,888	63,888	127,776
	Non-Management	551	303,625	303,625	607,250
	Skycaps	107	51,478	51,478	102,956
	Pilots	1,124	6,881,438	1,994,062	8,875,500
	Flight Attendants	1,549	1,113,730	1,113,730	2,227,460
	Management	1,431	2,099,413	2,064,075	4,163,488
	Total Emp. Reduction	12,199	$19,294,699	$13,542,793	$32,837,492

TABLE 15
SEVERANCE ASSUMPTIONS

Seniority levels system wide affected by the closing of a hub and resulting in termination, determined the level of seniority terminated at the closed hub. All others at the hub are dispersed into the system. Example:

	Reduction in System	Reductions in Hub
0-1 years seniority	100	20
1-2 years seniority	300	40
Total Reductions	400	60
Total at Hub	200	

Total dispersed to system 200 − 60 = 140

Assumptions:

- Fringe expense includes group insurance, pension, FICA, and Worker's Compensation for each class of worker. Fringe benefits end with the last severance payment or LPP dismissal payment.
- Management seniority is proportional to non-management seniority since a specific breakdown of management seniority was not available.
- All workers were assumed to be full-time, non-probationary employees with at least 1 year of seniority.
- Severance policy has 2 weeks of severance for employees with up to 3 years of service with a week for each additional year of service up to 16 weeks.
- The effective date of the employee reduction is assumed to be January 1st. Severance policy pays out earned vacation from previous year, before severance pay is initiated. Total severance cost is the sum of earned vacation and severance pay. Accrued vacation, although normally part of the severance payout, is not included because it would be zero on January 1st.
- Pilot's severance policy requires 45 days' notice of reduction in force. It is assumed that this notice is included in the time period that it takes to retrain pilots for new positions in the reduced workforce.

4. *Moving Costs and Real Estate Assistance*

The airlines have a three year obligation to move employees and their families and provide real estate assistance when leases are broken and homes cannot be sold for "fair value." Tables 16-18 contain estimated moving costs, again not trivial, for each of the three hubs. Table 19 describes the assumptions used in figuring these costs. Table 20 estimates real estate assistance costs. Table 20 assumes that houses would sell below cost in fifteen percent of the cases. If a hub located in a depressed real estate area such as Denver or Houston in 1985-87, however, then the carrier would incur moving costs much greater than those set forth in Table 20, because houses would sell below cost in far more than fifteen percent of the cases.

TABLE 16
Moving Costs
Large Hub

Class of Employees	No. of Eligible Employee Moves	Projected Actual Employee Moves	Cost/Move	Cost of all Employee Moves
Management	1,202	301*	$ 5,100	$ 1,535,100
Real Estate Assist.		24*	25,000	600,000
Pilots	911	1,822**	5,100	9,292,200
Flight Attendants	1,549	1,549	5,100	7,899,900
Agents	1,282	1,282	5,100	6,538,200
Reservations & CTOs	1,547	774***	5,100	3,947,400
Non-Management Staff	85	0****	-	0
Clerical	101	0****	-	0
Skycaps	48	0****	-	0
Mech. & Base Maint.	677	1,354**	5,100	6,905,400
Cleaners	209	209	5,100	1,065,900
Stock Clerk	90	90	5,100	459,000
Facilities Service	36	36	5,100	183,600
Ramp Service	1,073	537***	5,100	2,738,700
Total	8,810	7,954		$41,165,400

Assumptions:

* 25% of eligible moves will actually move, including 2% who receive real estate assistance.

** 1 initial move will result in 2 actual moves due to "bumping" of lower seniority employees.

*** For every two eligible moves there will be one actual move.

**** Although there are employees eligible for a move, it is assumed that employees at this level will not move.

TABLE 17
MOVING COSTS
MEDIUM HUB

Class of Employees	No. of Eligible Employee Moves	Projected Actual Employee Moves	Cost/Move	Cost of all Employee Moves
Management	652	176*	$ 5,100	$ 897,600
Real Estate Assist.		13*	25,000	325,000
Pilots	571	1,142**	5,100	5,824,200
Flight Attendants	1,327	1,327	5,100	6,767,700
Agents	555	555	5,100	2,830,500
Reservations & CTOs	1,005	503***	5,100	2,565,300
Non-Management Staff	55	0****	-	0
Clerical	68	0****	-	0
Skycaps	101	0****	-	0
Mech. & Base Maint.	108	216**	5,100	1,101,600
Cleaners	208	208	5,100	1,060,800
Stock Clerk	345	345	5,100	1,759,500
Facilities Service	78	78	5,100	397,800
Ramp Service	395	198***	5,100	1,009,800
Total	5,468	4,748		$24,539,800

Assumptions:

* 25% of eligible moves will actually move, including 2% who receive real estate assistance.

** 1 initial move will result in 2 actual moves due to "bumping" of lower seniority employees.

*** For every two eligible moves there will be one actual move.

**** Although there are employees eligible for a move, it is assumed that employees at this level will not move.

TABLE 18
Moving Costs
Small Hub

Class of Employees	No. of Eligible Employee Moves	Projected Actual Employee Moves	Cost/Move	Cost of all Employee Moves
Management	298	75*	$ 5,100	$ 382,500
Real Estate Assist.		6*	25,000	150,000
Pilots	406	812**	5,100	4,141,200
Flight Attendants	299	299	5,100	1,524,900
Agents	392	392	5,100	1,999,200
Reservations & CTOs	488	244***	5,100	1,244,400
Non-Management Staff	4	0****	-	0
Clerical	4	0****	-	0
Skycaps	0	0	-	0
Mech. & Base Maint.	141	282**	5,100	1,438,200
Cleaners	0	0	-	0
Stock Clerk	0	0	-	0
Facilities Service	0	0	-	0
Ramp Service	221	111***	5,100	566,100
Total	2,253	2,215		$11,446,500

Assumptions:
* 25% of eligible moves will actually move, including 2% who receive real estate assistance.

** 1 initial move will result in 2 actual moves due to "bumping" of lower seniority employees.

*** For every two eligible moves there will be one actual move.

**** Although there are employees eligible for a move, it is assumed that employees at this level will not move.

TABLE 19
Moving Assumptions

- One airline analysis showed average moving costs to be $5,100. In addition management employees were eligible for real estate assistance. An average management cost an additional $25,000.
- The number of eligible moves is generated by the greater of: 1. the number of employees at the closed hub; or 2. the number of employees reduced in the system by the closing of a hub. This does not include pilots and flight attendants who are assumed to move less often because of the ability to commute.
- Pilots eligible for a move were assumed to be equal to the size of the system reduction, less those pilots terminated at the hub.
- Flight attendants eligible for a move were equal to the actual size of the reduction in flight attendants for the medium and large hub scenarios. In the small hub the eligible moves were assumed equal to half of the reduction in the system since there were no flight attendants stationed at the hub.
- Agent and ramp servicer eligible moves are a ratio of the number of agent and ramp servicer reductions in the system to the number of agent and ramp servicer reductions at the hub, multiplied times the number of non-terminated agents and ramp servicers at the hub.

Mechanics and Base Maintenance.

- Small and large hubs have only line maintenance.
- Medium hub has mainly base maintenance.
- Small and large hubs assume that line mechanic moves are equal to a ratio of the total number reduced in the system to the total at the hub, times the number of non-terminated mechanics at the hub. Base maintenance system moves are assumed to be zero, since they will come out of the base maintenance facility at low seniority levels.
- Medium hub assumes that all system mechanic reductions will result in a move. Base maintenance reductions will come out of the lowest levels of base maintenance seniority in this city since this is where all the junior mechanics are located. Any movement between line and base is not an expense since the hub and base are in the same location.

TABLE 20
LPP REAL ESTATE ASSISTANCE

	Projected Actual Employee Moves	Renters w/Lease Breaking Costs	Total Costs to Break Employee Leases	Homeowners Who Do Not Receive Fair Market Value	Total Cost For Fair Market	Total LPP R.E. Assist.
Small Hub	2,215	277	$221,500	249	$1,658,340	$1,879,940
Medium Hub	4,748	594	$475,200	534	$4,640,460	$5,115,660
Large Hub	7,954	994	$795,200	895	$6,130,750	$6,925,950

LPP Real Estate assistance insures fair market value (not including the effects of the acquisition on the value of Real Estate) in the selling of an employee's home. In addition it insures the costs associated with breaking a lease of those renters required to relocate.

ASSUMPTIONS:

- 25% of Projected Actual Employee moves are renters; 75% are homeowners.
- 50% of renters will have to incur costs associated with breaking their lease. $800 is the assumed cost, which is equal to two months rent.
- 15% of homeowners will not receive fair market value for their home. They will receive only 90% of the fair market value.
- Average home value based on 1980 U.S. Census Statistics updated to 1984 by the U.S. Census Bureau and verified as still relevant through 1986.

Small Hub	$66,600
Medium Hub	$86,900
Large Hub	$68,500

D. *Total Estimated Costs*

The total estimated costs for each hub are set forth in Table 21. They are indeed awesome, totaling $387,600,745 for the large hub, $176,717,865 for the medium hub, and $91,999,296 for the small hub. Although these data do not include either the very real costs for training and retraining employees or the productivity losses resulting from the exercise of seniority by all nonpilot employees, we believe that these cost scenarios both conservatively and realistically reflect what might occur under the conditions specified.

TABLE 21
TOTAL LPP COSTS—THREE HUB SIZES

	Large Hub	Medium Hub	Small Hub
Total Costs	387,600,745	176,717,865	91,999,296
Dismissal and Displacement	286,350,399	120,833,804	64,731,423
Pilot Re-Training	20,321,504	12,928,235	7,628,463
Severance	32,837,492	13,300,366	6,292,970
Moving Costs	41,165,400	24,539,800	11,466,500
Real Estate Assistance	6,925,950	5,115,660	1,879,940

Source: Tables 1-20.

E. *Costs and Benefits of Different Employee Classes*

The data presented thus far estimate the total costs mandated by LPPs for employee displacements, dismissals, and related shifts. Tables 22 and 23 estimate how much these benefits cost the carriers while benefitting individuals in key classes. In Table 22 the illustrations of costs include the transfer of a captain from a DC-10 to a Boeing 757. Since the former aircraft is larger and heavier, both factors which figure in the pay rate, the carrier would pay $45,653 for having the captain perform the same work on a different aircraft. If the carrier transferred a first officer from a DC-10 to the same position on a Boeing 727, the carrier would pay nearly $63,000, again for having him do the same job on a smaller, lighter plane. An agent going from full to part-time work would cost the carrier the most—$73,216 even though the salary would be considerably below that of a pilot.

These costs could be the highest where a carrier's equipment is the newest. The Boeing 707, 727 and the older classes of the Boeing 747, the DC-8, the DC-10, and the Lockheed L-1011 all require a three-man crew and are scheduled to be phased out of service. Newer aircraft all require only two pilots. Thus, if a modernly equipped airline merges with a carrier that has not kept its equipment current, second officers are certain to be displaced or dismissed and others changed to different aircraft as the sur-

viving carrier concentrates its fleet on newer types of aircraft. The LPP costs involved can then be huge.

Table 23 shows the costs and benefits which might accrue to employees dismissed as a result of a merger if a LPP were in effect. The costs are severe and the benefits are liberal indeed, varying from $507,935 for a DC-10 captain to $118,527 for an agent. There is no precedent in American industry for dismissal pay of such magnitude for nonexecutive employees. LPPs clearly involve very high benefits to a small number of already highly paid employees.

Some mergers do not involve the dissolution of the acquired carrier's hub. For example, American's acquisition of Air California[56] did not result in the dissolution of Air California's hub, because American did not have a strong representation in the California market. Even that merger, however, involved substantial employee moves and eliminated the Air California headquarters office. The merger is also likely to result in the disposal of various Air California aircraft that are incompatible with American's fleet. In turn, this will involve the transferring, training, and downgrading of flight crew and mechanics. If conducted under LPPs, all of these moves would have remained excessively costly for several years.

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[56] American Airlines, Inc. and ACI Holdings, Inc., D.O.T. Order No. 87-3-80 (Mar. 30, 1987).

TABLE 22
COSTS AND BENEFITS TO SELECTED INDUSTRIAL EMPLOYEES ELIGIBLE FOR DISPLACEMENT

Employee Group	Seniority	Original Annual Wage Without Fringe	Displacement Cost	Moving Cost	Total Cost for Displacement Period
Captain DC-10 to Captain B-757	12th	123,678	40,553	5,100	45,653
F/O DC-10 to F/O B-727	12th	85,636	57,867	5,100	62,967
F/O B-727 to S/O B-727	12th	74,095	42,313	5,100	47,413
Agent Full- to Part-time	7th	29,660	68,116	5,100	73,216
Mechanic to Ramp	8th	31,140	23,443	5,100	28,543
Ramp to Cleaner	8th	27,483	16,724	5,100	21,824

Assumptions:
- Employee is at peak pay and seniority.
- Displacement includes fringe benefits.
- A moving cost is assumed to occur for the employee displaced for our example, although a move is not always an occurrence in a displacement.
- F/O = First Officer; S/O = Second Officer.

TABLE 23
COSTS AND BENEFITS TO SELECTED EMPLOYEES ELIGIBLE FOR DISMISSAL

	Annual Rate of Pay	Annual Rate of Pay w/Fringe	Severance Period	Severance Costs	Dismissal Costs	Total Costs First Year	Total for Dismissal Period
Captain DC-10	123,678	161,004	5 months	67,085	56,108	123,193	507,935
F/O DC-10	85,636	111,481	5 months	46,450	39,418	85,868	356,164
S/O DC-10	75,948	98,869	5 months	41,195	35,168	76,363	317,514
F/A	34,018	41,362	16 weeks	12,727	17,146	29,873	128,941
Agent	29,660	36,666	16 weeks	11,282	15,823	27,105	118,527
Mechanic	36,327	44,522	16 weeks	13,699	19,362	33,061	144,930
Ramp	31,140	38,165	16 weeks	11,743	16,951	28,694	126,622

Assumptions:

- Severance and dismissal extend concurrently so that severance is paid first and dismissal is paid next.
- Employee is at peak pay and seniority.
- Employee is eligible for maximum dismissal.
- Severance includes total fringe benefits.
- Dismissal costs include fringe benefits that are payroll related at 60%; non-payroll related benefits (i.e., medical, dental, etc.) are at a fixed cost.
- Accrued vacation payoff is not included for these employees. Prior to the start of severance there would normally be a period of vacation paid or taken.
- F/O = First Officer; S/O = Second Officer; F/A = Flight Attendant.

IV. SOME ECONOMIC CONSIDERATIONS

It would be fatuous to assume that LPP costs of this nature do not alter decision making by workers and management. Indeed, ample evidence exists that LPPs have a profound impact. Earlier, it was noted that the prohibition of layoffs in the railroad industry effectively barred mergers during the early 1930s.[57] A commentator found that the turndown of the Santa Fe-Southern Pacific merger by the Interstate Commerce Commission was likely to cause railroads to emphasize reducing labor costs instead of seeking economies in mergers.

> Industry executives say they would be forced to address their basic operating and labor problems that they were reluctant to tackle as long as cost efficiencies from merging were available. 'There will be a lot of labor unrest,'

[57] REHMUS, *supra* note 24.

says Anthony Sarkis, president of the National Industrial Transportation League, a shipper group.[58]

Finding that mergers did not solve the railroads' basic high labor cost problem, this commentator then declared that the opposite may be true:

> In fact, mergers may have added to the railroads' labor costs. One reason is that labor unions have negotiated job protection agreements in exchange for their support of the mergers. . . . 'I worked maybe a month last year, but I still collected my paycheck every week,' says David Halterman, a former clerk for the Illinois Central Gulf Railroad. Mr. Halterman left a protected job for one that he said offered opportunity for advancement. Plus, he says that at 33, he is 'a little young to be retired.'[59]

Several airlines have made it clear that the imposition of LPPs would have altered their plans, or indeed did so, to the detriment of both airline employment and the American economy. In two recent cases, for example, carriers took over airlines in, or close to, bankruptcy, thus saving numerous jobs. The first case, the *Midway-Air Florida Acquisition Show Cause Proceeding*,[60] involved Midway's purchase of certain operations and facilities of Air Florida, which was in bankruptcy. Midway asserted that if the DOT imposed a LPP on the transaction, it would not proceed with its plan, which included employing many of Air Florida's employees who were forced out of their jobs by the bankruptcy.[61] No other airline appeared interested in Air Florida. The DOT correctly concluded that the imposition of a LPP would be detrimental to Air Florida employees.[62]

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[58] Machalaba, *Railroads May Be Forced to Cut Costs After ICC Rejection of Proposed Merger*, Wall St. J., July 28, 1986, at 5, col. 1.

[59] *Id.* at col. 4.

[60] D.O.T. Order No. 85-6-33 (June 11, 1985).

[61] *Id.* at 3. "Midway had stated it would not proceed with the acquisition if LPP's were imposed, that the imposition of LPP's would presumably cause Midway to abandon the transaction, and that the net result would be the denial of jobs to the Air Florida employees." *Id.*

[62] *To Ensure Fair Treatment of Airline Employees in Airline Mergers and Similar Transactions: Hearings Before the Subcomm. on Aviation of the House Comm. on Public Works and*

Southwest's takeover of Muse in *Southwest Airlines-Muse Air Acquisition Show Cause Proceeding*[63] was a similar case. Muse was not in bankruptcy, but it was rapidly running out of cash and would probably have had to cease operations rather quickly if not rescued by a takeover. Since Muse operated almost parallel to Southwest, the latter could have purchased equipment and probably won most of the Muse traffic if Muse went out of business. Hence Southwest emphatically stated that it would not take over Muse and save the jobs of the employees if the DOT were to impose a LPP. Again, the DOT concluded that the LPP would be a detriment, not a benefit, to employees.[64]

The threat of a LPP can also limit, or even destroy, the ability of a carrier that has gone bankrupt to revive itself and rehire some employees. Furthermore, it can restrict the ability of carriers to purchase equipment. For example, Braniff's ability to revive from bankruptcy as a small carrier was undoubtedly conditioned upon its selling many of its aircraft. The carrier that purchased several such aircraft clearly would not have done so if the transaction had been covered by a LPP.[65]

Further evidence indicates that the mandatory imposition of LPPs as required by H.R. 1101, or threats thereof, can materially affect equipment purchased and the balance of payments as well as employment. For example, one carrier purchased used aircraft abroad rather than in the United States while Congress was considering enacting LPP legislation in 1982 in order to avoid coverage if such legislation were enacted.[66] Such overseas transactions not only cost Americans jobs, but also further inflate the deficit in the United States' balance of payments.

Transportation, 99th Cong., 2d Sess. 28-29 (1986) (testimony of Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation) [hereinafter *Hearings*].

[63] D.O.T. Order No. 85-6-79 (June 2, 1985).

[64] *Hearings*, *supra* note 62, at 29. Muse, renamed, later ceased operations.

[65] *Hearings*, *supra* note 62, at 114 (testimony of Robert E. Cohn, then general counsel, People Express Airlines).

[66] *Id.* at 110.

The United Airlines-People Express-Texas Air deals involving Frontier afford a good example of how costs can determine whether mergers can be effectuated and jobs can be preserved. As part of its arrangement to buy Frontier, United agreed to purchase some of Frontier's Denver airport gates, two hangars, and certain of its aircraft.[67] The deal depended upon United reaching a satisfactory, cost-efficient labor agreement (with, no doubt, no LPPs) with its pilots. United found it impossible to achieve such an agreement. Frontier had earlier become clearly a non-viable airline close to bankruptcy, which led to its purchase by People Express in late 1985 and to drastic wage reduction agreements.[68] Frontier's continued losses of about ten million dollars per month devastated People Express and resulted in People Express' proposed sale to United six months later. Texas Air Corporation finally acquired People Express, Frontier included, after Frontier declared bankruptcy.[69]

The original deal for United's purchase of Frontier collapsed because the Air Line Pilots Association (ALPA) chapter refused United's proposal to hire Frontier pilots on its "B" scale. The "B" scale is the lower of the two-tier pilot salary scale negotiated for new employees. After five years, the former Frontier pilots would have achieved "A" status. According to United, this would have meant an

[67] This deal was never fully consummated, although United did make a down-payment to Frontier just prior to Frontier's bankruptcy. In 1985 the beleaguered Frontier sold twenty-five of its seventy-seven planes to United. United did not gain possession of the gates and hangars involved in the proposed 1986 deal before Frontier filed for bankruptcy, however. After Texas Air purchased Frontier, a court ruled that Frontier, as an indirect unit of Texas Air, could maintain control of the hangars and gates until the issue could be fully adjudicated as part of Frontier's bankruptcy case. This left the facilities to be utilized by Continental, the Texas Air subsidiary which had already assumed Frontier's operations. To avoid long litigation, Texas Air and United settled out of court. Texas Air kept the assets and transferred fifty-five million dollars to Frontier. Frontier then reimbursed United forty million dollars. *Texas Air to Buy Gates, Hangars for $55 Million*, Wall St. J., Feb. 17, 1987, at 2, col. 2.

[68] People Express, Inc., D.O.T. Order No. 85-11-58 (Nov. 20, 1985).

[69] Texas Air Corp. and People Express, Inc., D.O.T. Order No. 86-10-53 (Oct. 24, 1986).

approximate $50,000 increase over this period. Absent an agreement with the pilots, United exercised its option to void the merger. People Express then put Frontier in bankruptcy, throwing all the latter's employees out of work. After Texas Air purchased People Express, including Frontier's assets, some former Frontier employees accepted positions with Continental, the subsidiary of Texas Air. Many employees, however, took the severance pay that Texas Air offered without the compulsion of a LPP. United employed some of these employees, including pilots. Under the seniority rules these former Frontier employees came in as new United employees at the bottom of the "B" scale. Those employees who joined Continental were employed under pay scales lower than the Frontier pay scales. Thus, the failure of the United pilots to agree to United's terms was costly indeed to many Frontier employees.[70]

The drastic job damage to Frontier employees in this situation would have occurred even if the DOT had im-

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[70] Frontier's basic equipment was the Boeing 737. According to data provided by the Airline Industrial Relations Conference (AIRCON), the seventy-five hour annualized yield in 1986 for a Frontier captain on this plane was $4,960 per month, or $59,520 per year. The captains flying the same equipment for United had annualized yields of $8,597 per month, or $103,164 per year, resulting in an annual difference between Frontier and United pilots of $43,644. Continental did not operate the Boeing 737 before taking over the bankrupt Frontier. On the comparable DC-9, also a two-engine plane with similar characteristics and usages to the earlier model 737s, Continental captains had annualized yields of $4,288 per month, or $51,456 per year. This amount was $8,064 less per year than the Frontier figure, and $51,708 less per year than that of United.

At the time of the proposed merger, a Boeing 737 captain at Frontier was reportedly paid $68,400 by Frontier and $115,000 by United, a difference of $46,600. The United chapter of ALPA demanded that the gap be closed in eighteen months. Frontier employees had no voice in the negotiations, which sealed the airline's fate. Whatever the exact differential of pay between annual earnings of captains at United and Frontier, it was approximately $40,000-50,000, and the captains' earnings at Continental remained below those at Frontier. (Details were extensively reported in the press during the summer of 1986. For a summary, see *United Holds Off on Bid to Buy Frontier, Says Impasse with Pilots Imperils Purchase*, 150 DAILY LAB. REP. (BNA) at A-3-4 (Aug. 5, 1986)).

The failure of United's attempt to purchase Frontier has hurt both it and its pilots. Now that Continental controls Frontier's former gates and hangars, it has replaced United as the No. 1 carrier in Denver, and United pilot job opportunities have been lost.

posed a LPP. United has assured this writer that it would have declined to rescue Frontier's employees from bankruptcy and unemployment if required to implement LPP terms, even if United's pilots would have acceded to the carrier's merger proposal. In addition to the displacement and dismissal costs, United was especially concerned about housing costs because of the severely depressed and overbuilt Denver housing market where most of Frontier's employees lived. Again, the employees would have suffered from legislation that is avowedly being pushed for their supposed benefit. Moreover, LPP legislation is likely to be more damaging than intransigent union policy, both because legislation is more far reaching and because legislation, unlike union policies, cannot be changed through negotiation. Texas Air made it very clear that it would not have purchased the bankrupt Frontier and the near bankrupt People Express if a LPP had magnified the purchase price.

It should be emphasized that the carrier opposition to LPPs is not grounded upon opposition to integrating seniority lists, to paying severance to displaced employees, or to reimbursing employees for specified moving expenses. Carriers have done all these things in the major mergers approved since the DOT has declined to order the implementation of LPPs. What the carriers want, and what would appear to be inherent in a free employee relations system, is to implement a fair system that is both efficient and predictable from a cost standpoint through negotiation with union employees and application to nonunion employees. LPPs as instituted in the past or as contemplated by legislation involve excessive, unpredictable costs. Moreover, by guaranteeing extraordinary payments in case of adversity to employees whose wages are already substantially above the average of employees in comparable jobs in other industries, the LPPs imposed by the government act unfairly to the carriers and to the consumers who must pay the ultimate costs.

The enactment of LPP legislation may preclude future

mergers in the airline industry. This may well be the short-term objective of the airline unions which support such regulation. A reduction in airline mergers, however, would clearly not result in employment stability or security. Most observers, for example, believe Pan American has little potential for long-term survival in its present form.[71] Pam American has already sold its most profitable assets, i.e., the Intercontinental Hotel chain, the New York City office building, and the Pacific routes, and apparently it may also dispose of its New York to Boston and to Washington, D.C. shuttle.[72] Pan American basically must depend upon its highly competitive North Atlantic and South American routes and its weak domestic network to survive. One hears frequent rumors that the company is for sale, but an aging workforce, older, less efficient aircraft, and other liabilities reduce Pan American's merger potential. Additionally, if a LPP is required for a merger, it would greatly hinder the deal. Then, Pan American, which has already lost more than two billion dollars since 1979, its last profitable year,[73] might well be forced to cease operations and to liquidate. Various domestic and foreign carriers would assume its routes, and its employees would lose their jobs instead of many gaining positions with the acquiring carrier. Once again, a law requiring a LPP would have a decidedly negative effect on the employees that it was purportedly designed to protect.

A. *Other Adverse Impacts*

The basic assumptions underlying the arguments of LPP proponents is that LPPs will protect jobs and guaran-

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[71] *See, e.g.*, Bennett, *Pan Am's Disappearing Act*, N.Y. Times, Jan. 18, 1987, § 3, at 1, col. 2; Carley, *A Pan Am Takeover Would Boost Rivalry*, Wall St. J., Jan. 19, 1987, at 2, col. 2.

[72] Schmitt, *Pam Am Threatens Shuttle Service End*, N.Y. Times, Feb. 21, 1987, at 18, col. 5 (Pan Am told its employees that it will sell the shuttle if it does not become profitable).

[73] Carey & Agins, *Pan Am to Post Net Loss for '86 of $400 Million*, Wall St. J., Feb. 13, 1987, at 8, col. 3.

tee income without causing adverse reactions. The incidents cited indicate the weakness of such propositions. In fact, by adding to costs, LPPs are likely to force air fares upward and thereby discourage traffic. As airline employees who have suffered during recessions well understand, less traffic means fewer jobs.

LPP proponents also assume that employees who are laid off or dismissed because of airline mergers or similar activities will have few or no opportunities for employment in the industry. This is certainly inaccurate today when airline employment is expanding. Pilots and other flight crew members are very much in demand. Indeed, for the first time in many years airlines are encouraging applications from pilots who are trained elsewhere than in the armed services because the need for pilots is so great.[74] Machinists and clerical employees find opportunities not only among airlines, but among many other industries as well, and mechanics are now also in short supply among several airlines.

B. *Generous Unemployment Compensation*

LPPs provide the most generous unemployment compensation system in American history. Generally, state unemployment compensation laws provide for payments over a twenty-six week period. Occasionally, in times of recession such payments have been extended up to sixty-five weeks. The LPPs extend this duration of unemployment compensation to five years. In addition, provisions guaranteeing wages and benefits regardless of the job held or of job downgrading are not usually found in union contracts because of their extreme costs, except where such moves to lower rated jobs are short, temporary assignments. Yet LPPs would place this burden on carriers.

[74] According to a study by the Congressional Research Service, the current demand for civilian pilots is expected to remain at record levels for the next several years, and a pilot shortage could occur. *See* CONGRESSIONAL RESEARCH SERVICE, CIVILIAN AND MILITARY PILOTS: THE LABOR MARKET RELATIONSHIP, REP. NO. 86-28 E (1986).

This is certainly very generous treatment on a comparative basis. Moreover, it would apply to those employees who are already among the highest paid in American industry. On the basis of equity, this does seem difficult to justify.

Actually, the LPPs may hurt the favored airline employees in the long run. In the first place, the costs inhibit job creation and thus are likely to diminish the prospects of a return to work and/or to their former job by LPP recipients. In addition, LPPs can harm the long run job prospects of downgraded or displaced employees. LPPs are likely to inhibit such employees from seeking work with greater long run opportunities that would utilize their talents more constructively. Some workers will take the initiative to look elsewhere rather than accept payment for not working. Many will not, and thus will fail to grasp opportunities. The result can be long-term unemployment when the payments for not working cease.

C. *Concluding Comment*

Under regulation, unions in air transport grew very strong and pushed wages close to the top of those in American industry while management acquiesced and permitted restraints on productivity and overmanning of jobs as well. The carriers raised fares to cover those costs, and air travel often cost more than the average consumer could afford.

Deregulation forced a change. No longer protected against competition, management was compelled to resist uneconomic costs, and unions found that nonunion competition restrained their power and ability to insist on ever larger economic packages and productivity restraints. A legislatively imposed LPP requirement could obviously cause the airline industry to regress toward regulation. Continued restructuring of the industry through competition will grow more difficult if each step costs from $92 million to $388 million. (See Table 21).

Deregulation was clearly in the public interest. Morrison and Winston conclude that

> on all efficiency grounds and on most distributional grounds, airline deregulation has served the public interest much more effectively than regulation would have. Substantial progress has been made in achieving the socially optimal level of fares and service for travelers. . . . The new industry capital structure will lead to more carrier efficiency gains under deregulation. It will also lead to a reduction in industry costs, owing to more efficient use of labor.[75]

They also conclude that recent mergers and consolidations "will not cause any harm to travelers' welfare. Actual and potential competition in high-density markets should remain sufficient to maintain the level of benefits achieved under deregulation."[76]

Bailey, Graham, and Kaplan also support the thesis that deregulation has been generally beneficial. They found that regulation was not in the best interests either of carriers or customers; that new schedules and better connecting trips under deregulation are benefitting both carriers and travelers; that costs have been reduced by improved equipment and equipment usage, by improving cost controls, and by eliminating "inflexible work rules and higher than competitive pay;" and that customers have especially benefitted by lower fares.[77]

Because the benefits of deregulation are so clear, and because the imposition of LPPs would so obviously be a re-regulation measure, advocates of LPPs have altered their rationale. Thus the 1986 House committee report in support of H.R. 4838, which the House passed but the Senate defeated, readily admitted that labor strife resulting from airline mergers was unlikely.[78] Instead, propo-

[75] S. Morrison & C. Winston, *supra* note 54, at 72.

[76] *Id.* at 73.

[77] E. Bailey, D. Graham, & D. Kaplan, *supra* note 49, at 196-97.

[78] H.R. Rep. No. 822, 99th Cong., 2d Sess. 3 (1986). "In a deregulated system it is unlikely that labor strife arising out of a merger would disrupt the national air

nents of H.R. 4838 focused on the need for social welfare legislation to assist workers displaced as a result of the substantial merger activity in the airline industry.[79] Proponents have utilized these same arguments in support of H.R. 1101 and S. 943, but they did not explain how to justify such liberal social welfare provisions for employees in an expanding industry who are among the highest paid in the United States, or why the industry needs regulation in this respect.

Competition has opened the airline industry to new entrepreneurs and has forced once-tired managements to react, to rethink, and to redeploy their resources both more economically and in a manner that better serves the public interest. The imposition of LPPs could well reduce employment, adversely affect the balance of payments, discourage air traffic, and permanently damage an industry now restructuring itself as a result of fair competition. Neither the public nor the favored airline employees who are already the most highly compensated employees in American industry would benefit from the imposition of LPPs.

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transportation system since other carriers are free to provide the services affected by the strike." *Id.*

[79] *See* 132 CONG. REC. H6926-30 (daily ed. Sept. 16, 1986). A merger places "the careers and economic futures of airline employees . . . at risk without guidelines from the Department of Transportation." *Id.* at H6928 (statement of Rep. Young).

APPENDIX A
H.R. 1101

100TH CONGRESS
1ST SESSION H.R. 1101

To amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in mergers and similar transactions.

IN THE HOUSE OF REPRESENTATIVES
February, 1987

Mr. MINETA (for himself) and
Mr. Anderson, Mr. Hammerschmidt, Mr. Roe, Mr. Strangeland, Mr. Oberstar, Mr. Gingrich, Mr. Nowak, Mr. Clinger, Mr. Rahall, Mr. Molinari, Mr. Applegate, Mr. Sundquist, Mr. de Lugo, Ms. Johnson, Mr. Savage, Mr. Packard, Mr. Bosco, Mr. Boehlert, Mr. Borski, Ms. Bentley, Mr. Kolter, Mr. Towns, Mr. Wise, Mr. Gray (Ill.), Mr. Visclosky, Mr. Traficant, Mr. Chapman, Ms. Slaughter, Mr. DeFazio, Mr. Cardin, Mr. Skaggs, and Mr. Perkins.

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 408 of the Federal Aviation Act of 1958(49 U.S.C. App. 1378) is amended by adding at the end the following new subsection:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions including the seniority of any air carrier employees, labor protective

provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 408. Consolidation, merger, and acquisition of control." is amended by adding at the end the following:

"(g) Fair treatment of employees.".

* * *

Although this Bill was passed by the House of Representatives on June 27, 1987, it was nevertheless added to H.R. 3051, which in turn was passed by the House on October 5, 1987, and by the Senate on October 30, 1987.

The provision in S.943, which would transfer the authority for imposing LPPs from the Department of Transportation to the Department of Labor, was included in the Senate version of H.R. 3051. Moreover, the Senate version also included the wording of H.R. 3332, which applies to mergers involving short line railroads.

APPENDIX B

METHODOLOGY FOR DEVELOPMENT OF REDUCTION IN FORCE SCENARIOS OF HYPOTHETICAL AIRLINE

The basic concept of our analysis was to identify the effects on a hypothetical airline with a reduction in force of ten, twenty, or thirty percent. This reduction would occur due to the closing of one of its hubs on January 1st of next year. The size of each hub was determined by the daily ASMs generated at each hub and was compared to the total daily ASMs for the airline. For example, the small hub had ten percent of the airline's total ASMs. The results of our analysis of each of the three hub scenarios reflects the individual composition of the hub closed and the specific interaction that the hub had with the airline system as a whole.

In order to determine the specific characteristics of each hub and the hypothetical airline, actual data from an operating airline was obtained and modified. This data included the daily ASMs daily departures, monthly block hours, monthly pilot and flight attendant hours and utilization rates, employee headcount and distribution in the system, and contract, wage and personel policies.

SEVERANCE

Severance costs were calculated first. Once we knew the number of employees in each category in the system to be reduced, we could determine the seniority levels in the system affected and give a monetary value to each employee reduction. This monetary value included an average wage rate for the seniority level plus the appropriate fringe or benefit expense. Since the hub is assumed to be closed in the future, on January 1st with the current employee headcount and seniority levels static, the employees will have at least one year of seniority and be eligible for the minimum two weeks of severance pay.

Termination included the additional cost of paying earned, but unused, vacation. Based on the personnel policies, terminated employees' earned vacation payment was calculated for the year prior to the January 1st closing. This payment included a normal work period rate of pay, plus the associated fringe benefits based on those payments.

In order to demonstrate the calculations, we can use a category of IAM worker, the ramp servicers in the small hub. There were 527 reductions from this group in the total airline. Of those, 413 had one year of service, and 114 had two years of service. Workers with one or two years of service were eligible for two weeks, or eighty hours, of both severance pay and earned vacation. The calculations were as follows:

413 employees ($11.15/hr x 80 hrs)	=	$368,396
114 employees ($16.84/hr x 80 hrs)	=	$153,581
		$521,977

In this example, both severance and earned vacation were the same eighty hour calculation, so that the total severance and vacation expense was $1,043,954.

MOVING

The next major calculation was moving costs associated with the closing of a hub. Moving costs arose because of two factors. One factor involved moves of employees with enough seniority at the hub not to be terminated. The second factor involved moves in the system generated by employee seniority, insuring the correct number of employees to provide the reduced level of service at each system location. The methods used to calculate those employees eligible for moves and projected actual moves, varied for each employee group. The assumptions relating to each method used were included in either the page of moving assumptions or the pages of hub moving costs. The assumptions were based on knowledge of how these employee groups functioned within the airline industry and socio-economic factors affecting these employee

groups. There was consistency among groups whose work was affected by similar factors.

The cost of an employee move ($5,100) included moving household goods, one house hunting trip, on the road expenses to a new location and temporary living expenses at the new location. In addition, management moves included a real estate assistance cost of $25,000.

Continuing with our example of ramp servicers, of the total 527 terminations, 120 were terminations at the small hub for employees with one or two years of service. This left 407 to be terminated through the rest of the system and 87 (207 hub employees − 120 terminations) non-terminations at the hub. To determine the eligible employee moves for ramp servicers, we took a ratio of the ramp servicer reductions in the system to the ramp servicer reductions in the hub. This ratio was then used to adjust the non-terminated ramp servicers at the hub. Through this calculation we were able to more directly relate the effects of the hub closing to the system. The groups of employees, ramp servicers, agents and mechanics, that were calculated in this manner were most directly associated with the hub and system interaction.

The calculation for eligible moves for ramp servicers was as follows:

$$\frac{\text{527 terminations in the system}}{\text{207 terminations at the hub}} \times \text{87 nonterminations at hub} = 221$$

Since we have assumed that for every two eligible ramp servicer moves, only one would occur, there were only 111 actual moves.

111 @ $5,100/move = $566,100

LPP

LPP costs were the last to be determined. They were considered in four parts: dismissal allowance, displacement allowance, real estate assistance, and pilot retraining.

The minimum dismissal allowance for a terminated em-

ployee with one year seniority was six months. Since it was assumed that termination benefits run concurrently, the employee received severance for two weeks (for employees with one year of service), thereby leaving approximately 5.5 months of dismissal allowance.

The dismissal allowance was calculated at sixty percent of the base pay rate, plus the associated fringe costs, with the exception of medical related benefits. We assumed that the carrier incurred a fixed cost per employee to provide these benefits, and the benefits were not determined by payroll costs, as are other fringe benefits.

In our example for ramp servicers in the small hub:

413 employees × $1357/mo (wages at 60% + benefits) × 5.5 months	= $3,082,426
114 employees × $1897/mo (wages at 60% + benefits) × 5.5 months	= $1,189,419
Total Dismissal Allowance	$4,271,845

The displacement allowance protects, for a period of time, the original wages of an employee who now has lower wages, resulting from either a change to a lower paying position or to a position with fewer hours. The displacement allowance was actually calculated on the differential between the old wages and the new for a period of four years.

The number of employee actual moves resulting from displacement varies by employee group. All IAM moves were assumed to cause a displacement, based on the actual number of moves and how well the system could absorb the moves. In other words, the greater the number of moves, the greater effect on the system, the greater the number of displacements.

In our example of 111 actual employee moves, a rather small number out of the total servicers in the system, only ten were assumed to be displaced down one level to airline servicers.

The example had a monthly wage and benefit differential of $299.54. Therefore,

10 employees × $299.54/mo × 48 months = $143,781 total displacement cost.

Pilot displacement cost was calculated in the same manner, yet the determination of the number of displacements was different in that it was the result of shifts in the seniority hierarchy and the resulting changes necessary to get each remaining pilot into the proper slot.

We also calculated displacement for the agents. All agent displacements were assumed to result from full-time to part-time changes with the number of working hours going from 40/week to 20/week. Once the differential was determined, the calculation was the same as for the IAM workers.

Real estate assistance was comprised of two parts; one relating to renters and the other to homeowners. The rental assistance provided financial reimbursement for those breaking a lease. For twenty-five percent of the employee moves, we assumed these costs to be the equivalent of two months rent at $400/mo. We have also assumed that only fifty percent of renters will need this assistance, since many will walk away from their leases.

We assumed the remaining seventy-five percent of the actual employee moves involved homeowners. Their real estate assistance was designed to make up the difference if they did not receive the fair market value for their dwelling. We have assumed this occurs for fifteen percent of the homeowners and was equal to only a ten percent loss of fair market value.

In our continuing example, the 111 actual moves of ramp servicers would involve twenty-eight renters and eighty-three homeowners. Of the twenty-eight renters, fifty percent or fourteen would be out of pocket $800 in order to break their leases. This is a total of $11,200.

Of the eighty-three homeowners, twelve would not receive the fair market value for their home. In the small hub, the average home was valued at $66,600. A ten percent loss on that average home was $6,660, making the

real estate assistance for the twelve moves equal to $79,920.

Pilot retraining was considered as a part of the total cost of LPP. In order to get the correct pilot, based on seniority, into the right aircraft and the right seat, retraining was necessary. Retraining consisted of both pilots who would need initial training because they had not flown for over eighteen months, and pilots who would only need requalification.

Initial training required anywhere from seventeen to twenty-six working days, or twenty-one to thirty-three calendar days, depending on the type of aircraft. The working days were spent in ground school and on a simulator. In the case of DC 10's, one day was spent in the aircraft, with an added cost of $5,600/plane for fuel, maintenance and landing fees. It was assumed that three pilots would be qualifiying at the same time. Requalification training required eight working days and ten calendar days for ground school and the simulator.

The costs calculated for retraining also included the pilots' pay and fringe benefits for each working day. Based on the union contract, pilots were paid at 4.5 hours per day for requalification training and 2.67 hours per day for initial training. The additional cost of per diem and a hotel was calculated at $64/day for each calendar day of training. For all DC 10 pilots, the cost of aircraft training was also included.

Comments