Book Note

AIRLINE LABOR LAW: William E. Thoms and Frank J. Dooley. Westport, CT: Quorum Books, 1990, 193 pp., $45.00.

by SUSAN C. LEIN*

Yes, airline labor law is unusual. It is unionized, but also supervised by the government under a federal mandate to protect public interest. The federal government supervises through the Departments of Transportation and Justice, the Federal Aviation Administration, and the National Mediation Board, while airports are under the jurisdiction of state and local governments. This book concentrates on the regulation of airline labor and management relations provided under the Railway Labor Act.

The seven chapters in the text take the reader from the origins of airline regulation, through the processes of the Railway Labor Act and the effect of other statutes on labor relations, and up through current issues affecting aviation labor law. Replete with case law and authoritative commentary, this book will be a significant asset to regulators, union leaders, and transportation attorneys and students.

Chapter 1 reviews the background of how airline labor law came to be covered under the Railway Labor Act instead of the subsequently-enacted National Labor Relations Act. The Railway Labor Act of 1926 came about as a result of lessons learned from earlier laws enacted to deal with rail labor disputes. The goal was to institute a mechanism to keep the primary interstate carriers of passengers and goods—the railroads at that time—in service during labor disputes. Disputes had led to strikes, lockouts, and physical violence, such that the national economy suffered. To minimize disruption of the national economy, the Railway Labor Act set forth the rights and duties of both carriers and their employees, and set up federal machinery to facilitate settlement of disputes.

When the air transport industry was still in its infancy, Congress became concerned that an intensely competitive environment could inhibit sound development. Congress, therefore, sought a regulatory structure that would provide standards of safety and satisfy the needs of commerce, public interest, and the national defense. As such, Congress in

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1936 extended the Railway Labor Act's provisions for settlement of labor disputes to employees of air carriers engaged in interstate commerce.

Chapter 2 is a detailed presentation of the Railway Labor Act's representation process. This process reflects the major objective of the Railway Labor Act—the avoidance of industrial strife by conference between the authorized representatives of the employer and employee. Some underlying concepts necessary to this process are described: the definition of the term "employee," the principal of exclusivity, the right to organize, and the duty of fair representation. The chapter then explores the employer's options for response to unionization.

Chapter 3 presents a broad overview of the Railway Labor Act in the negotiation process. The Act requires much, but it does not mandate that the parties reach a compromise. At impasse, the parties are free to seek economic self-help.

An understanding of the negotiation process requires a basic knowledge of dispute terminology. A "major dispute" arises in the formation of a collective agreement or the lack of one, while a "minor dispute" arises in the proper meaning or application of an agreement. The Railway Labor Act's process differs for each dispute. Minor disputes, for which there are not strikes, are settled by system boards of adjustment. Major dispute resolution follows a lock-stepped formalized procedure, which the authors set out in detail—including a convenient chart. These procedures rely on the Railway Labor Act's philosophy of collective bargaining, along with the National Mediation Board's mediation and optional arbitration.

If all this fails, the President may create an Emergency Board to investigate the dispute and make recommendations. In the event an agreement is still not reached, the parties may exercise self-help: strikes, lockouts, or imposition of new rules on the work force. At that point, however, Congress has been known to intervene to thwart interruption in the national transportation system. The chapter concludes with a description of the National Mediation Board's duties, central of which is the duty to bargain in good faith.

Chapter 4 examines the way in which case law has applied the negotiation provisions of the Railway Labor Act to six specific areas of dispute settlement. The areas detailed are: the distinction between major and minor disputes; the role of the system boards of adjustment; the purpose of the emergency boards; the concepts of impasse, economic self-help, and reinstatement; strikes, secondary boycotts, and injunctions; and restrictions on sub-contracting.

In Chapter 5, other laws having serious impact on the employment relationship are succinctly outlined: The Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Bankruptcy Act, the Airline Deregulation Act of 1978, and the National Labor Relations Act. The authors'

commentaries are a reminder that the Airline Deregulation Act was, in fact, a comprehensive over-haul of the governmental regulatory scheme and grossly affected provisions for labor protection.

Chapter 6 is a clear and detailed presentation of the past and current status of labor protection provisions, such as those being a form of mitigation of effects of company mergers on airline employees. The Civil Aeronautics Board had traditionally required labor protection provisions in merger situation. However, with the advent of the Airline Deregulation Act, the Civil Aeronautics Board's responsibility in this area shifted to the Department of Transportation and then to the Department of Justice. The Civil Aeronautics Board's position had been that imposition of labor protection provisions was consistent with its regulatory structure and necessary to protect the interests of carriers, passengers, shippers, and employees in acquisition or merger situations.

Since deregulation, new federal policy requires labor protection provisions only in rare circumstances. However, the collective bargaining core of the Railway Labor Act may prove to be the airline employees' strongest source of protection. The core afforded airline employees, through their unions, to negotiate labor protection provisions into their labor contracts.

The final chapter addresses the newest challenges facing airline labor relations. The Railway Labor Act, although old and possibly archaic by some standards, remains the tool with which to deal with new issues. These issues include: employee drug testing, the blurring distinction of the traditional roles of management and labor in an era of leveraged buyouts, mergers, and employee stock ownership plans.