Who Is Afraid Of The Big, Bad TRO?

"A man must work in order to live. If he can express no control over his conditions of employment, he is subject to involuntary servitude."
(Senate Report 163,72d Congress, 1st Session, p. 9,
regarding Norris-LaGuardia Act).

Special thanks to Mr. Grey

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The last time AAL pilots negotiated a contract without the threat of, or actual government interference was 1991. They jumped on the grenade, in 2003, to save the longer term earnings of all employees and the investors, because AMR executives threatened bankruptcy. Back in 2003, it was the pilots that gave the most. The managers got rich in the next decade, the flight attendants and unskilled ramp workers stayed at the top of the industry pay scales, American Eagle pilots, along with Jet Blue, Alaska and the pilots of several international "code-share" partners enjoyed a bonanza of new flying, and the mechanics kept their jobs within the United States. The shareholders had a nice ride off the 2003 lows in the stock price, and the investors kept getting paid in full and on time. It was the sacrifices of the pilots that made this possible. When you divide $800 million to $1 billion per year over 10,000 pilots, that's a significant amount of sacrifice when taken a decade at a time.

As it is often said, "No good deed goes unpunished."

The pilots always knew that AMR Corporation was intentionally stalling behind the RLA to keep from having to make the pilots whole from their decade of sacrifice, as **the law** allows. AMR admitted to it on the witness stand in federal bankruptcy court, and **the law** provided no consequence. Did any of this matter to the Honorable Sean Lane? Of course not. His job is to move the process forward and get the company reorganized. Who cares that the very people that caused the problem stand to make hundreds of millions of dollars at the expense of those that sacrificed the most to keep it from happening? That's how **the law** is written.

The law requires the pilots take the same hit as the other employees - just to keep things "fair." Never mind that unskilled employee groups are taking their haircut off their positions at the top of the industry pay scale. Never mind that the managers sucked up all the profits over the past decade. Never mind that Sean Lane expressly denied the

pilots' valid claim that the company has been reorganizing since 2003. The amount of value assigned to that $8 billion concession?

Zero.

The law requires airline pilots to keep chugging along, as if nothing happened, while airline executives plan on spending the life savings of the pilots. This is to keep the flying public from being inconvenienced, or more accurately, that is the pretext under which this grand larceny occurs. The "contract" can be changed on a whim and **the law** prevents pilots from stopping it. The courts have decided that their one-sided change of the collective bargaining agreement does not constitute a unilateral change in the pay and working conditions prohibited by the same Railway Labor Act that requires the pilots keep working during a dispute. It's not a "breach;" it's an "abrogation" or "rejection." It's difficult to believe an educated man tried to parse that distinction.

The unsecured creditors of AMR Corporation include the investors the pilots kept whole over the past decade along with the employees the pilots kept at the top of the industry pay scale. They also include the government pension guarantee agency, who will pay the pilots pennies on the dollar for their pension should they have to take it (as it has with other pilot pensions), and Boeing. **The law** allows these groups to use the Chapter 11 process to extract concessions out of the pilots to make back the money they lost to the incompetence of AMR executives.

Did we mention that those same executives will stand to make hundreds of millions if they can get these concessions from the pilots?

The only reason this happens is because **the law** allows it. If pilots were allowed to strike as a result, the various players might want to think twice before touching the hot stove. Sean Lane, the presiding judge in the AMR bankruptcy, said as much in his ruling where he rejected the pilot contract:

> **The diminished likelihood of a strike also weighs in favor of approving rejection of the agreement.** The Second Circuit has held that following rejection of a collective bargaining agreement, it would be **unlawful** for labor to strike until the bargaining process set forth in the Railway Labor Act has been exhausted. *See Northwest Airlines Corp. v. Ass'n of Flight Attendants-CWA, AFL-CIO (In re Northwest Airlines Corp.)*, 483 F.3d 160, 175 (2d Cir. 2007).
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> Following rejection of the agreement, therefore, both management and a union under the Railway Labor Act such as the APA would be required to continue negotiating in good faith.
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> > *Moreover, A strike is an inherent risk in every § 1113 motion, and in the end, it makes little difference if the Debtors are forced out of business because of a union strike or the continuing obligation to pay union benefits to avoid one. The unions may have the legal right to strike, but that does not mean that they must exercise that right. Northwest, 346 B.R. at 329–330 (quoting Horsehead Indus., 300 B.R. at 587).*
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> The Court must also consider the possibility and likely effect of any employee claim for breach of contract in the event of rejection. It is unlikely that the Unions would have rejection claims for breach of contract, as the Second Circuit has observed that "a debtor who rejects a contract pursuant to [Section 1113] abrogates rather than breaches the [collective bargaining agreement] at issue."[1] [emphasis added]

This is the way The Court has said they are only doing this because they know the pilots can't fight back. If the pilots could fight back, everyone would have to make different plans.

[1] Hon. Sean Lane, *Memorandum of Decision*, , United States Bankruptcy Court 11-15463-shl, Doc 4044, pg 98, http://www.amrcaseinfo.com/pdflib/4044_15463.pdf

AAL pilots fought back in a limited manner by refusing to "mission hack" and make up for everyone elses' problems. They still did their jobs - and only their jobs. After a fortnight of maintenance and operational problems being highlighted in the news cycle, the pilot association representing the AAL pilots sent out an automated message asking pilots to quit doing what the union had denied they had been doing all along. The message floated out that AMR Corporate executives were, once again, "on the courthouse steps" seeking an injunction against pilots writing up maintenance problems (aka. "doing their FAA mandated duties"). This was against the backdrop of a $162 million fine for faulty maintenance and several sets of seats coming loose in flight due to improper outsourced maintenance (AMR executives not doing their jobs).

You can't make this stuff up.

The latest fear coming out of the AAL pilot union is that the union will be fined into oblivion and the big, bad judge will continue to fine the individual pilots in the union. Whether or not the individual fines are what the union would be fined, divided by all pilots, or a judge fining individual pilots for not "mission hacking" is not clear. Apparently, the pilot union would like to believe that the "due process" clause of the Constitution, along with the FIRST AMENDMENT, does not apply to airline pilots. That represents a new low in fear grenades, but is in keeping with the reality that the modern pilot association has become a tool to control the modern pilot. USAPA, the union representing the pilots of US Airways, has on its website an admonishment for pilots to keep mission hacking their way through their jobs, after multiple bankruptcies and breaches of faith by their executives. The courts are using **the law** to force the unions to police the pilots, which is normally the domain of airline management. Executives can't be bothered as they are too busy asset-stripping the air transportation infrastructure of the United States for their own gain under the protection of **the law**.

We find that entire concept bewildering in the face of AMR executives not being individually fined for poor maintenance directives that have resulted in multiple groundings. Heaven knows they have been paid more than enough money to cover the $162 million. AMR executives have caused more damage to the airline than the pilots could possibly dream of causing, yet no one has used **the law** to move against the executives.

Here is our question to the average line pilot at any major part 121 carrier, specifically the pilot group at AAL: Who is afraid of the big, bad TRO?

A TRO (temporary restraining order) is used to prevent one party from taking action that would harm another until the matter can be settled in a court of law. OPERATION ORANGE believes that any pilot union taking action that has a reasonable likelihood of resulting a TRO is ultimately harming its membership in specific and the piloting profession in general. OPERATION ORANGE does not condone illegal slowdowns, strikes, nor any other kind of behavior detrimental to the health of the profession and industry. Our reasoning for this is borne out of the lack of necessity for such actions, but more so that it gives airline executives tremendous leverage over the pilot groups. USAPA, APA, and ALPA have all been on the business end of a TRO and their pilot groups all suffered accordingly.

The executives that were able to secure TROs in these contexts all were handsomely rewarded for taming their pilot groups. Bottom line: the TROs are just another way, along with the RLA and 11 USC 1113, for executives to pick our pockets.

If pilots are ever going to get their feet under them in the fight with airline management, they are going to have to operate outside the RLA, 11 USC 1113, and the courts. If anyone has a way for pilots to temper the rapacity of airline executives **within the current law**, we would like to hear about it. We have our own solution that would beyond the reach of the RLA, 11 USC 1113, and any court in the land. Using our methods, no union official ever has to lose any sleep over being on the wrong side of a TRO and no pilot group need consult with the NMB about taking action.

There is no way pilots are going to ever increase their career expectations under **the current law** - no way. Pilots are 100% locked down, and that is by design. As long as executives are free to conduct offensive bankruptcies that serve no other purpose than to comport their labor structure to facilitate the asset-stripping of the various airlines (as

they have since 1983), professional pilots are going to continue this downward slide.

We have said over and over again that change MUST occur at the legislative level. **The law** must be changed. Fighting for the profession on a contract-by-contract basis isn't going to work and we submit the previous 30 years as evidence for that claim. What "advances" pilots had in the previous three decades came largely at the expense of scope and have all been shown to be temporary in nature, whereas the work rule concessions have been permanent. If you want a monument to the ephemeral pilot gains in the past 30 years, look at the monster that the various regional airlines have become.

The pilot union is entitled to lobby Congress in any peaceful manner it chooses. The FIRST AMENDMENT is quite clear in this matter. If a union were to stage a stand-down, **for purposes of lobbying Congress**, no judge could issue a TRO to prevent it. That concept has a 221 year history and has been tested over and over again.

If a pilot union insists on playing "small ball" by **the existing law**, we can guarantee that the careers of their pilots are going to continue to decline. Fighting "contract-by-contract," as was done in the early days of ALPA (jacking up the house one corner at a time - often called "pattern bargaining") is a proven losing strategy in the modern era, as it falls squarely under the RLA and 11 USC 1113. TROs can be issued to enforce the matter, and judges can be very creative in bringing stalwart unionists to heel.

The key is to fight where judges can't go and **no law** can exist to restrict the behavior. That is the domain of PEACEFUL EXERCISE OF THE FIRST AMENDMENT.

We know you can't strike. We know you can't slow down. We know you can't work to rule.

WE KNOW YOU CAN PEACEFULLY ASSEMBLE TO PETITION THE GOVERNMENT FOR REDRESS.

There is **no law** to stop you, as it has been defined out of existence since 1791. Yes, your airline may terminate your employment, but that's where unity comes into play. If all of you walk out for purposes of peacefully assembling to petition the government for redress, they will have to replace thousands of you at once. The three largest pilot associations (UAL/CAL, DAL, and AAL) have 28%, 26%, and 21% of the passenger traffic. The airlines can't find enough pilots to fly their outsourced operations, and the government is too scared to release ONE pilot group to self-help for a week long period. How are they going to fill a hole that is going to be a minimum of one fifth of the entire industry? At current training capacity, it would take seven to ten years to train replacements and restock the pilots at any of the major airlines, and that presumes a pool of qualified pilots is available, (which isn't).

Look at what writing up under-maintained airplanes did over a two week period at AAL? They couldn't keep their schedule WITH pilots. How can anyone keep a schedule without pilots? If an airline wanted for its pilots to keep the schedule, and only lobby Congress in ways that don't weigh on the schedule, they are going to have to act in a manner that does not abuse **the law**, as they will not be able to get an injunction against peaceful political activity.

Your pilot association can march every single pilot out the door in a political protest and there is not a thing the NMB, or any court can do to stop it. You don't need 30 days of "cooling off." No PEB can delay the action 60 days. If you lobby Congress to amend the RLA and 11 USC, that is wholly covered by the FIRST AMENDMENT. THE RLA DOES NOT APPLY NOR DOES THE FEDERAL BANKRUPTCY CODE. BY DEFINITION, THE FIRST AMENDMENT TRUMPS ALL ACTS OF CONGRESS.

A pilot union needs tools to temper the rapacity of airline executives during bankruptcy. The bankruptcy code does not protect the pilots from such aggression, as it does rail employees, so pilots need to take matters into their own hands to defend what is theirs. Until **the law** is changed, pilots will continue to endure, and lose these attacks. Perhaps if executives saw pilot resolve in such civic matters, they would offer a substantial good-faith gesture and pledge to join the pilots in fixing this problem in **the law**…or maybe not.

The target is Congress. If they wrote **the law** in such a manner that financial sociopaths cannot abuse it for their own

gain (such as protecting pilots as they do rail employees and forcing executives to bargain in a timely manner, along with other provisions), pilots would have no need to conduct political protests in lieu of operating the air transportation system of the United States. Because Congress has abdicated prudent oversight of this area of **the law**, pilots must peaceably assemble to petition them to redress such a grievance.

It's our FIRST AMENDMENT, too.

Please read our entry called, "Who Wants To Play To Win?" and "What Is Illegal About OPERATION ORANGE?" In there, we outline how a political stand down will work. While it is most beneficial for all unions to act as one, it will also work if pilot group exerts leverage the courts cannot control. The political establishment cannot sustain a sudden hole in 21% of the passenger traffic, nor will they wish to give the pilots the confidence to conduct the SOS en masse. Neither government nor management can afford an operational display of pilots exercising their FIRST AMENDMENT rights in this fashion. That genie must be kept in the bottle at all costs. There is more than ample material to serve as a "grievance" against the governmental regulatory paradigm, as we have chronicled in this entry. All a pilot union needs to do is develop the courage to try something new.

Should one pilot association opt to take a leadership position in such an action, they need not worry about providing a persistent hole that can be exploited by more self-serving pilot groups. Three days here, two days there, a holiday weekend here or there is more than enough to keep the pressure on while protecting the flying. During that time, the pilot association in the leadership role can use its influence with more reticent associations to form a united political front, as the airline executives have done through various industry trade groups. That should be easy enough after the pilot group in the leadership role has demonstrated an effective combat test of their "gadget."

Pressure your elected union officials into adopting the OPERATION ORANGE strategy. They have all been briefed on OPERATION ORANGE, so do not let them pretend they do not know what you are talking about. Please support warriors rather than politicians when choosing your union officials. The era of the overgrown Eagle Scout is over.

OPERATION ORANGE is the "Manhattan Project" of airline pilot labor relations. This is how the new era war in pilot labor relations is going to be fought. It is time to win.

The career you save will be your own.