# Report

TO

# THE PRESIDENT

BY THE

# EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10770 DATED
JUNE 19, 1958, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED

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**To Investigate an unadjusted dispute between American Airlines, Inc., a carrier, and certain of its employees represented by the Air Line Pilots Association, International, a labor organization.**

**(NMB CASE NO. A-5567)**

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**WASHINGTON, D. C.**
**SEPTEMBER 3, 1958**

**(No. 124)**

## LETTER OF TRANSMITTAL

WASHINGTON, D. C., *September 3, 1958.*

The PRESIDENT,
*The White House,*
*Washington, D. C.*

Mr. PRESIDENT: The Emergency Board created by you on June 19, 1958, by Executive Order 10770, pursuant to section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between American Airlines, Inc., and certain of its employees represented by the Air Line Pilots Association, International, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the dispute.

Respectfully submitted.

JAMES J. HEALY, *Chairman.*
MAYNARD E. PIRSIG, *Member.*
BENJAMIN C. ROBERTS, *Member.*



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## I. BACKGROUND OF DISPUTE

Emergency Board No. 124 was created by Executive Order of the President on June 19, 1958 pursuant to the provisions of section 10 of the Railway Labor Act as amended. Appointed by the President as members of the Board were James J. Healy, Chairman, Maynard E. Pirsig and Benjamin C. Roberts.

The dispute to be investigated and reported upon by this Board arose out of notices of intended change in the agreement between the parties. These notices were exchanged by the parties on June 21, 1957, in accordance with the provisions of section 6 of the Railway Labor Act as amended.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

It is noted that under section 33 of the 1956 agreement so-called section 6 notices were to be served at least 60 days prior to August 24 in any year. Thus, the June 21, 1957, exchanges were in full compliance with both section 6 of the law and section 33 of the existing agreement. Conferences began in New York City on July 15, 1957, and continued on almost a daily basis through August 2, 1957. On August 7 the president of the association advised the National Mediation Board that the services of the Board were required "because of the failure of the association and the company to resolve the difference outstanding between them." The company on August 19, in reply to a letter from the National Mediation Board, indicated it would be glad to join in the mediation process, urging that there be insistence upon two-way bargaining during the mediation. However, although docketing the dispute, the Board declined to assign a me-

diator until the parties had reviewed the entire matter to narrow, if possible, the large areas of difference.

Further conferences between the parties were held on September 11, 12, 13, 1957. On September 16, the association again requested the assignment of a mediator, pointing out that even the attempt to narrow the issues had failed. The reason for this was primarily the inability of the parties to agree on the method of approach to negotiations. At this point there emerged more clearly the basic disagreement between the parties as to the scope of the issues to be negotiated, namely whether turbine aircraft issues were or were not a proper subject for bargaining under the June 21 reopeners. This problem was to persist as a roadblock throughout their subsequent bargaining efforts.

A mediator was assigned and he commenced his work with the parties on October 22. Mediation efforts continued through November 27. On December 6 the National Mediation Board requested and urged the parties to enter into an arbitration agreement. The proffer of arbitration was declined by the association and was accepted by the company only with respect to compensation. Accordingly, the Board concluded that arbitration of the whole dispute was declined, and on December 16 it served notice that its services were terminated under the provisions of the law. Shortly thereafter a strike vote was taken by the association. In January and February 1958 mediation efforts under the auspices of the National Mediation Board were resumed. Most of these efforts were concentrated on working out an order of procedure to overcome the impasse which had developed over the jet question. Again these efforts proved unsuccessful and given the refusal by the parties to arbitrate the entire case, the Board again closed the case as of February 24, 1958. The association notified the Board on April 8 that it had established "2359 local time April 16 for withdrawal from service by all pilots of American Airlines." Once more the Board urged a resumption of mediation efforts and requested postponement of the April 16 strike date. The association acceded to the Board's request upon the understanding that mediation conferences would begin on April 17, would be terminated promptly if unproductive, and would be without prejudice to the association's rights under the law. The company also acceded to the Board's request provided the strike date was withdrawn.

The conferences which followed led to an agreement on April 25, 1958, on the Provisions for Continuing Negotiations (attached as Appendix A). This agreement was directed primarily toward circumventing the impasse as to scope of issues. Negotiations under the auspices of the National Mediation Board were held in North Conway,

N. H., from April 30 to May 18. Additional meetings were held in New York City during the period of May 25 to June 5. Again they proved futile in bringing about a settlement of the differences. The Board closed its file on June 9 and 10 days later the President created Emergency Board No. 124 by Executive order.

## II. SUMMARY OF EMERGENCY BOARD PROCEEDINGS

As of August 8, the Emergency Board had 18 days of hearings since July 9. The time limit within which its report to the President could be submitted was extended by agreement between the parties on several occasions, the most recent of which established September 3 as the deadline for submission of a report as required under the law.

On the first day of the hearings, the Board became aware of the principal reason why the negotiation and mediation efforts over an extended period of almost 11 months had been unsuccessful, specifically, the inability of the parties to resolve the question of whether or not issues relating to turbine-powered aircraft were a proper part of the negotiations. It became apparent that preoccupation with the scope of the negotiable issues had frustrated effective collective bargaining.

The Board was disposed initially to hear testimony and received evidence on the scope of the issues properly before it. A ruling on what was then deemed by the Board to be a threshold procedural matter was urged by the company and with equal vigor was resisted by the association. Conferences with both parties convinced the Board that a ruling too early in these proceedings on the matter of scope might easily destroy the Board's effectiveness in assisting the parties toward a resolution of their differences. Accordingly, the Board on July 10 decided to defer hearing testimony and evidence and to postpone making an immediate decision on the matter of the issues properly before it. The association was permitted to present its case as it deemed appropriate; however it was understood that the company was free to engage in a cross-examination of association witnesses not only insofar as their testimony related to piston equipment issues but also as such issues might relate to turbine-powered equipment.

Pursuant to this ruling, the association's affirmative case was heard, in part, over the next 12 hearing days. It became increasingly evident to the Board that the dispute over what constituted the issues was the principal problem. The hearings themselves were bogged down by constant objections to certain lines of questioning or to the admission of certain exhibits, by frequent recesses, and by separate or joint sessions in chambers with the Board. In these proceedings, as in the protracted negotiations which preceded them, preoccupation with scope

of issues prevailed over bargaining on the merits of any of the issues. Because of this, it became apparent that just as effective collective bargaining had been frustrated by this problem, so too would the Board be frustrated in its purpose if the scope of issues was not defined. After a 2-day recess during which the Board reviewed the conduct of the hearings, it ruled on August 5, 1958, that it would require revision in the association's planned presentation of its affirmative case, that it would request the association to proceed immediately to testimony and evidence on the subject of whether or not issues relating to turbine-powered aircraft were before this Board in addition to the issues relating to piston equipment, acknowledged by both parties to have been properly in negotiations and before this Board. On August 6 the association complied with this ruling and upon completion of its case on this subject, the association's case was interrupted to hear the company's testimony and evidence on the scope of the issues.

As of August 6 the association had not completed its presentation on the merits of the various issues, and the company had not developed any of its affirmative case. Nevertheless, the Board felt after hearing testimony and evidence on the scope of issues that an interim ruling on scope accompanied by recommendations for the conduct of further negotiations would be in the best interest of promoting the resolution of the dispute in accordance with the intent of the Railway Labor Act. The following report and recommendations were submitted to the parties on August 8.

## III. INTERIM RULING AND PROPOSALS TO PARTIES, AUGUST 8

### A. SCOPE OF ISSUES

Stated briefly, it is and has been the association's position that the only issues appropriate for negotiations (absent special agreement to the contrary) and for these proceedings are those relating to present equipment, i. e., piston aircraft. The company, in turn, argues that not only piston aircraft issues, but also turbine-powered aircraft issues have been a proper subject for negotiations and are before this Board. This is the heart of the present dispute and has been since September 12, 1957. In fact, notwithstanding the somewhat belated upward revisions in offers and downward revisions in demands, most of the company and association efforts in mediation have been directed toward procedural resolution of the issue which had become a substantive matter.

In resolving this question, the Board adopts the premise that under the Railway Labor Act it has been customary to set forth the specific

intended changes in an existing agreement in what are normally referred to as section 6 openers. These openers establish the proper scope for subsequent bargaining, a fact acknowledged by both parties in the instant case. The section 6 notices protect both parties from the belated introduction of new issues unless it is agreed to in negotiations or during other processes provided by the act. It is the Board's judgment that the interpretation of the scope of the June 21, 1957, openers (as developed and clarified in the case of the company's notice on July 15, 1957) can be determined best by an examination of and a finding with respect to three areas of testimony and evidence: (1) the intent of each party in the preparation of its notice; (2) the language and content of the notices; and (3) the nature of the discussions in the early stages of negotiations following exchange of the notices.

**(1) The intent of each party in the preparation of its notice**

The Board is convinced that the association by its behavior and statements intended to open only on the issues relating to existing (piston) equipment. In the negotiating committee's announcements prior to June 21, 1957, it stressed the desirability of keeping the issues at a minimum and of completing negotiations in the shortest possible time; in a Bulletin to Pilots on April 16, 1957, it said that the major item this year (1957) would be money for *present* equipment and that new or different approaches to industry problems would not be tried this year on American Airlines. The consensus of the pilots canvassed at the various bases by the negotiating committee was that the goal for the 1957 opener should be an improved alignment of salaries and working conditions commensurate with or better than those already achieved by pilots on other carriers. There is nothing to suggest a contemplation of bargaining on jets.

The company's intent, as it prepared for the 1957 opener, is far less definitive. It stated that a negotiated handbook had been prepared well in advance of the opener date covering many matters "as they might pertain to the jet issue when we got into discussion with the pilots." But this leaves uncertain whether such preparation was dictated by a deliberate decision of the comany to include turbine issues in its opener or by an assumption that the association would raise the issues. Similar advance preparation (started as early as December 1956) for some form of simplified pay plan is inconclusive, because such a plan could be applicable to piston equipment alone and need not be contemplated solely because jets were to be introduced approximately 21 months later.

In summary, the record shows that the intent of the pilots to deal only with piston problems in its opener was definitive. The company's

intent to deal with jet issues in addition to piston issues in its opener was not established by the evidence.

**(2) The language and content of the section 6 notices**

The company argues that it had every right to believe that the pilots intended to negotiate turbine equipment issues because of three aspects of the association's opener:

(A) The association's proposed change of language in section 9 (b) (3) to cover "new aircraft which are faster than those specified in this section" must be prompted by a desire to apply the formula for speeds to turbine as well as piston equipment, according to the company.

This conclusion is invalid, however, when one considers that in paragraph (c) of the same subsection the union's opener states specifically that these procedures are *not* to apply when the established speed of the new or modified aircraft results in a figure greater than 349 miles per hour. This clause has the undeniable effect of excluding jets. In this respect, it is significant that the union opener also covers hourly pay for equipment with speeds up to 350 miles per hour, again excluding the possibility of jet coverage. If anything, the association's reopener language affirms its intent to deal only with the piston equipment problems.

(B) The reference in the association's letter of June 21, 1957, to changes desider "so as to provide for similar basic qualifications of all members of the operating crew." Given the resolution enacted by the association in November 1956 to provide for a pilot qualified third crew member in anticipation of jet equipment, the company interpreted the proposed change as a jet issue.

Although this deduction of the company is logical, it is just as logical to interpret the request as a renewal of a similar request made in the 1955–56 negotiations and one which had its genesis in the company's reversal of an announced policy to have pilot qualified third members at a time when introduction of jet equipment was not imminent.

(C) Finally, the company construes the various demands of the association which relate to pay and credit as suggesting concern for the jet issue. It reasons that the cumulative effect of these demands is to reduce the flight-time limitation from 85 hours per month to something considerably less; it becomes a feather-bedding device in anticipation of the impact of jets on manpower needs.

This company theory may have considerable merit, but it is not proof that the association opener covered jet issues as such. The submission of demands affecting pay and credit and thereby affecting actual flight-time opportunities is nothing new. Such demands, admittedly to a lesser degree, were made in negotiations in prior years.

The company's reopener makes no specific mention of the inclusion

of turbine equipment issues, but the company argues that two revisions suggest its intent to cover both piston and jet aircraft. *First*, it proposed a simplified pay structure and procedure which would enable it to "compensate pilots on a realistic basis," although the form of the new plan was not made known until November 26, 1957. *Second*, the company proposed in its notice a "more reasonable duration" for the succeeding agreement. It argues that it had in mind an agreement of more than the 18 months duration of the 1956 agreement and which would extend beyond the time when the first turbine equipment was to be delivered.

Notwithstanding the points made by the company in this respect, we do not believe they were sufficient to put the pilots on notice of any company intent to raise issues relating to turbine equipment. On the other hand, the language and content of the association's opener were quite sufficient to put the company on fair notice that the pilots intended to limit the issues to pistons. On July 15, when the company presented for the first time its detailed statement of proposed specific changes, it had been in possession of the association's specific demands for at least 2 weeks.

#### (3) The nature of the discussions in the early stages of negotiations

In the period of July 15 to August 2, 1957, the discussions were not of a nature as to show that the parties themselves consider the turbine issues to be raised by the reopeners. References to jets in these discussions were of a kind which one could well expect in the negotiation of piston issues with jets in the offing. The anticipation of the impact of certain bargaining requests on jets does not mean necessarily actual bargaining on so-called jet issues. Given the clear piston limits in the pilots' reopener and its stated intent to bargain primarily for money on present equipment, the company nevertheless did not press the question of scope of negotiations at the outset.

### B. CONCLUSION

It is the ruling of this Board that the problems of turbine-powered aircraft were not a part of this controversy as it developed from the section 6 notices exchanged in June 1957. However, the Board is equally convinced that to proceed at this time on the piston issues only would be entirely unrealistic. Both parties must recognize that they are now confronted with unresolved issues relating to turbine equipment as well as piston equipment. These issues must be faced up to in their entirety if a firm collective bargaining agreement is to be achieved.

### C. RECOMMENDATIONS TO THE PARTIES

There has been no real collective bargaining between the parties on the merits of any of the issues now confronting them. The controversy over the scope of negotiable issues which arose in September 1957 impeded any effort to explore constructively and to bargain on substantive contract issues. Consequently, the case came before this Emergency Board in a status not contemplated by the Railway Labor Act. The Board's principal function to clarify the scope of the issues having been accomplished, the parties must now assume their basic responsibility to negotiate and resolve the full scope of the issues as they relate to both piston and turbine equipment. Therefore, for the purpose of aiding the parties in carrying out this responsibility, the following recommendations are made:

A. The negotiating committees convene immediately and resume bargaining.

B. The basis for bargaining shall be the memorandum of understanding between the parties dated April 25, 1958, but with an acceptance that some of the issues on piston and turbine equipment are related.

C. The Board will make periodic inquiries as to the progress of such negotiations.

The Board has expressed its intention not to seek further extensions under the Railway Labor Act beyond August 30, 1958. It will be in no position as of that date to make a report dealing with the merits of the issues. It will embody in its final report the recommendations contained herein and the progress made by both parties in facing up to their bargaining responsibilities.

## IV. REPORT ON NEGOTIATIONS CONDUCTED PURSUANT TO EMERGENCY BOARD'S RECOMMENDATIONS OF AUGUST 8

After submission of the foregoing report and proposals on August 8, the hearings were adjourned without date, and the parties were requested to advise the Board Chairman by Monday, August 11, whether they were prepared to accept the Board's recommendations. Mr. Clarence Sayen, president of the Airline Pilots Association, International, sent a telegram on August 9 indicating the association's acceptance, and Mr. C. R. Smith, president of American Airlines, Inc., in a letter dated August 11, communicated the company's acceptance.

Prenegotiation meetings were held with the Board Chairman on August 11 and 12. The parties resumed negotiations in New York City on August 13 and 14 in accordance with the Board's recommendations. Negotiations were continued in San Francisco August 18–21,

inclusive. The first progress report was given to the Board Chairman in telephone conversation with each party on Wednesday, August 20. During the week of August 25 the parties continued negotiations in New York City. At the request of the Board, Mr. Judd McSwan of the National Mediation Board joined the parties to assist in their negotiation efforts. In addition, the Emergency Board members met each negotiating committee separately on at least two occasions during the week to ascertain the progress or lack of progress toward resolution of the dispute. The Board was kept informed as to the proposals and counterproposals made.

From its knowledge of the negotiation activity the Board has had to reach the conclusions set forth below. In appraising the progress made since August 8, the Board has been mindful that there already had been 12 months of bargaining discussions.

## FINDINGS

I. There has been no effective, realistic bargaining of the issues in dispute since the Board's August 8 recommendations were accepted.

(a) During these negotiations, the company made certain proposals to the association, the net effect of which was to increase its offer to the pilots.

(b) The pilots negotiating committee repeatedly rejected the company proposals. This committee submitted to the company on the fifth day of negotiations a clarification of its so-called 1958 "turbine equipment" opener, which contained further upward demands beyond those originally requested for piston equipment. It was not until August 28 that the pilots negotiating committee belatedly made any significant counterproposal to the company which revised downward its earlier demands. But the net overall effect at the time of this report was a set of demands by the pilots committee for piston equipment which exceeded any it had made known heretofore either to this Board or to the company.

II. The ruling of the Board on August 8 with respect to scope of issues had the salutary effect of creating a willingness by both parties to discuss both piston and jet equipment problems. However, in these recent negotiations they never reached the point of serious discussion of jet issues. In part, this was because of the new piston demands introduced for the first time by the pilots negotiating committee.

III. As indicated in the interim report of the Board, no genuine bargaining efforts had taken place prior to that time. Despite the long-continued efforts of the National Mediation Board to bring these parties together in realistic bargaining, supplemented by the activities

of this Board, the parties still have not reached a point of discussion in which issues have a fair prospect of being resolved or even clarified. The observed performance does not appear to justify that this Board request a further extension of its life. In the light of developments unique to this case, the Board concludes that a resumption of the hearings on the merits would not be warranted.

### RECOMMENDATION

In spite of the disappointment this Board has experienced and the lack of progress made, the Board has confidence in the ultimate capacity of the parties to resolve their differences by genuine collective bargaining. If both parties sincerely desire an agreement the real differences are not so great that they cannot be reconciled by direct and diligent negotiations. To be successful such negotiations must be conducted in an atmosphere devoid of mutual suspicion. The parties also must be constantly alert to the public interest involved. Therefore, the parties should resume negotiations in the constructive manner recommended by this report.

## APPENDIX A

### PROVISIONS FOR CONTINUING NEGOTIATIONS

An understanding between both committees that:

The company will implement any new agreement negotiated and concluded on present aircraft, with full retroactive pay when the problems of each of the parties connected with present aircraft are resolved to the satisfaction of each of the parties, and after such conclusion and implementation, the parties will begin negotiations immediately on rates of pay, rules, and working conditions and other related items (as may be deemed related by the respective parties) with respect to turboprop and turbojet aircraft.

Negotiations of present aircraft will be based on the proposals which are attached hereto. Such negotiations on present aircraft shall not extend beyond May 28, 1958. If such negotiations fail, the parties shall revert to their rights under the Railway Labor Act.

At the successful conclusion of the turbine aircraft negotiations, the items agreed to will be incorporated into one overall agreement with those items agreed to on present aircraft.

The pilot committee pledges further that every effort will be made to conclude an agreement on turbine equipment prior to the time the equipment is on the property.

The above negotiations shall continue under the auspices of the National Mediation Board.

Dated this 25th day of April 1958.

U. S. GOVERNMENT PRINTING OFFICE: 1958