

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**APPOINTED BY EXECUTIVE ORDER 10975 DATED
NOVEMBER 10, 1961, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED**

**To Investigate a Dispute Between Pan American World Airways,
Inc. and Certain of its Employees Represented by the Air Line
Pilots Association, International, a Labor Organization.**

(NMB CASE NO. A-6328)

**WASHINGTON, D.C.
DECEMBER 10, 1961**

(Emergency Board No. 143)

LETTER OF TRANSMITTAL

WASHINGTON, D.C.
December 10, 1961.

THE PRESIDENT
The White House
Washington, D.C.

MR. PRESIDENT: The Emergency Board created by you on November 10, 1961, by Executive Order 10975, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between Pan American World Airways, Inc., and certain of its employees represented by the Air Line Pilots Association, a labor organization, has the honor to submit its report and recommendations based upon its investigation of the dispute.

Respectfully submitted.

ELI ROCK, *Member.*
ARTHUR M. ROSS, *Member.*
LEO C. BROWN, *Chairman.*

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I. INTRODUCTION

This Emergency Board was appointed by the President pursuant to Executive Order 10975 of November 10, 1961, reading as follows:

EXECUTIVE ORDER 10975

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN PAN AMERICAN WORLD AIRWAYS, INC., AND CERTAIN OF ITS EMPLOYEES.

WHEREAS, a dispute exists between Pan American World Airways, Inc., a carrier, and certain of its employees represented by the Air Line Pilots Association, International, a labor organization; and

WHEREAS, this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS, this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service;

NOW THEREFORE, by virtue of the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), I hereby create a board of three members, to be appointed by me, to investigate this dispute. No member of the Board shall be pecuniarily or otherwise interested in any organization or airline employee of any carrier.

The Board shall report its findings to the President with respect to the dispute within thirty days from the date of this order.

As provided by Section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the Board has made its report to the President, no change, except by agreement, shall be made by Pan American World Airways, Inc., or by its employees, in the condition out of which the dispute arose.

JOHN F. KENNEDY.

THE WHITE HOUSE,
November 10, 1961.

(F.R. Doc. 61-10883; Filed November 13, 1961; 10:00 A.M.)

The Board convened in New York City on November 29, 1961. Eight consecutive days of hearings were held between November 29, 1961, and December 6, 1961. The record of the hearing consists of 1,211 pages of testimony, 263 Association exhibits and 156 Company exhibits. The Association was represented by Clarence N. Sayen, President; Henry Weiss, Esq., Counsel; and members of the Master Executive Council. The Company was represented by Everett M. Goulard, Vice President, and Robert S. Hogueland, Assistant Vice President.

II. PARTIES TO THE DISPUTE

Pan American World Airways, Inc. (hereinafter referred to as PAA), is an international air carrier principally engaged in commercial air transport operations. Historically, the Company (organized in 1927) has pioneered commercial air transportation between the United States and almost all major areas in the world. It has been and is currently the principal United States airline engaged in foreign and overseas air transportation of persons, property and mail. The Company's air transport operations serve most areas of the world from the continental United States. It connects, for example: (1) The West Coast of the United States with Alaska, Hawaii, the Philippine Islands, other islands of the Pacific, Japan, other points in Asia, New Zealand and Australia; (2) the East Coast of the United States and points in Europe, the Near East, the Middle East, Asia, West Africa and South Africa; and (3) the East and South Coasts with Bermuda, Puerto Rico, points in the Caribbean, Mexico, Central America, Canal Zone, and South America. The Company has not been authorized to and does not carry traffic moving entirely within the continental United States.

On December 31, 1960, the Company employed 23,271 persons in many crafts and classes. A large majority are represented by labor organizations, including pilots (Air Line Pilots Association), flight engineers (Flight Engineers' International Association), flight service attendants, mechanics, ground service employees and port stewards (Transport Workers Union), service supply clerks (International Brotherhood of Teamsters), dispatchers (Air Line Dispatchers Association), and clerks and related employees (Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees).

The union involved in this dispute is the Pan American Chapter of the Air Line Pilots Association, AFL-CIO (hereinafter referred to as ALPA or as the Association). It represents approximately 1,400 of the Company's employees in the classifications of check pilots, captains, first officers, second and third officers. The men are principally stationed at bases in New York, San Francisco, Miami, and Frankfurt, Germany. A small number are based in Seattle and Houston. (The base formerly maintained at Hong Kong has now been disestablished.)

ALPA and PAA have bargained collectively since 1945. A total of seven collective-bargaining agreements have been executed. No work stoppages have taken place; on the other hand, no agreements have been concluded without third-party assistance. In six instances mediation has been conducted under the auspices of the National

Mediation Board. The remaining agreement, signed in 1957, resulted from a private "factfinding" proceeding conducted by Mr. David L. Cole. Mr. Cole also served as a neutral factfinder in the present controversy between January and October, 1961, but for reasons indicated below his efforts could not be successful.

III. ISSUES IN DISPUTE

The agreement between the parties of February 4, 1959, was to "continue in full force and effect at least until August 4, 1960, unless written notice of intended change is served at least 60 days in advance of August 4, 1960, or any date thereafter, in accordance with Section 6, Title I of the Railway Labor Act, as amended." (Section 43.)

On June 2, 1960, PAA transmitted a letter to ALPA proposing amendments to the agreement. These proposals dealt with the following subjects:

1. Air Transport Pilot rating for copilots.
2. Seniority.
3. Reemployment rights of pilots returning from military leave.
4. Several proposals concerning transfer, bidding and assignment of pilots.
5. Hours of service.
6. Vacations in connection with foreign assignments.
7. Minimum crew complements in accordance with Civil Air Regulations.
8. Duration of agreement.

The ALPA proposals were transmitted to the Company on June 3, 1960. These proposals, running to approximately 50 pages and incorporating perhaps hundreds of specific points, are too extensive to be stated fully here. The subject matter of the proposals may be summarized as follows:

1. Compensation, including longevity pay, mileage allowance, gross-weight allowance, dead-heading time, on-duty time, days free of duty, ground or flight training, reporting pay, tax reimbursement, and other matters.
2. Vacation pay, including amount of vacation pay, additional allowance for deficiency in duty-free days, allocation of vacation periods, and other aspects.
3. Retirement benefits.
4. Health and life insurance benefits.
5. Hours of service, including definition of flight time, on-duty time, time free of duty, and crediting of flight time under various circumstances.

6. Scheduling of pilots, including a comprehensive manual of scheduling, as well as special provisions relating to permanent and temporary bid pilots, line check pilots, and other subjects.

7. Transfers and assignments, including transfers from one base to another, award of permanent base-station vacancies, establishment of new base stations, flight assignments at base stations, and other matters.

8. Furloughs and furlough pay.

9. Training procedures relating to pilots second in command, ground and flight training, and pilots awarded aircraft assignments or routes for which they are not qualified.

10. Miscellaneous proposals, including a definition of "controls" affecting the duties of pilots and flight engineers, travel expenses, living accommodations, discipline, system-board procedures, training of personnel, and other matters.

On September 25, 1961, ALPA addressed a further communication to PAA in accordance with Section 6, Title I of the Railway Labor Act, proposing three additional modifications in the agreement of February 4, 1959. These additional proposals dealt with the rights of the pilots and the Association in the event of certain labor disputes and with retirement benefits of pilots unable to fly after age 55 because of Government regulation of policy.*

Notwithstanding extensive negotiating, mediating, and factfinding efforts as described below, the parties have made no substantial progress toward a resolution of these issues. It must, therefore, be reported that the dispute remains in essentially the same posture as when the proposals were initially advanced.

IV. DEVELOPMENT OF THE DISPUTE

As noted above, reopening notices were transmitted by the parties on June 2 and 3, 1960. There were two series of direct negotiations, the first of which ran from July 19 to July 28, and the second from August 16 to August 19, 1960. The next step was a request for mediation under the Railway Labor Act, addressed to the Mediation Board by ALPA on August 22, 1960. Mediator Tedford E. Schoonover was assigned to the case; his efforts continued until the end of January 1961.

*A question has been raised concerning the admissibility of several documents relating to the Association's September 25, 1961, Section 6 notice. (Company Exhibit 11, Items 36, 37, and 38.) Technically this notice is distinct from its June 3, 1960, notice. The Board's opinion is that if the issues raised in the September 25 notice must be resolved before an agreement can be concluded, the documents are relevant. If, however, these issues do not constitute an obstacle to a complete settlement, the documents need not be considered.

In February 1961, the National Mediation Board proposed, under Section 5, Title I of the Railway Labor Act, that the issues in dispute be submitted to binding arbitration. This proffer was accepted by PAA, "subject only to the condition that the parties agree upon suitable questions to be arbitrated," but was rejected by ALPA.

Thereupon the National Mediation Board proposed that a neutral person be designated to find facts and make recommendations in the dispute. The proposal provided that the neutral should not "adjudicate any of the issues presented but it is understood that his recommendations will be used as a basis for reaching an understanding to adjust this entire dispute." Agreements were made by the parties concerning the duration of the factfinding procedures, the matter of retroactivity, and certain related questions.

Mr. David L. Cole, who had successfully served as the neutral in a factfinding proceeding which eventuated in the 1957 agreement, was again selected to serve in this capacity.

Occurrences involving the Flight Engineers' International Association and several airline companies are of great significance in the instant controversy. The Flight Engineers called a strike on seven major carriers on February 18, 1961, after the National Mediation Board had certified that pilots and flight engineers employed by United Air Lines constituted a single craft or class for purposes of representation. The strike terminated on February 23, after urgent appeals by the President and the Secretary of Labor.

In this connection the President issued Executive Order No. 10921, establishing a Presidential Commission on the Air Lines Controversy. The mandate of the Commission was "to consider differences that have arisen regarding the performance of the flight engineer's function, the job security of employees performing such function, and related representation rights of the unions, namely, the Flight Engineers' International Association and the Air Line Pilots Association on the following carriers: Pan American World Airways, American Airlines, Trans World Airlines, Eastern Air Lines, National Airlines and the Flying Tiger Line." Professor Nathan P. Feinsinger was named Chairman of the Commission and Professors Richard A. Lester and J. Keith Mann were the other members.

The Feinsinger Commission issued a report on May 24, 1961, containing basic principles which should govern the settlement of crew complement and related issues. When the companies and unions failed to achieve negotiated agreements, the Commission promulgated a supplementary report on October 17, 1961, incorporating detailed recommendations for the resolution of these issues.

The October 17, 1961, report of the Feinsinger Commission was endorsed by the President, who urged the Pilots, the Flight Engineers

and the carriers to follow the Commission's recommendations so that a new era of labor peace might be achieved in the industry. The President also specifically requested the members of the Commission to remain available to assist in the implementation of their recommendations.

Pan American World Airways, as well as the other affected air line companies, accepted the recommendations of the Commission in its final report. The Flight Engineers' International Association accepted the Report in November 1961 with the understanding that, in implementing the specific recommendations, it would be free to discuss with the carriers and the Pilots any special problems affecting the interests of engineers. The FEIA acceptance was made contingent upon similar acceptance from ALPA, which has not yet taken an official position on the Report.

Meanwhile, the factfinding proceeding between PAA and ALPA continued. Mr. Cole held some 25 days of formal hearings, received and analyzed hundreds of exhibits, and conducted numerous conferences with the parties. These proceedings were recessed on October 24, 1961. It seems evident that the lack of success of the fact-finding procedure in 1961 was related to the complex and difficult crew complement issues, which not only constituted a most significant problem in its own right but also is intimately interconnected with numerous proposals advanced by the Association and the Company. We are convinced that PAA and ALPA will not be able to conclude a renewal agreement until the crew complement and related issues are faced squarely and disposed of along the lines of the Fensinger Report.

ALPA promulgated a strike notice on November 2, 1961. The National Mediation Board then appealed to the parties to cancel the strike notice and to resume factfinding. However, the parties fell into a disagreement as to whether renewed proceedings would be "in lieu of" an Emergency Board proceeding under Section 10 of the Railway Labor Act.

On November 10, 1961, the President issued Executive Order 10975, creating Emergency Board 143 to investigate the dispute between PAA and ALPA.

V. INADVISABILITY OF SPECIFIC SUBSTANTIVE RECOMMENDATIONS

This Emergency Board is convinced that under the circumstances of the controversy, it would neither be possible nor desirable to make specific recommendations at this time covering the numerous points of difference between the parties.

The first reason for this conclusion is that the scope of the controversy in its present posture is so vast. As indicated above, literally

hundreds of specific points would have to be dissected, analyzed and evaluated. There are few, if any, significant provisions of the agreement which have not been thrown open at the instance of one party or the other. This is not an initial contract between inexperienced negotiators; on the contrary, it is an agreement between parties of unusual maturity, sophistication and experience. Certainly it should not be necessary for an outside Board to monitor almost every aspect of the employment relationship and the union-management relationship.

We are not indulging in modesty or self-deprecation in stating that we are not in a position to form confident judgments on these multitudinous issues, even if this were deemed desirable. The members of the Board were designated on November 24, 1961; the hearing commenced November 29; under the terms of the statute this Report must be filed by December 10. The Board suggested that an extension of the deadline might be desirable. PAA concurred, but ALPA rejected the suggestion. Under these conditions only eight days could be allocated for the hearing, leaving four days for executive sessions of the Board and preparation of the Report. As already mentioned, the record consists of 1,211 pages of testimony and more than 400 exhibits. Certain exhibits run to upwards of 100 pages.

With so many issues in dispute and so little time for considering them, we have no way of knowing which of them represent serious problems requiring a solution and which represent "filler" or "window dressing." For this reason, as well as those stated above, we are convinced that it would be inadvisable, even dangerous, for the Board to attempt specific recommendations on all of these points.

There are further reasons why it would be inappropriate for this Board itself to attempt a resolution of the issues. There has been little or no real collective bargaining between the parties since the serving of reopening notices eighteen long months ago. Our system of free collective bargaining in the United States, and the terms of the Railway Labor Act in particular, are based upon maximum reliance on self-determination by labor and management.

Finally, we cannot and should not ignore the factfinding proceeding which the parties initiated in February, 1961, and which broke off in October. Essentially this proceeding constituted a flexible and ingenious combination of negotiation, private mediation, and recommendations on unresolved issues. The procedure was specifically suggested by the National Mediation Board in February 1961 because it was employed successfully in 1957. Mr. Cole, who served as neutral in the factfinding proceedings, has had great success in resolving airline controversies during the last dozen years and has acquired intimate knowledge of the industry and its labor-management prob-

lems. During 1961 the parties invested many weeks in meeting with Mr. Cole and acquainting him with the issues in dispute. When the factfinding procedure was broken off in October 1961, the formal hearings had been concluded and the decisive phases of mediation, narrowing of issues and agreement-making were about to begin.

VI. PROCEDURAL RECOMMENDATIONS

The Board, therefore, recommends that the parties give serious consideration to resuming what appears to be the most useful and promising avenue toward a settlement: the factfinding proceeding which commenced in February 1961, and was broken off in October. We believe it regrettable that the parties were not able to agree upon a basis for resuming this proceeding and recommend its resumption without delay. The neutral should move immediately into the mediating phase which was about to commence in October.

In this endeavor the parties must recognize that some of the issues in the case involve vital interests of the flight engineers and the Flight Engineers' International Association. (A report in the dispute between PAA and FEIA was transmitted to the President by an Emergency Board on June 20, 1961.) There is every reason to think that the controversies between PAA and the two unions cannot be settled in isolation from each other. Therefore it may be desirable, at some stage, to involve FEIA in the resumed deliberations.

Moreover, the parties must face the fact that the crew complement issues studied by the Feinsinger Commission are intimately interwoven with the other matters in controversy. The Feinsinger Commission devoted to these problems many months of careful and patient study. Its October 17 recommendations are quite specific, although, needless to say, the installation of these recommendations on a particular air line is a proper matter for discussion between the employer and the two unions. We wish to make it plain that in proposing renewed negotiations and factfinding, we do not suggest any departure from the Feinsinger recommendations. These recommendations were based upon the most cogent, impartial analysis of the problem and have been strongly endorsed by the President. In our view, it would be inappropriate for any party to adhere to a position in conflict with the Feinsinger Report.

Finally, we recommend that the parties file a report with the National Mediation Board on December 22, 1961, indicating the progress which has been made and the current status of the controversy.

ELI ROCK, *Member.*

ARTHUR M. ROSS, *Member.*

LEO C. BROWN, *Chairman.*

