

Profile of the American Airlines' Pilot Sickout

Last February, pilots at American Airlines conducted a 10-day sickout that centered on when American Airlines would integrate the operations of Reno Air, a regional low-fare carrier it purchased in December 1998 to shore up its West Coast presence. After 8 months of negotiations the carrier officially integrated Reno Air operations.

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Last February, American Airlines and the Allied Pilots Association (APA) were involved in a labor dispute that spawned a 10-day sickout and led to the cancellation of some 6,600 flights that cost the carrier an estimated \$200 million.¹ The dispute revolved around when American would integrate 300 Reno Air pilots into its pay and seniority ranks, following the merger of the two carriers. Worried that American Airlines would transfer its routes to Reno's lower-paid pilots, the Allied Pilots proposed that the integration be retroactive to December 23, 1998, when American took control of Reno Air. American Airlines told the union that it intended to operate Reno Air separately for a transition period—12 to 18 months—to give it time to retrain Reno Air's pilots, refurbish its aircraft, and consolidate airport facilities. After 9 months of fruitless negotiations, American Airlines officially integrated Reno Air's operation on August 31, 1999, effectively ending another chapter in the parties' bargaining history.

Background

At the time of the dispute over the integration of Reno Air, there was already discord between American Airlines and the Allied Pilots because of problems that had been brewing for several years. In the mid-1980s, American Airlines unilaterally imposed a two-tiered wage system on pilots. In addition, following the integration of AirCal in 1987, some AirCal pilots stayed for several years at lower wage rates than their counterparts at American Airlines.² In the early 1990s, the carrier closed hubs in San Jose and Raleigh-Durham, and pulled out of West Coast service. As a result, American Airlines made joint marketing agreements with low-cost carriers, such as Reno Air, that gave them access to American's gates. American pilots saw this as an attempt to subcontract their jobs. During this time, American furloughed 610 pilots, some for as long as 3 years.³

At the same time, Reno Air enjoyed a close business relationship with American Airlines, which even allowed Reno Air's passengers to earn

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American frequent-flier miles. As the furlough list grew, so did the Allied Pilots' resentment over the close relationship between the two carriers, especially since Reno Air had taken over former American Airlines' routes.⁴ Coupled with years of mistrust, this resentment surfaced in 1997, when the pilots struck American Airlines briefly before being sent back to work under an executive order. The subsequent 1997-2001 contract agreement further angered many pilots, who were already frustrated by the president's decision to end the 1997 strike.⁵

Parties to the dispute

American Airlines. American Airlines, a unit of ARM Corp., is the Nation's second largest airline, with scheduled service to 161 cities, mostly throughout North America, the Caribbean, Latin America, Europe, and the Pacific. Coupled with its regional affiliate, American Eagle, the carrier serves 233 cities, with a workforce of 109,000 and a fleet of 892 aircraft. American Airlines carries some 225,000 passengers each day, and has 2,200 daily departures. Its major hubs are located at Dallas-Fort Worth, Chicago, Miami, New York, and San Juan.⁶

Allied Pilots Association. The APA is an independent union representing American Airlines' 9,500 pilots, who fly as captains and first and second officers. The union was founded in 1963, and was recognized for collective bargaining purposes by American Airlines in July of that year. The APA is headquartered in Fort Worth, Texas.

Reno Air. Reno Air, a scheduled, low-fare airline, began operations in July 1992. The carrier employed 2,100 people and had a fleet of 25 aircraft. It operated 182 daily flights to 13 cities from three major hubs—Reno-Lake Tahoe, San Jose, and Las Vegas. The carrier, which had little overlap in routes flown by American Airlines, maintained a marketing agreement with American from 1993 until 1998.

Issues in dispute

The 1999 dispute revolved around the Allied Pilots' contention that American Airlines was violating their 1997-2001 collective bargaining agreement's scope clause by continuing to operate Reno Air as a separate air carrier, even though it had purchased a majority of Reno Air's stock and had placed four of its senior-level officers on Reno Air's board of directors. The APA feared that American Airlines would operate Reno Air as a separate carrier. This would allow American to expand its Reno Air operations; thus, work would be lost to the Reno Air pilots who would not be covered under the terms of the American-APA collective bargaining agreement.

The union cited its scope clause as governing the dispute: "All flying performed by or on behalf of the company or an Affiliate shall be performed by pilots on the American Airlines Pilots Seniority List in accordance with the terms and conditions of the Agreement." According to the union, the scope clause meant that the flying performed by the Reno Air pilots for American Airlines since December 23, 1998, should have been assigned to American Airlines pilots, and that all pilots' work was to be performed according to the American Airlines-APA contract. The union said that it notified the carrier in October of 1998 that it needed to obtain an exemption (a "bridge agreement") to temporarily operate Reno Air.⁷

The APA wanted to protect its members' job security and pay. Reno Air pilots were paid half of the \$140,000 average salary earned by their American Airlines counterparts. The union feared that American would use these lower paid pilots in place of their higher-paid members. The APA insisted that all American pilots, including the former Reno Air pilots, should receive the pay rates set under the Allied Pilots' contract. The union had vigorously opposed two-tiered wage systems in the past, and cited its current agreement—negotiated after the 1997 strike—that had contract language calling for the elimination of

different wage scales for the same work.

The merger would bring sizable wage increases for the Reno pilots and new advancement opportunities for American Airlines' first officers. The APA proposed that American Airlines pay all pilots as if their promotions were retroactive to December 23, 1998. However, the company was only willing to phase in the wage boost over a 12- to 18-month integration period. The union also requested that the carrier compensate the pilots furloughed in the early 1990s, whom the union alleged were laid off because of American's decision to pull out of various West Coast markets and to subsidize Reno Air through market arrangements and other support. Throughout this dispute, APA insisted that these pilots' interests be addressed in the negotiations.

American rejected these two proposals, saying that it would cost an additional \$40-\$50 million and wipe out significant benefits brought about by the merger.⁸ The carrier claimed that its integration proposal was more generous than those in past airline mergers. It noted that it had made it clear to the union that it would not operate Reno Air as a separate carrier, and that it would pay Reno Air pilots American Airlines pilots' wages as soon as the integration was complete. In addition, American Airlines said it offered to significantly boost Reno Air pilots' wages during the integration period.

Also at issue was the integration of the seniority list, which directly or indirectly affects many aspects of the pilots' pay and working conditions. The APA wanted the Reno pilots to be placed at the bottom of the seniority list, instead of placing them according to their years of service. This would protect the American pilots, but put the Reno pilots, who were not covered under the APA collective bargaining agreement, at a considerable disadvantage.

Negotiations and court proceedings

American Airlines' and the APA ne-

gotiators opened contract talks in January 1999. After negotiators reached an impasse in early February 1999, the APA urged its members to consider whether the emotional or physical stress from the dispute would affect their ability to fly safely. The union's president, Richard LaVoy, told his members shortly after the sickout began, "We simply cannot allow anyone to pressure us into flying when we are not medically fit because it would be a serious violation of medical regulations."⁹

On February 5, American Airlines presented what it called a comprehensive proposal to the union, after which contract talks recessed. On the next day, some pilots started calling in sick, while others refused to fly overtime, causing the carrier to cancel flights. American Airlines canceled 90 flights on February 6, another 240 on February 7, and 500 flights on February 8. Because February is usually a light travel month, American's domestic flights were not booked up, so domestic passengers were more easily accommodated; but many of its international passengers had to be booked on other carriers. American Airlines, however, threatened to sue the union if it didn't terminate the sickout by the President's Day holiday weekend, when it and other carriers would be heavily booked.

At the company's behest, the parties resumed negotiations on February 9, at which time 827 flights were canceled affecting some 73,000 passengers.¹⁰ Frustrated by the continued sickout, which had forced the cancellation of some 2,400 flights since February 5, American requested a temporary restraining order on February 10 to end the job action. In its court filing, the carrier said that sick calls increased from 470 on February 5 to 1,200 by February 9.¹¹ In addition, American cited several instances where union officials encouraged their members not to report to work if they felt "stressed" because of the pace of the negotiations, or otherwise felt sick. The carrier insisted that, given its willingness to address the union's funda-

mental concerns, there was no reason for the job action to continue. With that, the union canceled the negotiation sessions that were to be held that day.

On February 10, U.S. District Judge Joseph Kendall found that the underlying labor dispute was a so-called "minor dispute" and, thus, the job action was "inappropriate and has to stop." (Case No. 7:99-CV-025-X.)¹² The judge ordered the pilots to end the sickout and to resume negotiations.¹³

The judge issued a temporary restraining order (TRO) that barred the union and its officers from "calling, permitting, instigating, authorizing, encouraging, participating in, approving or continuing any form of interference with American Airline's operations, including but not limited to any concerted strike, work stoppage, sick-out, slowdown, or other concerted refusal to fly in violation of the Railway Labor Act."¹⁴ The judge further ordered that the union leadership:

- Take all "reasonable steps within their power" to prevent any type of aforementioned job action.
- Instruct their members to "resume their normal working schedule."
- Notify their members "by the most expeditious means possible" of the contents of the TRO.
- Direct their members who were engaged in the sickout "to cease and desist all such activities and desist all exhortations or communications encouraging same."
- Post the notice about the TRO on their web site and the contents of this order on "all recorded telephone hotlines under control" of the union leadership.

During these hearings, the Allied Pilots adopted the legal position that American Airlines' action in ignoring the language of the scope clause created a "major dispute"¹⁵ under the Railway Labor Act, which would al-

low the union to use self-help, up to and including a strike. The union cited a 1969 U.S. Supreme Court ruling that it claimed applied to the Reno Air dispute:

...it could hardly be expected that a union would sit idly by as the... (carrier) rushed to accomplish the very result the union was seeking to prohibit by agreement. The union undoubtedly felt it could resort to self-help if the... (carrier) could, and, not unreasonably, it threatened to strike.¹⁶

Notwithstanding its position, the union said that it would fully comply with the order, but warned, "The company is still in violation of our contract...and the (judge's order) is not going to solve that."¹⁷

The parties resumed negotiation on February 11. About 2,400 pilots reported in sick on that day—compared to 2,077 the day before—and some 1,100 flights were canceled.¹⁸ On the same day, American Airlines went back to court and asked the judge to issue a contempt order in which the carrier would receive substantial monetary damages from the union.¹⁹

On February 13, Judge Kendall issued a contempt of court citation against the union and two of its leaders. The judge assessed temporary fines—\$10 million against the union; \$10,000 against Richard LaVoy, the union's president; and \$5,000 against Brian Mayhew, the union's vice-president—for violating the TRO issued 3 days earlier. The judge specifically cited a February 10 communication from the union leadership to its members, which, the judge said, "...intentionally gave the impression and further conveyed to the union membership that individual Union members did not have to comply with the TRO."

The APA claimed it went to great lengths to comply with the judge's order. The union said, "A job action involving so many widely scattered pilots making independent decisions about when they should clear the sick list, and involving so many mis-

matches between aircraft and crews, proved to be a very difficult thing to 'turn off'...in reality, the pilots' compliance with the TRO was outstanding. Many cancellations subsequent to the TRO were due not to a lack of crews, but were actually related to management decisions to cancel specific flights regardless of whether there was a crew available to fly them or not." In addition, the union contended that the sickout was a "grass-roots protest" that it could not control.²⁰

On February 15, American flew 90 percent of its normally scheduled flights as the pilots returned to work under the threat of the \$10 million fine. On the same day, American Airlines presented the union with a new, comprehensive offer to end the dispute. That proposal called for an immediate pay boost of up to 54 percent for Reno Air pilots, plus a cut in the amount of time to train pilots and integrate the operations of the two carriers. Further negotiations were held on February 16, but little or no progress was reported. American Airlines then issued a press release regarding the status of negotiations with the APA:

The airline is enormously disappointed that no progress is being made in our negotiations with the Allied Pilots Association, despite the fact that we have put forth another enhanced proposal addressing areas the APA has told us are important. During this entire negotiations, the union has shown a complete unwillingness to move off its original position. The proposal we have put forth is unprecedented in the history of airline mergers with regard to compensation and speed of integration.²¹

On February 17, Judge Kendall held hearings to allow the parties to present evidence concerning the amount of damages American Airlines suffered during the sickout. American presented evidence at the hearing, but APA did not. Instead, the union asked for a continuance so it could prepare evidentiary materials.

On February 18, American renewed

its offer to use an independent mediator or arbitrator to assist the parties in reaching a settlement. That same day, contract talks were recessed. In a prepared statement released on February 21, the carrier said:

We have made two generous and comprehensive offers to the union's negotiating committee within the last ten days. But thus far, APA has failed to present us with a comprehensive counteroffer to our proposals, except to say that it will settle for nothing less than its original key demands, including retroactive promotion pay for American Airline pilots, dating back to December 23, 1998. APA's key demands, which are simply out of step with regards to an airline merger, are presenting a huge obstacle to concluding this deal. Without these demands, we are confident that we could conclude an agreement in a matter of hours.

American Airlines' management was surprised by the reaction of the pilots' leadership to its implementation plans and by the intensity of their protest.²² The union saw the dispute as a line drawn in the sand, "...the stakes are enormous. AMR's plan for outsourcing our flying to its 'boutique' of airlines requires breaking the back of APA's contract, specifically the career protection provided by our Scope Clause."²³ The union contended that the carrier had to "successfully establish its precedent of violating the scope clause" so it could outsource more domestic and international flights to its code-sharing partners, such as Alaska Airlines and U.S. Airways, and its Oneworld Alliance partners.²⁴ The union claimed that it wanted the Reno Air dispute settled quickly in case American acquired an even larger airline in the future, in which case labor issues would take on even greater importance.

By agreement of the parties, Judge Kendall on February 23 extended the TRO until May 10. The judge also postponed hearings on the amount of compensation the union must pay American Airlines until April 12.

On February 24, American and the APA agreed to conduct two additional bargaining sessions, and if the sessions proved unsuccessful, to use an independent mediator to assist them in resolving their dispute. The parties subsequently canceled the 2-day negotiation sessions because they felt they were entrenched in their positions. American Airlines and the APA then began non-binding mediated negotiations with the help of an outside mediator. They held contract talks on March 21-22 and April 5-6.

On April 12, Judge Kendall reconvened the hearings on damages. Three days later, he levied a \$45.5 million fine against the APA to compensate American Airlines for its losses during the sickout, and ordered the union to deposit \$10 million in the court registry. The judge also requested briefs from the parties on the issue of whether Messieurs LaVoy and Mayhew should be held jointly and severally liable for the damages awarded. On April 19, Judge Kendall gave the APA until April 28 to make an additional \$10 million deposit.

On or around April 29, American Airlines and the APA reached a negotiated compromise in which American Airlines agreed not to collect on its money judgment against the union and to allow the union to keep the \$20 million in an escrow account while appealing the \$45.5 million fine. As part of the compromise, American Airlines and APA also agreed that each party would maintain their position regarding the union's scope clause, that APA would not appeal the court's judgment that the dispute was a minor dispute under the Railway Labor Act, and that both parties would agree to a permanent injunction against further walkouts.²⁵

On or around June 21, APA petitioned the National Mediation Board, the Federal agency that administers the Railway Labor Act, to investigate whether American and Reno operated as a single transportation system for purposes of the Railway Labor Act. This would be the preliminary step in APA being certified as the collective

bargaining agent for both the American and Reno Air pilots.²⁶

Two days later, Judge Kendall ruled that the APA and its top leadership must pay American Airlines \$45.5 million in compensatory damages. One day later, he issued a permanent injunction prohibiting the union from conducting a job action until its current collective bargaining agreement expires and the mandatory procedures of the RLA have been exhausted.²⁷

American and the APA participated in mediated negotiations from June 28 through July 1, with the help of the Federal mediator who had been assisting the parties since March. Negotiators met again during the week of July 6. On July 14, the Federal mediator offered a proposal to end the dispute; the proposal included comprehensive terms for the settlement of the Reno Air integration and a protocol for future mergers and acquisitions. According to press reports, the proposed settlement called for a series of pay raises for Reno Air pilots

and ensured that American Airlines pilots who were furloughed in the early 1990s would not be far behind Reno Air pilots in seniority in areas such as vacation pay or pension benefits. However, it apparently didn't provide retroactive raises to American pilots who had taken training.²⁸ American Airlines quickly accepted the offer.

The union's board of directors approved an amended version of the proposal on August 5. According to the union, there were three types of amendments added to the mediator's proposal: (1) Those that would have restored full seniority credit to pilots furloughed in the early 1990s for purposes of calculating pay, pensions, and vacations; (2) those clarifying that American Airline routes could not be transferred to an acquired carrier before the two airlines are fully integrated; and (3) those clarifying the meaning of certain provisions to eliminate potential misunderstandings.

Three days later, American Airlines

responded by saying that the union "made such substantial changes to it (the proposal) that it amounts to the APA rejecting it."²⁹ Alleging that the amendments would cost an additional \$50 million, the carrier vowed to complete the Reno Air integration by August 31, with or without an agreement with the union.³⁰

American Airlines and the APA resumed mediated negotiations on August 16-17 and August 29-31. With no agreement in hand, American Airlines officially integrated Reno Air's operations on August 31.

At its fall meeting, the Allied Pilots Board of Directors agreed to terms resolving most of the outstanding issues related to the Reno Air merger. The agreement credits American pilots furloughed in 1993 and 1994 with one-half of their elapsed furlough time for purposes of pension and vacation benefits. It also established all of the terms of the merger except the "control date" of Reno Air by American. That issue will be submitted to an outside arbitrator for resolution. ■

¹ *Wall Street Journal*, April 10, 1999, p. A2.

² *County Star*, February 11, 1999, p. E1.

³ *Wall Street Journal*, February 11, 1999, p. A10.

⁴ The pilots blamed the American Airlines—Reno Air connection for the 610 laid off American pilots. (*County Star*, February 11, 1999, p. E1.)

⁵ *Santa Barbara News-Press*, February 10, 1999, p. A10. Also see Michael H. Cimini “Profile of an Airline Emergency Dispute,” *Compensation and Working Conditions*, Fall 1997, pp. 32-39.

⁶ ARM Corp., “ARM Corporate Information,” accessed September 15, 1999.

⁷ APA Information Hotline, “Special Report to the Membership,” March 15, 1999, accessed September 12, 1999.

⁸ The union claimed the figure was \$20 million. (“APA Information Hotline,” August 18, 1999, accessed September 13, 1999.)

⁹ *USA Today*, February 9, 1999, p. A3.

¹⁰ *Moorpark Star*, February 10, 1999, p. E1.

¹¹ “American Airlines Disappointed, Union Calls Off Talks,” ARM Corporate Information, Corporation and Subsidiary News Release, February 10, 1999, accessed September 10, 1999.

¹² *Daily Review*, February 11, 1999, p. NEWS-1.

A minor dispute is one over the interpretation of the terms of an existing collective bargaining agreement. The Railway Labor Act, the law that governs collective bargaining in the airline industry, bars job actions over minor disputes.

¹³ Admonishing both parties, the judge said, “It’s silly for us to even be here. It’s like killing a gnat with a sledgehammer.” (*Kansas City Star*, February 11, 1999, p. C1.)

¹⁴ Judge Kendall was incredulous when the

union’s lawyer alleged that the sickout was not union organized and even more incredulous when the lawyer said all the pilots on the sick list were really sick. The judge said, “Please don’t insult my intelligence. Are you actually telling me all these pilots are really sick? Have you notified the Center for Disease Control in Atlanta?” (*County Star*, February 11, 1999, p. E1.)

¹⁵ A major dispute is one over the intended change in the terms and conditions of a collective bargaining agreement. Job actions over major disputes are permissible if the prerequisite steps of the Railway Labor Act have been taken.

¹⁶ *Detroit and Toledo Shoreline R.R. Co. v. UTU*, 396, U.S. 142, 154 (1969).

¹⁷ *USA Today*, February 11, 1999, p. 1B.

¹⁸ *Wall Street Journal*, February 12, 1999, p. A3.

¹⁹ On February 12, 1,046 flights were canceled and more than 2,400 pilots were on the sick list. One day later, 845 flights were canceled and about 2,100 pilots were on the sick list.

²⁰ Allied Pilots Association, *Special Report*, March 15, 1999, p. 15.

²¹ “American Disappointed With Progress of Negotiations With APA,” ARM Corporate Information, Corporation and Subsidiary News Release, February 16, 1999, accessed September 13, 1999.

²² Don Carty, American Airlines CEO, said, “It’s hard for me to believe that this is really about the Reno acquisition. I think it’s clearly more than that.” (*Wall Street Journal*, February 11, 1999, p. A1.) Some industry insiders saw the dispute as a political problem within the union: “Insiders say the American standoff was orchestrated largely by dissident pilots based in Miami and New York who successfully undercut a contract agreement two years ago, and by Mr. Mayhew, ... who endured some of the hardships now at the center of the Reno

Dispute.” (*Wall Street Journal*, February 11, 1999, p. A1.)

²³ APA, “Special Report,” March 15, 1999.

²⁴ The code sharing and alliances are cooperative service relationships where selected carriers serve many cities worldwide that American does not serve. American shares the partners’ flights by placing their “AA” designator code and flight numbers on theirs. By marketing these flights as its own, American expands the number of destinations it serves. The union adamantly opposes these alliances, calling them nothing more than outsourcing (subcontracting) that results in fewer APA jobs.

²⁵ According to a union press release, the injunction would expire when American and the APA signed a new contract or when either party engaged in self-help at the end of the next round of contract negotiations. (“Allied Pilots Association Issues Statement Regarding Negotiated Compromise With American Airlines,” Allied Pilots Association, April 29, 1999, accessed September 14, 1999.)

²⁶ On August 31, the National Mediation Board ruled that that American Airlines and Reno Air were a single carrier for purposes of the Railway Labor Act.

²⁷ Judge Kendall was referring to Sections 5, 6, and 10 of the act, which require that step-by-step procedures be exhausted before a union can strike or a carrier can lockout the union or change the terms and conditions of employment. See “Profile of an Emergency Dispute,” pp. 37-39.

²⁸ *Wall Street Journal*, July 19, 1999.

²⁹ *New York Times*, August 9, 1999, p. C2.

³⁰ “American Confirms Reno Integration Talks Next Week,” ARM Corporate Information, Corporation and Subsidiary News Releases, August 11, 1999, accessed September 11, 1999.