



# The Railway Labor Act and Self-Help

## What ALPA Leaders Need to Know

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## Section 2, First

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### Duty to Bargain in Good Faith

“exert every reasonable effort to make and maintain agreements . . . and to settle all disputes”



## Section 2, First (cont'd)

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- ▶ Good faith denotes sincere intention to reach agreement

AFA v. HORIZON, 976 F.2d 541 (9th Cir. 1992)

finding bad faith where carrier “displayed a general attitude of hostility toward the collective bargaining process” and “made numerous derogatory statements” during negotiations about the process



## Section 2, First (cont'd)

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Chicago & N.W. Ry. v. UTU, 402 U.S. 570 (1971)

the duty to bargain in good faith is the  
“heart of the Railway Labor Act” and  
*enforceable through exclusive district  
court jurisdiction*

e.g. – Delta v. ALPA, 238 F.3d 1300 (11th Cir. 2001)  
(discussion to come)



# Sections 2, Third and Fourth

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## Organizational Protections

Representatives designated “without interference, influence or coercion”

Employees “have the right to organize and bargain collectively through representatives of their own choosing”



## Sections 2, Third and Fourth (cont'd)

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### ► Very limited post-certification application

TWA v. IFFA, 489 U.S. 426 (1989)

court must exercise jurisdiction if otherwise “there would be no remedy to enforce the statutory commands which Congress has written into the Railway Labor Act,” including when employer interference with employees’ RLA organizational rights, “prevent[s] the scheme of the RLA from working” or is “inherently destructive of union [. . .] activity”)



## Sections 2, Third and Fourth (cont'd)

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ALPA v. Guilford Transportation Industries,  
399 F.3d 89 (1st Cir. 2005)

Transfer of all work to non-union affiliated corporation did not violate RLA organizational rights where:

1. pilots not prevented from organizing;
2. no “obstacles” erected to prevent collective action; and
3. no effort by company to intimidate others to boycott union



# Sections 2, Third and Fourth (cont'd)

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## ALPA v. Atlas Air, 232 F.3d 218 (D.C. Cir. 2000)

Where participation in profit sharing plan was immediately terminated upon decision to unionize, Court ruled that lack of CBA “does not absolve an employer from its obligation to refrain from activities which undermine employees’ rights.”





# Section 6

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## Status Quo Provision

Carriers/employees must follow/exhaust RLA's negotiation/mediation procedures prior to changing rates of pay, rules or working conditions as embodied in agreements, except in manner prescribed in such CBAs or Section 6



# Basic Rule

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- ▶ “Status quo” must be maintained by both sides



# Self-Help Not Allowed Until:

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1. Parties are released by NMB

AND

2. Cooling-off period expires



# For Management

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- ▶ No clear, contractually indefensible changes to rates of pay, rules or working conditions

*Note: Courts will permit changes having an arguable contractual basis pending arbitration of such “minor disputes.”*



# Management (cont'd)

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Conrail v. RLEA,  
491 U.S. 299 (1989)

Management has “light burden” to meet this test

Management may keep change in place  
unless/until arbitrator orders halt to the change



# For Employees

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## No Pre-Release Economic Operational Pressure

What is clearly permissible, however:

- ▶ informational picketing
- ▶ advertising
- ▶ public education campaigns



# For Employees (cont'd)

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What is not permissible:

- ▶ no concerted economic pressure

e.g. – Not allowed to affect operations

*(sickout; slowdowns; mechanical write-up  
and no-overtime flying campaigns)*



# Results of Premature Employee Self-Help (before expiration of cooling-off period)

- ▶ Risk of injunction leading to contempt finding
- ▶ Risk of loss of right to post-release self-help
- ▶ Leverage handed to management
  - at the table
  - possible negative affect on NMB process
  - in Court: unclean hands
- ▶ Bargaining process prolonged





# Results of Premature Employee Self-Help (before expiration of cooling-off period) (cont'd)

- ▶ Management gets public relations advantage
- ▶ Union communication and actions hampered
- ▶ Hostages taken; may have to buy back through collective bargaining concessions



# Allied Pilots Feb. 1999 Sickout

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- ▶ Issue – integration of the Reno pilots
- ▶ A minor dispute – should have been addressed in grievance process
- ▶ Sickout caused massive disruption to American's operations
- ▶ Company sought and got temporary restraining order



# Contempt

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- ▶ APA issued communication to pilots that Court determined violated TRO because it:
  - said injunction applies to leadership and implied it did not apply to membership



# Result of APA Communication

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American v. APA,  
53 F. Supp. 2d 909 (N.D. Tex. 1999)

- ▶ Number of pilots calling in sick actually increased
- ▶ Court found that result was:

**“Foreseeable  
And  
Intended”**



# Compensatory Contempt Damages

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▶ \$45,507,280.00



# Contempt Fine

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American v. APA,  
228 F.3d 574 (5th Cir. 2000)

- ▶ Fifth Circuit rejected APA's appeal of \$46 million contempt damages
- ▶ APA paid about half of the fine upfront and eventually paid the rest through CBA concessions



# Northwest Flight Attendants

## January 2000

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- ▶ Injunction issued – Court found public position of the Union was to discourage sick-out, but private Union position was to encourage it
- ▶ Court determination relied upon email and web posted messages



# Concern

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- ▶ Discovery Issue – search and seizure of Union computers and message boards – Company heavily relied upon electronic messages and postings





# NWA-AMFA Machinists

## November 2000

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- ▶ Injunction issued regarding concerted refusal to work overtime and increased mechanical write-ups
- ▶ Union claimed overtime was a “personal choice”
- ▶ Injunction required Union to “make every effort” to get machinists to stop job action



# Comair Maintenance Write-up Campaign

- ▶ Injunction issued – Court found:
  - “ALPA and its members have violated the status quo by the manner and means in which its members have written-up mechanical deficiencies.”



# Result

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- ▶ Prolonged bargaining process
- ▶ Gave management public relations advantage
- ▶ Company brought contempt claim attempting to use threat of damages to apply pressure at end of bargaining
- ▶ MEC's freedom/options during bargaining restricted
- ▶ Court dismissed contempt claim



# Delta – Overtime Flying

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- ▶ Pilots unhappy with lack of progress in bargaining
- ▶ Pilots (not Union officials) publicly stated:
  - not going to fly voluntary “open time”
  - encouraged others to do same
- ▶ Purpose – “to send message” to management



# ALPA Response

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## ▶ MEC Messages

- overtime decisions a matter of personal choice
- called on pilots not to harass each other over overtime decisions
- advised that overtime decisions should not be used as vehicle for putting economic pressure on Company



# Company Response

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## ► Sought injunction

- Company position – pilots involved in concerted action to apply economic pressure to influence bargaining
- ALPA position – overtime flying was voluntary pursuant to CBA and no ALPA led campaign, therefore, could not be illegal job action or change in status quo



# District Court Ruling

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Delta v. ALPA,  
123 F. Supp. 2d 1356 (N.D. Ga. 2000)

- ▶ Individual pilot's refusal to fly overtime constituted "concerted action" in violation of the Railway Labor Act
- ▶ But – no injunction issued because:
  - ALPA had discouraged action
  - Those responsible could not be identified



# Note

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- ▶ Delta also relied heavily upon email and web board messages for evidence





# Court of Appeals

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Delta v. ALPA,  
238 F.3d 1300 (11th Cir. 2001)

▶ No evidence ALPA encouraged action

BUT



# Court of Appeals (cont'd)

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- ▶ Under good-faith bargaining obligation of Section 2, First, ALPA has “an affirmative duty to end or prevent the unilateral unlawful activity of its members”
- ▶ ALPA must make “every reasonable effort” to end campaign – pilots told concerted refusal was illegal and told to fly overtime



# Warning

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- ▶ One judge concluded that ALPA would be required to bring Article 8 charges against pilots to ensure compliance with RLA, but not official view of Court



# Supreme Court

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- ▶ ALPA filed petition for review
- ▶ Case dismissed after ratification of CBA
- ▶ Appeal decision sets precedent



# Machinists at United

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- ▶ United denied injunction after alleging machinists involved in:
  - safety maintenance write-up campaign
  - refusal to work overtime
  - other slowdown activities



# Court of Appeals

United v. IAM, 243 F.3d 349 (7th Cir. 2001)

- ▶ United entitled to injunction
- ▶ Company provided clear proof Union participated in, authorized or ratified slowdown
  - pointed to numerous bulletins instructing machinists to “work safe”
- ▶ Court rejected argument that injunction not warranted because United could discipline or fire individual members



# ABX Case

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## ► Facts

- Union and Company involved in staffing grievance
- Contract did not require overtime flying
- Union led concerted effort to apply economic pressure by encouraging pilots not to accept open-time flying



# District Court

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- ▶ Denied Union's motion for summary judgment
- ▶ Held a trial
- ▶ Found campaign orchestrated by Union was illegal job action in aid of minor dispute
- ▶ Issued injunction





# Court of Appeals

ABX v. APA, IBT, 266 F.3d 392 (6th Cir. 2001)

- ▶ AFTER contract settled, Sixth Circuit reversed holding:
  - Union did not engage in “illegal strike” because contract made flying open time voluntary
  - Distinguished from Delta case because
    - ▶ action did not occur during bargaining
    - ▶ action did not unduly disrupt operations
    - ▶ Company could easily make up the flying (e.g., junior manning)



# Note

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- ▶ Court suggested result might have been different if action had true operational impact



# Cautions

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- ▶ Case only governs in Sixth Circuit (Ohio, TN, MI, KY)
- ▶ Note: Different fact situation may lead to different result
  - e.g., an effective overtime campaign would probably be enjoined



# Pilots at United

United v. ALPA, 185 LRRM 2562 (N.D. Ill. 2008)

- ▶ United alleged ALPA launched public campaign to pressure Company to reopen CBA by encouraging pilots to engage in various actions intended to increase costs and cause flight delays and cancellations



## Court Found Elements of Campaign Included:

- ▶ Encouraging refusal to accept junior/senior manning
- ▶ Encouraging refusal to waive contractual provisions
- ▶ Encouraging broader job action through directives such as “fly the contract”



## Court Also Found:

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- ▶ Defendants directly involved in instigating a “sick-out”
- ▶ Court did not credit assertions that defendants sought to stop the “sick-out”



## Court Further Found:

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“even if defendants had not instigated the job action, ALPA violated its duty to exert every reasonable effort to stop the disruption to United’s operations”

“no evidence . . . that ALPA published anything that was sincerely meant to discourage this conduct”



# Status of Case

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- ▶ Injunction prohibiting “any interference with United’s airline operations” still in effect
- ▶ ALPA’s appeal of the preliminary injunction is pending
- ▶ United seeking permanent injunction in District Court proceedings – discovery underway





# Sympathy Strike Activity

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Burlington Northern R.R. v. BMW,  
481 U.S. 429 (1987)

- ▶ RLA does not regulate or expressly prohibit sympathy strike activity, unlike NLRA
- ▶ Employees have right under RLA to engage in sympathy strikes

Important Subset of Sympathy Strike  
is Struck Work

- ▶ No express ban on employee refusals to perform struck work



# Sympathy Strike Activity (cont'd)

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LIRR v. IAM,  
847 F.2d 901 (2d Cir. 1989)

SEPTA v. Bhd. Of Signalmen,  
882 F.2d 778(3d Cir. 1989)

- ▶ Injunction against secondary strike activity likely pending arbitration if management can make non-frivolous argument such activity prohibited by CBA
- ▶ “Implied no strike clause” issue



# Sympathy Strike Activity (cont'd)

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## Atlas v. ALPA S.D.N.Y. 2005

Atlas Sympathy Action During Polar Strike

Question: What is a picket line?

► Injunction issued

- CBA contained No Strike LOA
- Balance of hardships “tilted toward Plaintiffs”



# ALPA Struck Work - Sympathy Strike Policies

- ▶ Discussed MEC to MEC with involvement of ALPA staff
- ▶ Approval of President required
- ▶ Requests from other unions must be routed through ALPA President



# Bankruptcy Issues

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- ▶ Northwest
- ▶ Judge Marrero (S.D.N.Y.) concludes flight attendants do not have right to strike after contract rejection
  - Second Circuit affirmed on strike issue, but actually made matters worse by also concluding that companies do not breach, rather abrogate with judicial permission, calls into question issue of damages
  - ALPA is working on 1113 reform on Capitol Hill, bill pending



# Bankruptcy Issues (cont'd)

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## ► Comair

- Request to reject contract granted by federal bankruptcy Judge Hardin

And

- Feb. 8, 2006 - Injunction issued against ALPA prohibiting any self-help activity
- ALPA filed immediate appeal to federal court in Southern District of NY
- Case settled with ratification of concessionary CBA

