

Testimony of Frederick W. Smith Chairman, President and CEO of FedEx Corporation

Mr. Chairman and Members of the Committee,

I am pleased and honored to have the opportunity to appear before you to address the labor relations problems that are confronting the airline industry today.

The special nature of the airline industry and its importance to the economy of this country caused Congress to protect the public from the devastating effects that labor disruptions can cause. One of the express purposes of the Railway Labor Act is "[t]o avoid any interruption to commerce or to the operation of any carrier engaged therein." Unfortunately, the system is not working as Congress intended.

Collective bargaining negotiations in the airline industry tend to be protracted and marked by frustration on both sides. Even where management and unions are able to reach tentative agreements, employees increasingly reject those proposed contracts, forcing the parties to return to the bargaining table. Employees who are not participating in the negotiations may not appreciate the give-and-take involved in the process. When the final product does not include everything they were after, they simply vote against it. At my own Company, between 1993 and 1999, we had two tentative agreements with our pilots' unions fail before we were finally able to reach a satisfactory settlement on a five-year deal. On both occasions, we had to start the bargaining process over again with a completely new union negotiations committee, and it was almost six years before we were able to get a contract in place. During that period, our pilots' pay and benefits were locked in place. Their frustration was perfectly understandable.

Within the past year and one-half, each of the largest passenger airlines has had to go to court to get injunctive relief against some form of unlawful union self-help. American Airlines, United Airlines, Delta Airlines and Northwest Airlines have been granted injunctions under the Railway Labor Act because of the illegal activities in which their employees have engaged to influence the outcome of negotiations. Air express companies such as Airborne Express and regional passenger airlines such as Comair have also been awarded injunctive relief requiring their pilots to halt unlawful work stoppages. At some carriers, negotiations have been opened far in advance of what was originally scheduled to try to curb employee frustration and to avoid disruptions to service that can accompany protracted negotiations. If

anything, the experience from these early negotiations only seems worse. At least in some cases, if the parties are unable to reach an acceptable collective bargaining agreement by the time bargaining was originally scheduled to begin, a flashpoint is inserted into the process and service disruptions begin long before self-help by either side is legally permitted. No, the labor relations situation in the airline industry is not improving.

From labor's perspective, the bargaining process is often too protracted. Once a contract becomes amendable under the Railway Labor Act, the employees may have to wait for several years, until a new collective bargaining agreement is in place, before they can receive any pay raise or benefit enhancement. Interim pay adjustments are sometimes negotiated while bargaining over the complete contract continues, but even these adjustments can provide a disincentive to reaching a final agreement. Furthermore, when an airline is in financial distress and needs relief from contract terms negotiated in better economic times, it is advantageous for the unions to let the bargaining process drag on. In that situation, unions and their leaders attempt to prolong the negotiations process to allow their members to buy time-waiting to see if the fortunes of the airline improve, while at the same time holding on to the higher wages which would be reduced by making concessions that may be necessary for the carrier's economic health or even its survival.

For the unions, there is little to lose in trying to force management to accede to their bargaining demands. Quietly spreading the word among the troops to slowdown or to write up imaginary maintenance problems or to stop working overtime is not uncommon. The most that a court is authorized to do to punish a union under the Railway Labor Act (at least as long as the union does not disobey a court order and, thus, end up in contempt as happened with the American Airlines pilots) is issue an injunction telling the union and its members to cease their illegal conduct. No monetary damages are available so the union is free to do as it pleases unless and until the airline can gather enough evidence to convince a federal judge that an emergency exists and that the extraordinary remedy of an injunction is warranted. In the meantime, airlines are disrupted, passengers are stranded and delayed, and the provisions of the Railway Labor Act are ignored.

In today's airline business, most carriers are too strapped with capital obligations to be able to withstand an airline strike of any significant duration. Indeed, just trying to establish the evidence of workplace disruptions sufficient to pass legal muster and enlisting the judicial process for what little help the courts are allowed to provide while an illegal job action is underway can have devastating financial

consequences. Airlines begin losing money as soon as the threat of disruptions is publicized. Passengers have already experienced for themselves the havoc that unhappy employees can wreck on flight schedules, and, with the first hint of labor problems at one airline, many passengers choose to make alternative travel arrangements. Those that don't often wish they had.

If the airline industry continues to consolidate, potential labor disruptions will provide even greater risk for the public. Labor disputes that larger airlines would create even greater threats to the country's economic well-being. Management at these airlines would face the dilemma of whether they should just give in to labor's demands or accept for themselves and the nation the turmoil that accompanies a struggle with labor. Neither airline management nor labor should be able to make decisions that affect the ability of the entire country to function with no concern for the general public.

Airlines and their employees are entrusted with the nation's welfare. Irresponsible conduct by either labor or management can trigger enormous consequences for the traveling public, and the public must have a voice in how labor relations issues are resolved. The Railway Labor Act currently provides no such mechanism for the public welfare to be considered. The increased use of Presidential Emergency Boards under the RLA as has recently been recommended by some experts will not solve this problem. Such Boards simply try to find some middle ground in the parties' bargaining proposals and give something to both sides. Instead of trying to reach some common ground in negotiations, the parties adjust their bargaining strategies to fit the Emergency Board process so that each of them is able to live with the solution recommended by the Board. And, if either side can't accept the Board's recommendations, the dispute only gets worse.

I greatly appreciate your interest in this matter and hope that steps can be taken to solve these critical problems facing our country today.

Thank you.