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DEREGULATION—THE UNITED STATES EXPERIENCE

Charles G. Moerdler*

Deregulation became a reality largely as the result of an uncustomary consensus among economists that government controls upon entry into, and exit from, particular markets were inefficient. From

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the late 1950's on, academics trumpeted the economic disadvantages of Government's ever increasing scope of influence and regulation. They urged, instead, the wisdom of deregulation of certain industries as a potential boon to those sectors of the economy, to the consumer and, in the final analysis, the future well being of the nation. Consumer groups eventually joined the cause in the belief that competition would be fostered and, in turn, price benefits would result.

Reform, however, would probably not have eventuated but for the unlikely confluence of support from forces usually opposed to one another. Then President Gerald Ford, bent on defeating inflationary spirals and, at the same time, reversing the tide of big government, joined the chorus of deregulation's proponents. Senator Edward Kennedy, long a leader of liberal forces, concurred with the conservative President, scheduling Senate hearings on airline deregulation. Then surprisingly, the regulatory agencies involved, rather than opposing proposals which would lead to their eventual demise or, at least, diminished influence, became enthusiastic proponents. Soon, deregulation became a talismanic phrase.

The airline, trucking and telephone industries—the latter with an assist from the judiciary acting in antitrust litigation—were among the earliest “beneficiaries” of reform. But the issue made for strange bedfellows in opposition as well as in support. Most segments of those industries—including the usually competing forces of management and labor—were opposed to deregulation.

3. See id. (noting that some academic economists have argued that “a substantial reduction in government regulation of transportation and heavy reliance on the forces of market competition [would] insure services and rates in the best interest of the public.” (quoting J. Meyer, The Economics of Competition in the Transportation Industries vi, 270 (1959))).
4. See id. at 42 (Ralph Nader, purporting to speak for consumers, formed Nader's Raiders, a group of Ivy League graduate students “who were eager to expose the wrongdoing of regulators, [and who] fanned out through government agencies and produced a series of books on the incompetence and probusiness bias that they believed they had found there.”).
5. See id. at 45-50 (Ford's criticism of regulation was, among other things, “popular hostility to big government.”).
6. Id. at 40; see also Solomon, supra note 1 (Kennedy scheduled the hearings at the suggestion of an aide).
7. See supra note 2, at 51 (noting that “[i]n the summer of 1975 a study done within the CAB [Civil Aeronautics Board] staff called flatly for ending entry, exit, and price regulation within three to five years.” (citing Regulatory Reform: Report of the CAB Special Staff (CAB. 1975))).
8. See id. at 147-48.
9. See Solomon, supra note 1; see also Katz, The American Experience Under the Air-
Management's opposition grew largely out of concern that cut-throat competition might endanger established markets and, in turn, their bottom line. Labor was opposed because it believed that regulation provided a certain framework for improvement, particularly in the areas of wages and benefits, since increases could generally be passed on to the consumer under existing mechanisms. Both believed that deregulation jeopardized the measure of certainty which governed their relationship, which was, for the most, a comparatively tranquil one. Both were right.

In the airline industry, for example, bankruptcies, mergers, price wars, reductions in services and service areas, and managerial upheavals have been visited upon management. Massive layoffs, significant reductions in salaries, two-tiered salary structures, unprecedented work rule changes, a plethora of labor disputes, and even "union busting" have been labor's harvest. Indeed, so dramatic have been the consequences in the airline industry that unions have now retaliated against management's unceasing efforts at cutting labor costs by assuming a role once reserved for Wall Street's barons, that of "raiders," seeking to acquire a major publicly-held airline conglomerate. And, in the aftermath, a carefully assembled

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10. Movat, *Nation's Airlines Compete for a Piece of the Sky*, Christian Sci. Monitor, Feb. 8, 1985, at 22, col. 1 (stating that "[i]n some cities numerous airlines have come and gone in the competitive free-for-all during the last few years and industry experts forecast significantly more airline closing and bankruptcies in the future.").
12. See id. (quoting Frank Cassels, a professor of industrial relations at Northwestern University, who states that "prior to deregulation, there was a posture of accommodation, [where] the unions accepted the companies and the companies accepted the unions. . . ").
15. See id.; see also Movat, supra note 10.
16. See Movat, supra note 10; see also Labich, supra note 14 (opining that "People Express failed in part because many passengers would no longer suffer the indignities heaped on them by People's no-frills approach. . . ").
17. See Herbert, supra note 11 (asserting that Pan American World Airways fired its Chairman and several other senior executives after a closed door deal with the airline's labor unions).
19. See id.; see also Hebert, supra note 11; Labich, supra note 14 (stating that "[i]n
conglomerate of airline, hotel car rental and other related businesses sold off its non-airline properties. 20

Consumer organizations have become increasingly shrill, denouncing poor service, scheduling and pricing structures that are not only inconvenient but also are so confusing that few professional travel agents are able to decipher them. 21 Indeed, on-time performance, particularly among those airlines which seem embroiled in in-terminable guerilla warfare with their unions, has become so bad that airlines have now been required to issue on-time performance records in the hope that disclosure of poor performance records will shame the offenders into improvement for fear of losing business. 22 In turn, the pressures on Congress for some elements of regulation have begun to build. 23

Despite occasional prophecies of a rosy future, most agree that the once regulated airline industry is largely worse off than under regulation. 24 Already subject to cyclical economic pressures, the airlines now face the added burden of significantly increased debt due largely to merger and takeover mania, in addition to the burdens created by the uncertainties of frequent price wars, 25 and the increasingly hostile confrontations with labor as management attempts to cut labor costs to become or remain profitable. 26 Labor is quick to agree that deregulation has inflicted significant losses upon tens of thousands of men and women—particularly the women. 27 Layoffs, reductions in wages and working conditions have become the order of the day. 28 The once relatively tranquil labor-management rela-


21. See Labich, supra note 14; Movat, supra note 10.
22. See Henderson, American is Biggest Where it Counts Most: American Airlines Inc. Part 2, 24 AIR TRANSPORT WORLD, 30 (1987) (noting that the airlines are required to also make public other data such as "number of passengers denied boarding and the assistance rendered to them, and percentage of bags mishandled.").
23. See Movat, supra, note 10 (stating that "if the problems [which have developed as a result of deregulation, such as airport congestion and discriminatory airfares,] persist and intensify, there may yet be another move in Congress to reimpose a few basic controls.").
24. See supra notes 13-22 and accompanying-text.
25. See Movat, supra note 10.
26. See e.g., Hebert, supra note 11 (proposing that since deregulation, "along with the bitter competition among airlines has come increasingly acrimonious relations with labor."); see also Labich, supra note 15.
27. See Herbert, supra note 11 (stating that two-thirds of 6,500 flight attendants at TWA, traditionally women, still await recall from a 1986 walk out, whereas the pilots and mechanics, traditionally male, have fared better in standing up to management demands).
28. See Hebert, supra note 11; see also Labich, supra note 14.

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tionships, are now only a fond memory.29

The issue before us today is not whether deregulation is good or bad. Rather, the focus here is upon the impact of deregulation from the standpoint of labor-management relations, and, given the adverse impact upon industry and jobs noted above, how labor and management can coexist and improve their collective lot in the face of severe adversity. The thesis of this paper is that a way can and must be found to have the parties in collision put aside the view that "Rambo"-like tactics will achieve the desired result and explore, instead, the wisdom of dialogue, accommodation and reason. Such cooperation, it is submitted, cannot be the product of coercion or legislative or regulatory fiat, but must, instead, evolve from the crisis itself and result from mutual recognition that, only through the suggested avenues, can either or both parties benefit, and the public interest be truly served.

An unlikely, but nonetheless instructive, analogy can be drawn from the events that led to, and the dramatic resolution of, the fiscal crisis that threatened to bankrupt America's preeminent city some thirteen years ago.30 Most students of the 1975 crisis that placed New York City at the very edge of bankruptcy are agreed that its salvation came about largely from the recognition of the City's governmental managers and of its labor leaders, as well as the City's bankers and industrial and communal leaders, that their common good mandated commonality.31 That only through joint action and common pain would any of them survive. Thus, given that conclusion, labor and management then put aside, for the moment, their traditional rivalries and set about to steer a course which brought the City back from the brink.32

Obviously, there will be those who will maintain that deregulation has not inflicted anywhere near the pain, or created anything resembling the chaos or crisis that was at stake in the New York City fiscal crisis, and, they are right.33 However, the lesson there taught is apt, as I shall briefly attempt to demonstrate. First, how-

29. See Hebert, supra note 11.
30. The New York City fiscal crisis of 1975 was precipitated in large part by its inability to borrow in the municipal bond market. See infra notes 114-15 and accompanying text.
32. See id. (stating that "[t]he generally adversarial relationship among city and state officials, labor leaders and businessmen evolved into a generally constructive partnership.").
33. Perhaps only the Chrysler near-bankruptcy provides fair comparison with the New York City saga.
ever, let us frame the issue by reference to the impact of deregulation upon the airline industry.

Beginning in the 1930's, and for more than four decades thereafter, airlines occupied a somewhat unique place in American industry. Like most other businesses and industries, they hired and fired, bought and sold airplanes and offered services in seemingly much the same manner as other businesses. They, however, had an advantage which few businesses shared. Their activities were regulated under, and they benefitted from, the protection offered by the Federal Aviation Act, which accorded them privileges much akin to public utilities. Under the Act, the Civil Aeronautics Board (hereinafter "CAB"), a Federal agency, regulated where each airline could fly, determined the reasonableness of the airlines' proposed fare structures, policed the airlines' practices to insure that the authorized fare schedules were in fact adhered to, shielded the industry from most antitrust law proscriptions and otherwise insured stability in the industry.

Competition was a congressionally prescribed goal, but only to the extent required to maintain a sound air transport system. Airlines were required to offer joint fares to facilitate interlining. Industry costs were, pursuant to an elaborate formula, the measurement against which was produced a predetermined fair price for carriage. Things like supply and demand, a particular airline's costs and management practices, and other criteria that measure price formulations in other businesses were of little, if any, import. Cooperative ventures abounded. Under the Mutual Aid Pact, air-

35. See Katz, supra note 9, at 87-88.
40. See McDonald, Airlines Management Prerogative in the Deregulation Era, 52 J. AIR L. & COM. 869, 918 (1987) ("asserting that the CAB often would award new routes to unprofitable, inefficient carriers in order to maintain a competitive balance in the industry.").
42. See id.
43. See M. DERTHICK & P. QUIRK, supra note 2, at 19 (asserting the theory that "regulation crumbled because the original public interest rationale for it ceased to comport with economic reality.").
44. See supra note 26 and accompanying text.
lines even contributed to an airline suffering a strike.\textsuperscript{45} Though the airlines' fortunes also depended in measure on cyclical conditions, the CAB was generally at the ready to facilitate needed mergers\textsuperscript{46} or approve rate increases when shown to be necessary.\textsuperscript{47} Such stability had its advantages: bankruptcies, hostile takeovers, and price wars were unknown.

Labor benefitted from this arrangement. Since the cost of individual labor contracts could be included in the industry's overall costs—and thus passed on to the consumer as part of the fare schedules—the airlines were generally able to give fairly steady increases.\textsuperscript{48} Similarly, benefits and working conditions were subject to fairly constant improvement.\textsuperscript{49}

In 1978 Congress rewrote the Federal Aviation Act,\textsuperscript{50} directing the CAB to place maximum reliance on competitive market forces.\textsuperscript{51} The campaign for deregulation started by economists and joined by such diverse forces as Ford, Kennedy, consumer groups and the agencies whose existence or vitality would thereby be doomed, had become a reality.\textsuperscript{52}

Few believed, however, that the impact would be as tumultuous, or as quickly manifested.\textsuperscript{53} By 1985, some 120 airlines, including commuter and charter firms, had either entered bankruptcy or simply closed.\textsuperscript{54} Consumers were soon startled to find that many smaller cities, which had once been served by jet transport several times each day and by direct access to major cities, now found that

\textsuperscript{45} See Katz, supra note 9, at 92 (noting that "struck airline would receive a share of the windfall profits earned by its competitors which gained revenue due to the strike.").

\textsuperscript{46} 49 U.S.C. 1378 (1982).

\textsuperscript{47} See Katz, supra note 9, at 92.

\textsuperscript{48} See id.; see also Comment, Deregulation in the Airline Industry: Toward a New Judicial Interpretation of The Railway Labor Act, 80 NW. U.L. REV. 1003 (authored by Beth S. Adler) [hereinafter New Judicial Interpretation of the RLA] (demonstrating that "[p]rior to 1978, management routinely conceded to union demands particularly with respect to salaries.").


\textsuperscript{51} See New Judicial Interpretation of the RLA, supra note 48 (stating that "[a]irlines are now free to set their own fares-up to five percent above or down to fifty percent below the standard industry fare level (SIFL)—without obtaining Civil Aeronaftics Board (CAB) approval.").

\textsuperscript{52} See Airline Deregulation Act of 1978, supra note 50.

\textsuperscript{53} Since deregulation, major airlines have suffered bankruptcy, falling revenues and overwhelming indebtedness. See Britton, Airline Deregulation in the United States, Focus, Jan.-Feb. 1985, at 3.

\textsuperscript{54} The Christian Science Publishing Society, Feb. 8, 1985 (citing ATA statistics).
turbo-prop aircraft were substituted and that feeder airline service, often on less frequent and sometimes irregular schedules, had now taken their place.\textsuperscript{55} Takeoffs and landings, which had been staggered at major hubs, now were concentrated in the same hours, much to the consternation of business travellers.\textsuperscript{56}

The impact on labor relations was even more dramatic.\textsuperscript{57} The Chairman and Vice Chairman of Pan American Airlines and several senior executives were fired after a closed door deal between directors and the airline's unions.\textsuperscript{58} The Air Line Pilots Association [hereinafter "ALPA"], once viewed as the least militant labor organization\textsuperscript{59}—it had frequently refused to honor picket lines of other unions in the industry—launched a 29 day strike at United Air Lines.\textsuperscript{60} United's management had demanded a dual pay structure under which new hires would be paid significantly less than current employees.\textsuperscript{61} Management's effort prevailed, but on far less onerous terms, from labor's standpoint, than had initially been demanded.\textsuperscript{62} However, the mere fact that ALPA was prepared to mount and sustain for an extended period an expensive strike, and the fact that management's efforts to break that strike had failed, of itself provided a foretaste of the new militancy of labor.

The second shoe dropped not long thereafter, when ALPA announced a multi-billion dollar tender for ownership control of United.\textsuperscript{63} Though ALPA's sally into the waters once reserved for

\begin{footnotes}
\footnote{55. See Movat, supra note 10 (noting that under CAB regulation, an airline received a route because the CAB determined it was a "public convenience and necessity" 49 U.S.C. 1371(d)(1982)). All functions, powers and duties of the CAB were terminated or transferred by the Airline Deregulation Act of 1978, Pub. L. No. 90-504 40(a), 92 Stat. 1744.}
\footnote{56. Id.}
\footnote{57. See Hebert, supra note 11.}
\footnote{58. Id.}
\footnote{59. See Lublin, Conservative Pilots' Union Turns Militant in Response to Fight at Continental Airlines, Wall St. J., Nov. 22, 1983, at 37, col. 4.}
\footnote{60. On May 15, 1985, the Air Line Pilots Association struck United Air Lines after their collective bargaining agreement had expired. See Air Line Pilots Ass'n Int'l v. United Air Lines, Inc., 802 F.2d 886, 890 (7th Cir. 1986), cert. denied, 480 U.S. 946 (1987).}
\footnote{61. "United sought to renegotiate . . . compensation to be paid both incumbent employees and new hires. . . . As negotiations progressed, it became obvious that the key issue was United's desire to have a reduced pay scale for those pilots hired during the duration of a new agreement." Id. at 891.}
\footnote{62. See Air Line Pilots Ass'n Int'l v. United Airlines, Inc., 614 F. Supp. 1020, 1037 (D.C. Ill. 1985), cert. denied, 480 U.S. 946 (1987) (stating that "[o]n May 20, United agreed to resume negotiations with ALPA . . . within two to three days, the parties reached a tentative agreement on the new-hire pay scale issue.").}
\footnote{63. See MacNeil/Lehrer Newshour: Rough Raider/Taking Control (PBS television broadcast, Nov. 4, 1987) (transcript No. 3158); see also Hornung, supra note 18.}
\end{footnotes}
“raiders” proved unsuccessful, the array of prominent investment bankers, legal talent and skilled publicists which the union had amassed demonstrated a new sophistication and resourcefulness on the part of labor. More impressive, however, was the fact that the stock in United which the union had acquired, as part of the overall “wage” package—the so-called employee stock option plan or ESOP—together with some $14 million in voluntary contributions from the membership and sizeable bank loans provided by major lenders, had enabled the union to leverage a $4.5 billion acquisition offer. And to cap this exploit, United’s CEO was ousted, despite the fact that under his leadership United had created a multi-billion dollar conglomerate, amassing an impressive array of acquisitions, including Hertz and the Hilton chain. His successor got the message and the long delayed labor contract negotiations with other unions were soon concluded. And in the aftermath, the conglomerate that briefly was known as Allegis returned to essentially its former shape with the sell-off of Hertz, Hilton and other properties.

However, labor has little to crow about. “Union busting” and the spread of nonunion airlines have become an important industry factor. Frank Lorenzo, through the vehicle of a small regional carrier, Texas Air Corp., has built in relatively short order the nation’s largest airline by merger with, or acquisition of, such onetime behemoths as Eastern, Continental, Peoples and Frontier. The unions discovered early that in Lorenzo they had met a determined adversary.

When negotiations with Continental’s unions to secure significant givebacks proved unavailing, Continental was placed in bankruptcy and its labor contracts vitiating. Following a brief shutdown, Continental emerged with pilots flying the same planes at a fraction of their former salaries and benefits, and stripped of their

64. See Hornung, supra note 18.
65. See id.
66. See id.; see also Hebert, supra note 12 (stating that with the addition of two hotel chains and the rental car company, Richard Ferris, United's CEO, "envisioned one-stop shopping for transportation and lodging for businessmen.").
67. See Hebert, supra note 12 (stating that Frank Olson, Ferris’ successor, hired D.C. lawyer Stephen Tallent, who quickly reached contract agreement with the flight attendants and machinists).
68. See id. (noting that Mr. Olson quickly agreed, subject to shareholder approval, to rename the company United Airlines Inc.).
69. See Labich, supra note 14.
70. See id.; see also Hebert, supra note 11.
71. See Hebert, supra note 11.
At Eastern the labor wars have produced an hitherto unbelievable confrontation. Nonunion pilots from another carrier were readied to fly the Eastern planes in the event of an anticipated strike. Eastern’s employees challenged its safety record and management’s attempts to sell or transfer assets, resulting in the commencement of judicial and administrative proceedings. The war goes on and on, with grievous wounds inflicted on all sides.

TWA’s flight attendants launched a strike when faced with demands for sharp salary cuts, and were promptly replaced. Indeed, the replacements had been given safety and other training in anticipation of the strike and were in the wings ready to act once the strike commenced. A significant number of the approximately 6500 attendants who struck still are grounded.

In airline after airline pay cuts have eventuated, as have work rule changes. The specter of “contracting out”—as demonstrated by Eastern’s suggestion that it could reduce ground operation costs at Jacksonville from $150,000 a month to between $50,000 and $70,000—has become a continuing threat, to the consternation of union leaders who see jobs and membership endangered. Another development has been the widespread institution of dual pay structures with new hires receiving significantly lower pay than those already employed. The union leadership in consenting to this dual system may to some extent have met their needs vis-a-vis current members, but the new hires provide a growing body of members who, mindful of their different status, can one day rise up against the union’s leadership.

And the claim is frequently advanced that airlines with a dual structure have acted to dismiss senior employees in order to

72. See id.; see also Labich, supra note 14 (proposing that Lorenzo’s reopening of Continental as a nonunion carrier “stunned the industry—and earned him the undying enmity of airline labor leaders.”).
73. See Hebert, supra note 11 (mentioning that “[a]n Eastern executive referred to the non-union pilots [from Orion Air] as Eastern’s insurance coverage.”).
74. Clayton, Cooling the Fire at Eastern, Christian Sci. Monitor, July 8, 1988, at 11 (stating that Lorenzo’s proposed sale of Eastern’s most profitable asset, its shuttle service, was blocked in court by the unions and employee charges of safety violations, which also prompted a Federal Aviation Administration safety inspection).
75. See Hebert, supra note 11.
76. See Katz, supra note 9, at 99 (noting that once the strike occurred 2,800 previously trained, permanent replacements were hired).
77. See Hebert, supra note 11.
78. See supra notes 17, 63-67 and accompanying text.
79. See Labich, supra note 14; see also supra notes 17, 63 and accompanying text.
80. See Labich, supra note 14.
replace them with lower paid new hires.

Morale among many employees continues to decline, and with it travellers increasingly believe that service standards are at best, poor.\textsuperscript{81} Consider the impact upon the travelling public of the following story published in the April 11, 1988 issue of \textit{Fortune} magazine:

The incident started on a Sunday afternoon when over 200 Eastern passengers showed up at Miami airport for the 3:15 flight to New York, only to discover it had been cancelled. No one behind the counter seemed to know exactly what had gone wrong, and the crowd grew increasingly angry as plane after plane took off without them. Toward the end of a very long day, one passenger went behind the counter and punched an agent in the chest. The police arrived and three of them hustled the fellow out as the crowd shouted and jeered.\textsuperscript{82}

The incident, as \textit{Fortune} went on to detail, is by no means isolated: "... difficulties at Eastern's gates have been so frequent that Dade County police assigned an officer to patrol the area full time during the peak tourist season this winter."\textsuperscript{83}

"Once-proud Eastern," \textit{Fortune} added, "has become perhaps the most troubled carrier in an often troubled industry."\textsuperscript{84} The statistics tell the tale: net losses of $181.7 million on revenues of $4.4 billion in 1987.\textsuperscript{85} According to \textit{Fortune}, even greater deficits are anticipated in 1988. A recent Department of Transportation consumer "report card" reflected, according to \textit{Fortune}, that Eastern "finished dead last in on time performance (only 61.5 percent of its flights arrived within 15 minutes of schedule),\textsuperscript{86} and had the highest rate of passenger complaints of any airline except Continental—Lorenzo's other large carrier."\textsuperscript{87}

The cause, \textit{Fortune} opined, was "[e]xceedingly hostile management labor relations."\textsuperscript{88} Some 500 pilots surrendered cherished seniority to start over with another airline in 1987, and another 250 had given notice by April of 1988 according to \textit{Fortune}.\textsuperscript{89} Eastern acknowledges that this, in turn, has caused the cancellation of nu-

\begin{thebibliography}{99}
\bibitem{81} See supra notes 60-62.
\bibitem{82} Labich, \textit{The Slowdown at Eastern Airlines}, \textit{FORTUNE}, Apr. 11, 1988, at 65.
\bibitem{83} \textit{Id}.
\bibitem{84} \textit{Id}.
\bibitem{85} \textit{Id}.
\bibitem{86} \textit{Id}.
\bibitem{87} \textit{Id}.
\bibitem{88} \textit{Id}.
\bibitem{89} \textit{Id}.
\end{thebibliography}
Numerous flights. And, according to *Fortune*, Eastern acknowledges its "difficulties" in "motivating such employees as flight attendants and ticket agents to deal with the public politely while ferocious labor battles take place inside the company."  

Not all airlines have undergone turmoil such as that illustrated above. However, few major airlines have avoided some form of labor management strife. With labor cost comprising a significant portion of their costs, and unable to pass those charges along to the consumer, particularly in the face of mounting price competition, management's focus has been, and gives every indication of continuing to be on affecting reductions. While such efforts are not at all unusual, what has marked this effort in the airline industry has been, the increasing hostility on both sides. Implementation has replaced negotiation; confrontation has replaced reasoned give and take. And the residuum of ill will is deep and certain to be lasting.

To make matters even worse, the focus of media attention, often precipitated by the combatants, has revealed all to the traveling public. Long established loyalties have undergone significant change as travellers, particularly business travelers, have come to believe that certain airlines are unreliable, offer less service and the like. That, in turn, has helped engender expensive campaigns—from advertising to frequent flight bonuses—to acquire or rebuild customer loyalty. And, of course, the costs attendant to those efforts can not help but affect, to one degree or another, the "bottom line."

Not all airlines have undergone turmoil in labor-management relations to the degree or with the intensity noted above. However, it is clear that the airline industry, following deregulation, is by no means the stable, relatively profitable and tranquil enterprise it once

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90. *Id.*

91. *Id.*

92. See Labich, *supra* note 14 (stating that labor costs, as an industry average, run 38 percent of total operating costs); see also Hebert, *supra* note 11 (noting that over 35 percent of an airlines operational costs are for labor, according to the Air Transportation Association).

93. See Labich, *supra* note 14 (professing price competition from nonunion operations with far lower labor costs, such as People Express and Frank Lorenzo's Continental, prevent firms from passing on their higher labor costs to the consumer).

94. See *id.* (stating that Frank Lorenzo stopped negotiating with the unions and shut down Continental Airlines, he then declared bankruptcy, shed the existing labor contracts, and three days later, Continental emerged with pilots flying the same planes, but earning half the salary).

95. *Id.; see also* Hebert, *supra* note 11 (proposing that "[a] state of outright hostility [has existed] between labor and management in recent years.").

96. See Labich, *supra* note 82.
was. Ever increasing debt—incurred to fuel takeover fever, to finance new aircraft needed to meet changing patterns, and, in some instances, to meet higher than usual interest payments exacted by wary lenders—seems certain to provide the seed for future difficulties. Stock gyrations and takeover fever have marked a number of airlines as present or future takeover targets. From the standpoint of labor management relations, things probably could be worse, but not much.

Still another "beneficiary" of deregulation—albeit partial deregulation—has been the trucking industry. The statistics are telling. From a high of about 500 large general freight carriers in 1978, only about 150 remain today. Between 1980 and 1987, the top ten general freight carriers' share of total revenues went from less than 40 percent to nearly 60 percent. Driver shortages have increased, in part because driver wages (averaging about $25,000 per year in the non-union truckload sector), have risen only about half as much, on the average, as wages in other industries. True, some segments of the industry have benefitted—particularly full-truckload carriers—as well as shippers, but this benefit could hardly be worth the expense.

Labor likewise has been affected. One report indicates that some 78 Teamster-organized carriers have either declared bankruptcy, been swallowed up in mergers or simply have gone out of business. Between 1979 and 1985 the Teamsters Union lost some 120,000 members to non-union shops, some of them subsidiaries of unionized carriers party to the industry-wide Master Freight Agreement. There is every indication that that trend continues.

Yet one important distinction stands out in any comparison between deregulation of the airline and trucking industries. The labor-

97. See Labich, supra note 14 (stating that since the close regulation of fares, routes and schedules, the "airline bosses grazed sleepily on a peaceful playing field" and after deregulation, the industry is describably the closest thing to legalized warfare).

98. Id. (stating that both United and Pan American Airlines have been recent takeover targets).


100. Id.

101. Id.

102. Trucking Deregulation Promotes Competition, Lower Prices, ICC Says, Daily Lab. Rep. (BNA) No. 185, at A-4 (Sept. 24, 1984) (stating that the chairman of the ICC told the senate that deregulation of the trucking industry has "enhanced competition among truckers, increased revenue for motor carriers, and resulted in lower prices.


104. Id.
management hostility which abounds in the airline industry is not evident in the trucking industry.\(^\text{105}\) Significantly, perhaps, the trucking industry is dominated by a single, politically powerful union.\(^\text{108}\) Leadership of the Teamsters Union is able in most instances to speak for the membership and to deliver upon its undertakings in the negotiating process.\(^\text{107}\) Thus, by means of a Master Agreement, labor and management have been able to conclude most of their bargaining for the entire unionized-sector of the industry for a three year period.\(^\text{108}\) By contrast, the airlines must deal with a number of unions, and indeed, in many instances, on an airline by airline, chapter by chapter basis. Though important, that distinction would not appear to explain fully the contrast between the labor-management climate in these two vital transportation-related industries.

Declining profits, increased competition, discounting, bankruptcies and consolidation has afflicted management in both industries following deregulation. Work force reductions,\(^\text{109}\) declining benefits,\(^\text{110}\) increased nonunion employers\(^\text{111}\) and other like concerns has preyed on labor's mind in both industries following deregulation. However, it seems clear that, since deregulation, labor-management relations in the airline industry has been marked by a degree of hostile confrontation that is unique. And therein may lie a lesson. Unduly hostile labor-management relations, particularly where they continue over an extended period of time, can not help but exacerbate problems. And where they impact adversely upon the consumer, the cost can be telling as well as lasting.

Against that background, imagine, if you will, this scenario. A vital service industry is, virtually overnight, confronted with imminent bankruptcy. The financial markets are closed to it. The forthcoming payroll for hundreds of thousands of workers is in doubt. A debt moratorium is legislatively imposed, with the credibility of bil-

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105. *Id.* (reporting that after two months of negotiations there was "little evidence of rancor [and] either side mentioned the possibility of a strike.").
106. *See supra* note 102 (stating that the International Brotherhood of Teamsters, with collective membership of 1.8 million, is the dominant union).
107. *Id.*
110. *See id.* (noting that wage and benefit levels are 20 to 25% below their pre-deregulation level).
111. *See Kaynard, Deregulation and Labour Law in the United States, 6 Hofstra Lab. L.J. 1, 19 (1988).*
lions of dollars of outstanding financial paper necessarily clouded. So important is the survival of that domestic entity that the then Chancellor of West Germany and the then President of France, in as diplomatic terms as possible, issue calls for rescue. Yet, the President of the United States turns a deaf ear.

Rescue, however, comes from a surprising source. Labor unions undertake to loan billions from their pension funds to finance a bailout. Giants of industry and commerce, including Chase Manhattan's David Rockefeller and Citibank's Walter Wriston, commence an ongoing dialogue with labor leaders to find and promote solutions to a common problem. Real estate enterprises undertake to pre-pay their taxes to help meet cash flow. And although tens of thousands of workers and management personnel are laid off, the furor is muffled. Disparate labor unions put aside their rivalries and undertake coalition bargaining with management to minimize one-upmanship and to facilitate the bargaining process. Increased productivity becomes a benchmark for wage increases. Labor leaders agree that for a period of years labor contracts will be subject to third party review. Dialogue replaces confrontation, and solutions are the end product. Within a short span of years, relative fiscal health is restored, in fact, significant surpluses replace overwhelming fiscal disaster. Laid off employees are gradually rehired and access to money markets is regained.

The picture thus painted may to some seem fictitious. Yet all that and more occurred during and in the wake of the 1975 fiscal crisis which threatened to bankrupt the City of New York and raised

113. See Madden, President is Commended and Assailed on Stand, N.Y. Times, Oct. 30, 1975, at 47, col. 1 (quoting President Ford's announcement that he opposed any bill to "bail out" New York City).
114. See Weisman, Levitt to Invest his Pension Funds to Tide Over City, N.Y. Times, Oct. 3, 1975, at 1, col. 1 (mentioning that Arthur Levitt agreed to use a 250 million from two state employee pension systems to help tide the City over its cash shortages).
115. See Clines, Emergency Board Confirms Estimate of City Revenue, N.Y. Times, Sept 24, 1975, at 54 (stating that "the [emergency] board noted [that] 976.7 million [dollars] had already been received by the city through pre-paid real estate taxes and advances in state aid").
117. See Fowler, Many Laid Off Found Back on New York City Payroll, N.Y. Times, July 3, 1976, at 25, col. 1 (reporting that three quarters of the blue dollar and clerical civil service workers laid off in New York City's fiscal crisis found their way back into the municipal payroll by [January 1976]."
118. Id.
the prospect that the State of New York and who knows what other entities and creditors would then be pulled over the abyss. Labor, management, and commerce as a whole proved that they can work together if the hand of good will was extended on all sides and the pain was shared. Dialogue and will were the key.

The decade of the 1960’s was a period of significant growth for New York City. The City’s population grew steadily, peaking in 1966 at slightly over 8 million. And with that growth, employment expanded, and that growth continued even after the population began to decline in 1966. Between 1963 and 1969, the period of the decade’s most sustained employment growth, the number of jobs grew by almost 265,000. By 1969, New York City had close to 3.8 million jobs. Other economic indicators were equally optimistic. However, these same positive statistics masked a number of significant economic trends portending serious problems. While total payroll employment steadily increased, declines in industries that had traditionally provided entry-level jobs to unskilled workers began a marked decline. They included manufacturing, wholesale and retail trades, transportation, and public utilities.

Nationally, the 1960’s were characterized by substantial population growth in urban areas and a concomitant increase in government services. The great Society programs initiated during Lyndon Johnson’s presidency fueled the steady expansion of local government services and, in turn, increased the level of expectations for still further service. But new programs mandated by the federal and state governments had to be supported by City reve-

120. Id.; see also Bureau of Census, U.S. Dept. of Commerce, County and City Data Book: A Statistical Abstract Supplement (1967) (noting that New York City population in 1966 equaled 8,125,066).
122. Bigel, supra note 119.
123. Id.; see also Bennett, supra note 121.
124. Bigel, supra note 119, at 3; see also Bennett, supra note 121.
125. See Bigel, supra note 119, at 2; see also Stetson, Gains Shown Here By Service Industry, N.Y. Times, Sept. 13, 1970, at 1, col. 3.
126. See Bigel, supra note 119, at 2; see also Stetson, supra note 125.
127. Bigel, supra note 119, at 3.
128. Id.
nues.129 For example, Medicaid, the largest of these programs, accounted for 29.5 percent of the City's share of public assistance when the program commenced in 1966.130 By 1975, when the fiscal crisis erupted, Medicaid accounted for 59.4 percent.131

When the national recession began in 1970, it triggered a seven year decline in the City's economy.132 Unlike the nation as a whole, the City did not recover in relatively short order from the 1970 recession.133 Between 1969 and 1977, New York City lost over 600,000 jobs, or 16.1 percent of all jobs in the city in 1969.134 As unemployment rose, and the exodus of entry level jobs continued, the demand for ever increasing governmental services did not abate. However, severe local budgetary pressures steadily increased.135 The City's expense budget had increased 260 percent between 1969 and 1975.136 To meet these competing and conflicting pressures—the demand for increasing services and the decline in the economic base—the City began to finance operating expenditures not out of its expense budget (which was financed by current tax revenues and short term revenue measures), but out of its capital budget (which is financed by long term debt vehicles).137 At the same time, the City sharply increased its short term financing measures.138 Having committed itself to financing services through short term borrowing, and with increased dependance upon long term borrowing to fulfill its now-inflated capital budget needs, the City's dependance on the public securities market assumed significant proportions. By 1975, New York City required over $8 billion in short-term financing in addition to funding over $800 million in operating expenditures out of the capital budget.139 The result of these and other factors, including unreliable financial information, mounting deficits, and increasing uneasiness among the banks, resulted in the closing of the public securities markets to city debt.140 The stage for fiscal disaster was set.

Two major obstacles were presented in any effort by the city to
surmount its difficulties. The City had to: (1) eliminate the existing budgetary imbalance between revenues and expenses, and (2) avoid bankruptcy and obtain financing until it could reenter the public securities markets. Few believed that the City could surmount these obstacles, yet the “miracle” was achieved.

Most informed observers agree—as did the governmental officials and the bankers—that the city’s labor unions deserve much of the credit. They made available their pension funds as substitutes for public security market financing. They facilitated the painful experience of massive layoffs. They furnished give up upon give up in benefits and work rule changes. They submitted to fundamental changes in the collective bargaining process, including pay freezes, and agreed that increases would be tied to productivity gains. Indeed, they lobbied for the legislative enactment of demands by the banks that, as a condition of their agreement to roll over short term City paper, labor contracts, as well as the City’s budget, would not become effective until first scrutinized and approved by a third-party panel (the Emergency Financial Control Board) comprised of state and municipal officials and public members drawn largely from the business community. Consider, if you will, when in your experience management and labor have agreed voluntarily, albeit reluctantly, to surrender their prerogative of concluding their own bargained agreements, let alone submitting them to third parties for scrutiny and approval. Further, putting aside parochial interests and interunion rivalries, the unions bargained successive labor agreements on a coalition basis, thereby minimizing one-upmanship and providing uniformity and certainty.

To provide savings, each union advanced proposals tailored to its particular needs and constituencies. Some accepted reductions in welfare contributions; others accepted the cessation of contributions to their annuity plans. Work rule changes were advanced by

141. Id.
142. Id.; see also Weisman, supra note 114.
143. Id.
144. See Clines, Beame Cites Rise in Attrition Rate, N.Y. Times, Jan. 9, 1976, at 29, col. 3.
145. See Bigel, supra note 119, at 4.
147. See Bigel, supra note 119, at 4.
And all this happened on top of massive layoffs, pay freezes and the like. To illustrate the enormity of the pain inflicted on the work force, consider the following statistics. The municipal work force on June 30, 1975 numbered 253,677. By June 30, 1981 it had been reduced to 196,151—a reduction of 57,526 employees, or 22.7 percent. In fiscal year 1976 alone, the work force was reduced by 41,490, accounting for 72 percent of all personnel reductions in the six-year period.

Givebacks of benefits were substantial for those workers who remained. They included changes in work rules (e.g., loss of reduced summer hours for clerical workers, loss of a preparation period for teachers, shorter lunch periods for transit workers, etc.), a reduction in pension benefits, and, most significantly, increased pension contributions by employees. These givebacks alone saved the City some $130 million a year.

The pension funds of the several unions were also deployed to permit recovery, specifically to finance the City’s debt in the absence of access to financial markets. $4.75 billion of retirement fund moneys were expended in the purchase of long-term debt, some one-third of it in unguaranteed Municipal Assistance Corporation paper. Additionally, the retirement systems were called upon to provide millions for the purchase of short-term debt.

Importantly, all of these painful and tradition-breaking steps by the leadership of all of the City’s unions were undertaken without undue rancor or hostility. The lasting bitterness, the corrosive macho tactics, and resultant generation of public ill-will which has marked labor-management relations discussed above, was not present.

One reason for the difference was that early in the process all sides recognized that dialogue and accommodation were the sine qua non for success and, hence, survival.

Let’s examine one example of the accommodations that were born of dialogue and reason. The Uniformed Sanitationmen’s Asso-

149. See Bigel, supra note 119, at 6.
150. See id.
151. Id.
152. Id.
153. Id.
154. Id. (noting that in spite of the city's fiscal solvency, municipal employees have not regained this benefit).
155. See Weisman, supra note 114.
156. See Bigel, supra note 119, at 8.
157. Id. (noting that $4.75 billion was contributed).
158. See Roberts, supra note 31.
Carnation represents the thousands of workers charged with removing the endless tons of accumulated refuse from the City's homes and streets, cleaning those streets not only of refuse but of tons of snow and ice in the winter and even of abandoned cars, and manning the landfills and waste disposal facilities. Their task is staggering and, as New York City discovered in the (prefiscal crisis) 1968 strike, their absence, more than any other service, will bring the City to a halt. Their burden is truly unbelievable—try lifting 10 tons of garbage on your back day in and day out. The union membership is fiercely loyal to respected leaders. The union's political power is and for decades has been significant—John Lindsay would not have been re-elected as Mayor of New York but for unions, he having already lost his party's designation for re-election. Mayors, governors and even presidents have acknowledged the Union's importance and invaluable aid in elections.

Following the fiscal crisis, as the City began the long hard trek toward solvency, the incessant theme was reduction in costs, coupled with demands that increases in wages and benefits—in anything that could add to cost—had to be based on a showing of increased productivity. Sanitation, like all other municipal unions, had given much long past the point of great pain. Yet, its members demanded wage increases because of spiraling inflation and years of increases that failed to keep up with the pace of inflation. Still the City reiterated its demands—productivity, cost cutting, etc. The stage for confrontation was set. Instead of confrontation, however, ingenuity, innovation and reason prevailed.

Sanitation collection vehicles in New York City are massive. They hold 20 or 25 cubic yards of refuse. Three men have traditionally been deployed to operate each truck and to pick up the heavily laden cans of refuse which are lined up in front of high-rise apartment houses or, frequently, down a few steps and in front of low rise apartment houses or brownstones. Following mediation, the Union and the City agreed that this traditional manning would be changed. Two men would now be required to do precisely the same routes and pick up the same quantity of refuse that once had

160. Id.
162. See Prial, supra note 159.
been picked up by three.\textsuperscript{164}

The savings to the City were measurable and substantial.\textsuperscript{165} Through a process of attrition, manpower in the collection force could be significantly reduced, impacting not only upon salary and benefit costs, but also upon significant future pension expenditures.\textsuperscript{166} Given these sizable savings by way of increased productivity, the City was prepared to provide a meaningful pay differential to those who would now bear an added burden.\textsuperscript{167} Gain sharing and productivity savings were realized.\textsuperscript{168} There was no confrontation and certainly none of the corrosive hostility that has marked the airlines’ efforts to achieve cost reductions through labor savings. Accommodation, dialogue and creativity had achieved a mutually acceptable result.

This approach extended beyond the already complex problem of labor-relations. Through a discreet and off-the-record association called MUFFLE, leaders of commerce, labor, government and civic organizations met to discuss how best to revitalize the City, to fashion plans for the future and to discuss and attempt to resolve day-to-day problems.\textsuperscript{169} The diverse assemblage included: Walter Wriston, Chairman of Citibank; Jack Bigel, consultant to the Unions, as co-chairman; David Rockefeller, Chairman of the Chase Manhattan Bank, among other members of the Bank; Felix Rohatyn, a partner of the investment banking firm of Lazard Freres and Chairman of MAC, (the Municipal Assistance Corporation); Victor Gotbaum, Executive Director of District Council 37 of the American Federation of State, County and Municipal Employees; and a variety of leading public officials.\textsuperscript{170} Again, dialogue and accommodation achieved lasting results.

It merits emphasis that the lessons learned have been translated in more recent years to the private sector. One example will be of particular interest to those in the United Kingdom. In 1988 the New York Post, then owned by Rupert Murdoch, was put up for sale.\textsuperscript{171} The press reported it was then losing money at the rate of $17 to $20

\begin{itemize}
  \item \textsuperscript{164} Id.
  \item \textsuperscript{165} Id.
  \item \textsuperscript{166} Id.
  \item \textsuperscript{167} Id.
  \item \textsuperscript{168} Id.
  \item \textsuperscript{170} Id.
  \item \textsuperscript{171} See Perry, \textit{America's Oldest Paper Sold to New York Real Estate Magnate}, The Reuter Library Report, Mar. 7, 1988 (p.m. cycle).
\end{itemize}
million dollars a year. Labor force reductions had been effected in 1987. The purchaser insisted on further savings—to be exact, $24 million in labor savings over a three year period. The savings were effected. The route employed was not akin to what had occurred at Wapping, England. The tactics employed were not the same as those employed at Continental or at Eastern Airlines. The result of joint labor-management discussions was that the unions were asked to meet a proportional budget and, in many instances, employees were offered buyouts at meaningful sums. Of course, there still was pain for those terminated. However, recognizing that a crisis was at hand—the outcome of which could well have been a shutdown of the paper—labor and management were able to achieve a solution through dialogue.

Valid parallels, it is submitted, can be drawn from the above illustrations. Like deregulation, the City's crisis produced a sudden change in the rules. Labor costs had to be reduced to effect necessary savings. There were no guideposts, no precedents existed for survival in a new and strange economic climate. An entirely new modus vivendi had to be constructed. Labor-management relations in this context were fashioned on the basis of negotiation, not confrontation and the flexing of muscle, with punch for punch retaliation. And this formula was pursued not just for the moment, but for the ensuing years—the climate and the ground rules had been established. Negotiation and accommodation are, after all, not creatures of the moment; they are, or should be, ongoing. Innovation can and should be an important tool to achieve mutual objectives. Gain sharing based on productivity is but one example.

The American experience with deregulation has been one of dramatic change, of turmoil and of considerable pain for labor and industry. If it has taught anything in the field of labor-management relations, it is that there is a wrong way to conduct that process, and the price then paid by both labor and management is substantial, and may well be lasting.

172. Id.
173. Id.
174. It merits noting, for example, that in the broadcasting industry the IBEW meets quarterly with management of certain major broadcasters to negotiate outstanding issues of mutual concern.