UNION BUSTING VS.

Two years after the Continental Airlines lockout, pilots see that—win or lose—a stronger, more unified ALPA exists to protect the future of airline piloting.

Commentary by F/O Jerry Baldwin

In the 1930s, E. L. Cord incorporated one entity after another in a calculated effort to lower pilot pay and benefits by employing nothing but "new hires" regardless of the number of years pilots had worked for him. Today a host of attorneys, judges, and accountants is needed just to untangle the web of corporations that was once Texas International.

Obviously the strategy is not new. The players are of the same ilk; only the names and dates have changed.

Retrospective

Francisco A. Lorenzo may not have been thinking union busting when he, and his Harvard Business School crony Robert J. Carney, under the umbrella of Jet Capital Corporation, sought to take over Texas International in 1971; he may have had his eye merely on control. And, with the aid of the Chase Manhattan Bank, he beat out noted industrialist and airline operator Howard Hughes in gaining control of Texas International. Hughes wanted to acquire and merge the small DC-9 operator with his Hughes Air West operation.

That initial acquisition established Lorenzo's modus operandi. He used the same strategy in his abortive attempt to acquire the much larger National Airlines in the late 1970s, in his brief attempt to get TWA in 1980, in his acquisition of Continental, and in his renewed efforts at controlling TWA. Lorenzo's distaste for unions may derive from a perception that unions threaten his power and control. Clearly though, the advent of deregulation heated his business blood and union busting became a major part of his strategy.

Still, Lorenzo's attempt to take over National Airlines in 1978-79, deregulation's first year, did not advance far enough to expose his anti-labor character. Indeed, National's employees seemed to welcome the prospect of having an aggressive leader at the helm.

His adversarial bent toward labor, though, was not entirely dormant. The pilots of Texas International entered negotiations with their company late in 1979 and reached agreement in June 1980. Lorenzo undermined the authority of his company negotiators and rejected that agreement out of hand. Pilots then operated for more than 18 months without a new contract.

(Printing deadlines prevented including in this article quickly changing strike-related events occurring at press time; such events would not affect the article's content.—Editor)

Lorenzo's attempt to acquire National had failed, but he ended up with $48 million profit when he sold back the stock he had bought. Donald Burr, then president of Texas International under Lorenzo, wanted to use the spoils of that foiled acquisition attempt to buy a new fleet of airplanes and build the company into a huge airline. Burr calculated that employees would rally to the cause and help in the expansion. Leaks from the head office foretold of a major fleet of Boeing 727-200s or even 757s. Response to the plan was enthusiastic and universal, except from the company's chairman. Burr left in a huff in January 1980 to implement his plan on his own (he would later establish People Express).

Shortly after Burr's departure, Lorenzo announced his intent to change the name of the corporation from Texas International to Texas Air Corporation, creating a parent holding company. Texas International would not drop its corporate charter. It would merely be subordinated to Texas Air and most of its cash assets would be passed up to its new, adopting parent.

Virtually on the eve of the final approval by stockholders of the corporate name change, Texas Air announced that it had established the industry's first "alter ego" operation, Big Apple Airways, later changed to New York Air. It was a new corporate charter operating with Texas International assets, managers, and airplanes, but without its pilots and other employees.

Lorenzo's union-busting character emerged with a bang!

The Continental takeover

Even as New York Air was getting off the ground, Texas International was driven deeper into debt to purchase stock in Continental. Initial purchases were kept secret. By February 1981, a merger between Continental and Western Airlines seemed likely. Lorenzo then made his Continental purchases known. He also offered to buy up to six million more shares of Continental stock at $13 per share. He would then own 48.5 percent of the stock. Initially, Texas Air announced its intentions to operate Continental as a separate entity. Owning a BIG airline, though, was one of Lorenzo's dreams, so Texas International and Continental would ultimately be merged.

No precedent existed for a hostile airline takeover. Before deregulation of the airlines in 1978, mergers routinely occurred and the government ensured that labor protective provisions were imposed. In the Texas International/ Continental merger, Texas Air management was adamantly against accepting standard labor protective provisions as mandated by the Civil Aeronautics Board.

Prior to and during the merger, Texas International managers were systematically engaged in a strategy to be nonunion within two years. An outline of a union-busting plan had been published by AFL-CIO in its February 1980 Rub Sheet, under the headline "Bargaining and the Busters." Among those in charge of Texas International strategy plan was Vice-President of Personnel John Adams.

The bankruptcy ploy was merely one chapter in the sordid plan, which called for forced strikes, attacks on seniority, stalled grievances, and creation of parallel nonunion operations. A loophole in federal bankruptcy legislation allowed a company to unilaterally reject its union contracts. (Congress recognized the loophole and amended the law in 1984, following heavy labor lobbying and a strong pilot grass-roots movement.)

Early concessions

To facilitate a smooth transition in the Texas International/Continental merger and ensure corporate viability, pilots agreed in 1982 to $100 million in givebacks, the furlough of 143 pilots, and a no-cost merger including an equipment freeze by aircraft type for respective pilots of the two carriers. Management hailed those concessions as critical to the future growth and prosperity of the company. But even before the ink was dry, management was back at the well trying to dip out more in givebacks: In January 1983, Lorenzo wanted $35 million, by June that had grown to $45 million, and by August it was $60 million.

Such concessions had become all too common in the airline industry at that time. The nation had plunged into a deep recession, and with the Professional Air Traffic Controllers Organization strike, the advent of deregulation, and a short-term over-capacity of airplane seats, no group was harder hit than the airlines.

Continental's new management took advantage of the situation to strengthen its hand over labor groups and to position itself for its eventual bankruptcy filing. Chairman Frank Lorenzo's focus from the outset of his takeover was clearly on the asset as noted in his comment to *Texas Business* in 1981:

> "We have taken the risk of making a major commitment in Continental, but that commitment nevertheless was financed by itself. We took some of TIA's [Texas International's] excess cash and made a borrowing that's repayable in September 1983 specifically related to that asset. So if Continental loses money, which we anticipate over the near term, it doesn't affect the loan [which is] the asset."

Control of the asset was the ultimate goal. The loan was immaterial; repayment was not a consideration. As Al Feldman, chief executive officer of Continental before the merger, observed in an April 1981 letter to Lorenzo: "The debt service coverage requirement, including the dividend on the preferred stock you propose, approaches $150 million annually. The operating profit required to service this debt is more than our two companies together have ever earned."

In that same letter Feldman clearly foresaw insolvency. It had nothing to do with labor, nor with fixed costs of any kind. It was merely a matter of adding debt onto debt.

Although Lorenzo's strategies all pointed toward bankruptcy, neither Feldman, nor the pilots, nor certainly any industry insiders believed that Lorenzo would relinquish any control of the asset as would be expected in a customary bankruptcy.

Such control would have undoubtedly been lost in Los Angeles, where the company's general office was located. Federal courts in that city are noted for being astute and farsighted. Lorenzo and his men could not risk losing control to a bankruptcy judge. The situation called for something drastic.

In June, July, and August 1983, the general office was moved from Los Angeles to Houston, Texas, despite Lorenzo's promise to the contrary. He had pledged to the California Commissioner of Corporations and state legislature that, if he were granted control of Continental, he would not move the carrier's headquarters out of Los Angeles.

Pilots off balance

By August 1983, the pilots of the recently merged Texas International and Continental were just pausing to lick their wounds from more than a year of squabbles with management and with each other over wage concessions, seniority list merger, furloughs, and threats of furloughs. The pilots had had clashes of personalities and of ingrained ideals of two very different airlines. They were divided on issues and prime targets for what was to follow. More than 400 pilots were on furlough. Many others had been reassigned. Most were disgruntled with their merged seniority number.

The International Association of Machinists and the Aerospace Workers strike of August 13 caused a rift between pilots who wished to support that effort and those who wanted to cross the picket line. The pilots crossed IAM's lines, and the rift widened between pilots, and between pilots and other unions on the property.

On Aug. 31, 1983, the company threw a shopping list of demands at the pilots. It would cut pay and benefits an additional $92 million. Pilots repeatedly sought, and the company adamantly refused, to arrange a meeting between lenders and employees. Frenzied and threatening activity was the order of the day. Employee group meetings, hurriedly scheduled by the company, were as hurriedly canceled and rescheduled. During "road shows" with employee groups, Lorenzo and company president, Stephen M. Wolf, threatened "drastic measures" if their shopping list was not filled.

Still, pilots agreed to make whatever economic concessions were necessary to keep the company viable. Though purporting to be seeking economic concessions, Lorenzo completely disregarded this offer. Clearly, Lorenzo's intent was to bust ALPA, not to extract concessions.

On September 21, Wolf quit and promptly departed the scene, another executive casualty of Lorenzo's hatchet.

On September 22, Continental's board of directors elected Lorenzo president. On the 23rd, negotiations continued with the promise by the company's chief negotiator, Tom Matthews, that "it will become clearer in the next 24 hours—all of us will become somewhat constrained in our ability to act." By the morning of the 24th, the pilots' equilibrium was unsteady, and the bankruptcy filing at 5

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ROGER FOLEY

p.m. CDT in Houston threw them well off balance.

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In the two weeks preceding the lockout, a select group of pilots had been trained to fly the international routes. They were given "management" contracts, and later formed the core of the scab force. The profitable and still regulated international schedule would continue to prosper without interruption.

Further, management insiders had calculated that to gain the sympathies of the court and the public, a complete shutdown of operations was necessary. They also determined that public support of the company would drop off rapidly if operations remained shut down for more than two weeks. They viewed 24 hours as too short a time to create a public awareness of the bankruptcy. They saw 72 hours as the ideal time span. The system was shut down on Saturday, September 25, a time when business at major airports is slow anyway. Restart commenced on schedule, 72 hours later, Tuesday, September 27.

As time passed, the plan seemed to be working. The loan made to purchase Continental, payable in September 1983, was held in abeyance. Pilots were manning airplanes. All seemed to be proceeding according to plan until October 1, the day pilots began their strike.

A strike was not wholly unexpected by management (forced strikes were part and parcel of the plan to be nonunion in two years). Management had reasoned that since some pilots were already crossing IAM's picket line, they would cross their own if a strike was called. Management further predicted that on Day 1 of the strike, 800 pilots would cross.

Pilots play catch-up

Caught unaware by the company's actions, the Master Executive Council played catch-up in the critical first two weeks of the strike. The MEC's effectiveness was further delayed because it was adjusting to its new makeup. Only a few short weeks before the bankruptcy filing, new representatives had been elected and had taken office, an action mandated by union bylaws after a seniority list merger.

The MEC met in almost continuous session to administer the strike, but many housekeeping chores precluded any real planning. As MEC members began to understand one another, they worked toward common goals, working desperately to avert the attack on their seniority and grievance machine. The MEC chairman, Capt. Larry Baxter, filled the spokesman's role until Oct. 13, 1983, when Capt. Dennis M. Higgins was elected MEC chairman. He has directed the pilot group's strategy since that time.

Strike centers were opened in the five domicile cities and at 15 other locations. In addition, coordination centers were maintained in six ALPA field offices, as well as in Washington, D.C. Problems encountered in developing such a diverse network made initial pilot communication efforts seem slim to erratic.

A recorded telephone message to keep pilots informed had been instituted at the time of the bankruptcy filing, but no mechanism existed to distribute the telephone number. Instituting a national, toll-free number was delayed more than a month.

On October 3, the third day of the strike, a pilot group newsletter was started, but it was distributed only to the Houston, Denver, Los Angeles, and Washington, D.C., strike centers. Honolulu and Guam were added by telegram, but transmission took up to 36 hours. A daily telephone conference call was started between Washington and the five domicile cities, but coordinated information was slow to be published by the press and even more slowly distributed among the striking pilots. One-on-one contact with skittish pilots was sporadic and uncoordinated; a family awareness program was not even considered. Pilots had been caught totally unprepared for Lorenzo's style of "warfare."

Strike shakes management

For all its problems in getting under way, the strike badly shook up management's plans. Instead of the expected 800 pilots, only 60 crossed on Day 1. Including the "management" strikebreakers, fewer than 170 pilots were available to fly the new reduced, but ambitious, schedule. The schedule, barely recovering from the shutdown, had to be curtailed once again, and a forecast 20 percent increase in flying turned into a mere 8 percent gain.

The company had advertised a return to 50 percent of prestrike capacity by November 15; the actual return came to 28 percent. To gain back enough pilots for that meager schedule, management used scare tactics in a thrust and parry fashion. They threatened to hire "permanent replacements" with attendant loss of jobs to strikers, then withdrew the threat. They repeated this ploy many times in the following weeks.

By late November just enough pilots had been whipsawed back to work to allow operations to continue. New and unqualified replacement pilots received greatly abbreviated training, and line pilots were wrongly given "check airmen" status. The Federal Aviation Administration looked the other way.

The MEC, for all its false starts in the beginning, recognized early the crucial importance of a strong picket line. Picketers are the army!

An army must have sustenance. The MEC worked doggedly to maintain strike benefit levels high enough to allow pilots to maintain a full-time presence at all major hubs and many out-stations. ALPA's President Henry A. Duffy, Executive Committee, Executive Board, and Board of Directors were also strong on this point.

Continued support at all levels, especially among the members at large, resulted in a sufficient presence to force bankruptcy court recognition of employee rights. On July 2, 1985, the court ordered management to negotiate with the association "until settlement is achieved."

Battles may fall either way, but this one will continue to have far-reaching implications throughout aviation for many years to come. Managements stand ready to accept poor pay, benefits, and working conditions as the common denominator for the piloting profession.

Under such pressure from the court, management was forced to attempt desperation tactics. After stalling the negotiation process for several weeks, Lorenzo's men instigated yet another component of the plan to be non-union. The plan called for a company union. On Aug. 26, 1985, Continental took the process a step further by acknowledging a scab pilot petition calling for no union and telling the world it was "withdrawing its voluntary recognition of the union as representatives of its pilots, effective immediately."

Such tactics are questionable under the Railway Labor Act, but many of Lorenzo's activities test the limits of the law. He hopes to establish new precedent. This then becomes one more tangential vector that ALPA must doggedly track down and stop.

Texas court

In 1983, Lorenzo counted on a now-defunct law and an ultra-conservative bankruptcy court to help him maintain control of the asset—Continental Airlines—by holding creditors, including pilots, at bay. Control was the key word. The U.S. Bankruptcy Court, Southern District of Texas, Houston Division, was chosen for the bold experiment, and the plan seemed to work marvelously under Judge Robert F. Wheless, Jr.

The first contest was over Continental's right to file under Chapter 11 of the bankruptcy code. Unsecured creditors, especially labor, contended that with $50 million in cash and $243 million in accounts receivable Continental was not bankrupt. Judge Wheless listened patiently for several months to arguments on both sides. He then sanctioned the filing with veritable praise for the debtor's genius in warding off claims.

Next, unions of employees asked for a balancing of equities in the question of contract rejection. Again, Wheless seemed to listen attentively to arguments over many months, before ruling in the company's favor. In an opinion reminiscent of a grade school book report—replete with improper English usage—Judge Wheless authored a ruling commending contract busting.

Then Judge T. Glover Roberts, of Biloxi, Mississippi, entered the case. His rulings have shown his inclination to balance the equities among all parties.

For example, Texas Air ordered 30 Boeing aircraft with most destined for Continental. The court allowed only 4 to be leased by the debtor company. Texas Air then proposed a new venture, Continental West, Inc., as an escape valve for the new airplanes. Continental would operate them as Continental West, outside the court's reach, but Judge Roberts and the Department of Transportation temporarily blocked the move. Attorneys for the official Public Debt Holders Creditors Committee filed suit to bring assets of Texas Air, et al, into the Continental proceedings. The matter was stayed by the court. When Texas Air announced its proposed acquisition of TWA, Judge Roberts uttered disbelief with "Oh, my God!" and lifted the stay.

For all his efforts, Lorenzo has never shown a true profit. He has produced fiscal or paper profits at will. Through accounting techniques or by selling one asset or another, Lorenzo has been able to get the word *profit* into the news anytime he has wished to float another equity or debt instrument in the public marketplace. A true profit, however, invariably eludes him. Texas International never turned back-to-back annual profits under Lorenzo. New York Air has been an habitual money loser, Continental is still in bankruptcy, and yet Texas Air is somehow flush.

Using ledger mirrors

How does Texas Air do it? With its primary holding in bankruptcy, its secondary company losing money, and no product or service of its own, how does Texas Air bid $793.5 million ($725 million in cash) on TWA? The answer, which illusionist Lorenzo would have everyone miss, is not complicated. Lorenzo, through Texas Air, has been making financial use of Texas International, New York Air, and Continental for years, stripping them of their cash assets. The same mirror magic would work at TWA.

From the start, Lorenzo referred to the windfall profit derived from the sale of National Airlines stock to Pan American as his money. After assuring Texas International employees that he was using their small strapped company to acquire Continental for their benefit, he turned right around and promised CAB that he would divest himself of the little company if it stood in the way of his acquiring Continental. Later, in response to a cash crunch brought on by leveraging to purchase Continental shares, he said Texas International was "not TAC's favorite charity."

After creating a pressing need for cash at Continental, Lorenzo offered to bail the company out at great expense to Texas Air by buying out Continental's highly profitable computer reservations system, which generated revenues in the $25 million range annually, for a cash outlay of $1.5 million. Today that valued asset is CCS, Inc., owned by Lorenzo and a group of his cronies.

Sidelines

As Lorenzo busied himself juggling assets and people, Donald C. Burr raised capital to form a new-entrant, non-union carrier, People Express. Burr, when he left Texas International, took with him many other Lorenzo-trained managers.

Operations such as New York Air and People Express prompted Robert L. Crandall at American Airlines to reactivate an anti-labor ploy that had lain dormant for nearly 15 centuries, the two-tier pay scale. This tactic, which helped hasten the fall of the Roman Empire with discontent among new army recruits, has nevertheless gained great popularity throughout industry, not just among the airlines.

Richard J. Ferris, chief executive officer of United Airlines, repeatedly invoked the names of American, People Express, and Continental in his demands for two-tier wage scales in the months and weeks leading up to the work stoppage of May 17, 1985, at United. Lessons learned from the haphazard, paste-up strike at Continental averted United's blatant attempt to bust ALPA.

Unlike the head-on attack by Ferris, Lorenzo's moves are more insidious. From a minor toehold, he quickly amasses gargantuan power. One might think, then, that labor's resistance to Lorenzo is low. Not so. ALPA alone has spent millions campaigning, striking, advertising, lobbying, and litigating to stop New York Air, mock bankruptcy, and ill-advised, leveraged buyouts. Those expensive medicines, however, have been amply diluted by the federal government.

Revolving-door syndrome

Deregulation, enacted amid altruistic rhetoric by politicians in 1978, propelled Lorenzo into the limelight. It allowed him to buy up stock in National Airlines, which he later sold at a tremendous profit. Deregulation and a friendly CAB allowed him to form New York Air. And he could not have acquired Continental without deregulation.

Lorenzo has cultivated few friends along his way, but he has been able to hire individuals who do his bidding. Many were wooed from Washington, after serving as public officials. Among them is a former chief counsel to FAA, Clark H. Onstad, who is today chief lobbyist for Texas Air, Continental, and New York Air.

Others who have passed through the revolving door include Phillip J. Bakes, Jr., who drafted the deregulation bill, and two CAB chairmen, John Robson and Alfred Kahn, who promoted the act that would eventually dissolve the agency they led. Robson pushed the bill through Congress. Kahn implemented deregulation under President Carter.

Bakes is now president of Continental. Robson sits at Lorenzo's right hand on the Board of Directors of Texas Air, with Kahn sitting at the other hand as a director of New York Air.

Safety or economics

FAA's dual purpose, to guard air safety and promote air commerce, has been amply debated in *Air Line Pilot* before. FAA's record toward the new Continental stresses commerce at the expense of safety. In addition, the government's watchdog has been either asleep or negligent in policing known Federal Aviation Regulation violations.

In a special operational inspection of Continental in March 1984, FAA discovered that scab check airmen were not qualified and that newly hired pilots were not given the full training syllabus mandated by law. FAA took no disciplinary action against the carrier.

Further safety violations committed in the air and on the ground, supported by FAA's own documentation and audiotapes, remain virtually undisciplined by that agency even though media newscasts, magazine and newspaper articles, and other investigative reports such as the "60 Minutes" report of April 15, 1984, continue to cast light on Continental operations. Nevertheless, FAA continues as Continental's chief apologist and primary advocate.

Richard Ferris tried on Lorenzo's shoes and found them a little tight. Who is next? John Adams, Lorenzo's chief lieutenant in his plan to be nonunion in two years, was dispatched to TWA to prepare for the inevitable but has been recalled since Carl Icahn won the bidding war for the carrier.

The Sept. 24, 1983, bold experiment in union busting is far from finished. A war of this nature, as a war of any nature, has no winner. Battles may fall either way. The Continental battle outcome, though, will continue to have far reaching implications throughout aviation for many years to come. Lorenzo and Carney's corporate takeover thrusts are certain to continue that strategy, which includes establishing alter-ego carriers. It is, after all, the only game they know, and the federal government and the courts seem unwilling to interfere.

Though Lorenzo may from time to time sign a pilot contract, either personally or through his lieutenants, those are merely instruments of a truce. The war continues. Two forces are at work in balancing equities. Texas Air is bent on being the leader in reducing the pilot profession—its pay, benefits, and working conditions—to the lowest possible level. Other managements stand ready and willing to accept that level as the least common denominator. The trend, then, is down, down, down.

Only ALPA can stop the trend.

Unity solution

ALPA first saw corporate manipulation in the 1930s. Recognizing it for the threat it was, ALPA treated it symptomatically. When the takeover/alter-ego threat reappeared in 1972, ALPA largely ignored it, because it affected only a small group in a little regional airline in the South. When it bit pilots hard in the formation of New York Air, ALPA ordered some strong medicine that was working. But treatment was stopped before the ailment was cured.

Now that takeovers and alter-ego operations are reaching proportions recognizing no bounds, airline corporate employees are worried. Yet, the mechanism at work is not new; it is known to us, the pilots who are ALPA. Corporate manipulation, such as takeovers and alter-ego-carrier start-ups, is the consequence of the lust for control, of greed, unbridled power, and avarice.

The cure is unchanged over the years. In the 1930s, to overcome union buster E.L. Cord, pilots used will and determination, solidarity, and sacrifice. Power concedes only on demand, and pilots throughout the world are of necessity becoming more unified in strength. As Herb Cohen, master negotiator, has said, "Power is a matter of perception: If you think you have it, then you have it. If you think you don't have it, even if you've got it, you don't have it."

As the threat becomes broader, pilots unite. As the disease spreads, it becomes weaker through ever-increasing debt. The cure is within us. The disease will fall. ALPA pilots know their worth and will settle for nothing less.

Lorenzo is one. Pilots are many. We have the power and can muster unity. Lorenzo has only debt, and debt eventually comes due.

Striking Continental Airlines First Officer **Jerry Baldwin** *is part of the public relations team of the pilot group.*