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Series: Sununu, John, Files
Subseries: Cabinet Agencies Files

OA/ID Number: 29190
Folder ID Number: 29190-001

Folder Title:
Skinner (Eastern Airlines - 1989)

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file

H.R. 1231 - MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 1231, a bill establishing a Congressional advisory commission to investigate and make recommendations on the three pending labor disputes at Eastern Airlines, because this intervention in the strike and bankruptcy could operate as a positive hindrance to saving Eastern and employee jobs.

The future of Eastern Airlines is now a matter of reorganization under Chapter 11 of the Bankruptcy Code. The bankruptcy court is charged with protecting the overall interests of the concerned parties in an even-handed fashion. This state of affairs should not be disturbed by new legislation. I am concerned that the investigation and recommendations of the Commission will create the expectation of further intervention by Congress in the carrier's affairs that will significantly disrupt chances for an orderly reorganization by the bankruptcy court. In my view, a favorable outcome would be jeopardized by the spectre of further legislation.

The Commission's mandate to investigate three pending labor disputes, as well as other aviation industry issues, is also unrealistic. While the National Mediation Board expended over 500 days of sustained effort in an unsuccessful attempt to resolve the single dispute at Eastern that has reached impasse, the four-member commission would be charged with recommending settlements for three outstanding disputes at Eastern in a fraction of the time -- 45 days. Furthermore, involvement in the two ongoing labor disputes at Eastern that have not reached impasse violates our policy against governmental interference in the collective bargaining process. I see no justification for approving legislation that would mandate government intervention in the case of the pilots and flight attendants.

In addition, the bill's mandate that executive branch resources be used to fund and support a Congressional Commission implicates constitutional principles of separation of powers.

For these reasons, I am compelled to withhold my approval of the bill. I stress that it is the substantive deficiencies of the measure that underlie this decision, and that I have often spoken for those legislative initiatives on behalf of the working person that I anticipate signing, such as

[or perhaps favorable reference to the minimum wage compromise]

GEORGE BUSH

THE WHITE HOUSE
November , 1989

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Samuel K. Skinner to John Sununu Re: President's Action on Eastern Airlines Bill (H.R. 1231) (3 pp.)	11/89	P 7 5	

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Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 5/12/05

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

MEMORANDUM FOR: John Sununu
Chief of Staff to the President

FROM: Samuel K. Skinner

SUBJECT: President's Action on Eastern
Airlines Bill (H.R. 1231)

Congress has cleared H.R. 1231, the so-called "Eastern Bill", for the President's signature. The enrolled bill would establish a four-member Commission appointed by majority and minority leadership of the Senate and the House of Representatives, to investigate and make findings of fact and recommendations for the prompt and equitable settlement of the dispute between Eastern Airlines and its collective bargaining units, as well as make policy recommendations to Congress and the Secretary of Transportation concerning: A) the powers of the Secretary to intervene on behalf of the public interest to maintain competitiveness in the aviation industry in light of mergers, acquisitions and bankruptcies of air carriers, and B) the adequacy of protection of employee collective bargaining rights in bankruptcy proceedings involving air carriers.

The Administration has indicated that the President's "senior advisors" would recommend he veto the legislation. There are important reasons for the Administration to fulfill its pledge and not allow the bill to become law.

The President acted decisively on the eve of the Eastern Machinists strike in early March to turn down pleas for appointment of a 45-day Presidential Emergency Board (PEB) under the Railway Labor Act. He correctly judged that the appointment of one more mediating body after years of intransigence by both sides at Eastern wouldn't yield the basis for compromise.

He also noted his intention not to intervene in the collective bargaining process of a private sector labor dispute. Collective bargaining, and all its consequences, should be off-limits to the government unless vital national interests are threatened (e.g., critical transportation services). Nothing has occurred in the resulting months to call the President's decision against intervention into question.

A primary reason for opposing the bill is that presenting recommendations to Congress to resolve the pending labor disputes at Eastern Airlines would generate immense pressure to "legislate

a solution" to the employee issues that conforms to the recommendations. Eastern is within the jurisdiction of the bankruptcy court, and even the expectation of further intervention by Congress in the carrier's affairs would significantly disrupt chances for an orderly reorganization. This threatens long-term stability of the carrier as an employer and a competitor.

At present, progress in reorganization suggests that Eastern can remain an independent and viable competitor. Eastern's employees, the traveling public, and the nation's economy all have a real stake in maintaining maximum competition wherever Eastern flies. This outcome would be jeopardized by the spectre of further legislation.

A second objection is that the Commission's mandate is entirely unrealistic. While the National Mediation Board expended over 500 days of sustained efforts in an unsuccessful attempt to resolve the single dispute at Eastern that had reached impasse, the four-member Commission established by the enrolled bill would be charged with recommending settlements for three outstanding disputes at Eastern in a fraction of the time -- 45 days.

Whether or not further legislation ensued, Commission recommendations on the two disputes that are still at the bargaining table could offer false hope to workers and doom prospects for successful mediation. We do not favor intervention in the collective bargaining process simply because one party or the other is not obtaining its objectives.

A third objection is to the mandate that the Department's personnel and resources be put at the disposal of this Legislative Branch Commission. While we defer to the Justice Department on possible Constitutional ramifications, it does not accord with generally accepted principles in the federal government to commit the executive's resources to the projects of the legislature.

Let me also stress that the Federal Aviation Administration continues to exercise detailed oversight of Eastern's current maintenance and other safety practices. The current conflict between labor and management at Eastern has not compromised the safety of the traveling public in any respect. Therefore, there can be no argument that enactment of the bill would relieve a threat to aviation safety.

I am confident of our ability to sustain a veto on this legislation. The original text of H.R. 1231, requiring the President to empanel an Emergency Board passed the House on March 15 by a vote of 252-167. The Senate, when it finally acted last week, substituted the commission concept for the Emergency Board. The Senate narrowly invoked cloture twice on the proposal, then finally passed the legislation, with 35 Republicans voting against the commission proposal, enough to sustain a veto.

We also received assurances from a number of Republican Senators that while they would support the legislation on final passage, we could count on them when it came to a presidential veto. The ability to sustain a veto on the House side on this issue is not automatic, but is certainly possible. The commission concept will be seen by some in the House as less problematic than an emergency board, but fundamentally, many members still disagree with the notion of the government intervening in a collective bargaining dispute. Since the legislation originated in the House, the House would provide the initial battleground for any attempt to override the President's veto. Even if we were not successful in the House, I believe the Senate would vote to sustain the President's veto.

Because of the significant potential for this legislation to disrupt to the processes that will contribute to a long term beneficial outcome for all parties involved in the Eastern situation, I remain strongly opposed to the President signing the enrolled bill.

Attached is a proposed memorandum of disapproval for H.R. 1231. I have sent Director Darman a copy of the memorandum under separate cover.

Attachment

H.R. 1231 - MEMORANDUM OF DISAPPROVAL

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The Commission's mandate to investigate three pending labor disputes, as well as other aviation industry issues, is also unrealistic. While the National Mediation Board expended over 500 days of sustained effort in an unsuccessful attempt to resolve the single dispute at Eastern that has reached impasse, the four-member commission would be charged with recommending settlements for three outstanding disputes at Eastern in a fraction of the time -- 45 days. Furthermore, involvement in the two ongoing labor disputes at Eastern that have not reached impasse violates our policy against governmental interference in the collective bargaining process. I see no justification for approving legislation that would mandate government intervention in the case of the pilots and flight attendants.

In addition, the bill's mandate that executive branch resources be used to fund and support a Congressional Commission implicates constitutional principles of separation of powers.

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GEORGE BUSH

THE WHITE HOUSE
November , 1989

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Memo	From Samuel K. Skinner to John Sununu Re: Airline Leveraged Buyouts and Foreign Airline Equity in U.S. Carriers (3 pp.)	9/11/89	P5	

Collection:

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C L O S E H O L D

file

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

September 11, 1989

MEMORANDUM TO: The Honorable John Sununu
Chief of Staff
The White House

FROM: Samuel K. Skinner *SKS*

SUBJECT: Airline Leveraged Buyouts and Foreign Airline
Equity in U.S. Carriers

Recent press reports have focused attention on the Department's monitoring of leveraged buyouts of and foreign investment in U.S. airlines, as well as possible steps we might take to ensure that these transactions are consistent with Federal law and policy. This memorandum will update you on developments in this area. My staff has discussed this matter with staff from the Treasury Department, the Council of Economic Advisors, the Securities and Exchange Commission, and the Office of Policy Development.

Leveraged Buyouts:

° Airlines continue to be active targets for leveraged buyouts. Alfred Checchi, through Wings Holdings, has completed a leveraged buyout of Northwest Airlines. The transaction would increase NWA's debt-to-equity ratio from 0.42/1 to 5.85/1. A management-labor leveraged buyout proposal to purchase United Airlines (UAL) has been submitted to the UAL board and may receive a favorable response. The proposal would increase UAL's debt-to-equity ratio from 1.48/1 to 5.71/1. Stocks of other airlines, notably American (AMR, Inc.), have been driven up by leveraged buyout speculation.

° The high interest payments associated with leveraging increase the risk that a leveraged airline will not be able to meet its financial obligations, particularly during an economic downturn. Given the small number of major U.S. air carriers, the failure of any of these carriers could reduce the level of competition in the industry, at least temporarily. In fact, new entrants into this industry have had a very difficult time and no major new carrier has emerged in over 10 years.

° Leveraging also could reduce an airline's ability to commit the financial resources needed to operate safely. The high cost of servicing large debt levels, especially during an economic downturn in this cyclical industry, may also deny airlines the flexibility to lower fares, expand operations, provide adequate maintenance in light of increasing costs associated with aging aircraft, modernize fleets and otherwise remain viable competitors in a highly concentrated industry.

C L O S E H O L D

° We have undertaken a comprehensive review of the Checchi/Northwest leveraged buyout. As part of that review, we have engaged Coopers & Lybrand to assist us in analyzing the financial condition of the leveraged company.

° Our preliminary analysis indicates that while the post-acquisition Northwest would be able to handle its debt burden and operating requirements, its assumptions (e.g., traffic growth, interest rates, and fuel costs) depend upon circumstances beyond the carrier's control and appear to be overly optimistic. We intend to meet with Northwest, discuss the results of our analysis with the carrier, and formulate steps Northwest could take to address any concerns that we may have as a result of our analysis.

° I met with UAL's management on September 6, 1989, and indicated to them that the Department would conduct a similarly detailed review of any transaction involving a leveraged buyout of or foreign airline investment in UAL.

Foreign Airline Equity in U.S. Carriers:

° Foreign airlines are aggressively pursuing financial interests in major U.S. air carriers. The Checchi/Northwest buyout includes a \$400 million investment by KLM, the Dutch airline, representing almost 60 percent of the equity remaining in Northwest. The proposed management-labor UAL buyout is reported to entail a \$750 million investment by British Airways, representing about 75 percent of the equity that would remain in United after the buyout. Swissair has acquired a 5 percent interest in Delta Air Lines. Scandinavian Air System (SAS) already has a 9.9 percent interest in Texas Air, parent of Continental and Eastern airlines.

° It appears that the Northwest/KLM and proposed United/British Airways relationships are consistent with the Federal Aviation Act requirement that 75 percent of the voting interest of a U.S. airline be owned or controlled by U.S. citizens and that two-thirds of the directors be U.S. citizens.

° Both relationships nevertheless raise questions about possible foreign control of U.S. airlines. For 50 years the Civil Aeronautics Board and the DOT have required that a U.S. carrier in fact be under the control of U.S. citizens. Mere compliance with the statutory ceilings is not enough.

° DOT has found airlines not to be U.S. citizens where a foreign entity is in the position to influence significantly the carrier's activities. This was most recently done in 1987, in the case of an allegedly U.S. airline which the Department found to be effectively controlled by Canadian nationals.

° Although we wish to avoid creating arbitrary obstacles to foreign capital that might otherwise be available to U.S. airlines, we feel that we must examine the foreign control issue carefully, focusing on a number of concerns:

- Whether foreign airlines will have access to the assets of U.S. airlines, including their aircraft, either directly or indirectly through, for example, application of U.S. bankruptcy laws.
- Whether such access would compromise national security by impeding the nationalization of U.S. aircraft in the event of national emergencies.
- Whether these alliances could adversely affect competition in international and domestic markets.
- Whether the foreign airlines will gain, through these investments, important economic benefits in our market while Europe continues to restrict U.S. airline operations across the Atlantic, possibly even after 1992.

° There are a number of actions which the Department might take to remove a foreign control problem, including:

- requiring a divestiture of part or all of the foreign entity's equity investment.
- prohibiting the foreign entity from having broad representation or from having other avenues of access such as advisory committees.
- prohibiting any further acquisition of equity by foreign entities without the prior approval of DOT.

Each of these remedial measures could be implemented in the form of conditions placed on licenses issued by the Department to U.S. airlines authorizing them to provide air transportation.

We stand ready to provide you with additional information, and we will, of course, furnish updates as our work progresses.

cc: Richard G. Darman
Director, Office of Management
and Budget

Roger B. Porter
Assistant to the President
for Economic and Domestic Policy

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memo	From Roger Porter to John Sununu Re: Possibility of Legislation Requiring Intervention into the Eastern Airlines Dispute (2 pp.)	9/11/89	b-5	

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THE WHITE HOUSE
WASHINGTON

September 11, 1989

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*

SUBJECT: Possibility of Legislation Requiring
Intervention into the Eastern Airlines Dispute

At our senior staff meeting today, it was noted that the Aviation Security Act of 1989 (H.R.1659) is scheduled for a floor vote on Wednesday and that the bill may include a provision requiring Federal intervention into the Eastern Airlines labor dispute. My office has spoken with minority staff on the House and Senate sides and with the Assistant Secretary of Transportation for Legislative Affairs about this possibility. On the basis of those discussions, we have determined that, as of now, this bill focuses only on aviation safety matters and that a floor amendment relating to the Eastern Airlines situation is unlikely to be introduced.

The Administration has issued a Statement of Administration Policy opposing the Aviation Security Act because it is unnecessary and because it establishes an unfavorable precedent for Federal funding. I have attached a copy of that Statement.

In the course of our discussions concerning the Aviation Security Act, we have discovered that the Senate Democrats intend to introduce an amendment to the Transportation Appropriation bill requiring Federal intervention into the Eastern Airlines dispute. The Transportation Appropriation bill is expected to be taken up on the floor of the Senate at about 6:30 P.M. tomorrow, September 12.

As we understand, the Senate Democrats' current proposal, which was initially proposed by the Air Line Pilots Association (ALPA), entails the creation of a three-person blue ribbon commission to investigate and make recommendations to Congress regarding the dispute between Eastern and the various unions involved in the dispute. Two out of three members of the commission would be appointed by the Speaker of the House and the President Pro Tempore of the Senate, respectively. The third member would be appointed by the Secretary of Transportation. Particularly because the commission would operate independently of the practices that have developed for Presidential Emergency Boards under the Railway Labor Act, the investigative authority of this commission could be interpreted very broadly.

We should send a strong signal to those who supported us in opposing a Presidential Emergency Board that we oppose the creation of this blue ribbon commission as strongly as we oppose a Presidential Emergency Board. I have just spoken to Secretary Skinner, who concurs in my recommendation that we oppose this amendment.

cc. David P. Sloane



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 7, 1989
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 1659 - Aviation Security Act of 1989
(Oberstar (D) Minnesota and 3 others)

The Administration opposes enactment of H.R. 1659, because it is unnecessary and establishes a costly precedent for Federal funding.

The bill creates automatic new spending not subject to the appropriations process and not in keeping with the FY 1990 Budget Resolution. It would thus increase the deficit by up to \$100 million in outlays and hinder efforts to avoid a sequester.

Moreover, the Federal Aviation Administration (FAA) has already required the installation of explosives detection systems, such as Thermal Neutron Analysis-type equipment. The airlines are fully capable of bearing the costs of this equipment, either through the existing security surcharge approach or through negligible increases in ticket prices. H.R. 1659 would transfer these costs to the Federal Government, thereby increasing the deficit by \$100 million in FY 1990.

The Federal Government's traditional role is to perform the research and development necessary to achieve security improvements and then transfer the technology to the private sector. The taxpayer has already committed approximately \$56 million to research and development in explosives detection technology over the past 8 years. Forcing the FAA to purchase the units will also slow their deployment by requiring acquisition through the Government's lengthy procurement process.

The Administration also opposes provisions in H.R. 1659 that would: (1) impose security measures on foreign carriers that are unnecessary or counterproductive; (2) interfere with the FAA's enforcement program by exempting airport operators from accountability for total airport security; and (3) require statutorily the screening of passengers and baggage on commuter airlines.

* * * * *

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 6, 1989

MEMORANDUM TO: The Honorable John Sununu
Chief of Staff
The White House

FROM: Samuel K. Skinner *SKS*

SUBJECT: Eastern Air Lines Bankruptcy and Labor
Situations

The purpose of this memorandum is to bring you up to date on Eastern Air Lines' reorganization and labor-management situation.

° The AFL-CIO and the striking Eastern unions are mounting an intensive campaign to force a vote in the Senate on a House-passed bill which would require the President to create an Emergency Board to settle the Eastern dispute. The bill (H.R. 1231), which I continue to oppose strongly, may well face a Republican filibuster. The President's strong opposition to an Eastern Emergency Board may be tested should the AFL-CIO succeed in the Senate. In general, Congressional interest on this issue is running high. I understand that the White House has received voluminous Congressional and public correspondence on this issue, as have DOT and Justice. DOT is working with Roger Porter's office to formulate appropriate and consistent responses from all elements of the Administration.

° Labor is pursuing other airline-related legislative initiatives in addition to the Eastern Emergency Board, including a bill supported by ALPA dealing with the integration of employee seniority lists following a merger or acquisition of all or part of an airline. Following a meeting that I held with Lane Kirkland two weeks ago, the Department is reviewing these initiatives to determine whether, and to what extent, they can be supported by the Administration.

° In the meantime, DOT continues to follow Eastern's reorganization closely. Eastern has stated that it plans to emerge from Chapter 11 bankruptcy at a down-sized level approximately two-thirds its pre-strike size. The airline expects to operate 600 daily flights by September 7 and 800 by the end of the year.

° Eastern has submitted a Plan of Reorganization to the bankruptcy court, but not a Disclosure Statement which would provide specifics of financial arrangements. The carrier is expected to file that document by September 15. Recent reports indicate, however, that Eastern has not been able to raise as much cash through asset sales as it had planned. This shortfall could alter its reorganization plans and/or its dealings with its creditors.

° Despite union allegations that Eastern's margin of safety has deteriorated, the FAA, after stepped-up surveillance, reports that it has found no evidence to support those allegations. The FAA compares Eastern's current maintenance performance favorably with that of other carriers of similar size.

° It appears that Eastern has successfully withstood the strike. The carrier has hired 1,000 non-union pilots (300 of whom have completed training and are flying); 700 pre-strike pilots have returned to work; and Eastern has now stopped rehiring striking pilots, thereby freezing out union pilots.

I stand ready to brief you or the President further as the need arises.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
05. Memo	From Sam Skinner to John Sununu Re: Overview of Airline Industry (3 pp.)	8/17/89	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Cabinet Agencies Files
WHORM Cat.:
File Location: Skinner (Eastern Airlines - 1989)

Open on Expiration of PRA
 (Document Follows)
 By JP (NLGB) on 5/12/05

Date Closed:	12/2/2004	OA/ID Number:	29190-001
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

August 17, 1989

MEMORANDUM TO: The Honorable John Sununu
Chief of Staff
The White House

SUBJECT: Overview of the Airline Industry

The airline industry has experienced a recent period of high growth in revenues, profits and asset appreciation, and a number of individual companies are now worth significantly more than their book value and stock prices. These developments are due to the overall favorable economic climate in the country, which has resulted in the current high level of demand for air service and aircraft, and the earlier consolidation of the industry. As a consequence, a number of airlines are under considerable pressure from the financial community to realize the inherent value of their companies for their stockholders and/or to take protective measures. At the same time, despite this favorable climate, some carriers are in a weak financial condition. These circumstances suggest that the industry may experience an additional period of consolidation and that the remaining firms may be operating in a new financial environment which may require a further shift from equity to debt financing.

- * The airline industry experienced a consolidation between 1986 and 1988. Many airlines that entered the industry during the initial phase of deregulation have either gone out of business or have been acquired by other airlines. Today, 94 percent of the domestic traffic is carried by the top ten airlines, compared to 78 percent in 1984. The Department of Transportation is in the midst of a major study of the state of competition in the airline industry. Among other things, the study is examining the impact of airline consolidation on fares and service. The Department expects to complete the study by the end of the year.
- * In 1988, the airline industry earned a \$2.8 billion operating profit and \$1.1 billion net profit. Absent major negative developments in the second half of 1989 -- a recession, steep fuel price increases, a fare war -- profits will be substantially higher in 1989, with several carriers earning record profits.

- * Investors have been attracted to airlines because of their ability to convert strong assets -- particularly their aircraft -- to cash, and because these assets are typically carried on their books for less than market value. Other assets, such as aircraft delivery positions, do not appear on the books at all. This situation has made airlines candidates for various forms of acquisitions, especially leveraged buyouts.
- * NWA, Inc., the parent of Northwest Airlines, has recently concluded a merger with an investment group led by Al Checchi which involved a leveraged buyout of NWA, Inc. UAL, Inc., the parent of United Airlines, has recently received a takeover proposal from investor Marvin Davis. American Airlines, Delta Airlines and USAir have been the subject of speculation that each may be targeted for a takeover. Delta and USAir have adopted defensive strategies in response to this situation.
- * Trans World Airlines and Pan American World Airways have made it known that they would like to merge with other carriers. Some smaller air carriers have experienced recent sharp increases in stock prices, raising speculation that they will be acquired.
- * Pan Am is in poor financial condition, with negative working capital and negative net worth. It is still suffering from a falloff in revenues after the Flight 103 disaster. It lost \$251 million in the first half of 1989, and will probably lose money for the rest of 1989. It may experience a liquidity crisis by early 1990. Its management believes that it must merge with a profitable airline to survive, but so far there is no willing partner.
- * Texas Air Corp., parent of Continental and Eastern, posted a consolidated net loss of \$365 million for the first half of 1989. It is highly leveraged and continues to be adversely affected by Eastern's ongoing financial problems. Eastern posted a net loss of \$385 million for the first half of 1989, even though it had a \$250 million gain from the sale of its shuttle. Eastern is in bankruptcy proceedings and has submitted a reorganization plan calling for a much smaller airline focusing on hub operations at Atlanta. Given Eastern's ongoing labor problems, its poor public image, its problem in hiring and training new pilots, and the intense competition it is facing in many important markets, its long-term prospects are questionable.
- * High debt levels -- either from leveraged buyouts, internal leveraging of assets or from past poor economic performance -- can present major problems for airlines. First, a higher percentage of operating earnings must be used to finance interest expense. Second, substantial debt can impede carriers from undertaking necessary capital expenditures, for example, buying new aircraft and building new airport facilities. A possible reduction of airline resources available for airport expansion is a concern of many local governments.

- * Labor groups are particularly concerned about the effect of increased debt levels on airlines' continuing operations and whether companies will have to sell off important assets to handle their debt or reduce wage offerings because of the need to use earnings to cover increased debt. The unions carefully considered the alternatives in the NWA buyout and did not oppose Checchi. United's unions may play a major role in any attempted takeover of that carrier.
- * Labor negotiations involving several carriers could be contentious. The most powerful union, the Air Line Pilots Association (ALPA), is currently involved in negotiations with Delta, Northwest, United and USAir. A union representing mechanics and clerical employees is negotiating with TWA. Most analysts do not foresee a strike at another major carrier (besides Eastern) this year, although the situation at TWA has the potential for resulting in a strike. In addition, if the situation for striking Eastern pilots continues to worsen, there is some possibility of a nationwide sympathy job action by other ALPA pilots, perhaps in the form of a one-day or similar short-term walkout.

SK Skinner

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06a. Note	From Jim Cicconi to Roger Porter Re: Attached memo (1 pp.)	3/6/89	P 5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Cabinet Agencies Files
WHORM Cat.:
File Location: Skinner (Eastern Airlines - 1989)

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 5/12/05

Date Closed:	12/2/2004	OA/ID Number:	29190-001
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
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P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

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PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

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THE WHITE HOUSE
WASHINGTON

DATE: March 6, 1989

NOTE FOR: ROGER PORTER

The President has

seen

☒

acted upon

☐

commented upon

☐

the attached; and it is forwarded to you for your:

information

☒

action

☐

James W. Cicconi
Assistant to the President
and Deputy to the Chief of Staff
(x-2702)

cc: Gov. Sununu ✓
Boyden Gray
Original to Files

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06b. Memo	From Roger Porter to POTUS Re: Eastern Airlines Labor Dispute (6 pp.)	3/2/89	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Cabinet Agencies Files
WHORM Cat.:
File Location: Skinner (Eastern Airlines - 1989)

Open on Expiration of PRA
 (Document Follows)
 By 01 (NLGB) on 12/12/07

Date Closed: 12/2/2004	OA/ID Number: 29190-001
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
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THE WHITE HOUSE
WASHINGTON

March 2, 1989

CB
signed paper

MEMORANDUM FOR THE PRESIDENT

FROM: ROGER B. PORTER *RBP*
SUBJECT: Eastern Airlines Labor Dispute

THE PRESIDENT HAS SEEN

The National Mediation Board has recommended that you create a Presidential Emergency Board to try to resolve a dispute between Eastern Airlines and the International Association of Machinists.

The Counsel's Office has carefully reviewed your legal options in coordination with the Departments of Labor, Transportation and Justice, and the Office of Management and Budget.

Secretaries Dole and Skinner have consulted and are continuing to consult with representatives of organized labor and the transportation industry. They have met with Governor Sununu, Boyden Gray, Dick Darman, and myself to consider the possible scenarios and the economic impact of a strike on Eastern and of secondary boycotts throughout the railroad and airlines industries.

Events are moving extremely quickly on this issue while Eastern's management negotiates with both the machinists union and the Eastern pilots in anticipation of the midnight, March 3, deadline.

A paper developed with the assistance of the Departments of Transportation, Justice, and Labor, the Office of Management and Budget, and the Counsel's Office is attached.

Attachment

cc: Governor Sununu

EASTERN AIRLINES LABOR DISPUTE

Issue

The National Mediation Board (NMB) has recommended that you create an Emergency Board to investigate a dispute between Eastern Airlines and the International Association of Machinists (IAM). If you create such a board by 12:01 a.m. **March 4**, Eastern and the IAM will have to maintain the status quo for another 60 days. If you do not create such a board by that date, it appears inevitable that there will be a strike at Eastern, which the IAM will try to extend to other airlines and the rail industry.

Background

For 18 months, Eastern and its parent, Texas Air, have been locked in a bitter dispute with the IAM, which represents baggage handlers as well as machinists. Eastern argues that it may not survive unless there are major wage reductions. The IAM argues that major wage reductions are not needed.

After trying for more than a year to mediate the dispute, the NMB finally declared an impasse and started a 30-day "cooling-off" period, which expires at 12:01 a.m. March 4. The Railway Labor Act authorizes the NMB to recommend that the President create an Emergency Board only if the NMB concludes that a strike would threaten to disrupt "essential transportation service" in at least one part of the country. The NMB has formally recommended that you create such a board. However, the Railway Labor Act provides the President complete discretion to accept or reject the NMB recommendation.

If you decide to create such a board whose members you would choose, the Railway Labor Act requires that the expired labor contract between Eastern and IAM remain in effect for up to an additional 60 days, as it has been during the mediation. While the board's recommendations would be purely advisory, the Congress could impose a resolution on the parties by statute if they do not accept its recommendations (as it has done before in the rail industry).

If you decide not to create such a board, Eastern would be free to reduce its wages and the IAM would be free to strike Eastern and engage in secondary activity, i.e., picketing and boycotts of railroads and perhaps of some other airlines.

Eastern has stated publicly that it opposes creation of an Emergency Board. Eastern claims it is now losing up to \$1 million a day. Texas Air might have to take Eastern into bankruptcy or substantially liquidate its assets if it loses money at this rate for another 60 days.

IAM has stated publicly that it supports creation of an Emergency Board. There are reports suggesting that IAM is willing to risk the collapse of Eastern in an effort to force Texas Air to sell Eastern to another airline or to the employees.

No president has created an Emergency Board in connection with an airline since 1966, in large part because other airlines have always been able to take up the slack from the affected airline. In addition, airline and railroad unions could not engage in secondary picketing and boycotts until 1987 when the Supreme Court ruled that such activity was legal.

If you do not create an Emergency Board, the IAM will not only strike Eastern, it will try to extend a strike to other airlines and the rail industry through secondary picketing and boycotts. It is unclear at this point how successful the IAM will be in disrupting the national transportation system. ~~Clearly, if the strike is limited to Eastern, its impact on interstate commerce would be minimal.~~ However, if the IAM can shut down 4 or 5 major airlines, Amtrak, and Conrail, disruption to interstate commerce would be so serious that swift intervention would be necessary.

However, the more likely impact of an IAM strike on interstate commerce falls between these two extremes. On the one hand, the IAM is trying to mobilize its members at other airlines and selected railroads in the Northeast Corridor and Chicago. In addition, the AFL-CIO has publicly supported extending the strike to other airlines and the railroads.

On the other hand, the ability of the IAM to extend a strike to other carriers depends significantly on the willingness of Eastern pilots to support IAM. We will not know for certain until after March 3 whether the pilots will support IAM.

Moreover, "no-strike" clauses in certain airline labor contracts could prevent IAM members at other airlines from participating in sympathy strikes in support of the strike against Eastern.

In addition, rail workers may be unwilling to risk their own right to secondary picketing and boycotts to support airline workers. If secondary picketing and boycotts seriously disrupted the economy, the Congress may face substantial pressure to pass legislation prohibiting secondary activity. (The law already prohibits such secondary activity in industries other than airlines and railroads.)

Criteria

While the Railway Labor Act authorizes the NMB to recommend that you create an Emergency Board only if it concludes that there would be a substantial threat of disruption, the Act provides you complete discretion to accept or reject the NMB recommendation.

There are five major criteria that should guide your decision on whether to create an Emergency Board:

- ✓ 1. Public safety -- the impact that an IAM strike against Eastern and possibly other airlines and the railroads would have on public safety.
- ✓ 2. Interstate commerce -- the impact that an IAM strike against Eastern and possibly other airlines and the railroads would have on the economy.
- ✓ 3. Future airline competition -- the effect that the demise of Eastern would have on long-term competition in the airline industry and pressures for re-regulating the industry.
- ✓ 4. Implications for future disputes -- the precedent that creating a board in this case would establish for presidential involvement in future labor disputes in the airline and rail industries.
5. Presidential leadership -- the perception that creating a board would be seen as giving in to organized labor, given their strong public pressures to create a board.

Options

Option 1: Create an Emergency Board before March 4. This approach would require Eastern and the IAM to maintain the status quo for up to 60 more days. At the end of this period, Congress could impose the recommendations of the board on the parties through legislation.

Advantages

- o Creating a board would delay any strike for up to 60 days and ensure that essential transportation services are not disrupted during that period.
- o Creating a board would avoid conflict with organized labor.

Disadvantages

- o Creating a board could lead to the demise of Eastern, which would reduce competition in the airline industry and thereby tend to raise fares to the public and increase pressure to re-regulate the industry.
- o If Eastern is forced into bankruptcy, the Pension Benefit Guaranty Corporation might have to assume responsibility for Eastern's unfunded pension liabilities, which apparently total between \$450 million and \$750 million.

- o Creating a board would set a precedent for presidential involvement in airline labor disputes.
- o Given labor pressures for creating a board, the public could perceive such action as giving in to labor pressure.

Option 2: Do not create an Emergency Board.

Advantages

- o Not creating a board would increase the chances of Eastern surviving and thus preserve airline industry competition, which in turn would reduce pressures for re-regulation.
- o Not creating a board would be consistent with the principle of encouraging labor and management to reach agreement through collective bargaining negotiations.
- o Not creating a board before March 4 does not preclude you from creating a board and restoring the pre-strike conditions after that date. This option gives you the flexibility to determine if an IAM strike against Eastern and any secondary picketing and boycotts do seriously disrupt the economy.
- o Serious economic disruptions or threats to public safety caused by secondary activity could encourage Congress to pass legislation prohibiting such secondary activity.

Disadvantages

- o Not creating a board runs the risk that an IAM strike against Eastern could escalate into major disruptions of interstate commerce.
- o An IAM strike against Eastern and secondary picketing and boycotts of other airlines could result in violence at picket lines in several cities, including Boston and Miami.
- o Not creating a board might expose you to unfair blame for any airline or rail accidents that might take place during an IAM strike. While the FAA is confident it can protect passenger safety during a strike, it obviously cannot ensure that accidents will not take place.
- o Not creating a board would guarantee criticism by organized labor that you are siding with management.

Decision

Option 1 ☐ Create an Emergency Board before March 4.

Option 2 ☒ Do not create an Emergency Board.

en

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 3, 1989

STATEMENT BY THE PRESIDENT

The National Mediation Board has recommended that I appoint an emergency board before March 4, pursuant to section 10 of the Railway Labor Act, as amended, to investigate the dispute between Eastern Airlines and the International Association of Machinists and Aerospace Workers. I have decided not to accept this recommendation.

The National Mediation Board has for many months attempted unsuccessfully to bring the parties to an agreement, and I have no reason to believe that an additional investigation, or the 60-day delay that would be entailed, would produce such an agreement. In light of the well-publicized threats of a strike and related activities, the Department of Transportation will monitor the situation and will in addition take whatever steps are needed to protect the safety of the traveling public.

I urge responsible labor officials not to try to influence resolution of this dispute by disrupting the Nation's transportation systems through secondary boycotts against uninvolved parties. Such boycotts would unfairly burden millions of citizens, not only preventing necessary travel, but also affecting shipment of consumer goods and the ability of many workers to earn a living. For these reasons, secondary boycotts are not permitted in any other sector of the economy.

Accordingly, if secondary boycotts threaten to disrupt essential transportation services, I will submit, and urge that Congress promptly enact, legislation making it unlawful to use secondary picketing and boycotts against neutral carriers. We cannot allow an isolated labor-management dispute to disrupt the Nation's entire transportation system.

#

TO: ALL EASTERN PILOTS

FROM: PHIL BAKES

SIGNED BINDING CONTRACT PROPOSED TO ALPA
MARCH 1, 1989

Eastern has taken definitive steps in an effort to reach total agreement with ALPA. Frank Lorenzo has signed a TAC side letter and joined Eastern management in signing a proposed collective bargaining agreement.

On March 1, 1989, Eastern presented ALPA with a comprehensive proposal to resolve all outstanding disputes. Eastern's proposal includes (1) a "Fence" Agreement that provides job security for the pilots of Eastern, (2) commitments by Texas Air in the event of a bankruptcy and (3) a new 5-year collective bargaining agreement that provides for pay increases and a strong economic incentive for Company growth.

The highlights of Eastern's proposal are as follows:

1. Five-Year "Fence" Agreement:

- Guarantee against furloughs for all pilots in active status and/or authorized leave. The pilot guarantee is based on the number on the payroll on the date agreement is reached.
- Guarantee a minimum fleet size of no less than 226 aircraft if agreement is reached by March 4, 1989, (fleet size calculated on the basis of available aircraft on March 4, 1989, less the 17 aircraft scheduled to go with the Shuttle and other committed aircraft sales and lease returns. The minimum number is dependant on the aircraft available on the date agreement is reached.)
- Guarantee a minimum number of captain positions of no less than 1202 captains. The number of captain positions guaranteed is dependant on the date an agreement is reached.
- Guarantee that no international route flying currently operated by Eastern will be transferred to affiliated carriers of Texas Air, including Continental.
- Guarantee of ALPA representation and contract survival during the "single carrier" proceedings.

- Guarantee of an automatic 20% pay increase in the event of a breach of the no furlough or minimum fleet size guarantees in addition to any remedies, including damages, that an arbitrator may award.
- Guarantee in the event of a pilot seniority list integration with any other carrier, including Continental, that the integration of seniority lists will be done in accordance with Eastern ALPA negotiated LPP provisions as now contained in the February 1986 EAL Pilot Agreement. That is, an independent arbitrator will make the final decision if the two pilot groups cannot agree on how the lists should be integrated. An integrated seniority list would not become effective prior to the following conditions being met:
 - A. An integrated seniority list has been finalized, and
 - B. The representational issues, if any, have been resolved as to the pilots on the integrated seniority list, and
 - C. The wages, rules and working conditions applicable to the pilots on such integrated seniority list have been established.

2. Texas Air Agreement:

- Provides that Texas Air will oppose any changes in the new collective bargaining agreement in the event of bankruptcy since the new contract was negotiated in good faith with ALPA and in full contemplation that bankruptcy was a possibility.

3. New Collective Bargaining Agreement:

- Long-term job security protection extending for 5 years from the date of the agreement.
- No reduction in pay, although pilots would work one more hour each month and some premium pay items will be changed.
- Pay increases as follows:
 - 3% March 2, 1992
 - 3% March 2, 1993

- Improved financial condition of the defined benefit pension plan through a freeze of future accruals in the "A" plan for the duration of the agreement and provide for funding to meet ERISA requirements.
- A powerful financial incentive for growth through increased productivity that will be utilized for additional flying and not for reducing employment and in a manner that has no material negative impact on scheduled days off and pilot "quality of work life."
- Expense reductions and other savings and efficiencies which help improve the financial condition of the company.
- Resolution of all major grievances and litigation.

Mutual Image Building Campaign:

- Eastern and ALPA would mutually agree to conduct an image building campaign targeted at the public to promote flying on Eastern

Signed copies of the Fence Agreement, the TAC Side Letter Agreement and the new Collective Bargaining Agreement are being put in your domicile mail box.

We hope the MEC will sign this agreement before the midnight March 3 deadline.

NO MOVEMENT IN IAM NEGOTIATIONS

Super mediation between Eastern and the IAM is continuing under the jurisdiction of the National Mediation Board. However, the IAM continues to reject any wage reductions and is still insisting on an 8% wage increase. The IAM has also refused to make a counter proposal to a new proposal made by Eastern. There has been no change in their bargaining position since October, 1987, over their demand for additional pay increases.

NO WORD ON A PRESIDENTIAL EMERGENCY BOARD SO FAR

President Bush has so far taken no action on the NMB's recommendation for the creation of an Emergency Board. There has been a national outpouring of editorial opinion strongly opposing a PEB, including the New York Times (2 editorials), the Wall Street Journal, the Atlanta Constitution, the Miami Herald and the Houston Chronicle.

The creation of a PEB would impose an additional 60 day cooling off period. During this waiting period, Eastern risks being put out of business because of the severe cash drain. The continuing uncertainty of a cooling off period with travel agents, the flying public, and trade creditors causes great financial strain. Reduced productivity of our IAM represented employees (C Checks are taking 2 - 4 times as long as normal to complete, to cite just one example.) causes additional cash difficulty.

CONCLUSION

If Texas Air and Eastern's management wanted to liquidate the airline, we wouldn't be going to such lengths to try to keep it flying. Flying is in your interest and ours. Good luck to all of us.

Sincerely,

Phil Bakes

THE WHITE HOUSE
Office of the Press Secretary

Internal Transcript

March 3, 1989

STATEMENT
BY
MARLIN FITZWATER

The Briefing Room

3:11 P.M. EST

MR. FITZWATER: The National Mediation Board has recommended that the President appoint an emergency board before March 4, pursuant to Section 10 of the Railway Labor Act as amended, to investigate the dispute between Eastern Airlines and the International Association of Machinists and Aerospace Workers. The President has decided not to accept this recommendation.

The National Mediation Board has for many months attempted unsuccessfully to bring the parties to an agreement. And the President has no reason to believe that an additional investigation or the 60-day delay that would be entailed would produce such an agreement.

In light of the well-publicized threats of a strike and related activities, the Department of Transportation will monitor the situation and will, in addition, take whatever steps are needed to protect the safety of the traveling public. The President urges responsible labor officials not to try to influence resolution of this dispute by disrupting the nation's transportation system through secondary boycotts against uninvolved parties. Such boycotts would unfairly burden millions of citizens, not only preventing necessary travel, but also affecting shipments of consumer goods and the ability of many workers to earn a living.

For these reasons, secondary boycotts are not permitted in any other sector of the economy. Accordingly, if secondary boycotts threaten to disrupt essential transportation services, the President will submit and urge that Congress promptly enact, legislation making it unlawful to use secondary picketing and boycotts against neutral carriers.

We cannot allow an isolated labor management dispute to disrupt the nation's entire transportation system.

Secretary of Transportation Skinner will hold a press conference at 3:30 p.m. to elaborate on the details of this decision.

Thank you very much.

END

3:13 P.M. EST

National Rainbow Coalition, Inc.

March 2, 1989

To: President George Bush
Gov. John Sununu

From: Rev. Jesse L. Jackson

Re: The Eastern Airline Strike

Copy for Governor Sununu
Original given to Cicconi
Copy to President

I write to reiterate the concerns expressed last night over the upcoming strike on Eastern Airlines. I think it imperative that you accept the recommendation of the National Mediation Board and act to forestall the strike.

Let me address the issues raised by Gov. Sununu in our meeting:

I. The Need to Intervene

The National Mediation Board, the Federal agency most knowledgeable about the situation, has recommended that you act in order to avoid a potential threat to public transportation. Over the past decades in 33 different occasions, no President - Republican or Democrat - has failed to act in response to such a request.

II. The National Message in Intervention

Acting now to forestall the strike will demonstrate forceful leadership in the public interest. You will demonstrate that you choose public safety - the public interest - over partisanship. You will demonstrate a willingness to use the instruments of government to manage the public's concerns.

You will gain bipartisan support for such action - from liberal and conservative, management and labor across the airline industry.

More importantly, you will send a message to workers that you will be tough, but fair. A Presidential Emergency Fact Finding Board (PEB) is the only hope for a reasonable, rational solution to this bitter confrontation. Any other course would lead to a terrible labor war. This is exactly the kind of situation that cries out for a third-party intervention. A PEB could establish a balance of equities and needs that the antagonists would almost certainly, in the end have to accept.

III. Concerns about Delay and Bankruptcy

Gov. Sununu mentioned his concern, often invoked by Texas Air President Frank Lorenzo, that delay would only prolong the losses for Eastern, leading to bankruptcy.

A fact not widely acknowledged is that Eastern Airline employees hold a class of preferred stock with a liquidation value of \$260 million. Eastern workers do not want to see their company go bankrupt.

This claim has little merit. Eastern is losing money, but not nearly as much as Lorenzo's nonunion Continental Airlines. Indeed, Lorenzo has been using Eastern as a source of finance for Continental, selling off assets, trading off gates, planes and the like. Lorenzo has claimed that Eastern was on the verge of bankruptcy for over two years; two more months will not ruin it.

Moreover, independent analysts in the finance industry agree that an agreement reached through the PEB would be far less costly to Eastern than a long highly disruptive strike - particularly at a time when people are already concerned about airline safety.

The Presidential Emergency Fact Finding Board (PEB) is designed in the law to bring disputes to resolution in a short time period. The PEB meets and makes its recommendations within 30 days. If one or both parties to the dispute do not accept the recommendation, the Congress may - and historically does - enact the recommendation into law. This effectively ends the dispute on the basis of a neutral board's recommendation - without the disruption and despair produced by a long strike process.

Clearly, your PEB will not recommend a settlement that will bring Eastern into bankruptcy. Their proposed solution will no doubt call for sacrifices from the workforce. It will provide a clear and quick end to the dispute. What it will not do is allow Eastern to crush its union and engender a poisoned atmosphere of labor relations at the beginning of your administration.

IV. Concerns about the Merits

I believe you should act in the public interest, regardless of the merits of the Eastern dispute. The PEB will resolve the merits. But the bitterness of this dispute is related to its substance.

Eastern airline employees with years of experience have made major concessions to the airline over the past ten years. They have taken wage cuts, changed work rules, increased efficiency to preserve the airline. They now have wages that are only seventh in the airline industry.

During negotiations the IAM offered wage cuts for new employees and a freeze on the wages of current employees, along with further work rule changes to lower costs and increase efficiency. From the inception of bargaining Eastern has refused to alter its initial wage cut demands whatsoever. In an

unprecedented break with the IAM's past practices, IAM employees have accepted the National Mediation Board's recommendation to binding arbitration to resolve all outstanding issues in this dispute. Eastern flatly rejected.

There is not one labor leader in America who does not understand that this is an extraordinarily abnormal labor-management dispute; this is a case of a determined union busting employer to crush a union. That is why this strike will be so bitter, across the transportation industry. That is why AFL-CIO President Lane Kirkland has publicly made this his priority. This is why the entire labor movement will now rally behind this tragic, but avoidable strike.

V. The Administration Message

This strike is being compared to PATCO and your Administration is being urged to demonstrate toughness. But this is not an illegal strike and the National Mediation Board has already recommended a solution available to you. Not to act now, especially when all other Presidents in similar situations have called for a PEB sends a clear, harsh and negative signal.

I urge you once again, for all parties involved, the public, the airline industry and the working men and women of Eastern airlines to accept the recommendation of the national Mediation Board.

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07. Note	From Jim Cicconi to POTUS Re: Eastern Airlines Labor Dispute (1 pp.)	3/2/89	P-5	

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Office: Chief of Staff, White House Office of
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THE WHITE HOUSE
WASHINGTON

March 2, 1989

MR. PRESIDENT:

The attached memo from Rev. Jackson describes organized labor's arguments in favor of creating an Emergency Board to resolve the Eastern Airlines dispute.

As you know, this matter is not yet before you for a decision. Tomorrow, you are scheduled to have a preliminary meeting on this issue with your principal advisors. At this point in time, it appears that Secretary Skinner, Secretary Dole, and Boyden Gray are all leaning strongly against the action advised by Rev. Jackson.

Thank you.


James W. Cicconi

cc: Chief of Staff ✓

Governor,

Captain Davidson called this afternoon in the hopes of speaking to or meeting with you about this. I told him it would not be possible for you to meet with him today and discouraged a call from you tomorrow. If you care to speak to him, though, I have a number where he can be reached in Florida tomorrow until about 11:00 a.m.

lc

Governor John Sununu
Chief of Staff
Office of the President
Washington, D.C.

March 01, 1989

Dear Governor Sununu:

I feel that the hour of decision may be near on advice that you and your staff may present to the President. As you know, the National Mediation Board and Labor Department have recommended the convening of a Presidential Emergency Board (PEB) to address the protracted labor situation at Eastern Air Lines. Because I enjoyed political association with you back home and because I am employed by the company, I would like you to be aware of several concerns.

I have spent my entire airline career as a professional pilot for Eastern and I have experienced many turbulent confrontations between management and labor over the past 26 years. There is little question that the responsibility for most of the labor strife has to lie primarily at the feet of a management who failed to properly manage. Conflicts which resulted in a corporate "cave in" to union demands were the rule rather than the exception in past years. Current management, despite their general reputation, is intent on attempting to correct the problem at Eastern so it may survive and prosper. On all previous occasions of strife, however, there never was a sense of doom as strong as that which exists here now. This is because of the apprehension many of us have that if our company is subjected to a PEB, the resultant financial bleeding during the next 60 days will be fatal.

Eastern has been losing money in excess of \$1 million dollars per day for months and has been forced to sell off valuable assets (such as the Air-Shuttle) just to survive. This unfortunate situation has been primarily the result of a major segment of Eastern employees, those represented by the I.A.M., not coming to the aid of the financially hurting company in 1986. At that time, all other employees, including pilots, responded with notable pay concessions. Even the present pilots union financial consultant, Mr. Farrell Kupersmith of Touche Ross, has publicly stated that Eastern would never have needed to have been sold to Texas Air Corporation, had the machinists joined the other 28,000 plus Eastern employees during the '86 crises.

Now finally, three years later, after millions of dollars of continued loses and scores of months of fruitless I.A.M. negotiations, the process is about to culminate with the needed showdown to once and for all end this bleeding. The risk of a promised I.A.M. strike has been thoroughly considered. Short of needed financial relief coming from the I.A.M., the company is prepared to accept a strike. The airline must stop hemorrhaging!

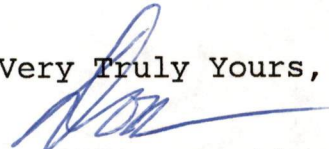
Last spring hundreds of employees lobbied in Washington. They were concerned that congressional plans to investigate Eastern (and Texas Air) after the FAA Safety Investigation were the product of documented union encouraged efforts. These efforts were directed towards "ridding the airline industry" of Frank Lorenzo by literally destroying the ability of Eastern to sustain public confidence. Many other employees and I feel the currant I.A.M. rhetoric of "shutting down the U.S. transportation system", is designed to force a PEB to be called in an attempt to kill Eastern in the hopes that Lorenzo will go under. The national leaders of the AFL/CIO and the I.A.M. have even **publicly** stated that if the Eastern employees have to be sacrificed in order to "get Lorenzo", so be it!

Governor, there is no way that I can stand quietly by and watch my Airline die in this manner. The formation of a PEB by the President must not be allowed. I fully expect that the financial demise of Eastern will be the result if it does. When you appointed me to the Aviation Users Advisory Board in New Hampshire, I was honored that you had the confidence in my abilities. You felt that my advice might be of value to you whenever there was a serious problem that you had to consider. I never thought in the wildest scenario that a need for your trust and confidence in my opinion would be for some outside need such as this situation. However, the ramifications of this PEB decision, have the gravest of consequences. I am sure that you understand my concern.

I have enclosed a packet of material on the subject for your perusal. If you have a need for any further information that may assist you with a recommendation for the President, I would be pleased to provide more detailed data.

I sincerely appreciate your attention in this matter and urge you,...Please do not recommend convening a PEB.

Very Truly Yours,



Donald C. Davidson
Captain, Eastern Airlines

LAW OFFICES IN ALEXANDRIA,
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NORFOLK, RICHMOND,
TYSONS CORNER, WILLIAMSBURG
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CHARLES J. COOPER

March 1, 1989

VIA MESSENGER

Governor John H. Sununu
Chief of Staff
to the President
The White House
Washington, DC 20500

file

THE CHIEF of STAFF
has seen

Dear Governor Sununu:

As I promised in our telephone conversation earlier today, I am enclosing a short memorandum analyzing the National Mediation Board's recommendation, pursuant to its authority under the Railway Labor Act (45 U.S.C. § 160), that the President appoint a "Presidential Emergency Board" to review the labor dispute between Eastern Air Lines and the International Association of Machinists. I represent Texas Air Corporation (Eastern's parent company) on this matter, and we believe that the appointment of a Presidential Emergency Board would force the substantial liquidation, if not the demise, of Eastern Air Lines, which would in turn occasion the loss of tens of thousands of jobs and the inevitable escalation of airfares by competing air carriers. Incidentally, during the past week, the editorial pages of both the Wall Street Journal and The New York Times have urged the President not to intervene in the collective bargaining process by appointing an Emergency Board. Copies of the Journal's and the Times' editorials are attached to our memorandum.

It was good to chat with you this morning. I know how busy you are, and I much appreciate your interest in this matter.

Sincerely,

Chuck

Charles J. Cooper

CJC:lad
Enclosures

LAW OFFICES IN ALEXANDRIA,
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**THE PRESIDENT SHOULD NOT CONVENE A PRESIDENTIAL EMERGENCY
BOARD TO REVIEW THE EASTERN-IAM COLLECTIVE BARGAINING DISPUTE**

For well over a year, the well-publicized dispute between Eastern Airlines and the International Association of Machinists (IAM) over wage rates of baggage handlers and other airline service employees has been held in forced "mediation" by the National Mediation Board (NMB). During that time, Eastern has been required by the Railway Labor Act ("RLA") to abide by an expired collective bargaining agreement establishing wage rates that result in an average annual income of \$45,000 for baggage handlers. On February 2, 1989, the NMB declared an impasse in the negotiations, thus releasing the parties from "mediation" and beginning a 30-day cooling off period. At the end of the 30-day period, the parties will be free to resort to "self-help" measures (for example, Eastern may unilaterally impose new wage rates and the IAM may strike) unless the President exercises his discretion under the RLA to appoint a Presidential Emergency Board. Appointment of an Emergency Board would extend for an additional 60-day period the terms of the expired collective bargaining agreement.

The IAM has issued the standard threat to engage in a strike against Eastern after the 30-day cooling off period. The IAM has also implied that it will engage in secondary picketing activity against other major air carriers and might even attempt to disrupt rail service as well. These highly publicized threats are part of a well-financed campaign to generate public pressure for the appointment of the first Presidential Emergency Board for an airline dispute in over twenty years. The union wants the President to convene an Emergency Board because, under the RLA, taking such a step requires continuing the generous terms of IAM's expired contract for another sixty days. Prolonging the already interminable, and clearly futile, "mediation" process for another 60 days, however, would be at odds with the RLA's mandate and with the bipartisan commitment to effective airline deregulation, would retard realistic efforts at resolving this dispute, and could likely ensure the demise of a major air carrier.

First, the relevant provision of the RLA simply affords no basis for convening an Emergency Board here. Under the Act, an Emergency Board may be convened by the President if the airline labor dispute "threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." 45 U.S.C.

§ 160. No such interruption is conceivable, much less substantially threatened, in these circumstances.

While Emergency Boards may have served an important purpose when the airline industry was controlled by comprehensive regulation, in today's deregulated environment such a Board would operate against expeditious resolution of the Eastern/IAM dispute. Since deregulation, even if a major carrier had to reduce service in a strike situation, other airlines are readily available to provide service. Here, for example, every city that Eastern services is also serviced by another airline. In fact, Eastern calculates that over the last five years approximately 1,600 new daily flights have been introduced by its competitors in its key service areas east of the Mississippi. As a New York Times editorial (December 15, 1988) on Eastern's predicament recently noted, "economists can see no logic whatever in applying the RLA to a competitive industry that could handle a strike without creating major dislocation." For this reason, no Emergency Board has been convened for any of the five major airline strikes since the industry was deregulated in 1978, even though they involved carriers, such as United, which are larger than Eastern. In short, Emergency Boards are anachronistic throwbacks to the days of comprehensive airline regulation and are at war with the current economic realities of the airline industry.

To be sure, Emergency Boards have been used in recent years to help solve labor disputes involving railroads. But there are two critical differences between the airline and rail industries. First, trains travel, obviously, only on tracks, and effectively closing a single railroad line halts all traffic. Accordingly, a rail strike involving a single carrier, particularly a commuter line, can literally paralyze a major city. Perhaps more important, major railroads bargain jointly through an industry association; a nationwide strike against all major rail carriers can thus be directly accomplished. In contrast, airlines do not engage in joint bargaining, and threats of nationwide airline strikes have simply not materialized.

Indeed, since deregulation of the airline industry, not one threatened nationwide strike has actually taken place. For example, the Airline Pilots Association threatened a nationwide strike in 1981 over an FAA rulemaking, in 1983 over deregulation, and recently over the issue of cabotage. No work stoppages occurred. Here, a nationwide strike by the IAM against the other carriers with which the union has contracts (United, TWA, US Air, and Piedmont) is foreclosed as a legal matter, for the IAM has pledged in those contracts that it will not engage in any strike or picketing. The federal courts have uniformly held that these "no-strike" clauses are enforceable both by discharging striking employees and by enjoining the strike pending arbitration.

The likelihood of a successful IAM secondary boycott against major railroads is even more remote. The IAM represents

only 18,000 employees in the railroad industry -- a small fraction of the overall work force. The chances of causing a nationwide rail stoppage over an issue as peripheral as the pay for baggage handlers of Eastern Airlines is virtually nonexistent. Moreover, the unions are aware that using a secondary boycott for such an unrelated matter creates a serious risk of a political backlash that could well result in congressional prohibition against all such boycotts.

In light of these facts, the union's threats of a nationwide strike against air and rail carriers should not be credited. But even if these threats could be viewed as substantial, an Emergency Board should never be convened on the basis of threats alone. To do so would effectively empower any union unilaterally to trigger appointment of an Emergency Board in any labor dispute simply by threatening secondary picketing activity. Rather, the President should exercise his extraordinary power under the RLA only when the union's ability and willingness "to deprive any section of the country of essential transportation service" are put to the test. Then, if the national interest requires, the President may move quickly to convene an Emergency Board and thus to restore any essential service.

In this case, the federal government has already concluded that a strike at Eastern would not disrupt the national air transportation system. In connection with Texas Air's acquisition of Eastern in 1986, the IAM argued, as it does here, that extraordinary federal interference with the collective bargaining process (Labor Protective Provisions) should be taken to avert a strike at Eastern that would seriously disrupt the national transportation system. The Department of Transportation, under Secretary Dole, flatly rejected this assertion and approved the acquisition. With respect to a strike at Eastern, the Department of Transportation found the following:

"The record does not show that a strike at Eastern would likely lead to a disruption of the national air transportation system. A strike against Eastern, although it is one of the largest carriers in the country, would not threaten the national system, although it could cause significant inconvenience."

Order 86-8-77 (August 26, 1986) at 19. The Department also correctly discounted the potential problems posed by IAM's threats of secondary boycotts against other carriers:

"The applicants have submitted that other carriers are frequently protected by no strike clauses in their labor contracts, and such clauses would prevent other unions from refusing to cross the secondary picket line [citation omitted]. In addition, IAM has not shown that employees of other carriers would honor a secondary picketing by Eastern employees. We therefore

cannot find that nationwide labor strife would be likely."

In any event, there is no realistic prospect that extending the agonizing 15-month mediation process for two additional months will help the parties resolve this dispute without resorting to self-help measures. To the contrary, as the past fifteen months of fruitless negotiations eloquently attest, the RLA's forced mediation process is futile in this case because the parties are so far apart, and Eastern's extremely debilitated financial position simply precludes it from meeting the IAM's currently exorbitant demands.

In February 1986, employees represented by the IAM refused management's proposed across-the-board labor cost reductions, thus precipitating the sale of Eastern to Texas Air. All other Eastern employees cooperated in the effort to ensure the carrier's survival and accepted wage reductions averaging 28%. The average salary of IAM's baggage handlers is over \$45,000 per year; some are paid as much as \$80,000. Yet IAM's latest offer in mediation nonetheless calls for a \$50 million increase in wages! Eastern's financial crisis on the other hand, requires at least \$150 million in labor cost concessions, and its survival is far from certain even if it gets them. Eastern has lost over \$500 million during the last fifteen months of forced mediation, and it continues to lose over \$1 million per day. To date, losses have been funded by asset sales and massive employee layoffs; a Presidential Emergency Board will surely force further asset sales and layoffs in an attempt to sustain the company during the 60-day delay. In light of the parties' widely divergent positions, common sense dictates that convening the Emergency Board will only unnecessarily postpone resolution of the dispute and further cripple Eastern.

Crippling Eastern is, of course, IAM's purpose in seeking to convene an Emergency Board. The IAM is prepared to run the risk of bankrupting the airline because it is committed to forcing Texas Air to sell Eastern to a more "cooperative" owner or to the union itself. As the Washington Post reported on September 4, 1988:

"From the start, the unions made no secret of their goal to force Lorenzo to sell Eastern to another airline or to the employees. The strategy is to stretch out the negotiations by bargaining just enough to keep the NMB from 'releasing' the dispute and permitting the unions to strike.

The IAM's president, Charlie Bryan, has publicly stated that the union's goal is to have Eastern "employee owned or certainly majority owned by the employees"

More important, the National Mediation Board itself has acted throughout as a willing partner in IAM's scheme. The NMB

has deliberately extended the clearly futile "mediation" process in order to penalize Eastern's alleged "anti-union animus."¹ Board Chairman Walter Wallace has publicly stated that a carrier's "anti-union animus" and "credibility" are factors controlling release from mediation (Speech of Walter Wallace, American Law Institute/American Bar Association, Washington, D.C., September 30, 1988), and he has repeatedly told Eastern officials that he would not release Eastern from mediation because it is "tainted" by such animus. These statements alone demonstrate that the NMB has abandoned its statutorily prescribed role of objectively determining whether mediation can feasibly resolve a labor dispute, and now serves merely as an advocate for unions. See also NMB brief in Russell v. NMB (No. 82-1466) (5th Cir.) (NMB believes its mandate is to encourage union membership by all rail and airline employees.). This abuse of the NMB's power, more fully discussed in the attached memorandum, not only strips all credibility from any determination by the NMB concerning the need for an Emergency Board, it also explains the dilatory tactics pursued by the NMB throughout this tortuous "mediation" process. The President must refuse to be a party to the NMB's perversion of the mediation process into a bludgeon for coercing from carriers agreements favoring the interests of unions.

More than Eastern's survival is at stake in this matter. As The New York Times aptly summarized in an April 15, 1988 editorial:

"Much rides on the outcome of Eastern. A Lorenzo victory would break the cozy arrangement in which major airlines have collectively been able to pass on to travelers the cost of \$45,000 baggage handlers and \$100,000 pilots. A Lorenzo defeat would preserve organized labor's ability to maintain wage patterns set before deregulation. Probably more important, it would prevent Texas Air from serving as the industry price leader, seeking market share by keeping fares low."

²Labor costs are the only meaningful variable costs for airlines. If Eastern is driven out of business or is forced to

¹ It should be noted that in a related context the D.C. Circuit rejected the claim that "anti-union animus" had motivated Eastern's furlough of employees in the summer of 1988. See ALPA v. Eastern Air Lines, Inc., _____ F.2d _____ (D.C. Cir., Oct. 28, 1988).

² The extremely high wage rate structure, and the consequent artificially inflated fares, of the airline industry under regulation is well documented. See, e.g., Airline
(Footnote Continued)

accept artificially high labor costs, the airline industry will likely soon become an oligopoly with a fixed price structure that is unaffected by competition and that acts as a virtually insurmountable barrier to new market entrants. For this reason, other air carriers, which pay high wages and fear price competition, have repeatedly urged the NMB to stop Eastern's labor cost reduction efforts, and, as noted, the NMB has responded with vigor. See, e.g., Speech of Charles Pasciutto, Vice President, Labor Relations, American Airlines, NMB Annual Staff Meeting, April 28, 1987 ("We will all be better off if labor costs cease to be a competitive weapon.") Accordingly, if the NMB succeeds in preventing Eastern from reducing its super-inflated labor costs, it will have essentially restored industry-wide "pattern wages" paid by an airline cartel and will have effectively frustrated bipartisan efforts to achieve effective airline deregulation.

Finally, an Emergency Board has authority only to recommend, not to impose a resolution of the dispute. In light of the distance between the parties, any such recommendation would undoubtedly be rejected by one or both of the parties. Enormous pressure would then be focused on Congress and the President for the enactment of legislation imposing a contract on the parties. See generally Maine Central R.R. v. Brotherhood of Maintenance of Way Emp., 835 F.2d 368 (1st Cir. 1987). Wholly apart from its questionable constitutional validity, settling labor disputes by federal statutes is hardly good public policy. The parties should be permitted to settle their dispute through resort to self-help measures without further delay.

In sum, convening a Presidential Emergency Board would hardly be an act of neutrality in this private labor dispute between Eastern and the IAM. Rather, it would be an unprecedented act of partisan government intervention that is wholly at odds with any effort to make the airlines competitive or otherwise bring them in line with the rest of American industry.

Charles J. Cooper
Michael A. Carvin

(Footnote Continued)

Deregulation: The Early Experience (J. Meyer and C. Oster, Jr.); Hendricks, Feuille and Szerszen, Regulation, Deregulation and Collective Bargaining In The Airlines, 34 Indus. and Lab. Rev. 67 (1980).

1989 Isn't 1934

Eastern Airlines, from baggage handlers to Frank Lorenzo, has circled in a holding pattern for almost a year-and-a-half thanks to the actions of a government anachronism called the National Mediation Board. This obscure federal agency has cost Eastern some \$500 million at a rate of \$1 million a day by preventing collective bargaining with its unions. President Bush must now free Eastern management and workers from the death grip of government intervention.

The immediate problem is that Eastern's 8,000 baggage handlers threaten to go on strike March 4. Normally, labor-management disputes like this are a private affair, with companies and unions bargaining over issues such as pay and job security. Not so with airlines. Under some 1934 amendments to the even hoarier Railway Labor Act, the National Mediation Board gets to intervene in any dispute involving trains or planes.

Despite its name and contrary to congressional intent, the "mediation" board is not neutral. The unions know that Texas Air, Eastern's parent, can't afford huge losses forever. But the union has no incentive to settle because the mediation board ruled that Eastern must keep paying wages at the existing high rate under an expired contract until mediation ends. So the very existence of the mediation board makes mediation impossible. On Friday labor leader Lane Kirkland threatened secondary strikes of airlines unless Mr. Bush calls for 60 more days of mediation.

This of course translates into \$60 million more out of Eastern's shallow pockets. Mr. Bush should tell Texas Air Chairman Lorenzo and the unions to settle the corporation's problems on their own. He also should move to abolish the National Mediation Board. Federal involvement in labor disputes is the problem, not the solution.

Just as de Havillands aren't Boeings, past monopolies of the airline

business bear no resemblance to today's highly competitive airline industry. Any argument for government intervention is gone. No city in the country is served only by Eastern, and airlines have many competing means of transportation. Moreover, several unions are involved in the dispute.

Indeed, Texas Air has good reason to hang tough with the baggage handlers, who earn an average of \$45,000. Unlike pilots and other employees, the machinists union, which also includes baggage handlers, didn't agree to take a 20% pay cut in 1986 to keep Eastern afloat. Thus, the airline is in great danger. One result of the labor impasse, for example, has been to exacerbate delays in the planned sale of the Eastern shuttle to Donald Trump for a badly needed \$365 million, about what Eastern lost last year.

What we are seeing here is nothing less than the steady bankrupting of a major airline. This raises a serious constitutional issue. Mr. Bush could remind the National Mediation Board that Texas Air may be able to sue the government under a recent executive order to prohibit unconstitutional takings of property by federal agencies. Eastern's losses from the bureaucratic "mediation" delay could very well violate the Fifth Amendment takings clause.

The status quo benefits no one. No jobs will remain if Eastern goes under. The supposed beneficiaries of government mediation—airline passengers—risk losing an airline. President Bush might recall how tough President Reagan was in his dispute with the air-traffic controllers early in his first term. It's also worth noting that there were fewer strikes or lost workdays last year than in any year since the keeping of records began in 1947. Mr. Bush should continue the recently established practice of keeping the government out of the business of negotiating labor disputes.

The New York Times

Founded in 1851

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Labor Threatens the President

Like President Reagan before him, President Bush faces an early challenge from labor in the air transport industry. Mr. Reagan stood firm against a strike by air traffic controllers that could have grounded civil aviation. The question now is whether Mr. Bush will stand up with equal courage to unions that threaten to shut down the railroads unless the White House intervenes in their dispute with beleaguered Eastern Airlines.

The cost of appeasement could be enormous. If the President sides with labor, Eastern is likely to fail, which would sharply reduce price competition in the deregulated airline industry, and other transport unions would be encouraged to settle their disputes in the political marketplace.

Eastern has been battling with its unions for years, trying (and mostly failing) to reduce labor costs. Those costs are one reason Eastern has lost \$1.4 billion since 1978. But the battle only turned ugly in 1986. The carrier's new owner, Texas Air, demanded concessions from baggage handlers, whose compensation averaged \$45,000 a year. Eastern's unions struck back with, among other things, a public relations campaign, frightening passengers with allegations of safety violations.

The conflict probably would have been resolved last year when the baggage handlers' contract expired, forcing both sides to stare at the real chance of a strike. But under the Railway Labor Act, airline contracts remain in force until an obscure agency, the National Mediation Board, decides that collective bargaining has failed.

The board's two members delayed, unwilling to risk the wrath of labor's friends in Congress by freeing Eastern from contract provisions highly favorable to the baggage handlers. So for 13 months, Eastern had to absorb million-dollar-a-day losses, selling assets to raise cash. Not till last month did the

board finally declare an impasse, setting the stage for a strike or lockout on March 4.

Now organized labor has switched tactics. It is urging the White House to create an emergency mediation board. That would postpone a strike — and drain Eastern's cash — for 60 more days. Even if the airline weathered the delay, it might not survive subsequent pressure to settle on the panel's terms. In the past, such boards have recommended settlements at prevailing industry wages, far above the means of a deeply indebted airline operating primarily in low-fare markets.

If the President does not intervene, the A.F.L.-C.I.O. president, Lane Kirkland, threatens the public with more than the inconvenience of a work stoppage at Eastern. Labor, he warns, will disrupt vital transport links by staging sympathy strikes against railroads.

Mr. Kirkland is probably bluffing. Rail and airline unions are the only unions legally permitted to stage such secondary boycotts. But rail workers are not likely to risk losing this precious leverage in support of generously paid airline employees. Whether he is bluffing or not, capitulating to these demands could make the traveling public pay.

The failure of Eastern would knock out the carrier with the strongest incentive to build market share by lowering prices. And it would increase market concentration in an industry already dominated by a few airlines that cover high costs by charging high fares.

Beyond economic loss, any short-term political benefits the White House might gain by avoiding labor conflict would be overwhelmed by the cost of the precedent. If baggage handlers can blackmail Washington, why would any transport union hesitate to try drawing the President into its labor disputes? The best time to defend the principle of collective bargaining is before it has been violated. And that time is now.

Mr. Kirkland's Words, Mr. Bush's Test

Lane Kirkland, president of the A.F.L.-C.I.O., protests that an editorial on Friday wrongly characterized his position on the labor dispute at Eastern Air Lines. The editorial, drawing from published news reports, said he had warned, if there should be a strike against Eastern, of widespread disruption in the transportation industry, including moves against railroads. Mr. Kirkland says he said no such thing [see Letters], and we accept that, with apology for the error.

Others in organized labor do talk of secondary job actions. For instance, the heads of the railroad unions recently declared, ominously, that labor action against Eastern "has the potential to spread to other air carriers, as well as the rail commuter and freight industry." How the President responds to such threats will likely have a lasting effect on labor relations nationwide.

The National Mediation Board, a feeble agency charged with keeping labor peace in the rail and airline industries, has recommended that the President use his authority to prevent a strike for 60 days. Such intervention would set a dangerous precedent, effectively ending the neutrality of the Federal Government in the dispute and short-circuiting collective bargaining.

The dispute involves Eastern's baggage handlers and mechanics. Their labor contract expired 13 months ago; only last month did the Mediation Board finally get around to declaring a bargaining impasse, opening the way for a work stoppage on Saturday. Eastern has vowed to fly through a strike

and labor is worried that Eastern could succeed.

That explains the threats to disrupt service at other airlines and on railroads, something that the Supreme Court seems to sanction. These threats give the President the legal rationale and the political incentive to put off a strike for 60 days while a board proposes settlement terms.

No board would be likely to find the mutually acceptable settlement that has eluded bargainers for so long. But Eastern, hobbled by work slowdowns, is losing so much money that it would probably run out of cash before the 60 days ended. And that would probably force Eastern's management to sell the carrier in pieces — to airlines more willing to pay industry-scale wages.

Why would that be so terrible? Because Eastern's demise would eliminate the carrier with the greatest incentive to lower fares to gain market share and keep the industry competitive. More important, if Eastern were thus defeated, Washington would leave itself open to future obstructionism. Why should the transport unions bargain in good faith if the White House can be bullied into stopping strikes at the expense of any troubled carrier?

If the Federal Government does anything to intervene, it should be for the long term, in the interpretation of labor law. The Supreme Court holds that transport unions are uniquely free to entangle the Government in their labor disputes by disrupting service with secondary strikes. The permanent answer to bullying and threats is for Congress to make such boycotts illegal.

For the moment, however, Mr. Bush's wisest immediate course is clear: to stay out of the way.

Withdrawal/Redaction Sheet

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08. Memo	From Elizabeth Dole to John Sununu Re: Eastern Strike Outline [2 copies] (12 pp.)	3/1/89	P/5	

Collection:

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Series: Sununu, John, Files
Subseries: Cabinet Agencies Files
WHORM Cat.:
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12791

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

TO: John Sununu
FROM: Elizabeth Dole
DATE: March 1, 1989

Attached is the Eastern strike outline that you requested.

EASTERN-IAM DISPUTE:
SHOULD A PRESIDENTIAL EMERGENCY BOARD (PEB) BE CONVENED?

A. PRO:

1. A PEB WILL AVOID ANY RISK OF ECONOMIC DISRUPTION FROM NATIONWIDE STRIKES IN THE AIRLINE AND RAIL INDUSTRIES.
 - PEB will maintain status-quo and avert any strike for 60 days.
 - Since IAM can legally picket any airline or railway, a strike of Eastern could have a significant adverse economic effect:
 - If Eastern alone is shut down, 60% of its 95,000 daily passengers could be left unaccommodated.
 - If Piedmont and USAir were also completely shut down, it would interrupt service at 454 different markets and impact 121,000 daily passengers.
 - In the Northeast corridor, a shutdown of Amtrak operated trains would strand 96,000 passengers a day.
 - Another 274,000 train passengers per day on trains dispatched and controlled by Amtrak could be affected (i.e. Long Island Railroad, SEPTA, and New Jersey Transit Rail Operations, Inc.)
 - Conrail, which has 1000 IAM employees, could be brought to standstill within 24 to 48 hours halting 45,000 carloads of freight per day and shutting down Conrail's vital rail link.
 - Even without a strike at other railroads, a shutdown of Conrail would affect automobile manufacturers within several days and also affect the steel, chemical and coal mining industries within a very short period of time.
- i) After two weeks, a Conrail shutdown could cause 80,000 workers to be laid off.

- ii) After four weeks, unemployment in these industries could reach 165,000 and halt daily production of \$128 million worth of goods.
 - iii) Utility blackouts and brownouts might start occurring within several weeks, after coal stockpiles are exhausted.
2. REFUSING TO CONVENE A PEB WILL BE VIEWED AS AN OVERTLY ANTI-LABOR ACT IN SUPPORT OF FRANK LORENZO, WHO IS PROBABLY DISLIKED BY ORGANIZED LABOR MORE THAN ANY BUSINESS LEADER IN AMERICA.
- This action, along with our insistence of on a minimum training wage, will most likely end the honeymoon with organized labor.
 - Organized labor's leadership has decided to exert maximum pressure on all constituent unions to stand behind the IAM. To some extent the reputation of the AFL-CIO is now at stake.
3. SINCE THE PRESIDENT HAS THE STATUTORY POWER TO STOP SUCH DISRUPTION, HE WILL BE UNDOUBTEDLY BLAMED FOR IT BY LABOR, SOME IN CONGRESS, AND SOME OF THE AFFECTED PASSENGERS.
- Without a PEB, we will necessary be pitched into a PR battle with respect to who is at fault for the negative consequences.
4. A STRIKE MIGHT TO PLAY OUT OVER A LONG PERIOD, WITH EASTERN STRUCK FIRST, THEN OTHER AIRLINES, THEN PASSENGER RAIL, AND FINALLY FREIGHT.
- Thus, a strike is likely to be an escalating problem that drags on for weeks or even months.
5. THE UNIONS WILL UNDOUBTEDLY MAKE SAFETY AN ISSUE, SO THE PRESIDENT MIGHT BE BLAMED IF THERE IS A SERIOUS AIRLINE ACCIDENT.

B. CON:

1. A PEB SHOULD NOT BE CONVENED UNLESS THERE IS A BONA FIDE ECONOMIC EMERGENCY.
 - It is impossible to predict accurately how effective the IAM strike will be. At this point we are dealing with speculation and threats calculated to influence the President.
 - It is not even clear whether ALPA pilots at Eastern will strike. Eastern strongly believes that the ALPA pilots will fly, even though the strike vote will favor a strike. ALPA is currently negotiating with Eastern and they may be bought off.
 - It is hard to imagine that pilots at other airlines will strike if Eastern's pilots do not honor IAM's picket lines.
 - It is quite likely that Eastern will continue to operate at least partially. Eastern has filed a strike contingency plan with the FAA to continue to operate and is making arrangements to obtain replacement workers from other sources.
 - Mechanics at Delta, American and Pan Am are either not organized or organized by a union rival to IAM, therefore, they are not likely strike targets.
 - Most other airlines with IAM contracts are subject to no strike clauses. The IAM on Monday filed a lawsuit in Federal District Court to enjoin the enforcement of these no-strike clauses.
 - There is some indication that IAM is concerned about potential monetary damages that might be assessed to IAM if they ignore their no-strike clauses.
 - Thus, the IAM might very well find it can relatively little impact on airlines and be forced to turn to railroad picketing.
 - The President can always convene a PEB when a genuine emergency has developed.
2. IF A PEB IS CONVENED, EASTERN WILL BE FORCED TO HONOR ITS EXPIRED CONTRACT WAGES, WHICH IT HAS TRIED TO RENEGOTIATE FOR THE PAST 15 MONTHS.

- Eastern is operating at a loss of approximately \$1 million per day and under its expired contracts has wage rates that results in an average annual income of \$45,000 for baggage handlers.
 - If a PEB is convened, Eastern will never have a chance to reach the kind of settlement that it feels it needs to continue operation.
 - If Eastern declares bankruptcy (which it might do if a PEB is imposed), the PBGC will probably be stuck with Eastern's pension plan which is at least \$750 million underfunded. This would be the second largest plan termination in PBGC history. This might force a PBGC premium increase, depending on the outcome of PBGC's LTV litigation.
3. SINCE 15 MONTHS OF MEDIATION HAS NOT RESULTED IN A SETTLEMENT, IT IS DOUBTFUL THAT ANOTHER 60 DAYS OF MEDIATION WILL PROVE SUCCESSFUL.
- Recent rail PEBS have not settled the disputes. In those instances the 60-day PEB has been followed by a Congressionally imposed strike-ban followed by a Congressional imposed "settlement."
4. A REPUBLICAN ADMINISTRATION SHOULD NOT INTERVENE IN PRIVATE LABOR DISPUTES UNLESS IT IS ABSOLUTELY NECESSARY.
- This would be the first airline PEB in the last twenty years.
 - We may not want to set the precedent that we will have government intervention in airline labor disputes when first picket line starts.
 - It is questionable whether a PEB is an appropriate tool after deregulation which allows other airlines to provide service.
 - There have been five major airline strikes since deregulation in 1978 and no PEBS.
5. THIS STRIKE COULD BECOME ECONOMICALLY TROUBLESOME ONLY BECAUSE OF SECONDARY BOYCOTTING OF THE RAILROAD INDUSTRY.
- Secondary boycotts are unlawful in every industry except the airline and railroad industries.

- The Reagan Administration proposed an amendment to ban such secondary boycotts following the 1987 Burlington Northern Supreme Court decision.
- This strike might provide the impetus to have secondary boycotts banned under the Railway Labor Acts. Absent a strike, there seems to be no momentum on the Hill to ban secondary boycotts.
- This would keep future strikes from spreading beyond the parties in dispute, a principle firmly established in the National Labor Relations Act.
- Secondary boycotts allow a union with a dispute against one employer to picket and shut down an entirely unrelated employer.
- If we permitted unrestrained secondary boycotts, we can have paralyzing national strikes like those that occur in Italy and elsewhere.

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National Rainbow Coalition, Inc.

March 2, 1989

To: President George Bush
Gov. John Sununu

From: Rev. Jesse L. Jackson

Re: The Eastern Airline Strike

I write to reiterate the concerns expressed last night over the upcoming strike on Eastern Airlines. I think it imperative that you accept the recommendation of the National Mediation Board and act to forestall the strike.

Let me address the issues raised by Gov. Sununu in our meeting:

I. The Need to Intervene

The National Mediation Board, the Federal agency most knowledgeable about the situation, has recommended that you act in order to avoid a potential threat to public transportation. Over the past decades in 33 different occasions, no President - Republican or Democrat - has failed to act in response to such a request.

II. The National Message in Intervention

Acting now to forestall the strike will demonstrate forceful leadership in the public interest. You will demonstrate that you choose public safety - the public interest - over partisanship. You will demonstrate a willingness to use the instruments of government to manage the public's concerns.

You will gain bipartisan support for such action - from liberal and conservative, management and labor across the airline industry.

More importantly, you will send a message to workers that you will be tough, but fair. A Presidential Emergency Fact Finding Board (PEB) is the only hope for a reasonable, rational solution to this bitter confrontation. Any other course would lead to a terrible labor war. This is exactly the kind of situation that cries out for a third-party intervention. A PEB could establish a balance of equities and needs that the antagonists would almost certainly, in the end have to accept.

III. Concerns about Delay and Bankruptcy

Gov. Sununu mentioned his concern, often invoked by Texas Air President Frank Lorenzo, that delay would only prolong the losses for Eastern, leading to bankruptcy.

A fact not widely acknowledged is that Eastern Airline employees hold a class of preferred stock with a liquidation value of \$260 million. Eastern workers do not want to see their company go bankrupt.

This claim has little merit. Eastern is losing money, but not nearly as much as Lorenzo's nonunion Continental Airlines. Indeed, Lorenzo has been using Eastern as a source of finance for Continental, selling off assets, trading off gates, planes and the like. Lorenzo has claimed that Eastern was on the verge of bankruptcy for over two years; two more months will not ruin it.

Moreover, independent analysts in the finance industry agree that an agreement reached through the PEB would be far less costly to Eastern than a long highly disruptive strike - particularly at a time when people are already concerned about airline safety.

The Presidential Emergency Fact Finding Board (PEB) is designed in the law to bring disputes to resolution in a short time period. The PEB meets and makes its recommendations within 30 days. If one or both parties to the dispute do not accept the recommendation, the Congress may - and historically does - enact the recommendation into law. This effectively ends the dispute on the basis of a neutral board's recommendation - without the disruption and despair produced by a long strike process.

Clearly, your PEB will not recommend a settlement that will bring Eastern into bankruptcy. Their proposed solution will no doubt call for sacrifices from the workforce. It will provide a clear and quick end to the dispute. What it will not do is allow Eastern to crush its union and engender a poisoned atmosphere of labor relations at the beginning of your administration.

IV. Concerns about the Merits

I believe you should act in the public interest, regardless of the merits of the Eastern dispute. The PEB will resolve the merits. But the bitterness of this dispute is related to its substance.

Eastern airline employees with years of experience have made major concessions to the airline over the past ten years. They have taken wage cuts, changed work rules, increased efficiency to preserve the airline. They now have wages that are only seventh in the airline industry.

During negotiations the IAM offered wage cuts for new employees and a freeze on the wages of current employees, along with further work rule changes to lower costs and increase efficiency. From the inception of bargaining Eastern has refused to alter its initial wage cut demands whatsoever. In an

unprecedented break with the IAM's past practices, IAM employees have accepted the National Mediation Board's recommendation to binding arbitration to resolve all outstanding issues in this dispute. Eastern flatly rejected.

There is not one labor leader in America who does not understand that this is an extraordinarily abnormal labor-management dispute; this is a case of a determined union busting employer to crush a union. That is why this strike will be so bitter, across the transportation industry. That is why AFL-CIO President Lane Kirkland has publicly made this his priority. This is why the entire labor movement will now rally behind this tragic, but avoidable strike.

V. The Administration Message

This strike is being compared to PATCO and your Administration is being urged to demonstrate toughness. But this is not an illegal strike and the National Mediation Board has already recommended a solution available to you. Not to act now, especially when all other Presidents in similar situations have called for a PEB sends a clear, harsh and negative signal.

I urge you once again, for all parties involved, the public, the airline industry and the working men and women of Eastern airlines to accept the recommendation of the national Mediation Board.