

STATEMENT OF SECRETARY SAMUEL K. SKINNER,
DEPARTMENT OF TRANSPORTATION,
before the
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
CONCERNING LEGISLATION ADDRESSING THE EASTERN AIRLINES LABOR
DISPUTE,
March 7, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO DISCUSS THE EASTERN AIRLINES MANAGEMENT/LABOR DISPUTE. AS YOU KNOW, AFTER 17 MONTHS OF ARDUOUS BARGAINING, THE PARTIES ARE EXERCISING THEIR RIGHTS UNDER THE RAILWAY LABOR ACT TO PURSUE SELF-HELP IN THE ATTAINMENT OF THEIR ECONOMIC OBJECTIVES. WE DO NOT TAKE SIDES IN THIS DISPUTE, NOR DO WE BELIEVE IT APPROPRIATE, IN LIGHT OF THE HISTORY OF THE DISPUTE AND THE PRECARIOUS FINANCIAL CONDITION OF A MAJOR COMMERCIAL CARRIER IN OUR DEREGULATED AVIATION ENVIRONMENT, TO EMPANEL A PRESIDENTIAL EMERGENCY BOARD.

HAVING SAID THAT, I AM WELL AWARE THAT SOME OF MY FRIENDS AND DISTINGUISHED MEMBERS OF THIS COMMITTEE ORIGINALLY BELIEVED THAT THE PRESIDENT SHOULD EMPANEL A BOARD AND PROLONG THE STANDOFF FOR ANOTHER 60 DAYS, PERHAPS IMPOSING A LEGISLATED SETTLEMENT THEREAFTER.

WE RESPECTFULLY DIFFER WITH THIS APPROACH, AND BELIEVE THAT EMPANELING A PRESIDENTIAL EMERGENCY BOARD IS WHOLLY INAPPROPRIATE. THIS ADMINISTRATION BELIEVES IN FREE MARKET PRINCIPLES -- WE SHOULD ALLOW THE COLLECTIVE BARGAINING PROCESS TO TAKE ITS NORMAL COURSE. WE DO NOT BELIEVE THAT GOVERNMENT SHOULD BE IN THE BUSINESS OF DRAFTING THE ECONOMIC TERMS OF LABOR AGREEMENTS. THE PLAIN FACT OF THE MATTER IS THAT A STRIKE AT EASTERN ALONE DOES NOT SUBSTANTIALLY DISRUPT THIS NATION'S TRANSPORTATION SYSTEM. IT IS ONLY THE SPECTER OF SECONDARY ACTIVITY THAT THREATENS TO HOLD HOSTAGE THIS NATION'S ECONOMY AND OUR GLOBAL COMPETITIVE POSITION. IF THIS SPECTER IS REMOVED BY CONGRESS, SAFE AND CERTAIN TRAVEL OF PERHAPS MILLIONS OF INNOCENT PASSENGERS CAN BE PRESERVED. IF WIDESPREAD SECONDARY ACTION OCCURS, I AM CONFIDENT THAT THE CONGRESS CAN ACT QUICKLY AND EXPEDITIOUSLY, JUST AS SPEEDY AS IT ACHIEVED A SOLUTION FOR CHICAGO'S MASS TRANSIT RIDERS ON THE C&NW LAST FALL WHEN I HEADED THE REGIONAL TRANSPORTATION AUTHORITY OF NORTHEASTERN ILLINOIS.

BEFORE GOING ANY FURTHER, I WANT TO EMPHASIZE THAT OUR FIRST AND FOREMOST GOAL AT THE DEPARTMENT IS TO ASSURE THAT THE SAFETY OF THE AIR TRANSPORTATION SYSTEM, AT EASTERN AND AT ANY OTHER POINT IN THE SYSTEM AFFECTED BY THE EASTERN SITUATION, IS NOT COMPROMISED IN ANY RESPECT. HEIGHTENED FAA SURVEILLANCE AND STAFFING PROCEDURES ARE IN PLACE TO ASSURE THAT SAFETY IS NOT AFFECTED BY THE STRIKE. WE ARE AWARE OF INTENTIONS BY SOME TO "FLY BY THE BOOK", AND WE WILL DEAL WITH THAT BY CONTINUING TO PUT

SAFETY FIRST AND EFFICIENCY NEXT. THE AIR TRAVELER WANTS TO GET TO THE DESTINATION ON TIME, OF COURSE, BUT WANTS ABOVE ALL TO GET THERE SAFELY. WE AGREE.

I NEED NOT DWELL ON THE FACTS OF THE STRIKE THAT PRECIPITATED THIS HEARING. ESSENTIALLY, EASTERN AIRLINES AND ONE OF ITS MAJOR UNIONS WERE UNABLE TO REACH A SATISFACTORY RESOLUTION OF WIDELY DIVERGENT GOALS, AND THE NATIONAL MEDIATION BOARD DECLARED AN IMPASSE IN THE NEGOTIATIONS BETWEEN THE MACHINISTS UNION AND EASTERN AT THE BEGINNING OF FEBRUARY. UNDER THE PROCESSES OF THE RAILWAY LABOR ACT, A 30-DAY "COOLING OFF" PERIOD WAS TRIGGERED, AT THE END OF WHICH THE PARTIES WERE ENTITLED TO EXERCISE SELF-HELP. EASTERN INDICATED THAT IT INTENDED TO IMPOSE NEW WAGES AND WORK RULES, AND THE MACHINISTS AVAILED THEMSELVES OF THEIR RIGHT TO SELF HELP AT MIDNIGHT FRIDAY NIGHT, WALKING OUT AND POSTING PICKETS, WHICH WERE HONORED BY NEARLY ALL OF THE PILOTS AND FLIGHT ATTENDANTS AT EASTERN. MOST EASTERN SERVICE WAS SHUT DOWN AS A RESULT.

THE PRESIDENT HAS ASSESSED THIS SITUATION AS IT HAS DEVELOPED, MOST PARTICULARLY BECAUSE THE RAILWAY LABOR ACT PERMITS HIS INTERVENTION IN A CASE WHEN A SECTION OF THE COUNTRY IS THREATENED WITH LOSS OF "ESSENTIAL TRANSPORTATION SERVICE". THE PRESIDENT'S DECISION TO APPOINT AN EMERGENCY BOARD TO MAKE RECOMMENDATIONS FOR A SETTLEMENT IS DISCRETIONARY. LAST FRIDAY AFTERNOON, THE PRESIDENT CONCLUDED THAT THE FACTS OF THIS LABOR DISPUTE DO NOT JUSTIFY THE APPOINTMENT OF A PRESIDENTIAL EMERGENCY BOARD.

TWO FUNDAMENTALS UNDERLIE THE PRESIDENT'S DECISION. MOST IMPORTANT, THIS ADMINISTRATION BELIEVES THAT LABOR/MANAGEMENT DISPUTES CAN BE AND SHOULD BE WORKED OUT BY THE INVOLVED PARTIES, WITHOUT RECOURSE TO THE PRESIDENT OR CONGRESS. THE RAILWAY LABOR ACT PRESERVES THE RIGHTS OF THE PARTIES TO EXERCISE SELF HELP IF BARGAINING AND THE MEDIATION EFFORTS OF THE NATIONAL MEDIATION BOARD ARE UNSUCCESSFUL. EASTERN AND THE MACHINISTS UNION HAVE REACHED THIS POINT, AND THE FEDERAL GOVERNMENT SHOULD NOT IMPOSE A COMPROMISE ON THEM. THE NATION'S ECONOMIC VITALITY IS A REFLECTION OF THE FACT THAT SOLUTIONS REACHED BY PRIVATE ENTITIES MOST OFTEN ARE BETTER THAN THOSE IMPOSED BY GOVERNMENT.

THIS REACHES THE SECOND FUNDAMENTAL POINT. THE UNITED STATES IS PART OF A GLOBAL ECONOMY, AND OUR MANUFACTURING AND SERVICE INDUSTRIES MUST REMAIN AS COMPETITIVE AS POSSIBLE TO MAINTAIN OUR PLACE IN THE WORLD. THE ECONOMIC DEREGULATION OF TRANSPORTATION HAS REAPED UNTOLD BENEFITS IN MAKING OUR TRANSPORTATION SYSTEM COMPETITIVE. OUR COMPETITIVE STANCE SHOULD NOT BE INTERFERED WITH. DECISIONS BASED ON MARKET FACTORS, NOT GOVERNMENT FIAT, WILL BEST PRESERVE OUR COMPETITIVE ABILITIES.

SINCE AIRLINE DEREGULATION IN 1978, THE SITUATION OF DOMESTIC AIRLINES HAS CHANGED DRAMATICALLY. BECAUSE THERE ARE NO BARS TO

SERVING DOMESTIC ROUTES, A REDUCTION OR CESSATION OF EASTERN SERVICE TO A PARTICULAR POINT WILL NOT MEAN AN END TO SERVICE. AS WAS THE CASE WITH FIVE SIGNIFICANT STRIKES AGAINST AIR CARRIERS SINCE 1978, OTHER CARRIERS FILL IN QUICKLY TO PROVIDE NEEDED PASSENGER AND CARGO SERVICE, AND WE HAVE ALREADY SEEN THAT HAPPENING IN THIS CASE AS DELTA, PAN AM, AND OTHER CARRIERS ARE MOVING TO ACCOMMODATE PASSENGERS UNABLE TO FLY EASTERN.

THIS ABILITY OF OTHER AIRLINES TO PROVIDE SUPPLEMENTARY SERVICE WHERE NEEDED MEANS THAT THE HISTORY OF PREVIOUS PRESIDENTIAL EMERGENCY BOARDS IS NO LONGER RELEVANT IN TODAY'S ECONOMIC ENVIRONMENT. IN THE LAST 20 YEARS, ONLY ONE EMERGENCY BOARD HAS BEEN APPOINTED IN THE AIRLINE BUSINESS, AND THAT WAS PURSUANT TO SECTION 44 OF THE AIRLINE DEREGULATION ACT. IT INVOLVED THE WEIN-AIR ALASKA DISPUTE IN WHICH THE CONGRESS ORDERED THE EMERGENCY BOARD DESPITE THE FACT THAT THE MEDIATION BOARD HAD NOT RECOMMENDED ONE. INTERVENTION IN THAT CASE, WHICH WAS BASED ON THE PARTICULAR FACTS OF THE DISPUTE, SHOULD NOT SERVE AS A PRECEDENT FOR INTERFERING IN THE EASTERN CONTROVERSY MORE THAN A DECADE LATER.

IN ANALYZING THE SITUATION BEFORE US, ANOTHER NEW FACTOR EXISTS BY VIRTUE OF THE 1987 BURLINGTON NORTHERN SUPREME COURT DECISION. FOR THE FIRST TIME SINCE THE INCEPTION OF THE RAILWAY LABOR ACT IN 1926, IT WAS RULED THAT A PARTY IS NOT BARRED BY THE ACT FROM CONDUCTING "SECONDARY ACTIVITY" AGAINST OTHER COMPANIES. THIS IS AN ANOMALY IN THE OVERALL CONTEXT OF U.S. LABOR LAW AND AT

VARIANCE WITH THE LAW GOVERNING MOST OTHER INDUSTRIES (SECTION 8(B)(4) OF THE NATIONAL LABOR RELATIONS ACT). SECONDARY PICKETING IN THE BUILDING TRADES AND TRUCKING INDUSTRIES WAS BARRED BY THE TAFT-HARTLEY ACT IN 1947, AND HAS NOT BEEN AVAILABLE IN ANY SECTOR OF THE ECONOMY SINCE THAT TIME, EXCEPTING THE SUPREME COURT RULING IN 1987 FOR AIR AND RAIL TRANSPORTATION. IN MY VIEW, THAT DECISION HAS UPSET THE BALANCE OF FORCES ANTICIPATED TO BE AVAILABLE UNDER U.S. LABOR LAW, AND SECONDARY ACTIVITY IS FUNDAMENTALLY UNFAIR TO TRULY "NEUTRAL" PARTIES, FOR INSTANCE, COMMUTERS IN CHICAGO AND NEW YORK, THAT CAN BE AFFECTED BY IT.

AT THIS POINT, SECONDARY ACTIVITY HAS BEEN THREATENED BUT HAS NOT OCCURRED, DUE TO THE TEMPORARY RESTRAINING ORDERS ENTERED DURING THE PAST WEEK ADDRESSING COMMUTER RAIL SERVICES AND OTHER AIRLINES. THE REASONING UNDERLYING THE DECISIONS IS BEING FURTHER TESTED AND WE MUST AWAIT THE OUTCOME. HOWEVER, THE PRESIDENT HAS INDICATED THE CORRECT APPROACH TO DEALING WITH SECONDARY ACTIVITY AGAINST TRULY NEUTRAL PARTIES WOULD BE TO AMEND THE RAILWAY LABOR ACT SO THAT IT DOES NOT PERMIT SUCH ACTIVITY. THEN, NEUTRAL PARTIES WOULD UNAMBIGUOUSLY BE ABLE TO SEEK PROPER INJUNCTIVE RELIEF. I SEE NO REASON WHY RAILROAD COMMUTERS IN NEW YORK OR CHICAGO, OR AIR TRAVELERS IN SAN FRANCISCO OR MINNEAPOLIS, SHOULD BE DEPRIVED OF SERVICE BECAUSE OF A DISPUTE BETWEEN EASTERN AND ITS MACHINISTS IN MIAMI. THE ADMINISTRATION IS PREPARED TO TRANSMIT CORRECTIVE LEGISLATION SHOULD CIRCUMSTANCES REQUIRE.

WITH REGARD TO THE LEGISLATION BEFORE THE COMMITTEE TODAY, MY CONSIDERED VIEW IS THAT SUCH AN APPROACH WOULD NOT SERVE THE INTERESTS OF THE PARTIES OR THE PUBLIC. THE FAA IS VIGOROUSLY UPHOLDING ITS RESPONSIBILITIES FOR ASSURING THE SAFETY OF THE SYSTEM. WE BELIEVE THAT THE PUBLIC WILL GENERALLY FIND ALTERNATE TRANSPORTATION ON OTHER AIRLINES WHICH SERVE ALL OF EASTERN'S MAJOR POINTS. WE ARE PREPARED TO DEAL WITH ANY "FLY BY THE BOOK" ACTIONS BY ASSURING SYSTEM SAFETY AND BY MINIMIZING DELAYS WHERE FEASIBLE.

THE APPOINTMENT OF A BOARD UNDER THESE CIRCUMSTANCES WOULD MERELY DELAY, FOR UP TO 60 DAYS, THE SELF-HELP PROCESS WHICH IS ALREADY UNDERWAY AND BEING DEALT WITH SAFELY. IT IS FAR SUPERIOR TO ALLOW THE ECONOMIC REALITIES OF THE DISPUTE TO DICTATE THE OUTCOME.

THIS COMPLETES MY STATEMENT. I WOULD BE PLEASED TO RESPOND TO QUESTIONS FROM THE COMMITTEE.