

1982

Introduction - The Dispute between the FAA and PATCO: Conflicting Views

Najees E. Halaby

Recommended Citation

Najees E. Halaby, *Introduction - The Dispute between the FAA and PATCO: Conflicting Views*, 47 J. AIR L. & COM. 275 (1982)

<https://scholar.smu.edu/jalc/vol47/iss2/5>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE DISPUTE BETWEEN THE FAA AND PATCO: CONFLICTING VIEWS

NAJEEB E. HALABY*

The following articles deal with the legal and public policy issues involved in the recent dispute between the Federal Aviation Administration (FAA) and the Professional Air Traffic Controllers Organization (PATCO), which resulted in the dismissal of over 11,000 controllers. J. E. Murdock III and Lee Arnold, General Counsel for the FAA spell out the position of the FAA while Mitchell Notis, Staff Counsel for the American Federation of Government Employees outlines PATCO's side of the dispute. In addition Beverly Shaffer of Emory University presents an analysis of the Federal Labor Relations Authority procedures available for the resolution of disputes concerning government employees.

The purpose of this introduction is to provide an historical background of the origin and growth of the dispute to familiarize the reader with the environment out of which the conflict grew. It also attempts to clarify the legal and public policy issues involved in the dispute to provide the reader with a common framework for considering the subsequent articles.

The strike by air traffic controllers against their employer, the FAA, was in the making for twenty years. The origin and growth of the dispute may be traced through the following

* A. B. Stanford, 1937, J.D. Yale, 1940. Mr. Halaby was in private practice with the law firm of O'Melveny & Meyers, served as FAA Administrator from 1961-1965, served as Chairman of the Board, Pan American World Airways from 1970-72 and now heads his own venture capital firm.

chronology:

- January 1962 President Kennedy issued Executive Order 10988 permitting organization of Government employees into unions but without the right to strike.
- January 1968 New York air traffic controllers formed PATCO and recruited over 5,000 FAA employees in its first year.
- July 1968 PATCO conducted its first slowdown.
- January 1969 The Civil Service Commission ruled PATCO was an employee organization; at the same time, the FAA agreed to permit a voluntary payroll deduction plan for payment of PATCO dues.
- June-July 1969 A work stoppage led by PATCO caused the FAA to suspend eighty controllers and terminate the dues withholding policy.
- October 1969 President Nixon issued Executive Order 11491, replacing Executive Order 10988, giving the Labor Department authority to grant exclusive recognition to Government unions.
- January 1970 The Air Traffic Controllers Career Committee, made up of private citizens and chaired by John Corson, submitted its report to the Secretary of Transportation. The report called for improvement of working conditions and management practices. It also urged legislation permitting early retirement of controllers.
- March 1970 3,000 PATCO members went on strike, leading to the issuance of contempt citations by the courts. The FAA suspended 1,000 controllers and fired 52 for their role in the strike.
- May 1970 The Airport and Airway Development and Revenue Acts of 1970 provided a trust fund to modernize air traffic control and

- airport systems.
- February 1972 The FAA reinstated the controllers dismissed in the 1970 strike.
- May 1972 President Nixon signed into law the Air Traffic Controllers Career Program Act providing for early retirement and other benefits.
- October 1972 PATCO was certified by the Department of Labor as the exclusive representative of more than 18,000 tower and center controllers.
- May-June 1978 PATCO staged intermittent slowdowns to protest the refusal of U.S. flag carriers to provide controllers with free overseas familiarization flights.
- April 1980 PATCO distributed a strike plan to its members.
- August 1981 PATCO members went on strike against the FAA.

The national airspace system is a cooperative one. It is absolutely dependent on collaboration between pilots, controllers, mechanics, technicians, airport operators and others. The United States system of air traffic control (the System) is the most mechanized, computerized, and probably the safest in the world. Yet, it is fully dependent on the men and women who operate it. The System underwent a rapid and broad modernization in the early 1960s. For the past decade or so, however, major technological improvements and replacements have been slow and have widened the gap between the controllers' expectations and the realization of a fully reliable and efficient System.

The impact of automation on the controller has been both benign, as technological advances have relieved the controller of some boring duties, and malign in failing to meet promises of more perfect computers and communications equipment. Situated in windowless spaces, huddled over impersonal radars, and commuting daily to Federal buildings, the controller is isolated by this automation from the airman, the airport and

the airplane. Only through the eye of the radar, and through the very high frequency communications in the ear, is the controller relieved from his isolation. He is simultaneously indispensable, but, "out of it." He feels an intense sense of responsibility for the safety of passengers in the skies, which often leads him to believe he is in fact operating the airplane. Such an impression can annoy the grizzled captain in command. Relations between PATCO and the pilots' union are more hostile than harmonious and pilots are disproportionately favored by their relatively larger shares of the airspace and economy. The senior airline captain's salary has remained two to three times greater than the average controller's salary. All around the controllers, other professionals, such as school-teachers, firemen, and policemen, have been striking. The controllers however, have been told by the government that, despite their equally important and stressful work, they may neither strike nor threaten to strike. In an age of militancy, PATCO members, many of whom are Vietnam veterans, have been alienated and many have more contempt than respect for their FAA managers. To add to this frustration, various Government reports have found the air traffic controller's job to be both stressful and poorly supervised by higher management in the FAA.

On the other hand, ever since the formation of PATCO and several other unions, which now represent 80% of FAA personnel, FAA managers have been confronted with managerial problems of unprecedented intensity and magnitude. The air traffic has continued to grow at a rapid rate. The FAA population is an aging one and various budget and manpower reductions have imposed constraints on the FAA in their management of the system. Although the FAA adopted the recommendations of the Controller's Career Committee (the Committee), in an earnest effort to improve its labor relations posture, the struggle between the FAA and PATCO for final authority to specify and control duties and responsibilities continued. Legislation for early retirement and second career training, recommended by the Committee, led to some improvements but was also subject to abuse.

Many of the senior FAA managers are veterans of World War II and Korea and have managed the system through authoritarian rather than consultative methods. Faced with Vietnam veterans, cynical toward authority, they have resented and resisted more than they have led the work force, thereby widening the alienation.

Each of the controllers signed an oath not to strike and, through Government command and action by the courts, there can be no doubt that each PATCO member was aware of the risks involved in disobeying injunctions and violating the law. Finally, the leaders appear to have misled their fellow members into believing that all of them were indispensable to the System, and that if all else failed they had some kind of 1980 campaign promise the Reagan administration would honor. Accordingly, no one can claim surprise at the events set in motion by PATCO on August 3, 1981.

QUESTIONS OF LAW AND POLICY

The facts of the dispute seem reasonably clear and are well recorded in several jurisdictions. The legal questions seem reasonably well defined and their answers easily ascertainable:

- 1) Did PATCO violate the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978?
- 2) Was PATCO in contempt of several Federal court injunctions relating to the dispute?
- 3) Could PATCO rely on the precedent of the FAA's 1972 rehiring of the PATCO controllers (while in contempt of court) as an indication that the government would not enforce the Anti-Strike Legislation?
- 4) Did the FAA bargain in good faith with PATCO?
- 5) Did the PATCO president actively lead his membership toward accepting the bargain he had struck with Secretary of Transportation Drew Lewis?
- 6) Were the remarks and actions of the President, the Secretary of State and the FAA administrator prejudicial of due process and fair hearing?
- 7) Was decertification of PATCO in accord with the law

and due process?

8) May striking controllers be denied reinstatement, as indicated by Federal officials, even though they have joined another union certificated to bargain for them?

The policy issues, however, are more complex and their answers are not easily ascertainable:

- 1) Does the punishment fit the crime?
- 2) Will another union be permitted to be certificated and to bargain for the jobs of the controllers who may have been misled and coerced by PATCO, or are the strikers banished forever from their profession?
- 3) On what criteria could the FAA rehire some and refuse others?
- 4) What organization and process will be established by the FAA to handle legitimate grievances in the future?
- 5) Could the Federal Service Impasses Panel have settled the dispute?
- 6) Why did the parties fail to use this alternative?
- 7) More fundamentally, in the light of the national experience to date, should air traffic controllers, like other national security operating personnel in the Department of Defense, Coast Guard, FBI, etc., be excluded from laws governing collective bargaining by other civil service personnel?
- 8) Pragmatically, the most important question of policy is: How does the FAA modernize and manage the national airspace system so as to motivate these essential professional men and women to control safely and surely the nation's air traffic?