INSIDE LABOR

By David Moberg

Unfriendly skies of United fly again

Though the skies were unfriendly, United Airlines won its two-tier wages with lower pay for new crew members, and its pilots showed they could stick together for a month-long strike with few defections. But some of the most significant issues of the strike remain to be settled in court after United union leaders voted to return to work on June 14. As a result, Federal Judge Nicholas Bua's decision on whether United Chairman Richard J. Ferris can reward strikebreaking pilots and flight attendants who crossed the pilot picketline "will set extremely significant precedents for the airline industry and for labor relations in general," argues airline labor relations expert and arbitrator Mark L. Kahn.

Putting the questions—will United now employ its newly hired trainees who refused to cross the picket line? will strikebreakers get superseniority? will recently hired replacement pilots retain special pay?—before a federal judge gives some edge to the company. An arbitrator would have decided on the basis of the contract, precedent and general fairness and equity. "On the precedent of what's been going on in the industry for 40 years, the pilots would win," said Frank Spencer, emeritus professor at Northwestern University, who was formerly a pilot and secretary of the Air Lines Pilots Association (ALPA). "In arbitration pilots would prevail. But in court the issue of fairness and equity is not necessarily present." But having lost two major arbitration decisions earlier, Ferris insisted on the courts.

Yet ALPA spokesman Capt. John Leroy insisted that the union may win a more lasting victory in court that would apply to other negotiations. Basically ALPA argued in hearings that began last week that federal law protects workers from being fired, not hired or disciplined for engaging in protected collective action and that United's seniority plans and refusal to hire the trainees discriminates against people for exercising those rights. ALPA decided that since it looked like Ferris was willing to sit out a very long strike, their best bet was to return to work—under terms of an economic concession already negotiated (*In These Times*, June 12) and fight in court.

Pilots had promised not to go back until flight attendants worked out their back-to-work agreement, but the Association of Flight Attendants (AFA) released pilots from that pledge after United insisted on major concessions in the flight attendants' contract. Now they will also fight in court—where they are suing United for illegally threatening to fire or discriminate against flight attendants—and in the grievance procedure. They want to enforce their contract and make United grant flight attendants seniority time for the month of the strike and reverse transfers made during the strike that gave junior flight attendants choice routes. "It may take time to get relief," an AFA spokesperson said, "but it's better than giving up something we have in our contract."

Kahn noted that pursuing the case before either an arbitrator or judge can be a ploy for one side to get off the hook, to say "damn the arbitrator" for decisions you couldn't agree to politically or for whatever reason." But since he is unaware of any significant precedent of strikebreakers receiving special breaks, "if United wanted to get a significant new precedent and wanted to set a new course, which it did, it probably wouldn't have wanted to have it arbitrated, since arbitration is an inherently conservative process. If a judge examines the history of major strike settlements, he would be inclined to settle it for the union." If Judge Bua, normally a political moderate, does not, all organized labor will suffer a serious blow.

Spencer wonders why Ferris continues to want to punish the nearly 570 new-hires, since he wants to expand United's flights, heavy hiring by many airlines over the past year has depleted the supply of the most qualified pilots, and United's lower pay and bruised image will now make it a less appealing employer. If Ferris persists, "you're going to have a tough time getting cooperation and resurrecting the 'friendly skies,'" Spencer said.

United's long history—indeed, Ferris' personal history until now—of friendly relations with pilots may have thrown pilots off guard. "They couldn't believe for months and months that this was going to turn out the way it did," Spencer said. "They didn't have any experience in strikes. If they'd known what Ferris was going to do on seniority, they'd never have agreed to the two-tier wage agreement."

Corporate execs guilty of murder

Stefan Golab, a 61-year-old Polish immigrant on a work visa, looked pale, weak and unsteady on Feb. 10, 1983, before he collapsed and died at Film Recovery Systems, Inc., a small suburban Chicago firm that removed silver from used photographic film. A coroner discovered very high levels of cyanide in his blood. After a seven-month investigation, the Cook County state's attorney's office charged four top executives with murder, claiming that they knowingly exposed workers to dangerous levels of cyanide. On June 14 Judge Ronald J.P. Banks found the former president, plant manager and plant supervisor—the governor of Utah had refused extradition of a company vice-president—guilty of murder and various misdemeanors.

During the course of the trial, numerous witnesses revealed how callously the company treated worker health and safety:

- one worker said that despite wearing five paper face masks at a time, he got headaches and vomited from the noxious cyanide fumes released from the company's treatment vats;
- a saleswoman who reported an "overpowering smell" that "burned the back of your throat" when she visited the plant, tried unsuccessfully three times to sell the company safety equipment;
- at his bosses' direction, another worker painted over the skull-and-crossbones on steel containers of cyanide-tainted sludge and hid them from inspectors after Golab's death;
- a former bookkeeper testified that illegal aliens were selected to work with the dangerous chemicals;
- other workers testified about recurrent nausea and illness but said they were never warned of dangers.

"I think it's going to have a big impact," David Simmons, newsletter editor of the Chicago Area Committee on Occupational Safety and Health, said of the decision. "There are hundreds of companies like Film Recovery Systems out there. In the absence of OSHA, this will have some deterrent effect."

A recent report by the Congressional Office of Technology Assessment concluded that the Occupational Safety and Health Administration (OSHA) has done little to protect workers over the past 14 years. That is even more true under Reagan, whose first appointment to head OSHA, Thorne Auchter, eliminated unannounced workplace inspections, and whose second, Robert Rowland, recently resigned after revelations of his participation in decisions affecting companies in which he owned more than $300,000 in stock. The OTA report concluded that the drop in injury rates in 1980 and 1981 was not a result of greater safety but rather of the deep recession and loss of manufacturing jobs.

Although the case marks the first time company executives have been found guilty of workplace deaths, prosecutor Jay Magnuson insists that the case established no new principles but merely expanded application. Under Illinois law, murder charges can be brought when someone "knowingly creates a strong probability of death or great bodily harm"—like firing through a tavern window—even if there is no specific intent of killing a particular victim. Although the Michigan attorney general charged General Dynamics with manslaughter for a worker death, there have been few other prosecutors willing to prosecute companies or executives.

Magnuson was inspired to bring the charges in part because of discoveries in his investigation, in part because of arguments in the work of a former professor, Christopher Stone of the University of Southern California. Stone agreed that this case was not a doctrinal departure. "You've simply got some imagination and boldness in prosecution," he said.

In many instances, corporate executives are so far removed from the workplace that it would be hard to sustain indictments against individuals. But Stone thinks prosecutors should bring criminal charges more frequently against corporations for workplace safety and pollution violations. In another pending case in Chicago, prosecutors are charging Chicago Magnet Wire with multiple battery for exposing workers—none of whom has died yet—to a variety of noxious chemicals, such as phosgene. Stone argues that in many cases courts could put companies on probation, force them to keep more detailed records or submit them to the jurisdiction of a court-appointed safety officer.

With the decline in OSHA and the continued mayhem in the workplace—25 deaths for every working day—criminal prosecutions of companies and executives may do what weak fines and rare inspections cannot do. In the case of Film Recovery Systems, it is worth recalling that an OSHA inspector had stopped at the plant, checked the company's records and given it a clean bill of health not long before Golab died.

Sending labor law violators to jail

Maybe criminal proceedings will provide some help in fighting management labor law violators as well. At the end of May a judge in Sheboygan, Wis., sentenced the president of R-Way, a small furniture manufacturer, to 30 days in jail and $1,000 fine for attacking a striker and damaging his camera. Donald Spitler had alienated even the business leaders of Sheboygan for his tough, anti-union actions in trying to force deep wage cuts and other concessions in a strike that started Jan. 10, 1984.

Eventually, workers who had not found jobs elsewhere regained their old positions but had to accept the concessions under a deal worked out by the regional director of the National Labor Relations Board (NLRB) following a company appeal of an original finding that it was guilty of unfair labor practices. Spitler's conviction may give them some slight satisfaction. United Furniture Workers President Carl Scarbrough said, "Perhaps if all corporate leaders who disregard laws, such as the National Labor Relations Act, were faced with prison sentences, then workers *could get justice on the job*."

But they shouldn't look to the NLRB. A study by AFL-CIO lawyers showed how radically the labor board has changed from the general pattern that had prevailed under both Democratic and Republican administrations in the '70s. Under Donald Dotson, Reagan's appointee as chairman, the board has dismissed in whole or in part three times the percentage of cases brought against employers compared with earlier boards. At the same time, there was a decrease of more than half in the percentage of cases in which charges against unions were dismissed. In the first three months of 1985, after the last Carter appointee left, the trend worsened. ■

IN THESE TIMES

The Independent Socialist Newspaper

Published 41 times a year: weekly except the first week of January, first week of March, last week of November, last week of December; bi-weekly in June through the first week in September by Institute for Public Affairs, 1300 W. Belmont, Chicago, IL 60657, (312) 472-5700

Member: Alternative Press Syndicate

(ISSN 0160-5992)

Corporate raiders are speeding decline

By John B. Judis

WASHINGTON

THE FIRST BILLION DOLLAR-PLUS corporate merger did not occur until 1975. Yet in the last four years, there have been 40 such mergers—17 in 1984 alone. Economists are comparing the present spate of mergers to the great turn-of-the-century wave that produced U.S. Steel and Standard Oil. But while that merger wave prepared the way for the emergence of the U.S. as a world economic power, this one may be an effect of its decline. Instead of producing economies of scale or increased influence over the world market, the new wave seems merely to be enriching investment bankers and a new breed of finance capitalist, dubbed the "raider" by his managerial foes.

This merger wave has also raised troubling questions about who really controls American industry. Is it the corporate managers; the stockholders, who are now dominated by large institutional investors; the money managers who oversee those institutional investments; or is it the raiders like Texan T. Boone Pickens and Sir James Goldsmith, who have catalyzed the current merger wave?

There are three causes for the merger wave. The first are systemic or structural: industries like oil or steel that are facing overcapacity and declining profits have used mergers to bolster their own profits. As Mesa's Pickens has said, "It has become cheaper to look for oil on the floor of the New York Stock Exchange than in the ground."

The second cause is the behavior of interest rates and prices during the last decade. The rise in prices has increased the nominal value of corporate assets, but the increase in interest rates has prevented stock prices from increasing proportionately. As a result, many firms are undervalued in respect to the total value of their assets, making them attractive to takeovers.

The third reason is what *Forbes* described as the Reagan administration's "virtual elimination of anti-trust restrictions based on size." Into this supermarket raiders like Pickens have wheeled their shopping carts.

Few of the raiders actually buy the companies that they try to take over. Pickens has never acquired a major corporation. Instead, they set off a spiral of defense and counterdefense by the target company's management that usually results in the stock price increasing and another firm (a "white knight") initiating a friendly takeover.

Pickens' bid for Gulf Oil was classic. In October 1983, when Pickens began buying Gulf stock, it was selling at $41 a share. Pickens offered its shareholders $55 a share. But then in March 1984, Gulf's management arranged for Chevron to buy Gulf and to buy out Pickens at $80 a share. Pickens and Mesa netted $760 million without drilling an oil well or selling a tank of gas.

To prevent a hostile takeover, a firm's management will sometimes buy out the raiders' stock at a premium. St. Regis paid Goldsmith a $50.5 million premium in "greenmail" to greet his bid, and Walt Disney forked over $60 million to Saul Steinberg.

The raiders have been assisted by a new breed of investment banker. The most important is Michael R. Milken of Drexel Burnham Lambert, Inc., who made a reported $25 million last year in fees from takeover attempts. The 39-year-old Milken perfected the technique of selling "junk bonds" to finance takeover attempts. Often no money will change hands.

What happens is this: Pickens or Goldsmith will set up a dummy corporation. Milken will arrange for institutional investors to buy bonds in the new corporation, the purchase to take place when the dummy company attempts to buy 51 percent in the target company. These bonds are termed "junk" only because they pay a higher return (and include a greater risk)

Nicole Ferentz

Have raiders like Texan T. Boone Pickens catalyzed the current merger wave?

than the bonds floated by Fortune 500 companies. But in the present climate they have been snatched up eagerly by institutions and their money managers. The money managers correctly anticipate that if a takeover does take place, the target firm's stock will initially shoot up and make it possible for their clients to get out with a quick profit.

Even banks that formerly looked askance at takeover financing have stepped into the fray. Thus Pittsburgh's Mellon Bank helped Pickens finance his bid for Phillips Petroleum.

Some raiders and their allies profess no allegiance except to their own bank account, but Pickens, who claims descent from Daniel Boone, fancies himself a "populist" acting on behalf of the neglected shareholder. He blames the undervaluation of corporate assets on mismanagement rather than general economic conditions and sees himself at war with entrenched management looking out only for its own vested interest.

There is some truth to Pickens' characterization of management. He and other raiders choose firms that are neither strong market performers like IBM or crippled companies on the verge of liquidation, but rather companies like Gulf or St. Regis whose potential appears to be squandered by an incompetent management complacent about unprofitable holdings. Pickens likes to recount how Phillips Petroleum hung onto a losing resort complex in Florida simply to have a "perk" for its executives.

But whether takeover or the threat of takeover actually improves the management of these companies—and American industry as a whole—is another question.

In Washington this month, Pickens' foes, led by Andrew C. Sigler, chairman of Champion International and the head of the Business Roundtable's committee on mergers, have been lobbying for restrictions on "greenmail" and stricter enforcement of anti-trust.

Their main contention is that the raiders encourage corporate managers to neglect long-term investments for short-term profits. William C. Norris, president of Control Data, put it this way, "As companies strive to avoid becoming targets—to push share prices continually upward—management attention is riveted to short-term results."

While the pro-takeover forces argue that stock prices reflect investors' estimation of a company's long-term rather than simply short-term prospects, managers seem to have followed the pattern described by Norris. In the year between Pickens' bid for Gulf and its takeover by Chevron, Gulf slashed research and development expenditures. After Chevron took over, it abandoned Gulf's vaunted research institute in Pittsburgh. Phillips Petroleum's research expenditures have been cut 75 percent since the takeover battle began.

When the raiders have succeeded in taking over firms, they have sometimes squandered their assets in order to pay off the costs of the original acquisition. After Denver oilman Marvin Davis took over Twentieth Century Fox in 1981, he took $539 million out of it to pay his costs of purchasing it. One film executive told *Business Week*, "Davis has just raped this company."

The raiders' foes also argue that the merger wave has diverted billions of dollars into wasteful consumption that could have been used for productive investment. They have a weaker case here. Theoretically, the money expended in takeovers either remains as savings or accrues to individuals for consumption, where it can lead to new investment. It doesn't simply disappear.

But the current mergers are fueling a trend toward a parasitism in the American economy. Both the talent expended in and the reward accruing to investment bankers, lawyers and financiers is out of proportion to any socially redeemable value they are creating. For instance, Salomon Bros. and its bankers got $29.6 million, Morgan Stanley got $16.5 million and Merrill Lynch $18.9 million for their parts in the Gulf takeover battle.

Managerial revolution.

Pickens and the raiders believe they are the vanguard of a new revolution that is returning power to the stockholders, who ceded it to the managers over the last 50 years. Supply-side economist Arthur Laffer endorses this conclusion. The raiders, Laffer says, "are really breaking the vise of the managing class."

Corporate executives, on the other hand, express disbelief at Pickens' call for them to heed their stockholders. Champion's Sigler says, "The problem is deciding who the hell the corporation is responsible to. I can't ask my shareholders what they want. Champion is 75 percent owned by institutions, and my shareholders change so damn fast I don't even know who they are. We're owned by a bunch of index funds. Who votes for an index fund? Some damn mathematical formula votes your stock."

One of the raiders' chief academic defenders, Rochester's Michael C. Jensen, views the takeover battles as a struggle between "management teams...for the right to control—that is, to manage—corporate resources."

The truth lies more with Sigler and Jensen. Even Pickens, who owns only 2 percent of Mesa, is a manager rather than a classic owner. And the stockholders that he or any other raider claim to represent are largely composed of enormous institutions and very wealthy individuals by no means in need of populist counsel. But the takeover battle represents more than what Jensen calls a new development in the "managerial labor market."

Corporate managers *are* losing control of their operations, but not to specific stockholders or institutions. The rise of institutional investors has given greater power to the money managers who represent them. The money managers tend to heed short-term turns of the market. As *Forbes* put it, "Money managers, who control two-thirds of U.S. stock trading volume, tend to take the money and run."

At the same time, the decline in profitable investment outlets in mining and manufacturing has prompted corporate managers to neglect productive investments in favor of what Robert Reich has called "paper entrepreneurialism." Thus, as the money managers have emerged, their power has been further enhanced by the proclivities of the corporate manager.

But as Sigler correctly notes, a corporate manager who heeds the wishes of a money manager becomes prisoner to a formula rather than a green eyeshade. The money managers—like Pickens and the raiders—exercise power by establishing an environment in which the corporate managers operate. By themselves they are not terribly important.

The corporate managers' loss of power is measured in their loss of discretion over decision-making. The managers have less power to make long-term investments that might in the short run damage the company's balance sheet, but that in the long run will make it better able to compete in the world market.

Such a loss in discretion not only diminishes the managers' power, but also the ability of American industry to compete in a world market increasingly dominated by large Japanese firms that enjoy the luxury of long-range planning and close government regulation.

In this respect, the raiders and the money managers are speeding America's industrial decline. ■