

# **CWA's Long March to Organize American Airlines: Twenty Years and Many to Go**

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*Suddenly after rolling over on one giant airline merger after another, the Department of Justice caught Wall Street and the two courting companies, American Airlines based in Dallas and US Air based in Pittsburgh, by surprise, putting its foot down and saying in effect, "No, this one won't go!"*

Editorialists and pundits tried to catch up with a new, emerging reality, and maybe Justice might have even been right finally to say, enough is enough, before there were only three or four giant airlines (United, Delta, Southwest, and whatever this might have been) in the United States driving prices, routes, and in some cases the commercial future of entire communities.

They were not the only ones surprised. Sandy Rusher, organizing director of the Communications Workers of America (CWA) had been up and down, round and round, with American Airline reservation workers for sixteen years of struggle working with reservation agents committed to building a union. After a heartbreakingly close loss on an election conducted by the National Mediation Board (NMB) under the often archaic Railway Labor Act (RLA) in January, 2013, buoyed by the prospect of a potential comeback with an American/US Air merger, she and her team would be back to the drawing board once again.

But, wait, I'm getting ahead of myself, because this is a story of a group of workers committed to building a union and hunkering down for decades to do so, a union committed to organizing these workers perhaps past the rational cost benefit analysis driving modern union decisions, seemingly committed to the task no matter what it might take, and a company and an industry willing to do anything to prevent this. This is an organizing campaign with a clear beginning but no happy ending, yet a story of the best and worst, of the courage and predicament of the contemporary labor movement.

## **The Legacy of Rules Forged in Struggle**

CWA's American Airlines organizing drive starts in Dallas with the firing of a union activist after workers lost an election with the airline, and the US Air drive in Pittsburgh after CWA first lost an election among reservation agents there and then won in 1999 the second time around. But that's not really the beginning for either the American workers or the unions that might want to represent them. The independent election that American workers had lost earlier was not unusual either, because elections for the airlines are conducted not by the National Labor Relations Board, but by the National Mediation Board under the Railway Labor Act, and, simply put, things work differently.

The Railway Labor Act has a long legacy beginning as a grandchild of the great, violent Knights of Labor strikes of 1877 and the ruthlessness of the robber barons of that era. The 1877 strike produced the requirement for mediation, which was only implemented once in a spectacular failure after the 1894 Pullman strike, when the board issued a report after Eugene Debs and his "industrial" union of all railway workers were crushed. Even in losing, though, legislation emerged in 1898 making mediation and arbitration binding, resting modern unions on Debs' shoulders to this day.

When the railroads were the heartbeat of economic life in the United States, strikes could cripple the country, triggering the federal mobilization of the military with injunctions falling like rain on the workers and their unions. Out of this mayhem came Congressional legislation and the hopes and prayers of politicians that mediation might curb the avarice of companies and assuage the desperation of workers.

Predictably, none of this worked, although it laid the foundation for endless steps including notices and “cooling off” periods that are still required before the NMB will allow union actions. Railroads were so critical that during World War I they were nationalized, as many argued would have been appropriate for banks during the recent gazillion-dollar bailout. The handmaiden of federal control creating one central employer in the railroad industry was the creation of some worker guarantees in terms of wages and the eight-hour day, along with more mediation and arbitration of disputes. Union representation under a single, federal employer also meant that one union could represent everyone within a certain job classification, like all the engineers or all the porters, and intensified the historic “craft” alignment for unions that was common throughout the late nineteenth and early twentieth century. After WWI when the railroads were re-privatized, various stumble steps at legislation preserving some of these cobbled-together statutes and fumbling with others led eventually to severe impasses that the Railway Labor Act passed in 1926 was meant to correct.

Additional amendments in 1934 and then an amendment in 1936 placed the airline industry under the Railway Labor Act rather than the National Labor Relations Act (NLRA) passed in 1935, covering most other private employment.

Today this history dictates that airline workers cannot be organized place by place, which is commonly the default under “community of interest” within the NLRA, but must be organized company-wide throughout all of the country’s large and small airport nooks and crannies, creating significant organizing obstacles for anyone other than national unions. The legacy has also created total mismatches between employers and the fragmented craft unions within the railroad industry, crippling their bargaining ability and forcing strange hybrid mergers like the SEIU’s Fireman and Oilers. It also means that there is a guarantee of union shop membership and dues payments throughout these “national” units, rather than the patchwork quilt of state laws on dues collection in force now.

With national elections there is of course mail rather than manual balloting, which also usually favors unions. There is binding arbitration on contract agreements under the RLA rather than simply the more tenuous right to “good faith” bargaining under the NLRA. But first unions have to get to the table, and the mountain to climb, under the RLA, was not winning fifty percent plus one of the votes cast as required by the NLRA and of course all of the rest of the elections Americans know well in their communities, but fifty percent plus one of the eligible voters or workers in the proposed “craft” unit. Certainly not voting would equal a “no” vote under those rules, but as surely such rules were huge incentives for companies to monkey with the eligibility lists, which in the absence of an *Excelsior Underwear* Supreme Court decision giving full names and addresses under the NLRA, left unions guessing about the voting unit. Thankfully, the NMB during the Obama Administration has altered the voting rules to conform to the more common practice where the winner is based on a majority of those voting, but there is still no easy road for workers wanting a union to get a union.

## **The Workers’ Petition, and the Union Can’t Say No**

Back to our story with the CWA’s election for reservation agents at US Air, American Airlines agents thought they saw a way forward. They still had the remnants of an organization from their earlier failed effort and some veteran leaders from that defeat. One of the central articles of faith in organizing mythology is the notion that communities or workers “invite” organizers and organizations in to help them organize in a secular incarnation which has continuing popularity within the organizing trade. Miraculously the American Airlines agents gave flesh to this frequent fantasy, and mustered themselves together sufficiently to send a letter with several hundred signatures to the CWA asking them for support in building their union. Irresistibly, the CWA mounted a drive with American to get way more than the required thirty-five percent level of worker authorizations to file for an election among the 17,000 workers then. Unfortunately the union fell short, with forty-four percent support when the paper ballots were finally counted.

Reacting to the union election, American Airlines set out to change the way its reservations staff operated, moving more and more of its agents to home-based work, and by 2005 there were no new hires for central reservation offices. Initially, such work had to be within fifteen miles of a major reservation center like the one around the Dallas/Fort Worth airport, so that the agents could be pulled in for trainings or other requirements. Over the years, and especially more recently, that requirement has also disappeared, diffusing the bargaining unit members farther and farther from each other and correspondingly increasing the difficulty of building the union. These workers are not covered by the Fair Labor Standards Act (FLSA) under a special exemption, so not only did wages and benefits plummet with the surge in homebased work, but so did things like “voluntary” overtime. Not surprisingly, the support for the union also grew among the displaced reservation workers and the home-based workers, resentful of their lower wages and benefits.

CWA organizers were confident of a rerun victory after the 1998 defeat. An election was pending at US Air on a rerun ordered by the NMB and sustained by the federal court. If anything, the organizers felt the grounds were even better based on the company activity at American. In a surprise, though, the court of appeals reversed the decision on the US Air rerun while the American Airlines rerun was also pending, throwing a wrench into both of these organizing drives. The delays though, if anything, had simply made the US Air agents even more determined, and when the election was finally held, this time it was a runaway for the union.

Rather than get dragged into another lengthy court battle, in 2000 CWA elected to begin organizing to re-file for an election in 2001. By that time one third of the agents were home-based. The voting unit had swelled to a unit of 21000 workers with 4000 new agents, previously unionized, through the merger of TWA into American Airlines in 2001. But suddenly there was 9/11, throwing the entire airline industry into crisis and leading to massive layoffs and furloughs of workers. Under the rules of the NMB, furloughed workers were part of any possible eligibility list for a period of up to three years. One might fairly say that this election went down with the Twin Towers.

## Keeping the Drive Alive

And then it gets interesting!

In a labor movement that too often runs on its own leadership election cycles, narrow budget cycles, and membership growth and dues return on investment models, CWA doubled down in Sandy Rusher’s telling by deciding to support the Association of Passenger Service Agents as a membership organization, to continue to keep the organizing active and alive even in the wake of their most recent defeat. According to one of the long time leaders of the Association, Sandy Josephson, now retired but still an activist for the union at the SRO (Southern Reservation Office) of American at D/FW airport, the association was really formed initially as a reaction to the firing of Mike LoVuolo, a well networked agent, fired for union activity at D/FW when thirty-five percent of the reservations agents worked for the airline there. Failing to win rehire on his blatant firing, CWA had hired him as an organizer, where he continues to be a sparkplug.

The Association was largely a way to keep their core activists and organizers in motion and effective. Dues were collected by bank draft, similar to the system used by CWA in building its successful local of state employees in the 1980s and 1990s, the Texas State Employees Union (TSEU). The levels were modest at \$10 to \$20 per month, but these were full members, not associates, and therefore fully integrated into CWA as Local #6001. According to Rusher, the Association was never larger than about 400 members but played considerably past its weight given the record of earlier elections and the prospects for more in the future. In essence the Association was a permanent, 400 person organizing committee.

They kept busy. The Association engaged in direct campaigns and legislative efforts. For example in the wake of 9/11 as flight attendants and pilots gained the ability to eject from any flight any passengers they deemed disruptive on the plane, passenger agents acquired the same authority in dealing with problems on the counter, and the Association mobilized to put the rules into practice.

Importantly, the Association was able to use the in-house grievance system aggressively to overturn disciplinary actions and maintain an effective presence on the job in the reservation centers. The internal process involves two steps, as Josephson described, the “first where we always lose, and then the second.” In the second there is a hearing offering a form of mediation with either a former management worker or a dispute resolution procedure.

The Association would help the worker with all of the preparation, but was not allowed to participate in the formal hearing, though on terminations being overturned, as Josephson reported, “our record was better than 50%.” Keeping the structure alive a decade is an organizing challenge, but the union strongholds in Dallas and Miami were able to keep a core activated. It also is certainly both shrewd on CWA’s part and accurate to say that in highly competitive organizing environment of the airline industry, keeping the organizing drive evergreen through the Association as a CWA local, gave CWA organizing protection through Article XX, the AFL-CIO’s anti-raiding procedure.

The consolidation of the industry through mergers and the impact of the recession led to predictions inside and outside of American Airlines that they were contemplating filing for bankruptcy. CWA and its Association were ready and beginning in the summer of 2011 began ramping up a card-signing campaign to collect authorizations for an election once again with the company. Prospects were excellent this time around with the new NMB rule allowing certification with fifty percent plus one of those that voted, rather than the old structure, but as always in this long march, nothing would be won easily.

Though American Airlines was reeling, the company could also sense that the momentum had shifted to the union now, and despite their protestations that the company was secure and not on the edge of bankruptcy, there was blood in the water. The company’s response was predictable: call the lawyers to put boulders on the road in front of the union. Their first strategy was to be a “refusenik.” They refused to follow the usual procedure of turning over a complete list of mailing labels to the NMB in order to conduct the election, which CWA finally overcame by submitting its own mailing labels. Then the company offered a highly padded list of 9800 workers in hopes that the union would fail on the showing of interest, but CWA was able to disqualify 1200 workers from the list as ineligible to vote, and prevailed against the company’s legal challenge of the list. Rusher conceded that that was “a good thing,” since the union had filed quickly on the momentum closer to the thirty-five percent minimum showing.

Not that CWA was guaranteed another chance at the ballot yet. The Republicans in Congress, reacting to what they thought was a “gimme” to labor on the NMB’s change in the voting rule for certification, passed a first-of-its-kind bill on various rules under the RLA, including a major change that would soon force unions to verify support from fifty percent plus one within the potential bargaining unit in order to have an election scheduled. CWA had filed under the old rule before the new changes were implemented. American’s reaction was to sue not for peace, but for delay, and argue that the union should have petitioned with a majority. When the dust finally cleared the court decision confirmed CWA’s argument, and finally a voting period was established, a year after the petition had been filed, for five weeks between early December and mid-January 2013. Fighting to the last breath, the company’s appeal to the Supreme Court was rejected, and the election allowed to finally proceed.

The election count made it clear that some of the company’s management tricks were more effective than their legal strategy. Throughout the year before the election American Airlines accelerated outsourcing and more of the unit was forced to go home-based, but to the union’s chagrin, not within fifteen miles but everywhere.

More critically, American offered a buyout package as they pushed people home-based which made it very attractive for even senior workers to choose the devil and leave the company, rather than the deep blue sea of staying. When the votes were finally counted the union bid had fallen short by fewer than 150 votes, and in fact a turnaround of seventy-five workers would have sealed a razor thin margin of victory. In the final tale of the tape in this long battle, the eligibility list had shrunk by more than 2000 workers to 7792, and the union polled forty-nine percent with 2902 votes for representation by CWA and 3042 against. Almost like

clockwork a little more than a month later in February 2013, American Airlines announces a merger with US Airways, shuffling the deck again.

Ironically, American began hiring in anticipation of the merger and a waning of the Great Recession as business began to come back to the airways. And, more significantly, for a change this development pushed the company closer to the union. US Airways in the serpentine pattern of mergers and bankruptcies had a reservations unit with 6500 members of a joint representation unit between CWA and the Teamsters. The earlier merger of US Air and American West out of Phoenix, formerly represented by the IBT, had led to one of those rare situations where two unions came together to represent jointly the newly merged unit of workers, rather than squaring off bitterly against each other in the kind of bitter internecine circular firing squads so common in the family of labor. The election outcome for a joint IBT/CWA representation system at a merged airline would have finally settled the issue of union representation after twenty years since math had now broken decidedly in favor of the unions, so not surprisingly they were enthusiastic advocates of the merger politically.

But then we are back to the Department of Justice's veto of the merger on anti-trust grounds. Perhaps the only thing guaranteed now is yet another big payday for the American Airlines legal team as they try to salvage the merger against all odds. The transition agreements the unions had negotiated with US Airways had allowed them to recover some of what they had lost earlier under the constant assault of concession bargaining during the recession, but those were no longer worth the paper they were printed on.

The other thing that seems guaranteed to the acute disappointment of the industry is that CWA will continue the long march to organize American Airlines regardless of how many years lie before them and seemingly regardless of any calculation of the costs involved. Organizers note that CWA President Larry Cohen has taken this organizing drive very personally and is totally committed. Rusher commented that it was "unbelievable" the amount of time that Cohen had devoted to the organizing drive right down to meeting with the committees at every stage of the drive.

## What's Next?

As Sandy Josephson says, "To me it's always been simple: are you better off with a contract or not?" Activists are encouraged that even hard nos or as they call them, "4s" are asking along with many others, "Where are the cards?" The union is able to file for another election on January 15, 2014, and the activists are preparing in earnest for another round using what they call a "10:1" program where each activist works with a list of ten or fifteen co-workers to target for signing, and then persuades each one of them to sign another ten or fifteen and so on until they have touched the entire unit.

This time there are two new obstacles. Of course one is the requirement for a fifty percent plus one showing of interest, but the other is the workers' uncertainty on what will happen with the Justice Department. This time around the organizing committee will be passing two cards, one for a "stand alone" election with just CWA, if the merger has not gone back on track, and the other for IBT/CWA, if the merger is revived between US Airways and American.

As the workers get ready to begin the third decade of their struggle to organize American Airlines, it seems only a matter of time before they win, though as Sandy Josephson says, they are only "cautiously optimistic." There's an organizing lesson here, long taught and often forgotten, that to organize big units of workers takes more than money, it takes commitment, and it takes persistence by unions, and it takes workers who will keep on marching. American Airlines will learn that from the CWA eventually, and the labor movement needs to learn that immediately.

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