The Railway Labor Act of 1926 and Modern-Day Airline Labor Strife: Progress Toward Labor Peace Begins With Overruling *Williams v. Jacksonville Terminal Co.*†

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I. INTRODUCTION

Events at American Airlines in February 1997 demonstrate the power of status quo provisions in the Railway Labor Act of 1926[1] (RLA). Four minutes after the Allied Pilots Union went on strike, President Clinton initiated a Presidential Emergency Board, triggering a sixty-day cooling-off period, and the strike was over.[2]

Regardless of the merits of American Airlines' union's or management's claims in the controversy, a strike would have been disruptive and harmful to the national economy.[3] As a separate example, during the four-day American Airlines Flight Attendant strike in November 1993, thousands of Thanksgiving holiday travelers were stranded, and cities dependent on American's business, such as Miami, suffered substantial economic loss.[4]

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† 315 U.S. 386 (1942).

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1. The Railway Labor Act of 1926, ch. 347, 44 Stat. 577 (current version at 45 U.S.C. §§ 151-188 (1994)).

2. *See* James Bennet, *American Airlines Pilots Strike But Clinton Orders Them Back*, N.Y. TIMES, February 15, 1997, at 1; Donna Rosato, *Pilots OK Contract with American*, USA TODAY, May 6, 1997, at B1.

3. *See* Adam Bryant, *A Showdown Forced by the Power of a Union*, N.Y. TIMES, Feb. 15, 1997, at 1.

4. *See* Laura Castenada et al., *Customers Watch Planes Leave Empty*, DALLAS MORNING NEWS, Nov. 19, 1993, at 1 (at Miami International, American Airlines accounts for forty percent of all passengers); Dirk Johnson, *American Airlines' Pilots Decide To Fly Empty Jets to Back Strike*, N.Y. TIMES, Nov. 20, 1993, at 1 (the flight attendant strike crippled travel throughout the nation); Edwin McDowell, *Air Travelers May Face a Void as Thanksgiving Nears Without American*, N.Y. TIMES, Nov. 20, 1993, at 6 (American Airlines accounts for almost twenty percent of domestic air travel).

The avoidance of labor strife and the resulting harmful effects on the national economy are precisely the reason Congress implemented the status quo provisions of the RLA.[5] During the running of any status quo restriction as shown by the cooling-off period example above, labor is not allowed to strike, and management is not allowed to significantly change working conditions.[6] These restrictions are designed to divert both labor and management from counterproductive activities and refocus their attention back toward constructive bargaining efforts.[7]

To facilitate the RLA dispute resolution process, Congress designed the RLA status quo provisions to be equally available to both labor and management.[8] However, after the *Williams* Court misinterpreted the Congressional intent behind a 1934 RLA amendment, new labor unions have been routinely denied RLA status quo protections during critical portions of the negotiation process.[9] As used in this Comment, new unions are those which the National Mediation Board (NMB) has certified to represent an employee group, but which have not yet negotiated the first labor contract with an employer. As a result of the *Williams* ruling, new unions have no RLA status quo remedy to counteract unilateral, employer-instituted changes in working conditions while the first contract is under negotiation.[10]

The Court's restrictive interpretation of the RLA continues to cause unnecessary labor strife between unions and management, thereby frustrating the intent of Congress. While negotiations are ongoing concerning the first labor contract between a union and an employer, the imbalance in RLA status quo application can only lead to more labor strife. This strife ultimately will lead to interruption and inconvenience in the transportation industry during a protracted labor strike.[11] The labor unrest resulting from the negotiating imbalance is exactly what Congress sought to avoid when legislating the RLA.

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5. The Railway Labor Act of 1926, *amended by* Act of June 21, 1934, ch. 691, 48 Stat. 1185, 1186 (1934) (current version at 45 U.S.C. § 151a (1994)) (reasons set out in preamble of this section).

6. *See generally* Railway Labor Act of 1926, §§ 2, 5, 6, and 10 (current version at 45 U.S.C. §§ 152, 155, 156, 160 (1994)).

7. *See* Detroit & Toledo Shore Line R.R. v. United Transp. Union, 396 U.S. 142, 150 (1969) (showing how the status quo requirements are central to the RLA's design.).

8. *See id.*

9. *Williams*, 315 U.S. at 402-03.

10. *See id.*

11. *See* Adam Bryant, *End to Strike Is Only a Lull in Industrywide Upheaval, Airline Experts Say*, N.Y. TIMES, Nov. 23, 1993, at C23.

Consequently, this Comment argues that *Williams* either should be overruled, or should be appropriately limited to the fact-specific setting under which it was decided.

To develop this thesis, Part II of this Comment will discuss both the history of labor unrest which drove Congress to pass the RLA and the design features of the RLA legislation which facilitate an atmosphere of cooperative bargaining through which the RLA dispute resolution system operates. Part III will discuss the first impression *Williams* case, wherein the Supreme Court gave an overly restrictive interpretation to the RLA, and will also discuss the post-*Williams* treatment of new unions under the RLA. Part IV will discuss a recent Second Circuit case, *Aircraft Mechanics Fraternal Ass'n v. Atlantic Coast Airlines, Inc.*,[12] in order to illustrate how continued adherence to *Williams'* restrictive interpretation of the RLA defeats the intent of Congress. Part V will present proposals to rectify the unfortunate implications for labor peace resulting from the *Williams* Court's misinterpretation of the RLA. The Comment concludes by reinforcing the fact that the RLA was intended to prevent labor strife, and continued adherence to the *Williams* decision will only lead to increased labor strife.

II. BACKGROUND

A. Labor Unrest

Violent labor conflicts were especially notable in the history of the railroad industry during the late nineteenth century and continuing through the beginning of the twentieth century. Clashes of near-revolutionary ferver pitted workers, farmers, and even urban merchants against the railroads' monopolistic power.[13] For example, during the "Great Upheaval of 1877" the townspeople of Pittsburgh set fire to a roundhouse and destroyed 104 locomotives, 2,152 cars, and 79 buildings.[14]

The Debs' Rebellion is another example of violent railroad labor unrest.[15] The incident began with railroad union workers boycotting Pullman cars. Railroad management countered the union boycott by loading United States mail onto Pullman cars and then by charging the striking workers with illegal interference with the mail. The Illinois

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12. 55 F.3d 90 (2nd Cir. 1995).

13. *See* BERNARD SCHWARTZ, STATUTORY HISTORY OF THE UNITED STATES: LABOR ORGANIZATION 12 (Robert F. Koretz ed., 1970).

14. *See id.*

15. *See id.* at 3.

governor responded by activating the state militia. The conflict escalated into violence, reaching its peak on July 7, 1894, when soldiers opened fire on a crowd and killed 30 people.[16]

World War I forced government intervention to quell this kind of railroad labor unrest which continued into the beginning of the twentieth century.[17] During the war, the railroad industry continued to experience labor shortages and unrest.[18] The government response to the wartime transportation crisis was to seize operational control over the railroads.[19] However, the transportation crisis during World War I also caused the government to recognize that the transportation industry was vital to national security. This recognition ultimately resulted in the first significant changes to labor legislation.[20]

The legislative changes were implemented after World War I ended and during the period when Congress transferred the railroads back into private hands.[21] As part of the transfer process, an unprecedented series of conferences between railway executives and union officials resulted in a new cooperative approach to dispute resolution specifically tailored for railway labor legislation.[22] Based on input from these conferences, a bill was drafted and submitted to Congress. It was subsequently passed without significant changes by both houses on May 20, 1926, and became known as the Railway Labor Act of 1926.[23] Key to the success of the new RLA approach were status quo provisions promoting stability within the transportation industry.

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16. *See id.* at 3.
17. *See id.* at 14.
18. *See id.*
19. *See id.*
20. *See id.* at 15.
21. *See id.* at 14.
22. *See Detroit & Toledo Shore Line R.R.*, 396 U.S. at 148-49 ("To this end, the Act established rather elaborate machinery for negotiation, mediation, voluntary arbitration, and conciliation."); *see also* Texas & N.O. Ry. v. Brotherhood of Ry. & S.S. Clerks, 281 U.S. 548, 563-64 (1930); SCHWARTZ, *supra* note 13, at 15.
23. SCHWARTZ *supra* note 13, at 15; *Texas & N.O. Ry.*, 281 U.S. at 563-64. In addition, Congress incorporated the airline industry into the RLA in a 1936 amendment. *See* Railway Labor Act of 1926, *amended by* Act of Apr. 10, 1936, ch. 166, 49 Stat. 1189 (current version at 45 U.S.C. § 180 (1994)).

B. How the Status Quo Provisions Facilitate an Atmosphere of Cooperative Bargaining Through the RLA Dispute Resolution System

As an overview, the status quo provisions provide that collective bargaining agreements never expire, but are only amended as the need arises.[24] They also mandate that the status quo be maintained for an almost unlimited amount of time during subsequent contract negotiations.[25] Further, the provisions facilitate bargaining by restricting both parties from resorting to counter-productive measures during negotiations.[26]

The status quo provisions are not easily discernible, however, because they are scattered among RLA sections 5, 6, and 10.[27] In addition, they are not easy to follow because the numbering of the sections does not necessarily reflect the order in which the sections are applied.[28] The best way to demonstrate how the RLA status quo provisions fit together is to walk through the normal flow of a dispute resolved under the RLA dispute resolution process.

Initially, the NMB certifies a union for which a recognized employee group has voted.[29] After the union is formed, the union and the company are required to meet with each other and negotiate in good faith to form an initial collective bargaining agreement.[30] Once in place, the initial collective bargaining agreement formed under the RLA never expires, thus providing stability.[31]

All modifications to the permanent collective bargaining agreement are then negotiated under two separate processes depending upon whether a problem area is classified as a minor or major dispute.[32]

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24. *See* Seaboard World Airlines v. Transport Workers Union, 443 F.2d 437 (2nd. Cir. 1971).

25. *See* Burlington Northern R.R. Co. v. Brotherhood of Maintenance of Way Employees, 481 U.S. 429, 444 (1987).

26. *See* Local 808, Bldg. Maintenance Serv. & Ry. Workers v. National Mediation Bd., 888 F.2d 1428, 1438 (D.C. Cir. 1989).

27. *See* Railway Labor Act of 1926, §§ 5, 6, and 10 (current version at 45 U.S.C. §§ 155, 156, 160 (1994)).

28. *See id.*

29. *See* Railway Labor Act of 1926, § 2, Third, Fourth, and Fifth (current version at 45 U.S.C. § 152, Third, Fourth, and Fifth (1994)).

30. *See* Railway Labor Act of 1926, § 2, Second and Ninth (current version at 45 U.S.C. § 152, Second and Ninth (1994)); SCHWARTZ, *supra* note 13, at 17; *see also* Virginia Ry. v. System Fed'n No. 40, 300 U.S. 515, 548 (1937) (stating that the RLA requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, and to make reasonable effort to work out differences).

31. *See* Railway Labor Act of 1926, § 2, Seventh (current version at 45 U.S.C. § 152, Seventh (1994)).

32. *See* Elegin, J. & E.R. Co. v. Burley, 325 U.S. 711, 723-25 (1945).

Minor disputes arise out of the interpretation or application of a collective bargaining agreement and are settled through arbitration by the NMB.[33] Because the ruling of the arbitrator is binding, arbitration alleviates the necessity to resort to status quo provisions.[34]

In contrast, the major dispute resolution mechanism entails a cooperative negotiation process between labor and management and, therefore, necessitates the use of status quo provisions to facilitate a cooperative bargaining atmosphere. The cooperative negotiation atmosphere is necessary for labor peace because major disputes involve changes to significant areas of the permanent agreement such as rates of pay, rules, and working conditions.[35] To preserve cooperation, either party desiring to modify rates of pay, rules, or working conditions must give advance written notice of the intended changes to the other party. This notice, labeled by the RLA section from which it is derived, is termed a "Section 6" notice.[36]

The RLA major dispute process then requires representatives from both parties to meet and bargain in good faith.[37] Since the NMB is not a party to the Section 6 negotiations, the parties are required to maintain the status quo as a protection to the bargaining process. Changes to the status quo are prohibited throughout the

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33. *See* Railway Labor Act of 1926, § 2, Sixth (current version at 45 U.S.C. § 152, Sixth (1994)); *see also Detroit & Toledo Shore Line R.R.*, 396 U.S. at 143.

34. *See* Railway Labor Act of 1926, § 3(i)-(l) (current version at 45 U.S.C. § 153(i)-(l) (1994)).

35. *See* Railway Labor Act of 1926, § 2, Seventh (current version at 45 U.S.C. § 152, Seventh (1994)) ("No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act."); *see also Detroit & Toledo Shore Line R.R.*, 396 U.S. at 148 ("The problem of strikes was considered to be particularly acute in the area of 'major disputes,' those disputes involving the *formation of collective agreements* and efforts to change them.") (emphasis added).

36. *See* Railway Labor Act of 1926, § 6 (current version at 45 U.S.C. § 156 (1994)). Section 6 provides in relevant part:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions . . . . In every case where such notice of intended change has been given, or . . . the services of the Mediation Board have been requested by either party . . . rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Id.

37. *See* Railway Labor Act of 1926, § 2, First (current version at 45 U.S.C. § 152, First (1994)).

completion of all negotiations, and negotiations continue without a time limit.[38]

If the parties reach an impasse, either party may further extend the status quo by requesting federal mediation under RLA Section 5.[39] Federal mediation can last several years.[40] If mediation proves unsuccessful,[41] the President of the United States may declare a Presidential Emergency Board (PEB) under RLA Section 10, during which time the status quo will be maintained for up to an additional sixty days.[42] As an example of the lengthy design of this process, the American Airlines negotiation participants exchanged Section 6 notices

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38. *See* Railway Labor Act of 1926, §§ 6, 5, First (current version at 45 U.S.C. §§ 156, 155, First (1994)).

39. *See* Railway Labor Act of 1926, § 5, First (current version at 45 U.S.C. § 155, First (1994)). This section reads in pertinent part:

> The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following . . . : (a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference. . . . The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

Id.

40. *See Local 808, Bldg. Maintenance Serv. & Ry. Workers*, 888 F.2d at 1438 (stating that the NMB's power to postpone the party's release from mediation constitutes a tool for compelling a carrier to engage in reasonable efforts to reach an agreement); *see also* International Ass'n of Machinists v. National Mediation Bd., 425 F.2d 527, 537 (D.C. Cir. 1970) (finding that the NMB's power to deny release from mediation for years at a time is virtually immune from judicial review).

41. *See* Railway Labor Act of 1926, § 5, First (current version at 45 U.S.C. § 155, First (1994)). This section reads as follows:

> If mediation is unsuccessful and arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Id.

42. *See* Railway Labor Act of 1926, § 10 (current version at 45 U.S.C. § 160 (1994)). This section provides:

> If a dispute between a carrier and its employees . . . in the judgment of the Mediation Board, threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute . . . . Such board shall . . . make a report thereon to the President within thirty days from the date of its creation . . . . After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

Id.

during the summer of 1994. The status quo period continued until a contract was ratified on May 5, 1997, almost three years later.[43]

The Supreme Court has stated that the status quo requirements are "purposely long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute."[44] Maintaining the status quo during negotiating periods is essential for labor peace, which in turn promotes national economic interests.

> The Act's status quo requirement is central to its design . . . . [S]ince disputes usually arise when one party wants to change the status quo without undue delay, the power which the Act gives the other party to preserve the status quo for a prolonged period will frequently make it worthwhile for the moving party to compromise with the interests of the other side and thus reach agreement without interruption to commerce.[45]

The importance of the parties' ability to invoke the status quo provisions equally cannot be overstated. Congress' major purpose for developing and implementing the RLA was to prevent strikes and to enact a mechanism which would allow the nation's transportation industry to amicably settle labor issues.[46] It is interesting to note that during the 1997 pilot strike, American Airlines management successfully lobbied the President to invoke RLA status quo restrictions through implementation of a PEB.[47] In contrast, during the 1993 flight attendant strike, they fought against a similar request for a PEB by the flight attendant union.[48] American Airlines management's actions demonstrate that parties cannot have it both ways. In order for the RLA status quo provisions to have the intended meaning and

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43. Rosato, *supra* note 2, at B1.

44. *See* Brotherhood of Ry. & S.S. Clerks v. Florida E.C. Ry., 384 U.S. 238, 246 (1966); *see also Detroit & Toledo Shore Line R.R.*, 396 U.S. at 149 ("A final and crucial aspect of the Act was the power given to the parties and to representatives of the public to make the exhaustion of the Act's remedies an almost interminable process.").

45. *Detroit & Toledo Shore Line R.R.*, 396 U.S. at 150.

46. *See* Railway Labor Act of 1926, § 2 (current version at 45 U.S.C. § 151a (1994)). The purposes of the RLA, in pertinent part, are set out in the preamble of RLA Section 2: "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein . . . [and]; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions." *Id. See also, Texan & N.O. Ry.*, 281 U.S. at 565 ("[T]he major purpose of Congress in passing the Railway Labor Act was 'to provide a machinery to prevent strikes.'"); *Virginian Ry.*, 300 U.S. at 547 ("[The RLA's] major objective is the avoidance of industrial strife, by conference between the authorized representatives of employer and employee.").

47. *See* Bennet, *supra* note 2, at 1.

48. *See* Adam Bryant, *American Rejects Request for Mediation*, N.Y. TIMES, Nov. 22, 1993, at A7.

effect, parties must have equal ability to invoke the status quo in order to foster the proper cooperative bargaining atmosphere. Unfortunately, as the following discussion will show, the holding in *Williams v. Jacksonville Terminal Co.* seriously frustrates the process of peaceful dispute resolution.

III. *WILLIAMS'* IMPACT ON RLA APPLICATION

A. *Williams v. Jacksonville Terminal Co.*[49]

Conflicting with the Congressional intent behind the RLA, the *Williams* decision stands as an obstacle to the process of peaceful dispute resolution. By denying RLA status quo protections to new labor unions during the negotiation period for the initial labor contract, the *Williams* decision detracts from the RLA's ability to provide stability in the transportation industry.

It is ironic that *Williams* became a fundamental case interpreting the RLA because in *Williams* the RLA was only a secondary argument.[50] The main issue concerned the correct application of the Fair Labor Standards Act of 1938 (FLSA), which set a minimum wage for employees in industries engaged in commerce.[51]

The facts of *Williams* are straightforward. Two consolidated controversies before the Court involved railroad "red caps"[52] and the companies for which they worked.[53] Before enactment of the FLSA, the red caps worked only for tips. After implementation of the FLSA, each red cap was guaranteed wages at minimum rates specified in the act.[54] The red caps believed that the FLSA minimum wage guarantee should have been calculated without an offset for the tips that they received.[55]

As a practical matter, it is hard to envision a Court sympathetic to the red caps' FLSA claims. A ruling in favor of the red caps would have resulted in a financial windfall because the red caps would have received not only tips, their sole compensation before the FLSA, but

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49. 315 U.S. 386 (1942).

50. The Court stated that certiorari was granted "[b]ecause of the importance of the question whether the tips could be treated as payment of the statutory wage. . . ." *Williams*, 315 U.S. at 390.

51. *See* The Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (1994).

52. Red caps are comparable to the modern day airline skycaps, who transport luggage for passengers.

53. *See Williams*, 315 U.S. at 388.

54. *See id.* at 390-91.

55. *See id.* at 390.

also would have received the new minimum wage mandated by the FLSA.

Emotions may have played a part in the red caps' loss on their FLSA argument. The case was argued one month after the Japanese attack on Pearl Harbor. In the wartime era where necessity and self-sacrifice were the norm, the red caps' quest for a monetary windfall might have seemed greedy. The Court dismissed the red caps' FLSA argument after deciding that the rules of contract, rather than the FLSA, determine whether tips are included as part of wages.[56]

The red caps' secondary RLA argument did not fare much better and resulted in a RLA precedent that continues to cause unnecessary labor strife. The red caps claimed that RLA Section 6 status quo provisions precluded altering the previous payment method while negotiations were under way.[57] Prior to enactment of the FLSA, tips were not calculated into any wage computation. Therefore, the red caps claimed that while RLA negotiations were under way, RLA status quo restrictions prevented the company from considering tips when calculating the FLSA minimum wage.[58]

There were two conceptual flaws in the red caps' RLA argument. First, the RLA status quo provisions maintain only those conditions existing at the time an RLA Section 6 notice is served.[59] At the time of the Section 6 notice, the red caps were receiving only tips as wages. Therefore, even if the red caps were successful with their status quo argument, the Court's injunction would have been limited to ordering that the red caps continue to receive only tips as wages. This result is markedly different from the red caps' actual argument that the status quo mandated a new method under which FLSA minimum wage payments were calculated.

The second and most important conceptual flaw was that the RLA status quo relief sought by the red caps did not promote Congressional policy. RLA status quo provisions incorporate injunctive relief remedies. These remedies are designed to promote negotiations by stabilizing existing conditions.[60] In both of the factual situations discussed in *Williams*, the unions did not file the lawsuits to preserve the status quo, but rather to recover monetary damages. In fact, both unions delayed filing their lawsuits until after negotiations

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56. *See id.* at 407-08 (ruling that the FLSA neither prohibited nor required the inclusion of tips within wages).

57. *See id.* at 389-91.

58. *See id.* at 398.

59. *See* Railway Labor Act of 1926, § 6 (current version at 45 U.S.C. § 156 (1994)).

60. *See Detroit & Toledo Shoreline R.R.*, 396 U.S. at 148-150.

were concluded and the initial labor contracts were ratified.[61] In this contractual setting, where the unions were seeking monetary damages, the policies of the RLA to "facilitate collective bargaining" and "avoid interruption to carrier operations" could not be directly furthered by retroactive implementation of the status quo.[62] The Court, therefore, had no basis in policy on which to predicate support of the unions' arguments under the RLA.

Unfortunately, however, the Court failed to directly address the substantive flaws in the red caps' arguments and ruled instead that the RLA status quo provisions were not available to the unions on procedural grounds. Central to its rationale, the Court relied on two words added to the RLA in a 1934 amendment. Specifically, the Court found decisive the fact that Congress added the words "in agreements" to the relevant Section 6 status quo language.[63] Before the amendment, status quo protections were implemented after "written notice of an intended change affecting rates of pay, rules, or working conditions . . . ."[64] After the 1934 amendment, the RLA Section 6 language reads as it does today. RLA status quo protections are implemented after either party gives "notice of an intended change *in agreements* affecting rates of pay, rules, or working conditions. . . ."[65] (emphasis added).

Because there is no legislative history supporting this small word change within an otherwise comprehensive amendment, this specific change was probably meant by Congress as no more than a housekeeping edit. However, the *Williams* Court construed the rewording as a major shift in legislative intent. The Court stated that the addition of the "in agreements" language pointed squarely to limiting the bargaining provisions of the RLA to existing collective bargaining agreements.[66]

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61. *See Williams*, 315 U.S. at 390-93, 396 ("[A] working agreement . . . was signed . . . and the following day this action was commenced.").

62. Railway Labor Act of 1926, § 2 (current version at 45 U.S.C. 151a (1994)).

63. *See Williams*, 315 U.S. at 400; Railway Labor Act of 1926, § 6, 44 Stat. at 582 (location of the status quo provisions prior to 1934 amendment) (current version at 45 U.S.C. § 156 (1994)).

64. *See* Railway Labor Act of 1926, § 6, 44 Stat. at 582 (this notice is the Section 6 notice described *supra* in note 36) (current version at 45 U.S.C. § 156 (1994)).

65. *See* Railway Labor Act of 1926, § 6, 48 Stat. at 1197 (location of the status quo provisions after the 1934 amendment) (current version at 45 U.S.C. § 156 (1994)).

66. *See Williams*, 315 U.S. at 399-400. As a further rationale for limiting Section 6 status quo provisions to collective bargaining agreements, the Court stated: "Arrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose." *Id.* at 403.

The Court then applied this analysis to the facts in *Williams* to procedurally deny both new unions RLA status quo protections. In the first of the two consolidated cases,[67] labor and management had not negotiated an initial working agreement before the claim arose. In fact, the employees began working under the new pay rules instituted by the company before the NMB certified the union. On these facts, the Court found that the employees had impliedly accepted the new pay rules in exchange for the consideration of their continued at-will employment.[68] The Court, therefore, resolved the first situation as a matter of implied contract law and did not need to reach the red caps' RLA argument.[69]

The Court held along similar lines in the second consolidated case even though the facts were substantially different.[70] In this instance, the NMB certified the union before the employer instituted the new pay rules. Additionally, the employer ignored union requests to negotiate the accounting changes.[71] The union claimed that the company violated the good faith bargaining requirements of the RLA. However, after noting that the union was seeking monetary damages and that the union and carrier eventually concluded a working agreement, the Court dismissed the red caps' argument with the following statement:

> Because the carrier was [by RLA Section 2, First] placed under the duty to exert every effort to make collective agreements, it does not

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67. *See id.* at 391-93.

68. *See id.* at 398. The Court actually decided the issue under freedom of contract theory, and the RLA Section 6 status quo discussion may be dicta:

> With the effective date of the [FLSA] the employers became bound to pay a minimum wage to their employees, the red caps. Accordingly the latter were notified that future earnings from tips must be accounted for and considered as wages. Although continuously protesting the authority of the railroads to take over the tips, the red caps remained at work subject to the requirement . . . . Although the new plan was not satisfactory to the red caps, the notice transferred to the railroads' credit so much of the tips as it affected. *By continuing to work, a new contract was created.*

Id. (emphasis added).

69. *See id.*

70. *See id.* at 394-96.

71. The union sought to declare the agreement invalid under RLA Section 2 up to the time that the union and employer eventually came to an agreement on the pay terms. *See Williams*, 315 U.S. at 402. RLA Section 2, First, requires employers "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions . . . in order to *avoid any interruption to commerce or to the operation of any carrier* . . . ." Railway Labor Act of 1926, § 2, First (current version at 45 U.S.C. § 152, First (1994)) (emphasis added). The timing of the union lawsuit, which arose after the agreement was reached and was only for money damages, would not have any effect facilitating the purposes of the act since the controversy at that point was over. *See Williams*, 315 U.S. at 402.

> follow that, pending those negotiations, where no collective bargaining agreements are or have been in effect, the carrier cannot exercise its authority to arrange its business relations with its employees in the manner shown in this record.[72]

After *Williams*, the RLA status quo protections are only applicable to negotiations modifying existing collective bargaining agreements. The *Williams* decision effectively precludes new unions, which by definition do not yet have an existing working agreement, from invoking RLA status quo protections while negotiating the initial labor contract. Where no collective bargaining agreement is in effect and where no negotiations have taken place, the "freedom of individual contract" legal theory applies, even where the NMB has certified a union to represent employees as a recognized group.[73]

B. Soundness of the Williams *Reasoning*

Given the magnitude of the RLA holding, the Court's justification was rather thin. The *Williams* Court's reasoning rested solely on the literal language of the 1934 RLA amendment,[74] on two cases cited in a footnote,[75] and on reasoning by analogy to the RLA's good faith provisions.[76]

Referencing the 1934 amendment, the *Williams* Court found it significant that the legislature amended Section 6 by adding the term "in agreements."[77] The Court held the added language signaled that the legislature altered RLA Section 6 so that only "agreements reached after collective bargaining are covered."[78] The addition of the phrase "in agreements," however, appears in the amendment without additional comment that supports a change in legislative intent.[79]

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72. *Williams*, 315 U.S. at 402.

73. *See id.*

74. *See id.* at 400.

75. *See id.* at 400 n.12.

76. *See id.* at 402-03.

77. *See Williams*, 315 U.S. at 400 ("The crucial [Section] 6 is phrased so as to leave no doubt that only agreements reached after collective bargaining were covered . . . . [the 1934 RLA amendment] adding 'in agreements' . . . point[s] squarely to limiting the bargaining provisions of the Railway Labor Act to collective action.").

78. *Williams*, 315 U.S. at 400. *See also* Railway Labor Act of 1926, § 6, (current version at 45 U.S.C. § 156 (1994)) ("[Parties] shall give at least thirty day's written notice of an intended change in *agreements* affecting rates of pay, rules, or working conditions . . ."). (emphasis added).

79. *See* Railway Labor Act of 1926, § 6, 44 Stat. at 582 (1926); Railway Labor Act of 1926, *amended by* Act of June 21, 1934, ch. 691, 48 Stat. 1197 (1934).

The *Williams* Court also footnoted two cases as analogous to the consolidated cases before it without commenting on their significance.[80] These footnoted cases, however, do not lend support to the Court's holding. The cited cases deal with representation issues whose subject matter is not covered in RLA Section 6.[81] The second of the two cited cases was not an RLA issue, but rather dealt with a National Labor Relations Act (NLRA) controversy.[82] Although cases construing the NLRA may be helpful in construing similar provisions of the RLA,[83] the NLRA case citation did not support the *Williams* holding in this instance because the NLRA does not contain status quo provisions.[84] An issue of first impression should compel more extensive analysis than a mere citation to the language of the amendment coupled with footnoting two cases of questionable value.

Finally, the *Williams* Court presented the following reasoning by analogy to the RLA's good faith provisions:

> The carrier's affirmative duty to exert every effort to make collective agreements—that is, to bargain in good faith—does not require that it refrain from exercising "its authority to arrange its business relations with its employees" where no collective bargaining agreement is in effect.[85]

But the *Williams* Court's reasoning missed the intent behind Congressional RLA policy:

> The Railway Labor Act was passed in 1926 to encourage collective bargaining by railroads and their employees in order *to prevent, if possible, wasteful strikes and interruptions of interstate commerce.* The

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80. *See Williams*, 315 U.S. at 400 n.12: ("Cf. Virginian Ry. v. System Federation, 300 U.S. 515, 548-49 [(1937)]; National Labor Relations Bd. v. Jones & Laughlin [Steel Corp.], 301 U.S. 1, 44-45 [(1937)].").

81. Ironically, if anything, the two cases cited by the *Williams* Court show that injunctive relief is proper even when a collective bargaining agreement in not in place between the parties and no collective bargaining has taken place. *See Virginian Ry.*, 300 U.S. at 548 (granting an injunction requiring the railroad to "meet and confer" with a newly certified union based on RLA Section 2 language, and did not even reach the "in agreements" issue on Section 6); *Jones & Laughlin*, 301 U.S. at 43-44 (The Court decided an NLRA labor representation issue in favor of the union: "[The] right [of a business] to conduct its business in an orderly manner without being subjected to arbitrary restraints . . . [has no bearing on employee's] correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work.").

82. *See Jones & Laughlin*, 301 U.S. at 22.

83. *See* Virgin Atl. Airways v. National Mediation Bd., 956 F.2d 1245, 1253 (2nd Cir. 1992), *cert. denied*, 506 U.S. 820 (1992); *cf.* Chicago & N.W. Ry. v. United Transp. Union, 402 U.S. 570, 579 n.11 (1971).

84. Status quo provisions are unique to the RLA.

85. *Williams*, 315 U.S. at 402-03.

> problem of strikes was considered to be particularly acute in the area of "major disputes," those disputes involving *the formation of collective agreements* and efforts to change them (emphasis added).[86]

An employer's unilateral changes to conditions of employment, while negotiating an initial collective bargaining agreement, "is as much a violation of the duty to bargain in good faith as a flat refusal to negotiate."[87] The absence of RLA status quo protections during bargaining allows a carrier to make unilateral changes under the guise of a business necessity and is counterproductive to the cooperative bargaining atmosphere contemplated by Congress when enacting the RLA.

C. *Same Court, Different Day*

Detroit & Toledo Shore Line R.R. v. United Transp. Union[88] was a notable movement away from *Williams'* strict "in agreements" holding. In *Detroit & Toledo Shore Line R.R.* (*Detroit & Toledo*), a railroad company attempted to establish a work reporting site far away from its normal operating location. Previously, employees reported to one central location and then were transported, at company expense and on company time, to the outlying locations.[89] The proposed change saved the company operating costs but placed a financial burden on affected employees. This particular matter had never come up before and, therefore, was not addressed in the existing collective bargaining agreement.[90]

The company claimed it was free to make the change in work assignments without going through the RLA dispute resolution process. Since the matter was not part of any previous written agreement, the company claimed the proposed work rule did not qualify as a change "in agreements" that invoked RLA Section 6 status quo provisions.[91] The union countered that the day-to-day practices and expectations of the employees were as much a part of the collective bargaining agreement as the written agreement terms.[92]

In contrast to the *Williams* decision, the Court in *Detroit & Toledo* held that the term "in agreements" contained in Section 6 of the

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86. *Detroit & Toledo Shore Line R.R.*, 396 U.S. at 148 (emphasis added).

87. International Ass'n of Machinists v. Transportes Aereos Mercantiles, 924 F.2d 1005, 1010 (11th Cir. 1991) (citing NLRB v. Kratz, 369 U.S. 736 (1962)).

88. 396 U.S. 142 (1969).

89. *See id.* at 142.

90. *See id.* at 143-44.

91. *See id.* at 147-48.

92. *See id.* at 146-48.

RLA was to be broadly construed.[93] "Agreements" reached between companies and unions are not only those written into collective bargaining agreements but also those common every day practices that both the union and company recognize as normal during the ordinary course of business.[94] It is ironic that the *Detroit & Toledo* Court used the "freedom of individual contract" logic found in *Williams* to show that the RLA status quo provisions applied "without any limitation to those obligations already embodied in collective agreements."[95]

Detroit & Toledo is important not only for broadening the scope of the phrase "in agreements," but also for the uncertainty it cast over the continued validity of the *Williams* decision. The *Detroit & Toledo* Court distinguished the *Williams* decision by stating the following:

> In *Williams* there was absolutely no prior history of any collective bargaining or agreement between the parties on any matter. Without pausing to comment upon the present vitality of either of these grounds . . . it is readily apparent that *Williams* involved only the question of whether the status quo requirement of [Section] 6 applied at all.[96]

However, the *Detroit & Toledo* Court stopped short of overruling *Williams* because of factual differences. Significantly, in *Detroit & Toledo*, the union members had an initial working agreement in place.[97] Because of this fact, lower courts must adhere to the *Williams* holding even when the consequences for new unions are harsh.

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93. *See id.* at 153.

94. *See Detroit & Toledo Shore Line R.R.*, 396 U.S. at 153-54 ("The status quo provisions of §§ 5, 6, or 10 . . . extends [sic] to those actual, objective working conditions out of which the dispute arose, and clearly these conditions need not be covered in an existing agreement.").

95. *Id.* at 148. *See also id.* at 153-54. The situation would have worked equally in the railroad's favor had there been a past practice of reporting to work in outlying locations for a sufficient period of time, with the knowledge and acquiescence of the employees. In this instance, the condition would have become a part of the actual working conditions even if it was not written into the collective bargaining agreement.

96. *Id.* at 158.

97. *See id.* at 158. In addition, in a 5-4 decision, the Court may have limited the *Detroit & Toledo* status quo requirement to obligations arising under existing written agreements and implied agreements from an "unquestioned practice for many years." Pittsburgh & Lake Erie R.R. Co. v. Railway Labor Executives' Ass'n, 491 U.S. 490, 506 (1989). However, the Fourth Circuit specifically reversed a district court reaching this conclusion and held that *Pittsburgh & Lake Erie R.R.* is not to be read expansively and only holds that "a union may not interfere with a railroad's decision to sell its assets . . . [by invoking the status quo] where the collective bargaining agreement is silent as to such a sale." Richmond, Fredericksburg & Potomac R.R. v. Transportation Communications Int'l Union, 973 F.2d 276, 282 (4th Cir. 1992).

D. *Dealing With the Aftermath of* Williams

The Second, D.C., and Ninth Circuit courts recently decided RLA issues in line with the *Williams* reasoning.[98] All three cases involved circumstances where an employer made unilateral changes in working conditions after union certification, but before negotiations began on an initial collective bargaining agreement. In *Virgin Atlantic Airways*, the airline company unilaterally altered rates of pay and did not bargain with the union.[99] In *Trans World Airlines, Inc.*, the airline company refused to meet with the newly certified union and made unilateral changes in working conditions by altering flight attendant duties.[100] Lastly, in *Regional Airline Pilots Ass'n*, the airline company withdrew flight pass privileges sixteen days after union certification, without bargaining.[101]

The circuit courts each recognized that the policy behind *Williams* had been somewhat eroded by the holding in *Detroit & Toledo*, but concluded that *Williams* still controlled.[102] Summarizing the positions of the other courts, the Second Circuit intimated that these results must follow from the *Williams* decision:

> [A]s the D.C. Circuit stated when faced with a similar problem, the [*Detroit & Toledo*] decision "plainly stops short of overruling *Williams* and leaves it binding in a case like the one before us where there has been 'absolutely no prior history of any collective bargaining or agreement between the parties on any matter.'"[103]

The most recent case of a union directly challenging the *Williams* rationale is *Aircraft Mechanics Fraternal Ass'n v. Atlantic Coast Airlines, Inc.* (*Atlantic Coast*).[104] The *Atlantic Coast* holding demonstrates that the *Williams* decision continues to detract from the purposes and policy of the RLA.

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98. *See* Virgin Atl. Airways v. National Mediation Bd., 956 F.2d 1245 (2nd Cir. 1992); International Ass'n of Machinists & Aerospace Workers v. Trans World Airlines, Inc., 839 F.2d 809 (D.C. Cir.), *cert. denied*, 488 U.S. 820 (1988); Regional Airlines Pilots Ass'n. v. Wings West Airlines, Inc., 915 F.2d 1399 (9th Cir. 1990), *cert. denied*, 501 U.S. 1251 (1991).

99. *See Virgin Atl. Airways*, 956 F.2d at 1252-53.

100. *See Trans. World Airlines, Inc.*, 839 F.2d at 812.

101. *See Regional Airline Pilots Ass'n*, 915 F.2d at 1400.

102. *See Virgin Atl. Airways*, 956 F.2d at 1253; *Trans World Airlines, Inc.*, 839 F.2d at 814.

103. *Virgin Atl. Airways*, 956 F.2d at 1253 (quoting *Trans World Airlines, Inc.*, 839 F.2d at 814).

104. 55 F.3d 90 (2nd Cir. 1995).

IV. DISCUSSION

A. Atlantic Coast: *Statement of The Facts*[105]

The NMB certified the Aircraft Mechanics Fraternal Association (AMFA) as the exclusive collective bargaining representative for employees of Atlantic Coast Airlines (ACA) on March 11, 1994. Active collective bargaining began in March 1994, and shortly thereafter the NMB appointed a federal mediator at AMFA's request.[106]

In April 1994, ACA attempted, unilaterally, to change working conditions by tightening overtime pay criteria. ACA rescinded the unilateral change after receiving a warning from AMFA's legal counsel.[107]

In October 1994, ACA re-implemented the unilateral change to overtime wage calculation. At the same time, ACA announced that it was eliminating the union job classification of lead mechanic and assigning its job functions to a new managerial job classification. ACA also unilaterally implemented changes in sick leave policy.[108]

As a result of ACA's unilateral changes, AMFA's members suffered loss of wages, compulsory demotions, lost work opportunities, and increased pressure to perform their sensitive safety functions while physically ill. None of these changes were negotiated, and all of the changes were implemented after the union was certified to represent the employees and collective bargaining had begun.[109]

ACA's unilateral actions have irreparably harmed AMFA and its members, as well as the traveling public. The harm to AMFA and its members is due to ACA's unrestrained ability to implement changes in working conditions. ACA's actions essentially undermine AMFA's bargaining leverage during the entire resolution process mandated by the RLA; particularly, in regard to major disputes. Since ACA knows it can achieve these changes without AMFA's agreement, there is little incentive to negotiate.

ACA's unrestrained, unilateral actions have also irreparably harmed the traveling public by increasing the likelihood of a work

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105. Reproduced from Appellant's Opening Brief at 3-4, *Atlantic Coast Airlines, Inc.*, 55 F.3d at 90 (No. 94-9230) (on file with the *Seattle University Law Review*) (hereinafter Appellant's Brief).

106. *See* Appellant's Brief at 3.

107. *See id.*

108. *See id.*

109. *See id.* at 3-4.

stoppage. Since both AMFA and the NMB were denied the ability to exert pressure on ACA to negotiate by forestalling ACA's unilateral action, the only means now left to AMFA to exert pressure during negotiations is a work stoppage.

B. *Decision of U.S. Court of Appeals, Second Circuit*

The *Atlantic Coast* court denied the union's argument that RLA status quo injunctive relief should be granted through the completion of RLA proceedings.[110] In reaching its decision, the court held that *Williams* remained good law and controlled the outcome of the case: "A newly certified union that has no collective bargaining agreement with the carrier is not entitled to a status quo freeze under the Act."[111] The court then denied the union's claim after noting that no collective bargaining agreement had been previously formed between the parties.[112]

C. *Subsequent History*

Finally, the union, having no other legal remedy, sought a declaratory judgment that it was not prohibited by the RLA from striking.[113] In a bitter irony, the district court denied the union's motion as violating the RLA Section 2 duty to bargain in good faith.[114]

The district court elected not to extend the rationale of a previous Second Circuit decision.[115] In *United Airlines, Inc.* (*United*), the Second Circuit held that a newly certified union, with no agreement in place, was entitled to strike where the union repeatedly made overtures to the carrier to bargain and the carrier refused.[116] The analogy for AMFA was that making unilateral changes was as much evidence of an unwillingness to bargain as an outright refusal to bargain. Apparently in the Second Circuit, however, as long as the employer goes through the motions of bargaining, the employer is allowed to make unilateral changes in working conditions, and the union is not allowed to respond by a work stoppage or any other self-help measures.

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110. *See Atlantic Coast Airlines, Inc.*, 55 F.3d at 93.

111. *Id.* at 94.

112. *See id.* at 93.

113. *See* Aircraft Mechanics Fraternal Org. v. Atlantic Coast Airlines, Inc., No. 94-CV 7915 (JSM), 1995 WL 753902, at *1 (S.D.N.Y. Dec. 18, 1995).

114. *See id.*

115. *See* United Airlines, Inc. v. Airline Div., Int'l Brotherhood of Teamsters, 874 F.2d 110 (2nd Cir. 1989).

116. *See id.* at 112.

The anomaly of the situation is appalling. One party's ability to take unrestrained unilateral action during the collective bargaining process is a complete evisceration of the Act's primary mechanism for peacefully resolving labor disputes. So long as ACA continues to enjoy an unrestrained ability to unilaterally implement changes in working conditions, it has no incentive to cooperate with either AMFA or the NMB.

The district court decision is currently on appeal with the Second Circuit.[117]

D. Creative Arguments Necessitated By Williams' *Harsh Consequences*

Labor unions have resorted to creative arguments in an attempt to circumvent the harsh effects of the *Williams* ruling, and have met with some success. The Eleventh Circuit granted a union's prayer for status quo injunctive relief based on RLA Section 2, a general section requiring parties to conduct their activities in good faith.[118] The court combined the rationale of *Shore Line* with National Labor Relations Board (NLRB) precedent to conclude that making unilateral changes during negotiations was, in itself, evidence of bad faith negotiating, and therefore precluded by RLA Section 2.[119] The court held that injunctive relief to prevent unilateral changes in working

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117. *See generally* Aircraft Mechanics Fraternal Org. v. Atlantic Coast Airlines, No. 94-CV 7915 (JSM), 1996 WL 169365 (S.D.N.Y. Apr. 11, 1996).

118. *See* International Ass'n of Machinists v. Transportes Aereos Mercantiles, 924 F.2d 1005, 1008 (11th Cir. 1991). The 11th Circuit framed the issue as the follows: "[W]hether [Section] 2, First's duty to bargain in good faith, standing alone, precludes unilateral changes after negotiations have commenced." *Id.*

119. The Eleventh Circuit Court's combined analysis of *Detroit & Toledo, Chicago & N.W. Ry. v. United Transp. Union (Chicago)*, and *NLRB v. Kratz* precedent is summarized as follows:

> 1) The policy behind *Detroit & Toledo*, applicable even where a collective bargaining agreement is not in place, is that "if management is permitted to make unilateral changes in working conditions during collective bargaining, the union's position will be undermined, interruptions to interstate commerce are likely to occur, and the purposes of the Act will be frustrated.";
>
> 2) An analogy to *NLRB v. Kratz* for the proposition that under the NLRA, "that 'an employer's unilateral change in conditions of employment while under negotiation for an initial collective bargaining agreement is as much a violation of the duty to bargain in good faith as a flat refusal to negotiate.'";
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> 3) An analogy to the NLRA was appropriate in this instance because the *Chicago* Court held that both the RLA and the NLRA require the same good faith bargaining; and
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> 4) RLA "§ 2, First provides legally enforceable duties" which prevent frustration of the Act in the above manner.

Id. at 1009-10.

conditions was proper even though the negotiation process on an initial collective bargaining agreement was not fully completed.[120]

On the other hand, an attempt to circumvent *Williams* using union election and certification protection was unsuccessfully tried in *Automotive, Petroleum and Allied Industries Employees Union, Local 618 v. Trans States Airlines*.[121] The defendant airline suspended annual merit raises for flight attendants following union certification, but before the initial collective bargaining agreement was reached. Rather than challenge the *Williams* holding, the union argued that the post certification change in policy was motivated by anti-union animus in violation of union election and certification laws.[122] The court refused to enjoin the company's conduct after noting that anti-union animus does not appear to be relevant to the legal analysis in *Williams* and that election and certification protection for unions is primarily limited to pre-certification conduct.[123]

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120. *See Transportes Aereos Mercantiles*, 924 F.2d at 1010-11. The 11th Circuit reached its conclusion by the following process:

> 1) Acknowledging that courts should hesitate to provide injunctive relief "unless that remedy alone can effectively guard the plaintiff's right.";
> 2) Stating that injunctive necessity did not mean that an injunction could not issue until all negotiations were completed, because the negotiations were the very procedures being undermined.;
> 3) Interpreting the *Chicago* holding as not limiting injunctive relief to completed negotiations. The court made the observation that, in *Chicago*, the fact that negotiations were completed was incidental to the *Chicago* Court's holding that during those negotiations, the RLA Section 2 duty to bargain in good faith was not complied with;
> 4) Stating the policies underlying the RLA were "designed to preserve the status quo and to discourage resort to self-help during the time that the RLA procedures are being pursued.";
> 5) Specifically finding that the necessity test for injunctive relief was met where "unilateral changes . . . will inevitably undermine [the union's] bargaining position, . . . could only serve to undermine the union members' confidence in [the union], and to undermine the ability of [the union] to bargain on a fair and equal basis with management."

Id. at 1010-11 and 1011 n.9.

Although not specifically addressed in *Transportes Aereos Mercantiles*, there is support for an expansive reading of the judiciary's injunctive relief authority in *Chicago*. The *Chicago* Court found the legislative history indicated that the RLA was intentionally written in general language rather than specific language to allow "'enforcement of the duties and obligations [to] develop through the courts in the way in which the common law has developed.'" *Chicago & N.W. Ry.*, 402 U.S. at 577 (citing *Hearings on Railroad Labor Disputes (H.R. 7180) Before the House Comm. on Interstate & Foreign Commerce*, 69th Cong. 91 (1926)).

121. 926 F. Supp. 869 (E.D. Mo. 1996).

122. *See id.* at 872.

123. *See id.* at 872. The court ruled that post-certification protections under RLA Section 152, Fourth, are limited only to prevent behavior which strikes "a fundamental blow to union or employer activity and the collective bargaining process itself." *Id.* at 873 (quoting Trans World Airlines, Inc. v. Independent Fed'n of Flight Attendants, 489 U.S. 426 (1989)).

Unless the policies behind the *Williams* decision are revisited, labor unions will only occasionally succeed in employing creative arguments, one of their only remaining ways to attempt to restore the balance destroyed by *Williams*. If *Williams* is allowed to stand, employers may continue to take disruptive unilateral actions affecting negotiations on the initial working agreement.

V. RECOMMENDATIONS

First, *Williams* should be overruled, or limited by recognizing the contractual setting under which it was decided. The Court's argument is logically sound in a contractual remedy context but is distinguishable conceptually from the injunctive nature of RLA status quo relief. The argument within the *Williams* case reflects the Court's contractual mind set: "Arrangements made after collective bargaining obviously are entitled to a higher degree of permanency and continuity than those made by the carrier for its own convenience and purpose."[124]

In a contractual remedy context, where parties are at odds over money damages, written agreements certainly deserve a higher degree of permanency and continuity. Conceptually, however, if the policy of the RLA is to promote labor peace by maintaining the status quo during negotiations, it should not make any difference whether common understandings regarding work rules are formally embodied in a written agreement or not. A formal or informal agreement found between the parties can be used equally effectively to establish the status quo and promote the RLA objectives of labor peace. This was exactly the setting behind the *Detroit & Toledo* holding and largely the factual setting in *Atlantic Coast*.

Williams' continued application should be limited only to situations where unions, which have neither a collective bargaining agreement nor have begun any negotiations, seek retroactive compensatory payments for alleged status quo violations.

Second, RLA Section 6 status quo provisions should apply in factual situations, similar to *Atlantic Coast*, where newly formed unions seek RLA status quo protections during bargaining. *Detroit & Toledo's* mandate to broadly construe RLA Section 6's "in agreements" language should be construed to infer an implied contract on the first day of union certification. In *Detroit & Toledo*, a pre-existing collective bargaining agreement served as a stepping stone for an injunction defining the status quo more broadly than the written

124. *Williams*, 315 U.S. at 403.

agreement.[125] In *Atlantic Coast*, the status quo could have been defined by the "actual, objective, working conditions" that were part of the ordinary course of business at the time the union was certified.[126]

By analogy, the Third Circuit did not require an existing written "agreement" for purposes of invoking the jurisdiction of an Adjustment Board in a minor RLA dispute. The court reasoned that:

> [A] union [sic] and employer's adoption of a labor contract is not dependent on the reduction to writing of their intention to be bound. Instead, what is required is conduct manifesting an intention to abide by the terms of an agreement.[127]

In a similar fashion, the *Williams* Court did not have trouble finding an implied contract between the employer and unrepresented employees when the employees continued to work after the employer had imposed a new accounting program. Therefore, it should not offend the *Williams* implied contract rationale to infer an implied contractual "agreement" when the employer continues to offer employment after union certification but before the initial collective bargaining agreement is formed. This implied contract, made up of the *Detroit & Toledo* "objective working conditions," would establish the status quo during subsequent negotiations on the initial collective bargaining agreement.

Finally, allowing new unions status quo protections during bargaining on their initial contract promotes the purposes of the RLA. By establishing an atmosphere of labor and management peace during the running of the status quo, negotiations are facilitated and an initial collective bargaining agreement can be reached without unwanted interruptions to transportation. This is a solution which ultimately benefits labor, management, and our national economy.

VI. CONCLUSION

Historically, violent labor conflicts were especially notable in the railroad industry during the late nineteenth century and continuing through the beginning of the twentieth century. Because of the transportation industry's importance to national security, Congress was receptive toward a unique approach to resolving the long standing

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125. *See Detroit & Toledo Shore Line R.R.*, 396 U.S. at 143.

126. *See id.* at 153-54.

127. McQuestion v. New Jersey Transit Rail Operations, 30 F.3d 388, 393 (3rd Cir. 1994) (quoting NLRB v. Haberman Constr. Co., 641 F.2d 351, 355-56 (5th Cir. 1981)).

labor conflicts. Key to the success of the new approach was a dispute resolution mechanism with provisions that promoted stability. Specifically, these provisions stipulated that collective bargaining agreements never expire, but are only amended as the need arises, and that the status quo be maintained for an almost unlimited amount of time during subsequent contract negotiations.

The RLA's status quo requirement is central to its design. Since disputes usually arise when one party wants to change the status quo without undue delay, the power that the RLA gives the other party to preserve the status quo for a prolonged period will frequently make it worthwhile for the moving party to compromise. This compromise allows the interests of both sides to be taken into account, and thus facilitates agreements without interruption to commerce.

Unfortunately, the holding in *Williams* frustrates the process of peaceful dispute resolution. In *Williams*, the Court ruled that the RLA's dispute resolution provisions are only applicable after a union and an employer have negotiated an initial working agreement. The *Williams* Court held that where no previous working agreement exists, an employer was not bound under the RLA status quo provisions. Although *Williams* has never been overruled, the Court's subsequent holding in *Detroit & Toledo* criticized the *Williams* principle and called for a more expansive application of the RLA dispute resolution provisions.

Atlantic Coast demonstrates the harshness of the *Williams* decision. As a result of the employer's unilateral changes, the employee union's members suffered loss of wages, compulsory demotions, lost work opportunities, and increased pressure to perform sensitive safety functions while physically ill. The employer's unrestrained ability to implement changes in working conditions undermined the union's bargaining leverage during the entire dispute resolution process mandated by the RLA. Since ACA knows it can achieve these changes without the union's agreement, there is little incentive to negotiate.

Detroit & Toledo and *Atlantic Coast* implicate the identical RLA policy: "[I]f management is permitted to make unilateral changes in working conditions during collective bargaining, the union's position will be undermined, interruptions to interstate commerce are likely to occur, and the purposes of the Act will be frustrated."[128]

In order for RLA status quo provisions to have the meaning and effect intended by Congress, parties must have the equal ability to

128. *Transportes Aereos Mercantiles*, 924 F.2d at 1008.

invoke them. The recent labor strife at American Airlines demonstrates the power of the status quo provisions. A comparison of recent and previous labor conflicts at American demonstrates that the status quo provisions can be beneficial to management's interests as well as to labor's interests. By diverting the parties from counterproductive activities, the status quo provisions foster an atmosphere where productive negotiations may occur. The avoidance of labor strife and the facilitation of an atmosphere of cooperative bargaining are precisely the reasons Congress implemented the status quo provisions of the RLA.

By declining to recognize that Congressional RLA policy is broad enough to protect new labor unions, the *Williams* ruling frustrates the Congressional intent behind the RLA and continues to cause unnecessary labor strife. *Detroit & Toledo* opened the door for federal courts to move away from the *Williams* contractual rationale and reshape the law in accordance with the policies of the RLA. It is time for the Supreme Court to revisit *Williams*.