

107TH CONGRESS  
1ST SESSION

# S. 1327

To amend title 49, United States Code, to provide emergency Secretarial authority to resolve airline labor disputes.

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IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. MCCAIN (for himself, Mr. LOTT, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title 49, United States Code, to provide emergency Secretarial authority to resolve airline labor disputes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Airline Labor Dispute  
5       Resolution Act”.

6       **SEC. 2. GRANT OF AUTHORITY.**

7       Section 42112 of title 49, United States Code, is  
8       amended by adding at the end the following:

9       “(e) EMERGENCY AUTHORITY OF THE SEC-  
10       RETARY.—

1           “(1) DECLARATION OF EMERGENCY.—Notwith-  
2 standing any other provision of this section or of  
3 section 40109(d) of this title, the Secretary shall de-  
4 clare an air transportation emergency whenever the  
5 Secretary finds that a labor dispute between an air  
6 carrier that provides service to a hub airport (as de-  
7 fined in section 41731(a)(3)) and an employee orga-  
8 nization representing employees of that carrier—

9           “(A) threatens to interrupt the carriage of  
10 passengers or cargo in interstate air transpor-  
11 tation by an air carrier in any region of the  
12 country in a manner that is likely to curtail op-  
13 erations significantly at any hub airport (as de-  
14 fined in section 41731(a)(3)) and thereby cause  
15 injury to the economy of that region;

16           “(B) threatens to interrupt the carriage of  
17 passengers or cargo in foreign air transpor-  
18 tation in a manner that is likely to cause injury  
19 to the foreign commerce of the United States or  
20 its balance of payments; or

21           “(C) threatens the national security or for-  
22 eign policy interests of the United States.

23           “(2) ACTION BY SECRETARY.—Notwithstanding  
24 any other provision of law or procedure established  
25 thereby, the Secretary shall issue an order to resolve

1 a labor dispute by arbitration whenever the Sec-  
2 retary declares an air transportation emergency with  
3 respect to a labor dispute under paragraph (1). The  
4 Secretary shall thereupon appoint a panel of arbitra-  
5 tors, composed of 5 members, 1 designated by each  
6 party to the dispute, and 3 neutral arbitrators to be  
7 designated by agreement between the 2 other mem-  
8 bers. If those 2 members are unable to agree on the  
9 neutral arbitrators within 5 days after their designa-  
10 tion, the Secretary shall ask the American Arbitra-  
11 tion Association to submit within 3 days a list of 11  
12 arbitrators who are members of the National Acad-  
13 emy of Arbitrators and are qualified and willing to  
14 serve. At a special meeting called by the Secretary,  
15 each member designated by a party shall alternately  
16 strike a name from the list until 3 names remain,  
17 who shall be the mutually designated neutral arbi-  
18 trators. No member shall be pecuniarily or otherwise  
19 interested in any organization of employees or any  
20 air carrier. The compensation and expenses of the  
21 panel members shall be fixed by the Secretary and  
22 shall be borne equally by each party to the dispute.  
23 A panel shall be created separately for each declared  
24 transportation emergency, and it shall investigate  
25 promptly the facts as to the dispute.

1           “(3) REQUIRED FILINGS.—Within 10 days  
2 after the date on which the 3 neutral arbitrators are  
3 appointed, each party to the dispute shall file with  
4 the panel a document containing the following:

5           “(A) The name, affiliation, and address of  
6 the party submitting the filing.

7           “(B) A statement that the employee orga-  
8 nization involved is either certified or recog-  
9 nized.

10           “(C) The number of employees in the ne-  
11 gotiating unit, together with a list of the job ti-  
12 tles represented in that unit.

13           “(D) A statement of the currently applica-  
14 ble rates of pay, rules, and working conditions.

15           “(E) A clear and concise history of nego-  
16 tiations leading to the impasse, including the  
17 number and dates of the negotiation sessions.

18           “(F) A list of all issues in dispute con-  
19 cerning changes in rates of pay, rules, and  
20 working conditions not adjusted by the parties  
21 in conference, and the party’s position on those  
22 issues.

23           “(G) The complete, written terms of the  
24 party’s final offer on those issues, including the  
25 text of the party’s proposed agreement on the

1 changes in rates of pay, rules, and working con-  
2 ditions.

3 “(H) A clear and concise statement of any  
4 other relevant facts and any supporting docu-  
5 mentation.

6 “(4) OPPORTUNITY FOR PRESENTATIONS.—  
7 Within 15 days after the date on which the docu-  
8 ment required by paragraph (3) is filed by both par-  
9 ties, the panel shall afford each party an opportunity  
10 to make oral and written presentations on its filing  
11 and to respond to questions.

12 “(5) SELECTION BY PANEL; APPLICABLE FAC-  
13 TORS.—Within 30 days after date on which the docu-  
14 ment required by paragraph (3) is filed by both  
15 parties, the panel shall, by a majority vote, select ei-  
16 ther the offer in its entirety concerning rates of pay,  
17 rules, and working conditions presented by the car-  
18 rier or carriers involved or the offer in its entirety  
19 concerning rates of pay, rules, and working condi-  
20 tions presented by the employee organization in-  
21 volved. The panel shall prepare a written explanation  
22 of its selection and the reasons for the selection, and  
23 shall furnish a certified copy of its selection to the  
24 parties to the dispute and to the Secretary. The

1 panel shall make its selection based on the following  
2 factors:

3 “(A) The stipulations of the parties.

4 “(B) The financial condition of the air car-  
5 rier and its ability to incur changes in labor  
6 costs while continuing to maintain its competi-  
7 tive market position, pay its debts, meet its  
8 other contractual obligations, provide job secu-  
9 rity and equivalent treatment for all of its em-  
10 ployees, and return a reasonable profit, con-  
11 sistent with historic margins and rates of re-  
12 turn, for its shareholders.

13 “(C) A comparison of the rates of pay of  
14 the employees involved in the dispute with the  
15 rates of pay of other employees performing  
16 similar services for comparable air carriers of-  
17 fering similar air transportation services to  
18 public.

19 “(D) The rules and working conditions ap-  
20 plied by the air carrier and comparable air car-  
21 riers offering similar air transportation services  
22 to the public in light of market conditions for  
23 those services.

24 “(E) Such other factors as are normally  
25 and traditionally taken into consideration in the

1 determination of rates of pay, rules, and work-  
2 ing conditions through collective bargaining,  
3 mediation, fact-finding, arbitration or otherwise  
4 between the parties.

5 “(F) Changes in the average consumer  
6 prices for goods and services, commonly known  
7 as the cost of living, including changes in the  
8 Consumer Price Index.

9 “(G) The existing collective bargaining  
10 agreement between the parties and the history  
11 of the collective bargaining agreements between  
12 the parties, including the history of negotiations  
13 leading to the impasse.

14 “(6) SELECTION BY PANEL.—Within 10 days  
15 after the panel furnishes its selection to the Sec-  
16 retary, either party may file with the Secretary a pe-  
17 tition to set aside the selection on the grounds set  
18 forth in paragraph (7). If no petition to set aside the  
19 selection has been filed within 10 days after the fil-  
20 ing of the selection, the Secretary shall enter an  
21 order directing the parties to give effect to the pan-  
22 el’s selection, which order shall be final and conclu-  
23 sive on the parties.

24 “(7) PETITION TO SET ASIDE SELECTION.—

1           “(A) IN GENERAL.—The Secretary may  
2 entertain a petition to set aside a selection fur-  
3 nished to the Secretary under paragraph (6) of  
4 this subsection only if the Secretary finds  
5 that—

6           “(i) the selection by the panel does  
7 not conform, or confine itself, to the re-  
8 quirements of this section;

9           “(ii) the selection by the panel does  
10 not conform, or confine itself, to matters  
11 concerning rates of pay, rules, and working  
12 conditions;

13           “(iii) the selection by the panel does  
14 not conform, or confine itself, to matters  
15 within the scope of jurisdiction under title  
16 II of the Railway Labor Act (45 U.S.C.  
17 181 et seq.);

18           “(iv) the selection by the panel does  
19 not conform, or confine itself, to the offer  
20 in its entirety concerning rates of pay,  
21 rules, and working conditions presented by  
22 one of the parties to the dispute; or

23           “(v) a party to the dispute or a mem-  
24 ber of the panel practiced fraud or corrup-  
25 tion which affected the selection.

1           “(B) REMEDY FOR UNCERTAINTY.—The  
2 Secretary may not entertain any such petition  
3 on the ground that the selection is invalid for  
4 uncertainty. If either party to the dispute seeks  
5 to set aside the selection on that ground, it  
6 shall submit the dispute to a board of adjust-  
7 ment as provided in sections 204 and 205 of  
8 title II of the Railway Labor Act (45 U.S.C.  
9 184 and 185).

10           “(C) MINOR ERROR.—A selection by the  
11 panel under paragraph (6) may not be set aside  
12 for trivial irregularity or clerical error affecting  
13 only a matter of form and not the substance of  
14 the selection.

15           “(8) ACTION BY SECRETARY.—

16           “(A) DEADLINE.—The Secretary shall  
17 issue a final order either granting or denying  
18 the petition to set aside the panel’s selection  
19 within 10 days after the petition is filed.

20           “(B) WHOLE OR PARTIAL INVALIDITY.—  
21 Except as provided in subparagraph (C), if the  
22 Secretary determines that the selection is in-  
23 valid in whole or in part under paragraph  
24 (7)(A), the Secretary shall set aside the selec-

1           tion and remand it to the panel for further ac-  
2           tion.

3                   “(C) SPLIT DECISION.—If the Secretary  
4           determines that—

5                           “(i) only a part of the selection is in-  
6                           valid under paragraph (7)(A),

7                           “(ii) the valid and invalid parts of the  
8                           selection are separable, and

9                           “(iii) the parties agree to a setting  
10                          aside only of the part determined to be in-  
11                          valid,

12           then the Secretary shall set aside the invalid part,  
13           enter an order requiring the parties to give effect to  
14           the valid part, and remand the invalid part for fur-  
15           ther action by the panel consistent with the Sec-  
16           retary’s order.

17                   “(9) JUDICIAL REVIEW.—At the request of ei-  
18                   ther party to the dispute, a final order of the Sec-  
19                   retary under this subsection is subject to review by  
20                   the court of appeals under section 46110 of this  
21                   title. For the purpose of applying that section to a  
22                   petition for review of an order by the Secretary  
23                   under this section, the terms ‘10 days’ and ‘10th  
24                   day’ shall be substituted for ‘60 days’ and ‘60th day’  
25                   in section 46110(a). Any such petition shall stay the

1 effectiveness of the Secretary's final order, which  
2 shall otherwise become effective on the 10th day  
3 after the date it is issued.

4 “(10) STATUS QUO REQUIREMENT; INJUNCTIVE  
5 RELIEF.—Upon the issuance of an order to resolve  
6 a labor dispute under this subsection and until the  
7 Secretary's final order becomes effective, no change,  
8 except by agreement, shall be made by either party  
9 to the dispute in the rates of pay, rules, or working  
10 conditions out of which the dispute arose. Changes  
11 thereafter shall only be made consistent with the  
12 terms of the Secretary's final order. A court of com-  
13 petent jurisdiction shall enjoin any effort by a party  
14 to make unilateral changes before the Secretary's  
15 final order becomes effective at the request of the  
16 other party to the dispute.

17 “(11) RATES OF PAY DEFINED.—In this sub-  
18 section, the term ‘rates of pay’ includes wages, vaca-  
19 tion, holidays, and excused time, insurance and de-  
20 fined pension or contribution plans, profitsharing  
21 plans, medical and hospitalization benefits, the con-  
22 tinuity and stability of employment, and all other  
23 consideration and benefits of any nature, paid or re-  
24 ceived.”.

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