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MAKING AIRPORTS WORK FOR AIRPORT WORKERS

Spencer Nelson

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EXECUTIVE SUMMARY

Airports are some of North America's largest worksites. 1.25 million people are estimated to work at U.S. airports. 63,000 work at Atlanta's Hartsfield-Jackson International Airport, and 50,000 work at Toronto's Lester B. Pearson International Airport, making it Canada's largest worksite. Airport workers' jobs are as diverse as airport commerce. Among other things, airport workers move people, baggage, and goods around terminals, staff in-terminal malls, maintain expansive facilities, and service and operate aircraft.

In the last ten years, unions, workers, and their allies have had great success in improving airport jobs, often by enlisting public entities in support of workers. In the U.S. in particular, worker allies have deployed the powers of airport authorities and local governments to restrain corporate management and promote decent work. Their achievements are embodied in a new wave of living wage, worker retention, and recall rights laws—policies that make airport work more stable, secure, and remunerative. Similar gains have been achieved through like means at Canada's largest airport, Toronto Pearson. The Toronto Airport Workers Council, an airport-wide body of workers, across multiple unions, has succeeded in pressuring the airport authority to adopt pro-worker policies. The Council's ability to bring the energies of a broad coalition of workers, along

with their allies in the community, allow it to exert telling pressure on employers and the airport authority.

The victories of the last decade have helped blunt many of the effects of privatization, deregulation, and fissuring in North American aviation, but more opportunities and threats lie ahead. Many airports, particularly in the U.S., are in the process of undergoing pandemic-and-stimulus-driven transformations. New airport constructions may either fuel exploitative and precarious work or promote stable public transit employment, for example. Tranches of funding may be used to advance pro-worker public contracting policies but may equally entrench employers' and investors' roles in airport governance.

The FIFA 2026 World Cup, taking place across North America's three countries, presents an enormous opportunity to the airport workers who will make the events run. Chances for workers to exercise their power arise long before the events begin, as cities legislate to comply with FIFA requirements and companies angle for event-related business. In 2026, airport workers will operate the vital infrastructure that ties together the continent-wide event with the eyes of the world watching. For airport unions and workers in Canada, Mexico, and the United States, the World Cup presents a platform to pressure employers, publicize workers' concerns, and achieve long-held priorities, especially in those cities where progress has previously been frustrated.

This report describes the complex world of airport work and identifies the ways it has already been transformed for the better through activism and advocacy. The principal focus is on major airports that are large enough to host 2026 World Cup games, concentrating on U.S. airports while noting Canadian and Mexican comparisons. The report begins with a review of the role of

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the public in airport governance. In the U.S. and Canada, but less so in Mexico, the main bodies governing airports are public institutions. While major North American airports are parts of national and international transportation systems, the distribution of power at these airports is determined by local laws, regulations, and contracts. These local relationships, along with national and international rules, create both levers for worker influence and obstacles to its success.

The mix of jobs and employers at airports, as well as the legal and contractual implications of airport governance, are discussed in the succeeding section. Most airport workers fall into one of three categories: public employees; airport authority concessionaire and service contractor employees; and airline and airline service provider employees. The predominant employers in each of these categories are international businesses who are subject to airport authority rules. In its final sections, the report surveys pro-airport worker policies enacted in the U.S., which

provide a demonstration of what tripartite airport governance can do for workers and a template for further improvements. The Toronto Airport Workers Council and its successful drive to channel the collective energies of airport workers demonstrate what can be done to empower workers in their relations with employers and airport authorities.

A few lessons emerge from this research. First, effective airport activism requires deep familiarity with the legal and contractual ties that organize airport commerce. These networks create but also limit workers' leverage and distribute power among public authorities and private businesses. Second, as the Toronto Airport Workers Council's efforts show, the most successful campaigns to transform airport work have been supported by broad coalitions of workers, unions, worker advocates, and community partners. Public authorities and private employers value their relationships with the airport community, and they have found it difficult to resist the demands of broad coalitions that claim the mantle of representing that community. Piecemeal efforts to reform airport work have been frustrated by corporate restructurings, providing yet another reason to favor a comprehensive strategy. Third, worker advocates must be attentive to the international dimension of airport work. Airport operations are governed by international rules and performed by employers from across the globe, some of whose operations are highly mobile. International connections between workers and their unions allow for more effective action, putting pressure on employers in the geographies where they are most vulnerable.

2

AIRPORT GOVERNANCE

Nearly all major U.S. airports are governed by public bodies empowered by state laws. Some airports are managed directly by states, counties, or cities through agencies and departments, while other airports are governed by bodies independent from other units of government. Airport governing bodies, commonly known as airport authorities, often manage multiple airports. Airport authorities have significant but locally distinct powers that allow them to function as the owners of airport land and infrastructure, landlords to airlines and other businesses, purchasers of services, and regulators of commercial activity and public safety. Federal labor and aviation law restrict airport authorities' powers but leave airport authorities significant leeway in overseeing airport work. In some locations, state preemption of wage-and-hour laws may cut more deeply into airport authorities' power to influence employment. Still, however, airport authorities have significant influence on the working conditions of many workers in their capacity as regulators, landlords, and contractors for services.

2.1 Who Governs the Airport?

Airport authorities take many forms because all are created by state law. Even the multi-state Metropolitan Washington Airports Authority, which operates Dulles and Reagan, is a Virginia corporation.² Most small airports and many large airports are operated by departments or agencies that are accountable to city, county, and state officials. Los Angeles World Airports (LAWA)—the owner and operator of Los Angeles International Airport (LAX)—was called the Los Angeles Department of Airports until 1995. LAWA's board is appointed by the City of Los Angeles Mayor.³ Baltimore-Washington International Airport is owned and operated by the Maryland Aviation Administration as one of the departments of state government,⁴ while Denver International is run by the City of Denver Department of Aviation.⁵

Public corporations are a mainstay of airport governance. Some public corporations distribute power throughout a region. The Port Authority of New York and New Jersey (PANYNJ) is managed by twelve commissioners, with each state appointing six members and enacting parallel enabling acts. Likewise, Dallas/Fort Worth International Airport is co-owned by those two cities, governed by a board members appointed by the city councils.⁶ Other public corporations are independent units of government. Seattle-Tacoma International Airport is managed by the elected commissioners of the Port of Seattle, a special-purpose corporation serving the voters of Kings County.⁷ Notably, airport authorities are sometimes located in jurisdictions other than the jurisdiction that controls the airport. San Francisco International is owned by the City and County of San Francisco, but the airport is geographically located in an unincorporated portion of San Mateo County.⁸

State and local law distribute the powers needed to govern, operate, and own airports in different ways that are difficult to generalize. Importantly, however, airport authorities' powers over contracting and facilities access often allow them to regulate off-site employment through contract rules for on-site contractors that run to their subcontractors. Some authorities have a degree of power throughout large geographical areas. As a result, airport authorities can construct regulations that are not easily evaded through relocation. The PANYNJ's new wage rules for non-trade labor services, for example, apply to airline catering operations serving the authority's airports throughout the port district, which runs to the New York-Connecticut border and covers most of the New York City metropolitan area.⁹

Frequently, multiple governments have a claim to regulating on-site employment, and these overlapping government powers may sometimes create multiple avenues for pursuing advocacy. In 2013, the voters of the City of SeaTac, the Kings County municipality encompassing the airport, passed an employment law referendum that fundamentally changed work at the city's largest worksite, Seattle-Tacoma International Airport.¹⁰ The Port of Seattle, the airport authority, might have done the same as well.

2.2 Limits on Airport Governance: Federal and State

U.S. airport authorities are subject to a variety of legal restrictions on their powers emanating from the states and the federal government. As they are public entities, airport authorities are subject to state and federal preemption. Federal grant programs, chiefly for the maintenance and development of airfield infrastructure, also impose significant budgetary and operational requirements on airport authorities.

Because U.S. airport authorities are public bodies, they are subject to state and federal preemption. Federal labor laws—the National Labor Relations Act and the Railway Labor Act—have broad preemptive effect, yet they do not preempt minimum standards legislation like minimum wage, benefits, and leave requirements.¹¹ The Airline Deregulation Act of 1978 banned state and local regulation of “prices, routes, and services,” but most courts have construed the law not to preempt traditional employment regulations.¹² State preemption laws, however, may prevent local governments and airport authorities from pursuing just such policies.¹³ Even taking the broadest possible view of preemption, airport authorities' control over layouts, capital investments, and other aspects of operation provide direct and indirect means of controlling working conditions.¹⁴

Airport authority powers are limited by the rules attached to federal grant programs, which have played a major role in the development of the U.S. airport system since the New Deal.¹⁵ The FAA's Airport Improvement Program (AIP) and its authorizing statute require that airports agree to extensive grant assurances in exchange for AIP funds. Some of those assurances are project-specific, while others apply to grant-obligated airports throughout their useful life. Most large airports are grant-obligated, but some airports, notably the New York-area airports and Baltimore, Denver, San Diego, and San Francisco international airports, are grandfathered in and are not bound by FAA revenue restrictions. The FAA may still deny future grants based on noncompliance with AIP regulations by grandfathered-in airports.¹⁶

Broadly, AIP statutes and regulations serve three different purposes especially relevant to the relationships between airport authorities, workers, and businesses. First, they ensure that aeronautical users and the public have reasonable and competitive access to the airport. Airports are forbidden from “unjustly

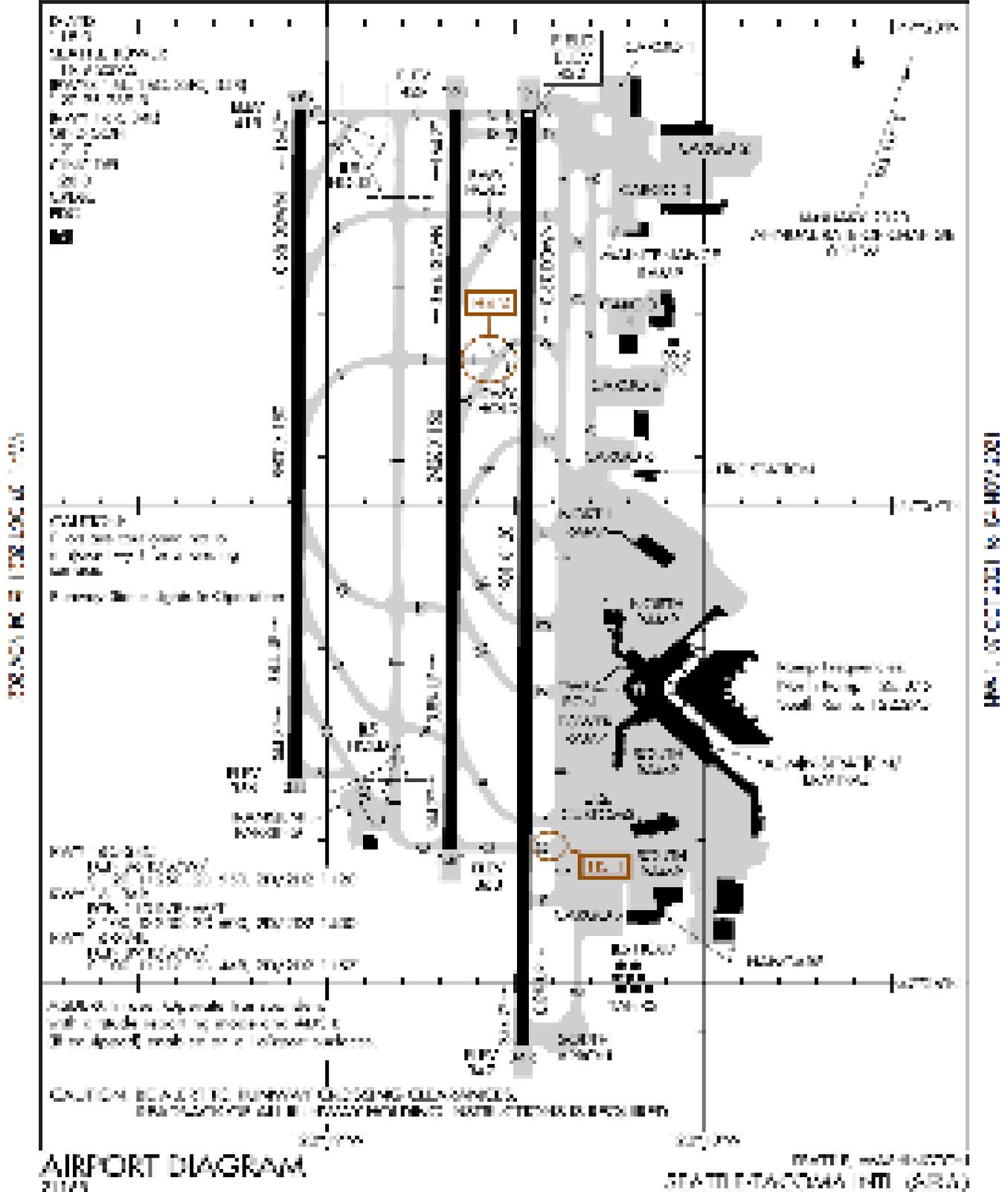


Figure 1.1: Map of Seattle-Tacoma International Airport.

discriminat[ing]” against aeronautical users, although they may impose generally applicable minimum commercial standards on all users. To ensure reasonable public access, federal law caps the per-passenger fees airport authorities may charge to airlines and passengers.¹⁷ Second, the grant rules protect federal investments by prohibiting “revenue diversion,” which is the

San Juan’s Luis Muñoz Marín International Airport is subject to an airport-wide, long-term lease of forty years signed in July 2013. That airport remains the only major hub that has successfully completed the FAA’s Airport Privatization Pilot Program, renamed the Airport

use of airport operations to subsidize other government activities. The FAA has regulatory authority over the use of airport revenues which the administration uses to promote self-sustaining airport operations and revenue reinvestment. The FAA’s principal sanction for violation of AIP budgetary rules is the withholding of current and future grants, although the FAA has a rarely used civil enforcement authority.¹⁸ Third, the grant rules pursue equity in the allocation of airport authority business through the Airport Disadvantaged Business Enterprise Program and Airport Concessions Disadvantaged Business Enterprise Program.¹⁹

Through AIP, airport authorities are subjected to many of the requirements that apply to federal contractors generally, but with important limits. Some of the most significant AIP requirements for workers apply only to specifically funded projects. The prevailing wage rules of the Davis-Bacon and Service Contract Acts, however, apply to work performed on AIP-funded projects and lapse at the end of funded projects. In contrast, Title VI of the Civil Rights Act, which bars discrimination in federally financed employment, applies indefinitely after receipt of AIP funding.²⁰

2.3 Private Power at U.S. Airports.

U.S. airport authorities have resisted a global trend towards privatization. No U.S. commercial hubs are privately owned, although San Juan’s Luis Muñoz Marín International Airport is subject to an airport-wide, long-term lease of forty years signed in July 2013. That airport remains the only major hub that has successfully completed the FAA’s Airport Privatization Pilot Program, renamed the Airport Investment Partnership Program in 2018. Still, airport authority private parties can play a major role in airport administration, development, and decision-making.²¹

U.S. airlines have frequently played prominent roles in the financing and development of airport infrastructure, especially terminals. Some airport-airline contracts give airlines a say in airport authorities’ capital planning decisions through majority-in-interest clauses, which allow the airlines accounting for a majority of traffic to approve, reject, or be consulted on airport development projects that would necessitate significant increases in the fees airlines pay to airport authorities.²²

Concessions, management and development contracts with airlines and other businesses also erode public power. The development and management of JFK’s Terminal 8, for example, was entrusted to Westfield, a major shopping center manager. The same is true of Terminal 4, which describes itself as “the only privately operated terminal in the United States” and is currently operated under a design-build-operate contract with Schiphol Group.²³ The Schiphol Group is a corporation fully owned by

three Dutch government bodies, and the group operates Amsterdam’s Schiphol airport, among others. The section on airport employers further details some of the contractual arrangements that put private parties in control of airport operations.

2.4 Global Comparison: Canada and Mexico.

Airport privatization has spread throughout the globe at a rapid pace since UK Prime Minister Margaret Thatcher privatized the British Airports Authority in 1987.²⁴ In Asia, Latin America, and particularly in Europe, policymakers have divested public interests in airport land, facilities, and revenues to profit-making corporations through public-private partnerships, build-operate-transfer agreements, and public stock offerings. The extent of public control is difficult to measure but few dispute that the role of private capital in airport finances and management has

grown dramatically across the world. Airports Council International estimated that fully and partly privatized airports accounted for a majority of global passenger traffic by 2017.²⁵ In Canada and the U.S., however, private management and investment have played a smaller role. No major commercial airports have been fully privatized. Still, airport authority development and management agreements, some decades-long in duration, frequently give a substantial role in airport administration to airlines, retail operators, and other businesses.²⁶

As in the US, most major Canadian airports are publicly owned, although the federal government has traditionally played a much more direct role in airport management. Prior to 1992, the Canadian federal government built and operated the 26 major airports of the National Airport System, but since then all have been transferred (on 60-year leases) to nonprofit corporations controlled by a mix of local, provincial, and federal governments. Consider for example the

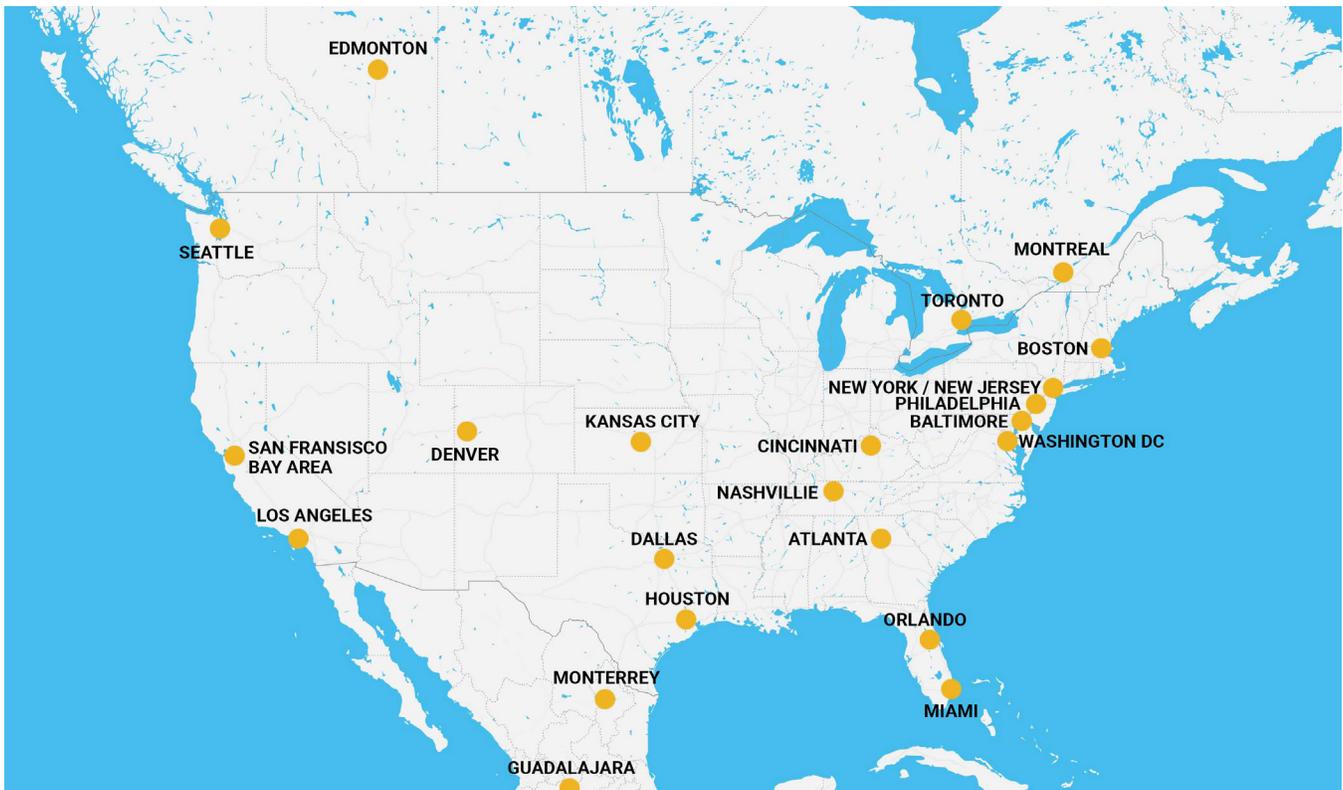


Figure 1.2: “United 2026 Bid cities. Note that Montreal has dropped out of consideration.”

two Canadian candidate host cities for the 2026 FIFA World Cup: Toronto and Edmonton. Toronto Pearson International Airport was managed by a federal agency until 1993-1995, when it was replaced with a federally chartered non-profit corporation, the Greater Toronto Airports Authority, whose board members are appointed by the federal government (2 members), the Province of Ontario (1), and nearby local governments (5). The Edmonton Regional Airports Authority is organized along similar lines and manages Edmonton International Airport among others.²⁷

Mexico began privatizing some of its airport management functions in 1995. Still, formal ownership of major Mexican airports rests with the federal government, with public and private corporations operating facilities under long-term leases. Some of these corporations are owned by the federal government. The three host city candidates for the 2026 FIFA World Cup—Guadalajara, Mexico City, and Monterey—illustrate the principal types of governance structures. Aeropuertos y Servicios Auxiliares, for example, is a federally owned corporation that operates Mexico City International Airport. The operators of Guadalajara International Airport and Monterey International Airport are publicly traded corporations, with the Mexican government having negligible ownership.²⁸

Endnotes

- 1 For a survey of state and local legislation authorizing airports, see Jodi L. Hardwick, Nat'l Academies of Sciences, Engineering, and Medicine, *Compilation of State Airport Authorizing Legislation* (2012) (<https://www.nap.edu/catalog/22735/compilation-of-state-airport-authorizing-legislation>). Appendix A, id. at 40, has references to the code sections that govern airport authorities, airport zoning, and aeronautics agencies in each state.
- 2 Va. Code § 5.1-153 (creating WMAA); see also 49 U.S.C. § 49106 (granting federal powers to WMAA). Per Section 5.1-155 of the Virginia Code, the WMAA consists of seventeen members with six-year terms. Seven members are appointed by the Virginia governor, four by the D.C. mayor, three by the Maryland Governor, and three are appointed by the President. Ten votes are required for bond issues and the annual budget. Id. § 5.1-155(d). Dulles and Reagan were operated by the Federal Aviation Administration until a federal law transferred those airports to the WMAA under a long-term lease. *Metro. Washington Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 255–58 (1991).
- 3 City of Los Angeles Admin. Code § 630; Cal Gov't Code § 50474.
- 4 Md. Code Transp. § 5-201.
- 5 City and Cty. of Denver Code § 2.11.2.
- 6 *Dallas/Fort Worth Int'l Airport Bd. v. Ass'n of Taxicab Operators, USA*, 427 S.W.3d 547, 548–49 (Tex. App. 2014).
- 7 Wash. Rev. Code § 53.04.020.
- 8 City and Cty. of San Francisco Code § 4.115.
- 9 Port Authority of New York and New Jersey, *Overview of Facilities and Services* (<https://old.panynj.gov/about/facilities-services.html>).
- 10 City of SeaTac Code § 7.45.060. SeaTac workers did not receive the benefits of the ordinance for some due to a state court injunction against the enforcement of the Initiative within the Port of Seattle's jurisdiction. The Supreme Court of Washington, en banc, reversed a judgement holding that the city lacked the power to enforce the Good Jobs Initiative (passed November 2013) against airport workers, depriving airport workers of the ordinance's benefits more than a year. See *Filo Foods, LLC v. City of SeaTac*, 183 Wash. 2d 770, 785 (Aug. 20, 2015) (en banc); *BF Foods LLC v. City of SeaTac*, No. 13-2-25352-6 KNT, 2013 WL 6851515, at *5 (Wash. Super. Dec. 27, 2013). The complete text of the ordinance is posted by the City of SeaTac at this link: <https://www.seatacwa.gov/home/showpublisheddocument?id=8233/>.
- 11 *Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756–57 (1985); *New York Telephone Co. v. New York State Dept. of Labor*, 440 U.S. 519 (1979); see e.g., *Bldg. Owners & Managers Ass'n of Chicago v. City of Chicago*, No. 19 CV 7212, 2021 WL 168966 (N.D. Ill. Jan. 19, 2021) (Chicago Fair Workweek Ordinance not preempted).

- 12 49 U.S.C. § 41713(b); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127 (9th Cir. 2021); *Air Transp. Ass'n of Am. v. Washington Dep't of Lab. & Indus.*, 410 F. Supp. 3d 1162 (W.D. Wash. 2019), *aff'd*, No. 19-35937, 2021 WL 2029186 (9th Cir. May 21, 2021); *Watson v. Air Methods Corp.*, 870 F.3d 812 (8th Cir. 2017); *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1055 (7th Cir. 2016); *Amerijet Int'l, Inc. v. Miami-Dade Cty., Fla.*, 627 F. App'x 744, 751 (11th Cir. 2015). But see *Massachusetts Delivery Ass'n v. Healey*, 821 F.3d 187 (1st Cir. 2016); *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429 (1st Cir. 2016); *DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81 (1st Cir. 2011).
- 13 Economic Policy Institute, *Worker Rights Preemption in the U.S.* (Updated Aug. 2019) (<https://www.epi.org/preemption-map/>).
- 14 Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 *Harv. L. Rev.* 1153 (2011); see also Kate Andrias, *The New Labor Law*, 126 *Yale L.J.* 2 (2016).
- 15 V.M. Johnson, *Laying Foundations: New Deal Public Works and Aviation Infrastructure*, 30 *J. Pol'y History* 695 (2018).
- 16 Barry Molar et. al, National Academy of Sciences, *Understanding FAA Grant Assurance Obligations*, Vol. 1: Guidebook, 68 & Appendix D (2017)
- 17 49 U.S.C. §§ 40117(a)(13), (l); FAA Order 5190.6B, 17-1.
- 18 Molar, *Understanding FAA Grant Assurance Obligations*, S-24.
- 19 49 C.F.R. § 23; National Academy of Sciences, *Resource Manual for Airport In-Terminal Concessions* 107 (2011).
- 20 Molar, *Understanding FAA Grant Assurance Obligations*, S-14.
- 21 Congressional Research Service, *Airport Privatization: Issues and Options for Congress* (Updated Mar. 11, 2021).
- 22 Sheri Ernico et. al, Transportation Research Board, *Considering and Evaluating Airport Privatization* 3 (2012); Roy W. Block et. al, National Academy of Sciences, *Airport/Airline Agreements—Practices and Characteristics* 10 (2010).
- 23 T4 JFK International Air Terminal, *About T4* (<https://www.jfk4.nyc/about/about-t4/>).
- 24 Anne Graham, *Airport Privatization: A Successful Journey?*, 89 *Air Trans. Mgmt.* 101930 (2020).
- 25 Airports Council International, *Policy Brief: Creating Fertile Grounds for Private Investment in Airports* 4 (2018).
- 26 John Sabel, *Airline-Airport Facilities Agreements: An Overview*, 69 *J. Air L. & Com.* 769 (2004).
- 27 Institute for Governance of Public and Private Organizations, *The Governance of Canadian Airports: Issues and Recommendations* (2014); SI/96-49, *Order Designating the Greater Toronto Airports Authority as a Designated Airport Authority and Designating the Date for the Transfer of the Toronto-Lester B. Pearson International Airport to the Greater Toronto Airport Authority* (1996).
- 28 Oscar Rico, *The Privatization of Mexican Airports*, 14 *J. Air Trans. Mgmt.* 320 (2008); Int'l Civil Aviation Organization, *Case Studies on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Services Providers* (Updated Aug. 2013) (https://www.icao.int/sustainability/pages/Eap_ER_Databases_CaseStudies_ANSPs.aspx). Monterrey International is operated by Grupo Aeroportuario Centro Norte and listed on NASDAQ. Guadalajara International is operated by Grupo Aeroportuario del Pacifico and listed on the New York Stock Exchange.

3

What Do Airport Workers Do?

Airports are intermodal transportation hubs with built-in malls and parking lots, with many different types of jobs performed on airport land or in support of airport operations. Broadly, the people working at airport authority-regulated business can be broken into three location-based categories—outside the terminals, inside them, and on the tarmac—although significant categories of work span the divides, and some work takes place off-site. Unfortunately, federal statistical methodologies make it difficult to classify and quantify much of the work that goes on in the regulatory orbit of airport authorities.

3.1 Outside the Terminal

Ground Transportation, Parking, and Car Rental

Travel to and around airports generates a significant amount of employment. Airport authorities often operate extensive transportation facilities reaching off-site, while managing on-site linkages between terminals. Transit, parking, and rental car businesses are some of the largest employers in the airport mix.

Many airport authorities operate their own mass transit systems, as well as substantial parking infrastructure. This is partly the result of FAA grant rules that discourage airport authorities from mixing funds with other government units. Many of these systems are automated, generating less employment than comparable public transportation. For example, the NY/NJ Port Authority runs various transportation links reaching far off airport property, such as the JFK AirTrain, an 8.1-mile-long automated people mover system reaching both on-site terminals and external parking and transit sites.²⁹ The system is operated by Bombardier Transportation under a Port Authority contract and is not directly connected to Metropolitan Transit Authority stations. Due to the scope of airport property, parking lots are frequently operated as concessions and connected to terminals by busses. Airport parking lots are among the largest in the world, capable of generating significant airport employment.³⁰

Ground transportation—moving passengers and goods between terminals, parking lots, and other facilities—generates additional employment. Authorities and their contractors often run shuttles connecting the terminals and other important airport locations to one another,

creating jobs for drivers and mechanics. Many airport-associated transit systems are operated as third-party concessions, with private firms paying for the privilege to use airport assets for business purposes. Other sources of transportation employment around airports are not as closely tied to airport authorities, such as taxi, ride-hail, bussing, and trucking companies that load or unload at airports. Air cargo operations bring large amounts of associated trucking, docking, warehousing, and security employment, although on-site operations are generally measured poorly due to federal statistical methodologies. These workers may be employees of air cargo airlines, other ground transportation firms, and associated subcontractors.

AIP regulations restrict airport authority control over ground transportation, requiring authorities to “permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport.”³¹ However, airport authorities still may charge fees to ground transportation operators, assign them pick-up and drop-off locations, and otherwise influence their operations.³²

3.2 In The Terminal

Customer Service and Concessions.

In and around the terminals, workers in a variety of job categories provide security while others manage passengers, service their needs, and maintain the facilities. A mix of employees associated with airport authorities, the airlines, and their contractors greet passengers on their arrival at airports. The skycaps who help manage passenger baggage and customer service agents who check passengers in are employed by airlines and their contractors, while the wheelchair attendants that help passengers navigate terminals are typically airport authority contractors. As passengers progress through check-in and security and move towards their

gates, they walk through concourses filled with airport concessionaires. Concessions workers staff everything from sit-down restaurants to duty free stores to currency exchanges. Airlines and their contractors, and sometimes airport authority concessionaires, also run lounges along concourses as complements to in-flight offerings.

3.3 On the Tarmac, in the Cabin, and in-Flight.

Once passengers arrive at their gates, the employees of airlines and airline service providers take over. Passengers arriving at their gate are met by gate agents and customer service representatives, who handle the process of organizing, informing, and boarding passengers. On the tarmac and in the cabin, employees in several different categories prepare planes for flight. Helped by trucks and conveyor belts, catering and ramp employees load prepared food, water, and baggage onto the planes, prepare the cabin, and service the lavatory. (Air cargo firms usually call ramp agents cargo agents, and they perform similar on-and-off-loading tasks.) Fleet service agents fuel, inspect, de-ice, and guide planes into position. The plane itself is maintained by employees in part by these agents and others out of passengers’ sight, including aircraft (or aviation) engineers, mechanics, technicians, and maintenance agents. Employees sometimes called gate agents connect the plane to the gate, usually using a passenger boarding bridge or mobile staircase, and provide other assistance in the boarding process. Having helped passengers to their seats, flight attendants prepare passengers for the flight and, after the pilots get into the air, provide in-flight services. Air traffic controllers, employees of the FAA, help the pilots through the airspace.

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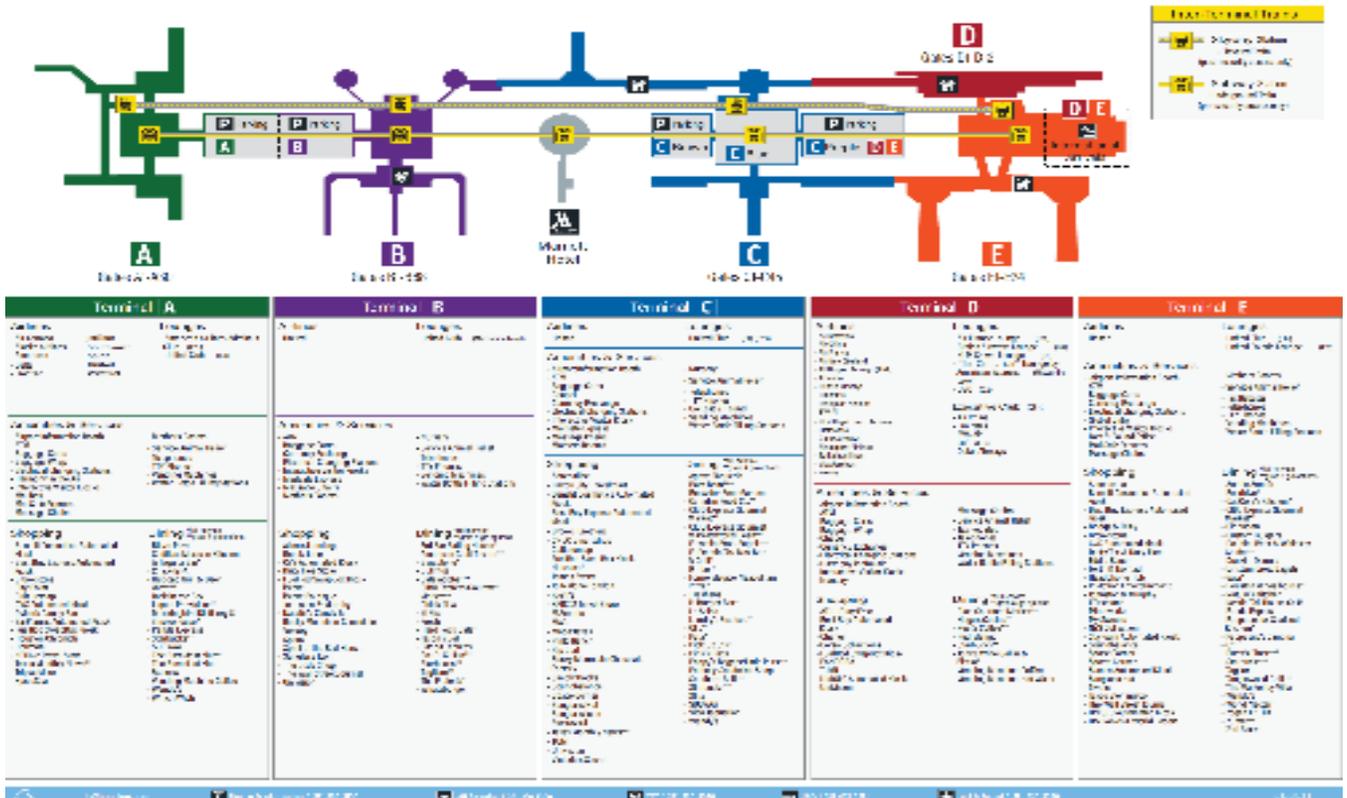


Figure 2.1: George Bush International Airport ³⁵

3.4 Across Divides and Off-Site

Property Services, Maintenance, and Airline Catering

Airport custodial, maintenance, and infrastructure functions all generate diverse, location-specific employment. Airports also issue major property services contracts of various kinds to maintain large, complicated, high-traffic facilities. These functions are either contracted out, sometimes to hiring halls, or made the task of public employees.³³ Sometimes, property services contracts also include services for passengers who require assistance moving around the terminals, such as wheelchair attendants.

A notable example of off-site employment sometimes subject to airport regulation is airline catering. While some segments of

airline catering operations may be located on-site, food preparation for airline catering is often performed off airport property and is nevertheless sometimes subject to regulations by local governments and airport authorities.

Security functions provide a great deal of employment, some public and some private. One of the largest sources of direct employment by airport authorities involves policing terminals and the traffic around them. For example, the City of Los Angeles’s payroll information for the airports department recorded 2,993 active full-time employees in 2020, with 383 custodians, 349 security officers, and 467 police in various job categories.³⁴ Inside, private security employees complement federal Transportation Security Administration and Customs and Border Patrol employees, as well as some employees on government service contracts, in securing access points, monitoring sterile areas, and enforcing the law.

- 29 Matthew A. Coogan et. al, National Academies of Sciences, Ground Access to Major Airports by Public Transportation 64 (2008).
- 30 Laura Frascchetti, The World's Largest Parking Structures, Rich & Associates Parking Consultants (Aug. 4, 2020) (<http://richassoc.com/news/2020/08/04/the-worlds-largest-parking-structures/>). Sea-Tac, DTW, ORD, YPZ (Toronto Pearson), BWI, and DFW all host some of the world's largest parking structures.
- 31 49 U.S.C. § 47107(a)(20).
- 32 See e.g., Dallas/Fort Worth Int'l Airport Bd. v. Ass'n of Taxicab Operators, USA, 427 S.W.3d 547 (Tex. App. 2014).
- 33 The Los Angeles City Administrative Officer publishes city-union MOUs, including MOUs for at least five airport-specific units, mostly of police officers. <https://cao.lacity.org/MOUs/>.
- 34 The City of Los Angeles payroll is made public on a rolling basis at this link: <https://controllerdata.lacity.org/Payroll/City-Employee-Payroll-Current-/g9h8-fvhu/data>.
- 35 <https://www.fly2houston.com/iah/maps>

4

Who Employs Airport Workers?

Airports nationwide host similar work, but airport authorities, airlines, and their contractors arrange it in diverse ways. The following describes a typical breakdown of employment relationships at major airports. In general, employees are attached to one of three employment categories: public employment; airport authority contractor and concessionaire employment; airline and airline service provider employment. Many public employees work at airports, chiefly in security and regulatory functions. They run the gamut from air traffic controllers, who are FAA employees, to local police officers, who are often airport authority employees. Others work on airport authority service contracts. Service contracts generate significant employment in property services and maintenance. Concessions contracts, which allow businesses to pay for the privilege of operating airport assets, generate an even broader array of employment in retail, services, hospitality, transit, and rental car operations. Airlines and airline service providers also employ massive numbers of workers in flight operations, baggage handling, catering, customer service, and other functions.

Significant subcontracting of various kinds and at various levels occurs in airport work. Airline holding companies have fractured employment among their subsidiary airlines and among airline service providers, some of which are also airline subsidiaries. Depending on local practices, the ultimate employer in many segments of airport work may be a small LLC, and small LLCs

are particularly common in concessions and property service operations.³⁶ Employment in these contractual chains can be precarious due to changes in employer identity that, depending on the circumstances, might cost jobs or result in workers being retained on worse terms by successor employers.³⁷

4.1 Public Employment

Various levels of government employ workers at airports. Air traffic controllers are employed by the FAA, while TSA agents are employed by the federal government or federal contractors.³⁸ The employees of states and localities are also prominent at airports, performing security, facilities maintenance, and, in partnership with federal workers, law enforcement functions. The largest groups of employees on the Los Angeles World Airports 2020 payroll, for example, are law enforcement officers, with smaller groups of maintenance, engineering, and trade employees.³⁹ In 2020, PANYNJ listed 2,406 employees in its police department and categorized 1,855 employees as aviation workers.⁴⁰

4.2 Airport Authority Contractors and Concessions

Airport authority contracts scatter jobs among various employee-employer relationships. Some authority-contracted employers are concessionaires, which are firms that rent profit-making facilities like retail space. Others are service contractors, such as the property services, security, and maintenance firms that keep airports running smoothly and safely.

Airport authorities take a few approaches to structuring employment among contractors and concessionaires. Some authorities contract out their management tasks wholesale to a third-party manager or developer, usually on a terminal-by-terminal basis. The management of JFK's Terminal 8, for example, was contracted to Westfield, a major shopping center manager. More simply, authorities can directly lease facilities to their operators, but some authorities route most or all of concessions management through a prime concessionaire, which operates some share of the on-site businesses directly while contracting other aspects out. Schemes with multiple primes, with each prime managing a terminal or a specific business category (e.g., retail or duty free), are also common. Service contract work is also arranged by airport authority contract packages.⁴¹

These contractual schemes often leave airport employers substantial room to subcontract the work they do on concessions or other contracts. The immediate employer of a custodian or a rental car sales representative may be a small LLC franchised by a larger business. Rental car concessions business is distributed among many franchisees to just three holding companies (Avis, Enterprise, Hertz), each containing multiple brands. HMSHost, Hudson, and other food, beverage, and retail concessionaires not only operate franchises of other brands, but also sublease to outside businesses. Service

contractors and concessionaires use subcontracts and joint venture agreements to satisfy federal, state, and local programs that encourage the participation of disadvantaged groups in public contracting.⁴²

4.3 Airlines and Airline Service Providers

Four airline holding companies and their subsidiaries dominate the U.S. air travel industry, due to post-deregulation consolidation. The top four passenger air carriers—American, Delta, Southwest, and United—hold over two-thirds of the domestic market as measured by sales. Those four firms are both the largest employers and earners in an industry that employs about 600,000 full-time workers, according to Bureau of Transportation Statistics (BTS) data, which unfortunately do not group employees by airline holding company but by carrier. Air cargo revenues are similarly concentrated in FedEx and UPS. About 446,000 people, or 71% of all airline employees, work for American, Delta, FedEx, United and Southwest, not including their air carrier subsidiaries. FedEx is the largest employer per the BTS, with over 200,000 full-time employees, although some are not be closely tied to airports.⁴³

Since deregulation, airline bankruptcies and mergers have seriously burdened collective bargaining and workers' rights.⁴⁴ Except for Southwest, the major airlines have all have filed for bankruptcy in the last two decades. United filed in 2002, Delta in 2005, Frontier in 2008, and American in 2011. Unions strenuously objected to the terms of some of these bankruptcies, which cut compensation and benefits and encouraged outsourcing.⁴⁵

Splitting work among direct employees, employees of subsidiaries, and employees of contractors has been a central feature of airlines' attacks on unionized workers and working conditions more broadly. Apart from Southwest,

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Carriers Reporting Over 5,000 Full-Time Employees	
Carrier	FTEs
Hawaiian	5104
Frontier	5129
Piedmont	5281
Republic Airline	5,496
United Parcel Service (UPS)	6,455
Spirit	8,949
Envoy Air	11,200
SkyWest	12,968
Alaska	14,992
JetBlue	15,088
Southwest	53,602
United	60,215
Delta	61,045
American	87,718
Federal Express*	205,921

the major airlines all operate subsidiary airlines and have ground handling subsidiaries.⁴⁶ United owns a ground-handling subsidiary called United Ground Express. As of 2019, Delta owns only 49% of Delta Global Services, its ground services operation. American, Delta, and United have also contracted with SkyWest, which operates flights as part of major airlines' sub-brands, like American Eagle, Delta Connection, or United Express. The major airlines also own an assortment of regional airlines in addition to their main and subsidiary carrier brands.

Airline service providers, which contract with airlines to provide ramp, fleet, catering, and customer service, have also been establishing a growing presence at North American airports, expanding rapidly after the 2008 financial crisis.⁴⁷ Many of these firms, often called ground service providers, are spinoffs from European flag carriers or are Europe-based, like Swissport (a Swiss corporation owned by international private equity firms),⁴⁸ WFS-Aviapartner (owned by LBO France, a private equity firm), and Menzies (Scotland-based firm owned by Endless LLP, a UK-based private equity firm). There are major domestic players in the ground services market as well, such as GAT Airline Ground Support, Aircraft Service International Group, Airport Terminal Services, and Aviation Port Services. While some airline service providers like Menzies offer services almost sufficient to displace an airline's entire presence at an airport, specialists like the catering brands SkyChefs or Gate Gourmet also play an important role in supplementing airline services.⁴⁹

At major airports a large number of these businesses may be present in varying degrees, performing any number of functions. These airline contractors also subcontract frequently, so the immediate employer of a cabin cleaning or baggage handling agent may be a small LLC operating as a franchisee.

4.4 Comparison: Canadian and Mexican Airlines.

The deregulatory impulse that changed American civil aviation in 1978 reached Canadian and Mexican airlines during the eighties and nineties. Air Canada, once a federal Crown corporation, was completely privatized by 1989.⁵⁰ Privatization of Mexican state-owned airlines, Aeromexico and Mexicana, as well as deregulation of routes and fares, began in 1988. Shortly afterwards, Aeromexico bought Mexicana only for both to enter bankruptcy, return to state ownership, and be privatized once again. Now, Aeromexico is part-owned by Delta, and Air Canada's shares are owned by a mix of mutual funds. Mexicana Airlines ceased operations in 2010 following its bankruptcy.⁵¹

As in the U.S., mergers, bankruptcies, and consolidation followed airline deregulation in Canada. In 2001, Air Canada bought its chief competitor, Canadian Airlines. That acquisition

created a two-tiered workforce and brought Air Canada to file for bankruptcy in 2003.⁵² Now, Air Canada, WestJet, and the smaller Transat dominate the Canadian passenger air travel market.⁵³ Following financial difficulties in the 2000s, significant parts of Air Canada's business were sold to raise funds.⁵⁴ Air Canada Express, for example, acts similarly to American Airlines's regional subsidiaries but Express flights are operated by Jazz LP, part of Chorus Aviation's holdings. In Mexico, during a years-long battle over privatizing state airlines, low-cost carriers grew rapidly. Volaris, Viva Aerobus, and Aeromexico Connect now dominate the Mexican passenger air travel market, each earning more revenue than Aeromexico's mainline brand.⁵⁵

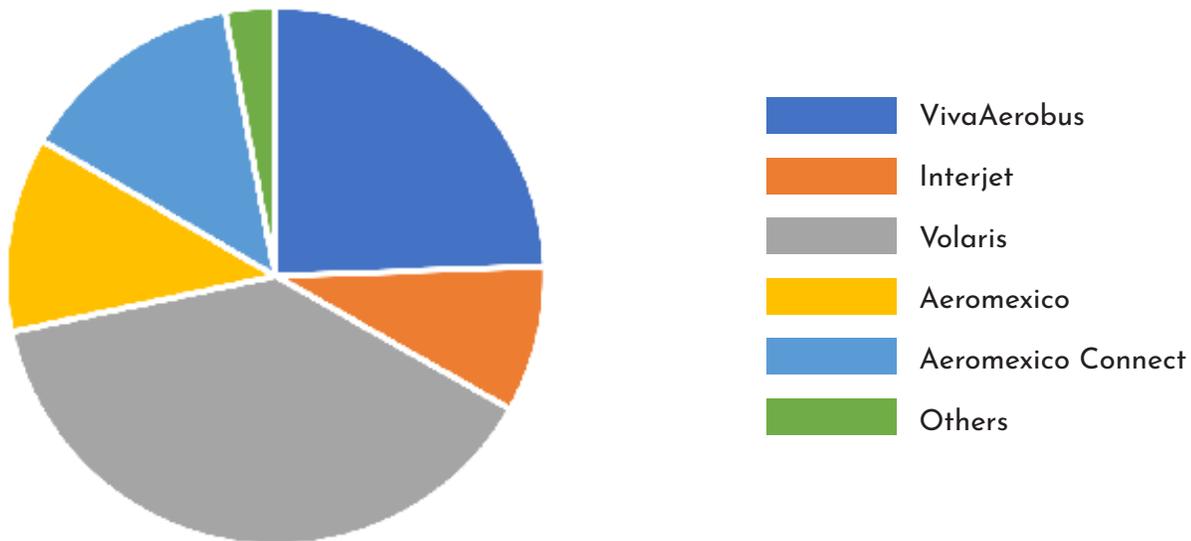


Figure 4.1: Mexican Airlines by Domestic Revenue Passenger Miles, 2020

- 36 Brian Callaci, Fissuring in Flight: Consolidation and Outsourcing in the US Domestic Airline Industry, 1997-2018 (Jan. 7, 2020) (<https://cwa-union.org/AirlineOutsourcing>).
- 37 International Association of Machinists and Aerospace Workers, Contract Flip in Canada Nets New Contract and New IAM Members (May 24, 2018) (<https://www.goiam.org/news/contract-flip-in-canada-nets-new-contract-and-new-iam-members/>).
- 38 49 U.S.C. § 44920.
- 39 The City of Los Angeles payroll is made public on a rolling basis at this link: <https://controllerdata.lacity.org/Payroll/City-Employee-Payroll-Current-/g9h8-fvhu/data>.
- 40 The NY/NJ Port Authority posts its payroll data here: <https://www.panynj.gov/corporate/en/transparency/payroll.html>.
- 41 National Academies of Sciences, Engineering, and Medicine, Resource Manual for Airport In-Terminal Concessions 112 (2011) (<https://www.nap.edu/catalog/13326/resource-manual-for-airport-in-terminal-concessions>).
- 42 Id. at 111–14. There are multiple federal programs that encourage a diverse contractor base on airports. Airports receiving Airports Improvement Program (AIP) funds are subject to Disadvantaged Business Enterprise Program (DBEP) if they receive more than \$250,000 in AIP funds in any fiscal year. 49 C.F.R. §§ 23, 26. Another program applies to concession businesses. The Airport Concession Disadvantaged Business Enterprise Program (ACDBE) applies to primary airports that receive AIP funding and have concession revenues of \$200,000 from car rental and non-car rental concessionaires. 49 U.S.C. § 47107(e); 23 C.F.R. 23. The states, not the federal government, certifies firms as DBEs although federal law encourages states to recognize DBE certifications from other states. 49 C.F.R. § 23.65(d)(2) (state declining reciprocity must show “good cause to believe that [another state’s] certification of the firm is erroneous or should not apply in your state”).
- 43 The Bureau of Transportation Statistics ranks airlines by operating revenue among other features on its website (<https://www.bts.gov/airline-rankings-2019>).
- 44 American Airlines merged with Trans World in 2001 and, while emerging from bankruptcy, merged with US Airways in 2013. Southwest Airlines acquired ATA Airlines in 2008 and Air Tran Airlines in 2010. Frontier and Midwest Airlines were purchased and merged in 2009 and now operate only as Frontier under a new owner, the investment firm Indigo Partners. In 2010, United and Continental merged, while Alaska Airlines merged with Virgin in 2016, with the company now operating solely as Alaska. For a chronological list of airline bankruptcies, see: <https://web.archive.org/web/20160528074046/http://airlines.org/data/u-s-bankruptcies-and-services-cessations/>.
- 45 See e.g., *Midway Airlines, Inc. v. Northwest Airlines, Inc.*, 6 F.3d 492, 493 (7th Cir.1993) (Minneapolis-Saint Paul Metropolitan Airports Commission objecting; *In re AMR Corp.*, 478 B.R. 599 (Bankr. S.D.N.Y. 2012) (authorizing American Airlines to reject collective bargaining agreement with Allied Pilots Association); Protecting Employees in Airline Bankruptcies: Hearing Before the Subcomm. on Commercial and Administrative Law, 110th Cong. (Dec, 16, 2009) (Statement of Stephen Nagrotsky, Deputy Director, Airline Division, International Brotherhood of Teamsters) (<https://www.govinfo.gov/content/pkg/CHRG-111hhr54077/html/CHRG-111hhr54077.htm>). The last cited hearing includes testimony from representatives of the Air Line Pilots Association, the Coalition of Airline Pilots Associations, the International Association of Machinists and Aerospace Workers, and the International Brotherhood of Teamsters.
- 46 United runs United Express. Delta runs Endeavor Air. American runs Envoy Air, Piedmont Airlines, and PSA Airlines. SkyWest and Republic Airlines also operates flights under American Eagle, United Express, and Delta Connections branding.
- 47 Kalena Thomhave, Airport Workers to Launch Worldwide Protests for Higher Pay, Improved Working Conditions, Am. Prospect (Sept. 26, 2018) (<https://prospect.org/labor/airport-workers-launch-worldwide-protests-higher-pay-improved-working-conditions/>).
- 48 Effective December 2020, Swissport’s secured lenders—a group of private equity firms—became Swissport’s owners. Swissport, Swissport Completes Financial Restructuring / Ownership Transfer to Group of New Shareholders (Dec. 20, 2020) (<https://swissport.com.au/2020/12/22/swissport-completes-financial-restructuring-ownership-transfer-group-new-shareholders/>).
- 49 Steer Davies Gleave, Study on Airport Ownership and Management and the Ground Handling Market in Selected Non-EU Countries (June 2016) (commissioned by the European Commission’s Directorate General for Mobility and Transport) (<https://ec.europa.eu/transport/sites/transport/files/modes/air/studies/doc/2016-06-airports-and-gh.pdf>).
- 50 Air Canada Public Participation Act, R.S.C., 1985, c. 35 (4th Supp.).
- 51 Brian Callaci, Fissuring in Flight: Consolidation and Outsourcing in the US Domestic Airline Industry, 1997-2018 (Jan. 7, 2020) (<https://cwa-union.org/AirlineOutsourcing>).
- 52 Andrew Stephens and Andrew Templeton, Collective Action and Labour Militancy Interrupted: Back-to-Work Legislation and

the State of Permanent Exceptionalism at Air Canada, Economic and Industrial Democracy (2016) (<https://journals.sagepub.com/doi/full/10.1177/0143831X16682306>).

53 Arunima Kumar and Allison Lampert, Air Canada Scraps Transat Deal on EU Headwinds, Other Bidder Returns, Reuters (Apr. 2, 2021) (<https://www.reuters.com/article/us-transat-at-m-a-air-canada/air-canada-scraps-transat-deal-on-eu-headwinds-other-bidder-returns-idUSKBN2BP17D>).

54 Brent Jang, Union Wars of Air Canada Maintenance Outsourcing, Globe & Mail (Mar. 8, 2011) (<https://www.theglobeandmail.com/globe-investor/union-warns-of-air-canada-maintenance-outsourcing/article4268194/>); Andrew Stephens and Doug Nesbitt, An Era of Wildcats and Sick-outs in Canada? The Continued Decline of Industrial Pluralism and the Case of Air Canada, Labor Studies Journal (2014) (<https://journals.sagepub.com/doi/10.1177/0160449X14531681>).

55 Volaris is Now No. 1 Airline in Mexico for Market Share, Mexico News Daily (Oct. 26, 2019) (<https://mexiconewsdaily.com/news/volaris-no-1-airline-in-mexico-for-market-share/>).

Advances for Airport Workers

Workers, unions, and their allies had remarkable success in improving the quality of the jobs that bring people onto airport property over the last decade. Through advocacy and activism, they have won legislation, regulation, and procurement policies that make airport work more secure, remunerative, and dignified. Airport authorities and other agents of local government have been vital parts of broader efforts to change the basic rules of work. The City of SeaTac, which contains Seattle-Tacoma International Airport, was one of the first jurisdictions to enact a fifteen dollar minimum wage, which it did through a 2013 referendum.

A variety of pro-worker policies have committed public power to improving airport employment. Through statutes, regulations, and contracting policies, minimum wages have risen and been tied to inflation or prevailing wage formulas. Even before the pandemic, airport workers were among the first to benefit from statutory recall rights. Airport tenants have been subjected to labor peace agreement requirements embodied in airport authority rules and local law. These policies may apply to groups of employees defined by the amount of working time they spend on site, the type of service they work to provide, or the contractual relationships between their employers and airport authorities.

At Toronto Pearson Airport, Canada's largest interunion cooperation has proven to be a potent force for workers' rights. Emerging from resistance to the privatization of airport and

airline operations, the Toronto Airport Workers Council (TAWC), an alliance between several unions active at Pearson, pursues the collective goals of all airport workers and supports the struggles of its member unions. TAWC has

tangibly advanced Pearson workers' interests by bringing their collective influence to bear on the Greater Toronto Airports Authority (GTAA), resulting in early vaccine access, reduced transportation costs, and other benefits. TAWC provides a model for effective, airport-wide advocacy and activism based around the airport.

5.1 Policies for Airport Work

Airport authorities and local governments have established policies that improve employee compensation, enhance job security, and ease organization. Airport employment has been an important contributor to major advances in compensation and other terms of employment through what are generally called living wage laws. The highest wage floors in the nation cluster around airports. San Francisco's Minimum Compensation Ordinance, enacted in 2000, imposes an \$18 minimum wage on most on-site airport work.⁵⁶ The City of Los Angeles Living Wage Ordinance, as of July 2021, requires "airport employers" to pay at least \$17 per hour with at least \$5.67 contributed to health benefits or \$22.67 without health benefits. Workers at LAX and Van Nuys airports, under the living wage law, must also receive at least 96 compensated hours off-hours per year along with 80 hours of uncompensated leave for personal or family illness.⁵⁷

Similar gains have been achieved without legislation. The Mayor of Houston signed a "living wage" executive order in October 2019, which raised the minimum wage for some airport

employees to \$12 in 2021.⁵⁸ PANYNJ raised the minimum wage at John F. Kennedy, LaGuardia, and Newark airports by administratively adopting new wage rules for some airport employees. In September 2018, the minimum wage for Newark airport workers was \$10.45. By 2023, it will be \$19 at all three airports.⁵⁹

Many of these recent policies for airport work include provisions for long-term change in wage and benefits rates, either by tying the rates to inflation indices or prevailing rates. These provisions are supplemented by further wage and benefit rules enacted in the Healthy Terminals Acts, parallel laws passed by the legislatures of New York (S.6266D of 2020 and S.4001 of 2021) and New Jersey (S. 989 of 2021).⁶⁰ Similarly, Philadelphia amended its prevailing wage ordinance for city contractors to include a broad variety of airport employers. The City of SeaTac's minimum wage is indexed to the CPI-W, which is also used to adjust social security benefits.⁶¹

Other local government and airport authority policies give rights to labor organizations. Some airports have a policy of signing project labor agreements with labor unions. Project labor agreements are pre-hire agreements, typically between labor organizations and contractor associations, that set the terms for employment on specified projects, similar to pre-hire agreements in the private construction industry.⁶² Labor peace policies generally require that employers enter into an agreement with a labor organization seeking to represent their employees.⁶³ Through contract, employers and unions may cede their National Labor Relations Act rights. In return for the union's promise not to call a strike, an employer might agree to waive its right to demand a representation election or to campaign against organizing. If a union requests a labor peace agreement but cannot agree with an employer, then the remedy is sometimes authority-mandated arbitration, as LAWA's policy provides. In 2019, the Ninth

Circuit held that LAWA's labor peace policy was not preempted by the Airline Deregulation Act, the National Labor Relations Act, or the Railway Labor Act.⁶⁴

Recall and retention requirements have spread across U.S. airports in recent years, fueled by pandemic-related job insecurity and aggressive business practices. Recall rights laws require employers to offer laid-off employees their former jobs or similar jobs if they become available, and to offer retraining for different jobs in some cases. Worker retention laws require successor contractors to retain, and sometimes retrain, employees of the predecessor contractor for a specific time and provide important stability in a contract-based employment environment.⁶⁵ An April 2021 California law established recall rights for certain air transportation employees, among others. That law, SB 93, supplements but does not preempt similar recall-and-retention legislation for air travel established by several localities, including the cities of Long Beach, Los Angeles, and Oakland. Outside of California, Minneapolis, Philadelphia, and the State of Nevada have also enacted similar legislation.⁶⁶

Each of these policies and laws applies to certain segments of employees who go to airports in the course of their work or work on contracts with airport authorities and on-airport employers. Some of these policies use a geographic definition of airport workers or designate specific kinds of work as subject to the relevant policy. Portions of the New York Healthy Terminals Act, for example, apply to workers employed for at least half of any workweek on PANYNJ airport property in the state, with exclusions. The wage rules PANYNJ adopted before these acts were passed took a different approach, designating three pages worth of services that were subject to the policy. Philadelphia's labor peace law follows a similar pattern and applies to airline contractors performing "ground services," a category which includes ramp area security

services, cargo and passenger loading services, and aircraft cleaning, deicing, fueling, and maintenance.⁶⁷ A recently enacted Philadelphia law applied prevailing wage rules to a larger group, “covered airport service employees,” a complex amalgam of workers involved in ground services and food, beverage, and retail concessions operations, among others.⁶⁸

Legal definitions of airport work are often lengthy and dense, with significant exclusions based on employers’ contracts with airport authorities, the geography of work, and the functions performed on a job. A common limitation prevents living wage laws from applying to the employees of airlines and their subsidiaries to avoid administrative and legal challenges, but other wage policies do apply to some air carrier employees.⁶⁹ However, federal labor and aviation law preemption may still provide room for state and local employment regulation of airport and aviation employment.⁷⁰

Businesses have cynically manipulated these contractual divides to avoid regulation, a fact evidenced by American Airlines’s evasion of the Miami-Dade living wage ordinance. American contracted with Eulen USA to provide wheelchair attendant services at Miami International Airport. The wheelchair attendants were protected by the 1999 Miami-Dade County living wage law, which applied to airline service providers but not airline and airline subsidiaries.⁷¹ To avoid the law’s provisions, American Airlines insourced the work to its subsidiary Envoy.⁷² The county mayor vetoed efforts to expand the law in 2018. American made similar efforts to evade the application of Broward County’s living wage law at Fort Lauderdale-Hollywood International Airport.⁷³

5.2 Enforcement

None of these policies is self-enforcing, and some airport employers are already lax in their compliance with employment, health, and safety law. Airport authorities generally have the power to discipline contractors and subcontractors who violate contractual requirements and regulations, but for many authorities cancelling the contract is the primary available remedy. Yet authorities are hesitant to do so, not only because of potential legal risks and administrative costs, but also because airlines object, claiming a need for continuity of service. To avoid these limitations, unions have advocated for policies that ensure rules are followed without resort to the airport authority’s remedies of contract cancellation or contractor debarment.

Private rights of action are an important means for enforcing rights against recalcitrant airport employers, allowing employees to sue without involving the airport authority or another government agency. These ordinances may contain penalties and fee-shifting provisions that make bringing a suit a viable means for relief. Miami-Dade County, for example, attached a private right of action to its living wage ordinance. A successful action can win back pay, benefits, attorney’s fees, and other costs, as well as a sanction of up to \$500 for each week the employer is in violation of the ordinance. Separate penalties may be sought by and paid to the county.⁷⁴ Some governments may also recover the funds through administrative processes or breach of contract suits against employers.⁷⁵

Contractor responsibility policies are another enforcement tool that require potential airport authority contractors to prove their bona fides as employers. Usually, the responsibility policies begin to take effect during the bidding process. LAWA, for example, requires bidders and proposers to submit survey answers regarding

their employment practices and past violations of employment law. The contractor responsibility policy continues after the award, as the procurement department has an investigation and sanctions process for violations. Designating a contractor non-responsible allows LAWA to seek legal remedies, to disqualify potential contractors, and to subject existing contracts to cancellation.⁷⁶

5.3 Toronto Airport Workers Council⁷⁷

Based at Lester B. Pearson International Airport, the Toronto Airport Workers Council (TAWC) is an organization of airport workers supported by a pact of solidarity signed by airport unions. TAWC and the pact grew out of Pearson workers' resistance to the pressures brought on by Air Canada's transformation from public airline to part of a restructured holding company. Facing pension and other cuts, several of the numerous bargaining units at Air Canada—customer service agents, flight attendants, mechanics, pilots, and others—were called to strike in 2011 and 2012. They were restrained by threatened and actual back-to-work legislation. As a path around government repression, TAWC was founded and the solidarity pact expanded in 2012. That same year, the Greater Toronto Airports Authority recognized the Council as a legitimate representative of workers' interests and began meeting with its members regularly. Since then, TAWC has proved a potent channel for all Pearson workers' power even in an environment marked by bitter resistance to workers and unions.

TAWC provides support to on-site unions and an infrastructure for wielding worker power at Canada's largest workplace. Its meetings, held on-site, offer a forum for union and worker activists to identify common goals and act on them—through the Council's joint mobilization committees. TAWC, for example, helped assemble broad worker backing behind Unifor

and the Machinists's fight against contract flipping at Pearson, a strategy employers have used to destabilize unions and attack workers' rights.⁷⁸ TAWC also serves an important interunion coordination role at the airport, whose approximately 400 employers pay 50,000 people to work on-site. TAWC generates efficiencies by aligning the work of local committees. Especially when the employer-union relationship seems unlikely to provide relief, committees can turn to the Council, and the Council's relationship with GTAA can provide a more effective route for action.



TAWC's strength lies in its connection to airport workers and the airport community. TAWC has made great efforts to build up a community of airport workers focused on creating a worker-centric culture and making solidarity a matter of day-to-day life. Most meetings are held at accessible, on-site locations prior to the pandemic, and the Council has advocated for the expansion of common areas for workers to congregate. The Council holds an annual May Day event and celebrates the airport's wildcat strike culture. TAWC also serves to connect airport workers with outside partners, routinely collaborating with community groups interested in airport life. This collaboration has had many successes. For example, with Toronto Transit Commission Riders, TAWC successfully campaigned to reduce the fares on the Union Pearson Express, a rail link between downtown Toronto and the airport, from \$27 to \$12 for the public and to \$3.50 for

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Figure 4.2: TAWC members celebrate May Day.

airport workers. TAWC has also provided support to campaigns for higher wages in Toronto and Ontario, even though federally regulated TAWC workers will not benefit.⁷⁹

The Council's work is strengthened by its tight lines of communication to the Greater Toronto Airports Authority (GTAA), which manages the airport. GTAA recognized TAWC as a legitimate representative of airport workers' interests in 2012, and the two organizations meet monthly. GTAA is very concerned to protect its relationship with the airport community and to preserve continued service. The Council's connections to Pearson workers, as well as its broad reach, make it valuable to GTAA. TAWC can inform GTAA of developing problems before they result in service interruptions, and TAWC can provide the community input GTAA desires. Through this relationship, TAWC has been able to use the GTAA's powers to constrain employers and advance workers' interests, providing an important complement to union bargaining. Through GTAA, TAWC has successfully advocated

for a worker-empowering airport-wide health and safety council as well as employment assistance during the COVID-19 pandemic.⁸⁰

Using GTAA as a lobbying site has been a boon for bargaining, providing another source of leverage over and information about employers. Although the authority has been far from a perfect ally, GTAA's role in developing the airport's physical plant has provided an effective opening for worker influence. Alerted by TAWC agitation, GTAA helped stop Air Canada's plan to build new, unsafe ticket agent workstations, leading to the installation of an ergonomic alternative.

56 Brent Jang, Union Wars of Air Canada Maintenance Outsourcing, *Globe & Mail* (Mar. 8, 2011) (<https://www.theglobeandmail.com/globe-investor/union-warns-of-air-canada-maintenance-outsourcing/article4268194/>); Andrew Stephens and Doug Nesbitt, An Era of Wildcats and Sick-outs in Canada? The Continued Decline of Industrial Pluralism and the Case of Air Canada, *Labor Studies Journal* (2014) (<https://journals.sagepub.com/doi/10.1177/0160449X14531681>).

57 City of Los Angeles Admin. Code § 10.37.

58 City of Houston, Exec. Order 1-64, Living Wage Air Carrier (Oct. 9, 2019) (<https://www.houstontx.gov/execorders/1-64.pdf>).

59 Port Authority of New York and New Jersey Amended Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts—LGA/JFK/EWR (Sept. 27, 2018) (<https://www.panynj.gov/content/dam/airports/index/amended-wage-rules.pdf>).

60 Healthy Terminals Act, 2020 Sess. Law News of N.Y. Ch. 387 (S. 6266-D); Healthy Terminals Act, 2021 Sess. Law News of N.Y. Ch. 88 (S. 4001); Healthy Terminals Act, 2021 N.J. Sess. Law Serv. Ch. 68 (S. 989).

61 City of SeaTac Code § 7.45.050(b).

62 See e.g., *N.Y. Lab. Law § 222; Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993).

63 City of Philadelphia Code § 18-201(8)(b); City of Chicago Code § 10-36-210(a). LAWA's Board of Airport Commissioners Resolution 23437 (Oct. 15, 2007) requires this language on be inserted into concessions contracts:
Prior to the contract execution and/or contract amendment by City, and as a condition precedent to such execution: (i) Concessionaire shall have a signed Labor Peace Agreement (LPA) with the labor organizations representing or seeking to represent concession workers at the premises covered by the Agreement; (ii) Concessionaire shall have submitted to LAWA (Los Angeles World Airports) a copy of such LPA, executed by all of the parties; and (iii) such LPA shall prohibit such labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of Concessionaire at any of the airports operated by LAWA for the duration of the Agreement.

64 *Airline Service Providers Association v. Los Angeles World Airports*, 869 F.3d 751 (9th Cir. 2017).

65 City of Oakland Code § 5.95.

66 2021 Cal. Legis. Serv. Ch. 16 (S.B. 93) (amending Section 2810.8 of the California Labor Code (https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB93)); City of Long Beach Code § 16.69.030; City of Los Angeles Admin. Code § 10.36; City of Oakland Code § 5.95; City of Philadelphia Bill no. 200557 (2021); Nevada Hospitality and Travel Workers Right to Return Act (Senate Bill No. 368 of 2020).

67 City of Philadelphia Code § 18-201(8)(b); City of Chicago Code § 10-36-210(a) (defining concessionaire subject to labor peace policy).

68 City of Philadelphia Bill No. 210421-A (2021).

69 City of SeaTac Code § 7.45.010(M).

70 See e.g., *Bernstein v. Virgin Am., Inc.*, No. 19-15382, 2021 WL 3047171, at *7 (9th Cir. Feb. 23, 2021) (holding flight attendants' claims under California wage and break law not preempted); *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812 (3d Cir.), cert. denied, 140 S. Ct. 102 (2019).

71 Miami-Dade Cty. Code § 2-8.9(F).

72 Jim DeFede, MIA's Forgotten Workers: Low Wages, Poor Treatment for Many at Miami International Airport, *CBS Miami* (Apr. 21, 2019) (<https://miami.cbslocal.com/2019/04/21/mia-forgotten-workers-low-wages-poor-treatment-miami-international-airport/>); Taylor Dolven, Miami Approved MIA Workers' Living Wage. So Why Are Many Still Making Below Minimum?, *Miami Herald* (Dec. 5, 2018) (<https://www.miamiherald.com/news/business/tourism-cruises/article222612650.html>).

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74 Miami-Dade Cty. Code § 2-8-9, compliance and enforcement (C).

75 Port Authority of New York and New Jersey Amended Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts—LGA/JFK/EWR (Sept. 27, 2018) (<https://www.panynj.gov/content/dam/airports/index/amended-wage-rules.pdf>).

- 76 Los Angeles City Code § 10.40.6. The sanctions regulations are clarified here: https://www.lawa.org/-/media/lawa-web/business-opportunities/files/crp_faq.ashx.
- 77 For a description of TAWC's achievements and structure, see Jordan House and Paul Christopher Gray, The Toronto Airport Workers' Council: Renewing Workplace Organizing and Socialist Labor Education, *Labor Studies Journal* (March 2019) (<https://journals.sagepub.com/doi/10.1177/0160449X19828468>). For a description of the background of labor disputes at Pearson, see Andrew Stephens and Doug Nesbitt, An Era of Wildcats and Sick-outs in Canada? The Continued Decline of Industrial Pluralism and the Case of Air Canada, *Labor Studies Journal*
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- 79 Steven Tufts, Living Wages for Airport Workers, *The Bullet* (Jan. 12, 2020) (<https://socialistproject.ca/2020/01/living-wages-for-airport-workers/>).
- 80 Andrew Stephens and Doug Nesbitt, An Era of Wildcats and Sick-outs in Canada? The Continued Decline of Industrial Pluralism and the Case of Air Canada, *Labor Studies Journal* (2014) (describing the labor disputes of 2011 and 2012 and the legislative response) (<https://journals.sagepub.com/doi/10.1177/0160449X14531681>).

6

GOING FORWARD

For North American unions, airports are a site of challenges and of opportunity. The air travel business is normally cyclical, but the pandemic shock has been of another magnitude. Unions have the density at airports to make this a pro-worker recovery, one that addresses structural and more immediate issues.

One relatively straightforward way for unions to expand their influence at airports is to, following the Toronto Airport Workers Council model, establish airport-wide councils to represent workers. The broader claim of representation amplifies councils' voices and provides a unique ability to contest public judgements about what is best for the airport and its surrounding community. This can form the basis for an active relationship with airport authorities and other policymakers. Building stronger relationships with airport authorities has also proven to be an extremely effective way to prime airports for organizing and securing benefits for workers organized and not. At the same time, an airport-wide council could provide an airport-wide reserve of power and coordinated energy to bolster workers and unions in their struggles.

Relationships between airport workers, airport unions, and airport authorities can also be used to influence basic structural features of the work-

place and many vital working conditions. Authorities' ownership interests give them some degree of influence over most airport operations. With the right advocacy, that influence can be used to facilitate contract structures that promote effective bargaining and improved working conditions. In particular, the structure of bids can be used to create administrable and strong bargaining units, resisting trends towards unit fragmentation. More broadly, as airports adjust their layouts to meet new public health needs and new operational requirements, influence with authorities can ensure that the physical layout of an airport is built with the needs of workers in mind.

While the power of airport workers may be exercised to many different ends, two areas stand out for near-term progress: airport access and health policy. For the purposes of organizing units and staging effective protest actions, unions can advocate to ensure that airport workers can exercise their First Amendment rights in an effective way, despite the security issues that usually keep on-site activity restrained. Access to on-site spaces for worker gatherings may also be desirable, especially as an aide to airport-wide organizing efforts. Health and safety policy relevant to all workers will largely be controlled by airport authorities in combination with federal regulators. Workers across the airport have tightly interwoven interests when it comes to preventing the spread of infectious disease, and health and safety councils that represent workers provide a means to ensure that those interests are represented in making decisions about work.

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