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THE NATIONAL AIR LINES STRIKE: A CASE STUDY

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NATIONAL Airlines, a medium-size carrier with about 1,650 employees, was beset by labor troubles during the early post-war years. These erupted, early in 1948, into two protracted strikes. The International Association of Machinists (IAM) called out National's 675 clerical and office workers on January 23, and the 650 maintenance employees, also represented by the IAM, "respected" the clerical picket lines. This strike lasted for six months. On February 3, over an unrelated issue, the Air Line Pilots Association (ALPA) initiated a walkout of National's 125 pilots. This strike continued for almost nine months, and complications developing out of the pilot dispute had not been resolved until 1950. All airline work stoppages prior to the National strikes had been less than four weeks in duration.

The length of the disputes, and the determination with which they were fought on both sides, found the parties resorting to a variety of tactics unparalleled in airline experience. For the first time, a carrier tried to break a strike by the hiring of replacements. Assorted legal actions were instituted. Public relations activities aimed particularly as National's customers were given considerable emphasis. Unusual political pressures were applied. The recommendations of a Presidential Emergency Board, belatedly appointed in May, 1948, were rejected by the company. The Civil Aeronautics Board, which has always tried to steer clear of union-management disputes, became deeply embroiled. For these and other reasons, the National experience has provided a particularly revealing episode in the development of airline industrial relations. The purpose of this article is to recount and to extract the relevant lessons from the National Airlines controversy.

BACKGROUND: THE IAM STRIKE

On December 13, 1945, the National Mediation Board certified the IAM as the representative of the mechanical, ground service and stores employees of National Airlines.¹ Prior to this date, as later reported by a Presidential Emergency Board, National's management

... had attempted to prevent the employees from affiliating with a national union and to bring about the establishment of an independ-

* For another discussion of the Railway Labor Act applied to airlines see comment by Frankel, "Airline Labor Policy, the Stepchild of the Railway Labor Act," 18 J. AIR LAW & COM. 461.

¹ NMB Case No. R-1548.

ent [company] organization of its employees. Its efforts in this direction included the offer of the free use of the Carrier's legal services in securing certification of an independent union and in the preparation of a contract with the Carrier; they included also the promise of more substantial future benefits to the employees from the formation of an independent union than would be forthcoming if they affiliated with a national union.²

In spite of these efforts, the results of the NMB representation election constituted an overwhelming endorsement of the IAM.³ Although a first contract was signed on March 17, 1946, and a second contract on January 17, 1947, this entire period was marked by frequent manifestations of hostility toward the union on the part of National and of a lack of good faith on the part of the carrier in living up to the terms of the contracts it did sign.

During the summer of 1946, the Brotherhood of Railway Clerks commenced an organizing campaign among the clerical and office personnel of National. The IAM had no desire to represent this bargaining unit, but it contested the BRC's asserted claim to stores employees. On January 31, 1947, the NMB included stores personnel within the clerical craft or class.⁴ To maintain its representation rights for the stores employees, the IAM promptly undertook, in competition with the BRC, to represent the enlarged clerical unit. After winning a close election, the IAM was certified as representative of the clerical unit on April 1, 1947.⁵

Early in June, the IAM local chairman requested from National a copy of the wage rates, job descriptions and titles used by the carrier for its employees in the clerical unit, these data to be used by the IAM in formulating the union's proposals for a clerical contract. This request was repeated several times during the next two months, but the material was not supplied. In August, the IAM finally constructed a proposed contract without the benefit of this information, and transmitted the document to National on August 27. After some delay and a postponement, both due to the Company, negotiations commenced on October 21.

Unproductive bargaining sessions continued for eight days. Considerable time was spent listening to National's President Baker tell the union leaders why there should not be a union. Apparent throughout was National's unwillingness to limit or compromise what it regarded as essential managerial prerogatives. The company's contract proposal concerning seniority, for example, read: "Seniority, while it shall not be considered a controlling factor in promotions, demotions,

² Emergency Board (No. 62), appointed May 15, 1948, pursuant to Section 10 of the Railway Labor Act, as amended (hereafter cited as: NAL Emergency Board), *Report to the President*, p. 11.

³ Out of 315 workers eligible to vote, 270 cast valid ballots. 264 of these designated the IAM.

⁴ NMB Case No. R-1706, *et al.* "Determination of Craft or Class."

⁵ NMB Case No. R-1706. "Certification." 640 out of 849 eligible employees cast ballots. The vote: 285 for IAM; 259 for BRC; and 96 void.

transfers and layoffs, will be considered." To govern the compensation of employees assigned to temporary service away from their home stations, National's proposal read: "The Company, at its option, may establish a per diem to cover all expenses other than transportation.⁶ On October 29, after documenting its case with a detailed statement of National's financial position, the Company insisted that no wage increase was possible at that time. It then insisted on a recess, over the union's objection, until December 2. On November 17, without prior notice, National unilaterally instituted a wage increase of \$20 per month, for all employees earning less than \$275 per month and not covered by labor agreements. "This wage increase was applicable to the clerical employees represented by the Association whose negotiating representatives had just been informed that no increase in wages was possible."⁷

The IAM had requested NMB intervention on October 31. On November 12 (five days before the unilateral wage increase) the clerical employees took a strike vote and set a strike date for December 12, so notifying the Company and the NMB. A mediator arrived on the scene on December 1, and fresh negotiations began on the following day in his presence. The IAM agreed to postpone the strike. This time, the Company adopted the apparently dilatory tactic of insisting upon an unlimited right to contract out all work, while it refused to discuss other contract terms until the contracting-out issue was settled. These negotiations continued through December 8, on which date the mediator informed the parties of his belief that a stalemate had been reached. On December 10, the mediator made a formal proffer of arbitration in writing, which the IAM accepted the following day. The Company, replying on December 17, stated its unwillingness to arbitrate at that time, but informed the NMB that it would submit the question to its Board of Directors at a January meeting. On December 23, National announced to its employees changed Company policies with respect to sick leave, vacations, holidays, notice of layoffs and grievances — matters which it had refused to discuss during the preceding series of negotiations with the IAM.

Although the NMB had made a formal proffer of arbitration, its mediator nevertheless returned to Miami on January 13, 1948, in an attempt to effect a resumption of negotiations. He could not persuade National's management to attend, however, and he so informed the union on January 19. On January 21, in a letter which noted that National's Board of Director had not accepted arbitration in a meeting on January 20, the mediator informed the parties that the services of the NMB had been terminated. On January 22, the IAM clerical group met and reset the strike date for noon on January 23.

While the foregoing events were taking place, National's maintenance personnel had also been encountering difficulties. The union

⁶ NAL Emergency Board, transcript, pp. 815, 934.

⁷ NAL Emergency Board, *Report*, p. 12.

had many serious grievances concerning the administration of its January, 1947, collective agreement.⁸ Matters reached a climax in August, when, without prior consultation, the Company proceeded to dismiss the employees of its Instrument Department and to contract out the work they had previously performed. Unable to make headway in subsequent negotiations, and aware that the deadline for a new contract was approaching, the IAM requested NMB mediation for the maintenance group in November, 1947.⁹ The Board, already well occupied with National and the IAM clerical union, failed to respond promptly to this request.

On January 22, recognizing that a walkout at National was imminent, the NMB seized upon the November request as a possible basis for effective intervention. It notified IAM President Harvey Brown, in Washington, that the Board members themselves would mediate the maintenance dispute on January 26, and that they would like to mediate the clerical dispute at the same time. Ten minutes before the strike deadline the following day, a wire from President Brown reached the IAM local leadership in Miami stating the NMB's request that strike action be deferred until this new effort at mediation had been made. Before the widespread clerical groups could be contacted, however, their strike had already begun.

The union leadership, assisted by the federal mediator (who had been reassigned to the case), persuaded some strikers to return to their jobs. Other groups refused, however, because they feared Company discipline or discharge. When this became generally known, other stations ceased work again. The following day, January 24, a tentative "no discrimination" agreement was made between IAM and the Company, but this was rejected at an employees' meeting on January 25 because it "did not provide for a means of settling the disputes."¹⁰ On Monday, January 26, the IAM appeared at the NMB offices as requested, but the Company did not. National took the position that it would not mediate while a strike was in process.

National's maintenance employees, while not legally entitled to strike under the Railway Labor Act, refused to cross the clerical picket lines and were therefore on strike as well. There is, indeed, evidence to suggest that the maintenance workers were more solidly on strike

⁸ The subjects in dispute included: establishment of "lead mechanic" classifications; wage adjustments under the provisions of the agreement; hours; vacations; holidays with pay; limitations on committee activities in connection with grievances; denial of the IAM chairman's pass privileges; and the formulation of an apprenticeship agreement.

⁹ NMB Case No. A-2732. An IAM official later testified that President Baker had made the remarkable assertion "that it was his [Baker's] ambition to operate an airline in which all he had to do was to exchange money and where he had no responsibilities to the employees and no unions." This testimony was not contradicted. NAL Emergency Board, Transcript, p. 782.

¹⁰ NAL President Baker asserted on January 26 that only 140 persons attended the union meeting called to ratify the agreement, and that only 37 of these were clerical employees. Letter to National Employees (mimeographed).

than the clerical workers.¹¹ The Company maintained operations despite the walkout and promptly set about hiring replacements for the strikers on a "permanent" basis.

BACKGROUND: THE ALPA STRIKE

On September 13, 1945, a National Airlines first pilot named Maston G. O'Neal, Jr., was involved in a major accident.¹² He was promptly suspended, pending a hearing which took place the following day. Two weeks after the accident, Captain O'Neal was discharged. The ALPA processed a grievance protesting this discharge through the System Board of Adjustment, composed of two Company and two ALPA representatives.¹³ The System Board was unable to render a decision concerning the propriety of O'Neal's dismissal, the votes being evenly split. It was equally unable to agree upon a method for breaking the deadlock. On May 6, 1946, under the terms of the National-ALPA agreement then in effect, the System Board lost jurisdiction of the case.¹⁴

The ALPA, in the person of President Behncke, continued to press for a solution to the dispute, principally through correspondence and conferences with National's President Baker. On March 31, 1947, having made no progress in the interim, Mr. Behncke wrote as follows to Chairman Douglass of the National Mediation Board:

I presume that the only way we will be able to get this matter settled is to threaten a strike and force the appointment of a neutral by the National Mediation Board to make a determination. Unless I hear from Mr. Baker, I presume that the pilots will insist that this action be taken about the fifteenth [of April]. Your cooperation will be greatly appreciated to get this matter settled.¹⁵

Additional correspondence and telegrams disclosed the continued reluctance of Mr. Baker to submit the merits of O'Neal's discharge to the judgment of an impartial arbitrator. On May 13, the ALPA served a strike notice on the Company. A meeting in the offices of the NMB took place the next day. Under the pressure of an imminent pilot

¹¹ NAL's Industrial Relations Director later testified that he believed only 17 percent of the clerical force struck, while 83 percent of the maintenance workers refused to cross the picket lines. *Ibid.*, p. 1036.

¹² O'Neal landed his plane at excessive speed in a tail-high attitude too far down a wet runway. A sea-wall prevented the plane from skidding into the ocean. No one aboard was injured, but the collision destroyed the aircraft. The Company subsequently decided that O'Neal lacked the judgment required of a pilot and discharged him in the interest of safety. The merits of the case involve highly technical judgments and are not particularly germane to this study. They are thoroughly discussed in the "Opinion of Neutral Referee and Award," National Airlines Pilots System Board of Adjustment, Aug. 6, 1949 (mimeographed).

¹³ The establishment of bi-partite System Boards of Adjustment is required by the Railway Labor Act, as amended, Section 204.

¹⁴ ". . . If agreement upon a procedure [for breaking a deadlock] is not reached within thirty (30) days and such thirty (30) days is not further extended by consent of the parties hereto, the Board shall have no further jurisdiction in that case." National-ALPA System Board of Adjustment Agreement, Dec. 9, 1941, Sec. (m).

¹⁵ NAL Emergency Board, Transcript, p. 78.

walkout the Company and the ALPA signed an agreement requesting the NMB to appoint a fifth, or neutral, member of the System Board of Adjustment, with the understanding that the decision of the System Board so constituted would be final and binding in the O'Neal case. This step might well have led to the termination of the controversy, had not the NMB designated an individual to whom the ALPA took strong exception.

The fifth System Board member named by the NMB was Mr. Oscar Bakke, an employee of the Safety Bureau of the Civil Aeronautics Board. The parties were notified concerning his selection on May 22. On June 3, 1947, Mr. Behncke lodged a vehement protest in a letter to the Secretary of the NMB:

There is no time when there isn't a sharp disagreement between this politically controlled Safety Bureau and the air line pilots. . . . The Safety Bureau of the CAB is a misfit and a miscarriage of the true purpose intended. . . . We are completely and unalterably convinced . . . that Mr. Oscar Bakke, or anyone else from the Safety Bureau of the Civil Aeronautics Board, because of his position and the reasons stated herein and loyalty to his superiors would be unable to act without prejudice. . . .¹⁶

When the NMB informed Mr. Bakke concerning Mr. Behncke's objections, Mr. Bakke readily appreciated the situation and withdrew his acceptance of the appointment. On June 17, the NMB notified the parties that "due to unforeseen circumstances" Mr. Bakke had resigned, and that Mr. Floyd McGown, of San Antonio, had been named as the fifth System Board member. On June 28, National's attorney wrote to the NMB:

. . . I have learned to my utter amazement that the unforeseen circumstances which caused Mr. Bakke to resign . . . was due to . . . objection to his appointment registered by Mr. David L. Behncke. . . . For Mr. Behncke to cause the resignation of the referee so appointed naturally leads to our belief that Mr. Behncke will not accept any appointees of the Mediation Board unless and until the appointee is satisfactory to him. . . . I am directed to withdraw the request of National Airlines, Inc., for the appointment of a referee unless the original appointee is permitted to serve.¹⁷

Another stalemate ensued. In late October another pilot strike date was set for November 12 and then postponed one week at NMB request. From November 17 through 19 National and the ALPA met again under NMB auspices, but had reached no agreement when Mr. Behncke departed for an ALPA Executive Board meeting in Chicago. The ALPA President had indicated that the pilots would not quit their jobs.

There were no further negotiations between National and the ALPA. On February 3 at 9:00 A.M., Mr. Baker received a wire in-

¹⁶ *Ibid.*, pp. 97-100.

¹⁷ *Ibid.*, pp. 106-109.

forming him that his pilots would strike at 11:00 A.M., which they did. This was eleven days after the start of the IAM strike. The NMB promptly requested the parties to meet in Washington on February 7. On February 4, National's attorney offered to accept one neutral to be appointed by the NMB to settle the O'Neal case. The NMB so notified Mr. Behncke, who agreed to accept the offer at the February 7 meeting. However,

At the scheduled meeting, . . . [National's attorney] stated that Carrier's offer had been withdrawn the day before and his only authority was to listen to proposals of the Association. He then advised the Chairman of the Mediation Board of the action of the Carrier in discharging all pilots two days before. Upon receipt of that information by the Mediation Board, further efforts to compose the differences were discontinued.¹⁸

The ALPA had hoped that the prompt appointment of a Presidential Emergency Board would occur, and thus terminate the strike. But, in the words of NMB Chairman Douglass:

The President was not advised of the pendency of this strike because the Board felt this strike did not substantially interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service and also because we were convinced that management would more than likely not participate in any hearings to ascertain the facts and, in no event, would abide by any recommendations of a fact-finding board.¹⁹

The occurrence of the IAM strike had undoubtedly influenced the timing of the pilot walkout. There was some concern over the state of aircraft maintenance under strike conditions after January 23, and it was believed that National would offer less resistance in the face of a double strike. The ALPA also felt the time to interrupt traffic, for maximum effect, was at the beginning of the peak months of February, March and April. But in no sense was the ALPA's action a sympathy strike.

National had maintained a high level of operations following the IAM strike, but the pilot walkout forced the cancellation of all flights. When the Company discharged the ALPA pilots on February 5, it simultaneously advertised for qualified replacements.²⁰ CAA sources indicated that there were about 1,100 pilots with airline transport ratings not then employed by scheduled carriers. National's first trip with non-union pilots took place on February 11. Schedules were enlarged in subsequent weeks as more pilots were checked out for duty on National's routes. To guard against accidents, the CAA on February 16 tightened a number of operating requirements "until the pilots get the requisite experience." No aircraft accidents did occur on National throughout the ten-month pilot strike.

¹⁸ NAT Emergency Board, Report, pp. 6-7.

¹⁹ Letter to Senator Pat McCarran, Mar. 4, 1946 (mimeographed copy by National Airlines).

²⁰ *New York Times*, Feb. 7, 1948.

THE PRESIDENTIAL EMERGENCY BOARD

As National continued to increase operations through March, April and May, the breach between the Company and the two striking unions widened. Injunction proceedings were instituted by both the unions and the Company.²¹ National sued each union for \$5,000,000 in actions that commenced February 5, charging libel and slander in connection with allegations that National's aircraft were unsafe.²² In April, the ALPA sued National for \$1,000,000 to offset financial losses allegedly caused by the Company's actions, which had "caused the strike, and prevented its settlement."²³ Principal National airports were picketed by both IAM and ALPA members, while the ALPA instituted aerial picketing with towed signs and smokewriting to discourage passenger traffic. *Table A* provides data to illustrate the impact of the strike on National's operations. Because of the marked seasonal variation present in National's traffic, 1947 statistics are provided as a rough basis of comparison. A substantial recovery in traffic had been achieved by the close of April, 1948, although, particularly in domestic service, passenger-miles and load factors remained well below the comparable 1947 figures. The low daily aircraft utilization, as compared to the preceding year, reveals the continued impact of the strike situation.

There appeared to be no immediate prospect of a settlement acceptable to the unions, however, except as a consequence of affirmative federal intervention. Only an Emergency Board was in order, but the NMB had declined to recommend one.

Mr. Behncke's plan was disclosed in an "Inter-Association Letter to all ALPA Members" on March 23, 1948. He wrote:

. . . The [National Mediation] Board takes the position in its letter to Senator Pat McCarran that the flight stoppage on National doesn't constitute a flight stoppage of sufficient magnitude to warrant the appointment of an Emergency Board. *A larger emergency is obviously necessary.*²⁴

Three days later, the ALPA Board of Directors passed the following resolution:

It may become necessary for the members of the Air Line Pilots Association to honor and respect their own picket lines, those of the National Airlines pilots where they are established at the principal terminal points of the Company, by notifying all airline companies flying into areas where such picket lines exist that it is the intention of the airline pilots to respect those picket lines and not to go through them for any purpose; and to notify the National Mediation Board in advance of such intent, thereby making it

²¹ In the Circuit Court, Dade County, Florida; the Federal District Court for the Southern District of Florida, Miami Division; and the Circuit Court, Duval County, Florida.

²² *New York Times*, Feb. 5, 1948.

²³ *Air Line Pilot*, Vol. 17, No. 3, April, 1948, pp. 1-4.

²⁴ ALPA, Inter-Association Letter, Mar. 23, 1948, p. 3 (mimeographed).

possible for the provisions of the Railway Labor Act to become more effective.²⁵

TABLE A — National Airlines, Inc., Operating Statistics
January-September, 1947 and 1948

Month	A. Domestic Service					
	Revenue Passenger Miles (thousands)		Revenue Passenger Load Factor (%)		Daily Utilization of Aircraft (Hrs.)	
	1947	1948	1947	1948	1947	1948
January	14,315	10,356	67.5%	51.7%	8:48	5:53
February	15,108	1,907	68.3	51.8	9:46	1:04
March	17,758	3,931	70.3	50.8	9:56	1:44
April	16,637	5,098	67.8	40.3	9:36	2:10
May	14,696	7,759	54.8	35.6	9:07	3:18
June	11,452	8,076	45.5	35.7	8:29	3:50
July	10,027	7,574	42.9	31.1	6:09	3:56
August	11,597	7,884	47.1	31.0	6:03	4:03
September	12,165	7,701	51.2	34.2	6:10	3:54

Month	B. International Service					
	Revenue Passenger Miles (thousands)		Revenue Passenger Load Factor (%)		Daily Utilization of Airport (Hrs.)	
	1947	1948	1947	1948	1947	1948
January	961	923	62.3	56.0	9:39	8:51
February	1,061	98	72.1	33.9	10:00	1:56
March	1,025	615	61.7	37.1	10:28	4:37
April	801	539	51.0	33.9	10:11	5:09
May	648	561	40.0	34.0	11:20	6:14
June	774	612	48.5	38.5	10:30	6:30
July	814	881	49.4	41.0	8:42	6:15
August	844	977	49.3	46.7	8:29	7:15
September	726	861	48.1	46.2	8:22	6:54

*Source: CAB, Recurrent Reports of Mileage and Traffic Data.

The NMB was duly informed, and on April 12, 1948, Mr. Behncke also sent a letter directly to President Truman explaining the situation that might develop in the absence of an Emergency Board appointment. On May 15, apparently on the recommendation of the NMB, the President created an Emergency Board to investigate the ALPA-National dispute.²⁶ On June 3, after eight days of hearing had taken place, an amendatory Executive Order instructed the Emergency Board to consider the IAM-National dispute as well.²⁷ Five additional days of hearings were then held from June 1 through June 5. The findings and recommendations of the Emergency Board were reported on July 9, 1948.

The Railway Labor Act provides (Sec. 10) that after the creation of an Emergency 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

²⁵ NAL Emergency Board, Transcript, p. 447.

²⁶ Executive Order 9958. The members, named on May 19, were: Grady Lewis (Chairman), Walter V. Schaefer and Curtis W. Roll.

²⁷ Executive Order 9965.

the dispute arose." Both unions used this clause as the basis for having their respective members report back to work, but their offers to do so were ignored by the Company. The Act, obviously, had not contemplated a situation in which the Emergency Board is appointed long after the commencement of a strike, and in which the strikers had been completely replaced.

During the hearings, National held that the Emergency Board's creation was improper because no emergency existed. It pointed out that it had been serving every point on its system since May 15, and that the NMB had previously asserted that no justification for the creation of an Emergency Board existed. The Company also argued that both strikes were illegally called: the ALPA walkout because the dispute was still formally in mediation; the IAM walkout because the thirty-day "status quo" period had not expired. It pointed out that the employees who had been hired on a permanent basis to replace the strikers also had an equity involved. And it pleaded:

The only inference which can be drawn from these facts is that this Board was created for the purpose of intimidating the Carrier into dismissing present employees, to create places for those who have struck in wanton disregard of the law.

On this account, the jurisdiction of the Board has been challenged from the outset, and we feel that this Board should report these facts to the President, unless it wishes to encourage further emasculation of the Railway Labor Act.²⁸

In its Report, the Board ignored the charge of illegality against the ALPA strike. It found the IAM strike legal on the ground that the 30-day prohibition of changes "in the rates of pay, rules or working conditions" following the failure of the NMB's mediatory activities was a restriction only on the conduct of the employer, not the employees.

The Report of the Emergency Board contained a powerful indictment of National's behavior and constituted a major tactical victory for both unions. Concerning the pilots' dispute, the board found that

Over the entire period from the date of O'Neal's discharge . . . every one of the many efforts to dispose of the dispute was initiated by the Association; in no instance did the Carrier take the initiative and it was induced to act at all only when confronted with the threat of a strike. What was sought by the Association was reasonable. It did not seek reinstatement of O'Neal. It sought only an impartial determination of the propriety of his discharge.²⁹

Thereby fixing full blame for the strike upon the Company, the Board observed:

The story revealed by the evidence is one of disregard for statutory and contractual obligations on the part of the Carrier. It indicates an immaturity and lack of responsibility which is not

²⁸ NAL Emergency Board, Transcript, p. 1284.

²⁹ *Ibid.*, p. 7.

consistent with the duties imposed by Congress upon carriers in interstate commerce.³⁰

Concerning the IAM dispute, the Board found that

By its unilateral actions concerning matters properly the subject of collective bargaining, National Airlines violated the duty imposed upon it by statute. . . .

The Carrier's disregard of its statutory duty was not isolated or accidental; on the contrary, it was repeated and deliberate. And it contributed directly and immediately to the situation out of which the strike arose.³¹

The Emergency Board recommended reinstatement of the ALPA and IAM strikers; arbitration of the O'Neal case pursuant to the signed agreement of May 14, 1947; and the resumption of negotiations for a clerical agreement, to be concluded by arbitration if necessary.

National and the IAM, acting on the basis of the Emergency Board's Report, resumed negotiations promptly and signed a detailed settlement on July 27, 1948. This agreement provided for the return of all strikers during the first half of August, for the initiation of new collective bargaining conferences by August 27, and for the withdrawal from or dismissal of all law suits and proceedings between the parties. The ALPA immediately accepted the Report's recommendations, which were exactly what the pilots' union had hoped for, but on August 2, the Board's recommendations with respect to the ALPA were rejected by the Company. A pilot settlement seemed as distant as ever.

THE ROLE OF THE CIVIL AERONAUTICS BOARD

The CAB became involved in the National controversy through several avenues: because of its authority to determine air mail compensation; because of the statutory requirement of the Civil Aeronautics Act that carriers comply with the Railway Labor Act as a "condition upon the holding of" a route certificate; because of the statutory requirement that all inter-carrier agreements be approved by the CAB; and because of the responsibility of the CAB for the establishment of a sound route structure in scheduled air transportation.

On February 24, 1948, the CAB had awarded National a retroactive and continuing mail rate increase, based on a Company request which had failed to specify the strikes as a major source of its financial troubles. The ALPA protested this "Federal condonement of strike-breaking," but in its final order on March 29, 1948, the CAB upheld the mail rate increase with the assertion that National's needs "have been measured independently of the strike."³² This was apparently

³⁰ *Ibid.*, p. 8.

³¹ *Ibid.*, pp. 12-13, 15.

³² A year later, the CAB ruled that strike-caused losses would not, thereafter be offset by mail increases. CAB *Opinion*, accompanying Order No. E-2731, April 19, 1949.

a euphemistic way of stating that the CAB had ignored the existence of the strike. The new rate was estimated to mean an increase in National's 1948 revenues of more than one million dollars.

On March 5, the IAM alleged in a formal complaint to the CAB that National had failed to comply with the Railway Labor Act, asked the CAB to order compliance, and "to revoke or suspend National's certificate of authority to engage in air transportation" if the Company did not obey. On May 24, the CAB's enforcement attorneys held that the CAB had no choice but to accept responsibility for the determination of Railway Labor Act violations, in accordance with its responsibilities under the Civil Aeronautics Act. The CAB did not take immediate action, and the IAM withdrew its complaint on July 27 as a condition of the settlement with National.

On March 12 the CAB was asked to approve an agreement between National and Capital Airlines for the interchange of aircraft and flight personnel. National anticipated substantial increases in revenue and a reduction in seasonal fluctuations in the use of personnel and equipment from such interchange. On September 10, 1948, CAB Public Counsel recorded his belief that it would be contrary to the public interest for the CAB to approve the interchange if National was violating the Railway Labor Act. On November 8, 1948, CAB Examiner E. T. Stodola recommended to the CAB that the commencement of operations under the interchange agreement be contingent upon settlement of the existing labor dispute between National and the ALPA. The CAB's final Opinion in this case was not issued until April, 1949; the text indicated that the CAB would have supported the Examiner's position had not an ALPA-National settlement already been reached.^{32a}

On September 28, 1948, the CAB instituted an investigation to determine whether the dismemberment of National, and the transfer of its routes and equipment to other carriers on just terms and conditions, would be in the public interest.^{32b} The CAB "order" did not refer in any way to the ALPA-National dispute. It was probably more than a coincidence, however, that a long-range investigation of the route structure of the United States should be launched at so critical a time with proceedings specifically concerned with the dismemberment of National. The action did, in any event, serve to increase the pressure on the Company for settling the ALPA controversy.

THE ALPA-NATIONAL AGREEMENT

Early in October, 1948, overtures toward the ALPA for a resumption of negotiations were advanced by National, and confidential talks began about the middle of the month. Both sides had agreed to em-

^{32a} CAB *Opinion*, E-2760, April 28, 1949.

^{32b} CAB *Order*, E-2020. On March 16, 1951, CAB *Opinion* and *Order* E-5205, it was held that "The public interest does not require a transfer of the whole or any part of the route of National to any other carrier. . . ." The CAB noted: "The record establishes that National has held its own since relieved of the causes leading to its bad performance in 1948. . . ."

ploy James M. Landis, former CAB Chairman, as a mediator. After almost six weeks of intensive discussions, National and the ALPA signed an agreement with the following major provisions: (1) Early settlement of the O'Neal case by the addition of an impartial referee to the System Board of Adjustment. The referee would be one of three individuals nominated by the NMB, with the Company and the ALPA each having the right to scratch one nominee. (2) The "expeditious" return of all ALPA pilots to duty, with full seniority rights. Base pay would begin, in any event, within sixty days. (3) Checkout of ALPA pilots by check pilots borrowed from other airlines using comparable equipment, so as to avoid discrimination. (4) Retention of Mr. Landis as a conciliator for nine months, and settlement by a neutral of all otherwise unresolved grievances. (5) Amendment of the System Board of Adjustment agreement in the ALPA contract to provide a mandatory deadlock-breaking procedure, utilizing the NMB, whenever the System Board could not devise one of its own within thirty days. (6) the withdrawal by both parties of all complaints or legal actions or other proceedings brought against the other party.³³ More than three years after the O'Neal accident, an arbitrator was at last going to determine the propriety of his discharge. The ALPA had gained its point.

CONCLUSIONS

It is pertinent to inquire into the motivations that induced National to seek a settlement, and to accept one on substantially the ALPA's terms, three months after rejecting the similar recommendations of the Emergency Board. The Company's dispute with the IAM had been resolved by the July 27 agreement;³⁴ its non-union pilots had functioned with a spotless safety record; and its flight schedules had long since been fully restored. With the ALPA strike thus "broken," the Company had then taken the initiative to come to terms with the apparently defeated party.

One element prompting National's change of heart in October was clearly the failure of passenger traffic to return even to pre-strike levels. Throughout the period of their walkout the union pilots had waged an effective publicity campaign designed to keep the flying public continually aware that National's *regular* pilots were on strike. Sky-writing and sign-towing aircraft were utilized frequently over major National stations, while uniformed pilots picketed on the ground.³⁵ With competing carriers available on most National routes, air travelers were understandably prone to resolve *any* doubts as to

³³ Memorandum of Agreement between National Airlines, Inc., and the Air Line Pilots Association, International, Stipulating the Terms and Conditions to End the National Strike (mimeographed), Nov. 24, 1948.

³⁴ Soon after the IAM agreement National's advertising, stressing "Reliability and Security," featured that fact that its maintenance was performed by members of IAM, "a real American trade union." *New York Times*, Aug. 5, 1948.

³⁵ The various publicity techniques are described in detail in the *Air Line Pilot*, Vol. 17, Nos. 2-9, Feb.-Oct. 1948, *passim*.

safety by avoiding National. The data in *Table A* show that the slump in passenger traffic was maintained to a significant degree even seven months after the commencement of the ALPA strike. Passenger miles, passenger load factors and average daily aircraft utilization all remained well below the levels of the comparable months in 1947, whereas the reverse was true for National's principal competitors.³⁶

But another major consideration—perhaps *the* major consideration—was National's belated recognition that a company as dependent upon the Federal government as is an airline cannot continue to offend that government and remain unscathed. When the CAB undertook to accept responsibility for ascertaining violations of the Railway Labor Act; when it threatened to withhold approval of National's interchange agreement because of those violations; and when it launched an inquiry into whether the public interest might not benefit from National's liquidation as a corporate entity—the Company's management soon became aware of the pressing need to effect a reconciliation with the ALPA.

POSTSCRIPT

Publication of this paper was delayed by the author because implementation of the NAL-ALPA settlement proved to be a painful and protracted matter and it was felt that its premature appearance might adversely affect the relationships between the parties. There were difficulties associated with the checking-out of the union pilots, who had not flown for a long period, and obstacles placed in the path of reinstatement by the non-union pilots who understandably resorted to various dilatory tactics. It was not until 1950 that peace was fully restored. Industrial relations at National are now reported to be excellent.^{36a}

To complete the chronicle of the incident which led to the ALPA strike, it should also be recorded that on August 16, 1949, an arbitrator named by the NMB finally disposed of the O'Neal case with an opinion which concluded:

O'Neal's discharge on September 27, 1945, was in good faith, for proper cause and in the interest of safety . . . [and] was not arbitrary, malicious, discriminatory or capricious.³⁷

Captain O'Neal's discharge was upheld.

³⁶ CAB, Recurrent Reports of Mileage and Traffic Data, 1948.

^{36a} *American Aviation*, Vol. 15, No. 10, August 6, 1951, p. 41.

³⁷ "Opinion of the Neutral Referee and Award," NAL Pilots System Board of Adjustment (I. L. Broadwin, referee), Aug. 6, 1949 (mimeographed).