



David L. Behncke, *The Airline Pilots, and the New Deal: The Struggle for Federal Labor Legislation*

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Three important pieces of airline legislation were enacted in the 1930s: (1) Decision 83 of the National Labor Board (NLB), which was incorporated into the Air Mail Act of 1934 and granted airline pilots a federally protected pay formula; (2) Title II of the 1936 Railway Labor Act (RLA), which granted airline employees the right to bargain collectively; and (3) The Civil Aeronautics Act (CAA), passed by Congress in 1938, which subjected the commercial airline industry—both air mail and passenger carriage—to economic regulation. Decision 83 guaranteed pilots a major share in productivity gains derived from improved airline technology. The RLA provided the industry with a mechanism for collective bargaining that encouraged frequent Federal intervention in airline labor disputes. And the CAA made compliance with Decision 83 and Title II of the RLA mandatory for all regulated airlines. It also gave the industry a remarkable degree of stability for a period of 40 years.

The Air Line Pilots' Association (ALPA), during the first eight years of its existence (1931–38), benefited from the interaction between the state and private industry, and benefited considerably. Applied to the union movement in general, this observation is shared by the majority of historians, political scientists, and other New Deal scholars writing today. A rather diverse group of scholars (Melvyn Dubofsky, Lisabeth Cohen, Robert Zieger, Stanley Vittoz, Theda Skocpol, and Kenneth Finegold) have all recognized that the state—during the 1930s—had promoted policies conducive to the growth and victory of independent trade unionism.¹ In many ways, the airline industry provides

*The author wishes to thank David Brody, Nelson Lichtenstein, and two *Labor History* referees for their comments on earlier drafts of this article.

¹See Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina Press, 1994), chaps. 5, 6; Lisabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919–1939* (New York: Cambridge University Press, 1990), especially 301–313; Robert H. Zieger, *American Workers, American Unions* (1986, revised and reprinted, Baltimore: Johns Hopkins University Press, 1995), chap. 2; Stanley Vittoz, *New Deal Labor Policy and the American Industrial Economy* (Chapel Hill, NC: University of North Carolina Press, 1987); Theda Skocpol, "Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal," *Politics & Society*, 10(2) (1980), 155–201; Kenneth Finegold and Theda Skocpol, "State, Party and Industry: From Business Recovery to the Wagner Act in America's New Deal," in Charles Bright and Susan Harding, eds., *Statemaking and Social Movements: Essays in History and Theory* (Ann Arbor, MI: University of Michigan Press, 1984), 159–192; "Explaining the New Deal Labor Policy," *American Political Science Review* 84(4) (1990), 1297–1304. See also David Brody, *Workers in Industrial America: Essays on the 20th Century Struggles* (New York: Oxford University Press, 1980), chap. 4.

For a critical interpretation of the New Deal labor policy that emphasizes the repressive role of the state, see Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880–1960* (New York: Cambridge University Press, 1985), chaps. 4, 5, 6, and sources of critical legal studies cited there. A radicalized version of the critical argument has been introduced recently by Colin Gordon. In a rather sophisticated analysis of the New Deal labor policy (his

us with a compelling example of such a case: not only was the regulation of labor relations in the air transport industry most extensive, but ALPA fought long and hard to win such legislation.

Most New Deal scholars, however, have studied unions affiliated with the CIO, not the AFL. My purpose is to study an AFL-affiliated union and show that while unions generally gained from government intervention in the 1930s, unions of highly skilled workers gained most of all, an observation often lost in accounts dealing with the CIO. A brief review of the literature suggests, in fact, that AFL organizations in general, and craft unions in particular, were the principal beneficiaries of the New Deal labor policies.²

In describing the events that led to ALPA's ultimate victory, the role played by David L. Behncke, president of the Association, figures prominently. Launching a nationwide legislative campaign almost singlehandedly, Behncke undertook the fullest efforts to link the fate of the airline unions to the expanding power of the state. From the outset, he understood the critical importance of forming an early alliance with the AFL. Representing a small union, which in 1938 had just 1000 members, he used his AFL contacts to lobby influential senators, congressional members, and government officials. New Dealers like Fiorello LaGuardia, Robert Wagner, Hugo Black, Burton

Footnote 1 continued

treatment of NIRA is particularly insightful), Gordon is still offering what amounts to a teleological argument: "the essential conservatism of the New Deal" was rooted in the success of the business community to shape federal labor policy. See Colin Gordon, *New Deals: Business, Labor and Politics in America, 1920–1935* (New York: Cambridge University Press, 1994). The quotation is on p. 4. See also David Montgomery, "American Workers and the New Deal Formula," in Montgomery, *Workers Control in America: Studies in the History of Work, Technology and Labor Struggles* (New York: Cambridge University Press, 1979), for a more balanced version of the critical interpretation of the New Deal.

²In an early monograph on the New Deal collective bargaining policy, Irving Bernstein, for example, in *The New Deal Collective Bargaining Policy* (Berkeley: University of California Press, 1950), chapt. 4, has shown how the railroad unions (both the AFL-affiliated non-operating organizations and the independent brotherhoods) lobbied successfully for the passage of protective labor legislation (the 1934 amended RLA, and the 1934 Railroad Retirement Act). Walter Galenson, in *The CIO Challenge to the AFL: A History of the American Labor Movement, 1935–1941* (Cambridge, MA: Harvard University Press, 1960), 566, 592, chaps. 14–19, similarly has concluded that the AFL grew faster than the CIO between 1936 and 1941, and argued that, first, the AFL's gains were spurred by the threat of the rival CIO unions, and second, such gains were less significant than those of the CIO unions because only the latter organized the core, strategic firms within the manufacturing sector. Two case studies of selected industries have confirmed, in part, Galenson's conclusions. The first was a study of the meatcutting industry by David Brody (*The Butcher Workman: A Study of Unionization* (Cambridge, MA: Harvard University Press, 1964), chaps. 7–9), the second, a study of the pulp and paper industry by Robert Zieger (*Rebuilding the Pulp and Paper Workers' Union, 1933–1941* (Knoxville, TN: University of Tennessee Press, 1984)). Zieger, like Brody, identified three elements that were responsible for the success of the AFL's organization: the favorable federal labor policy, the broadening of the union's jurisdictional boundaries to include the non-craft workers, and the stimulus provided by the contest with the CIO. For another example of an AFL-affiliated union born in the 1930s, see Daniel J. Leab, *A Union of Individuals: The Formation of the American Newspaper Guild, 1933–1936* (New York: Columbia University Press, 1970).

Christopher Tomlins, in turn, has questioned Galenson's main conclusions. In a major re-evaluation of the performance of the AFL unions in the 1930s, Tomlins has argued that the traditional historiography exaggerated the extent to which the CIO stimulated AFL organizing activities. He has shown that membership in the AFL and CIO during the late 1930s and 1940s came from different sectors of the economy, that manufacturing accounted for only one-third of the AFL membership, that many of the fastest growing AFL affiliates faced no challenge from the CIO at all, and that the traditional view ignored the increasing importance of transportation, communication and services. "AFL Unions in the 1930s: Their Performance in Historical Perspective," *Journal of American History*, 65(4) (1979), 1023, 1034–1037, 1039–1040. More recently, Steve Babson in *Building a Union: Skilled Workers and Anglo-Gaelic Immigrants in the Rise of the UAW* (New Brunswick: Rutgers University Press, 1991), esp. 2, 9, 110–113, 199, 226, 237, has described—and analyzed—the leading role played by the skilled trades in auto unionism in the 1930s.

Wheeler, Joseph Eastman, Frances Perkins—and President Roosevelt himself—all lent their support to airline-labor legislation; all were actively involved in the airline legislative battles of 1932–38. And, in the end, Behncke was successful, leaving a lasting legacy: throughout the era of government airline regulation (1938–78), the airline unions were heavily dependent on the protection of the state.

But Behncke left another legacy. He governed ALPA autocratically, centralized control at the top, suppressed all attempts at local autonomy, and crushed any challenge to his power. He remained president for nearly 20 years until he was recalled by the membership in 1952, following a successful move to democratize the union.

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Unlike the majority of craft unions in the U.S., the Air Line Pilots' Association was born at the national level. It did not evolve from a loose association of local or regional societies, highly independent of each other and fiercely autonomous in conducting their union affairs, as had been the case, for example, with most AFL-affiliated unions in the 19th century.³ The Air Line Pilots' Association was formed by Behncke and a group of 12 other pilots on July 27, 1931. Within six months, ALPA obtained a charter from the AFL, recruited members at almost every airline, had a total membership of 450 pilots, and a unionization rate of 65%.⁴

Initially, in the mid-1930s, the air mail pilots made up the bulk of the organization, and they were all government employees paid according to a complex formula worked out by the Post Office. Once the industry was turned over to private contractors in 1926–27, management retained the Post Office pay formula intact with the tacit understanding that the pilots were quasi-governmental employees. Any airline wishing to change the formula and cut pilots' wages was thus running the risk of losing its government contract.

No other issue in the airline labor field was subject to greater congressional and governmental debates in the 1930s than the pilots' pay formula. It was more controversial than the right of airline employees to form unions and to engage in collective bargaining. Airline companies opposed the Post Office's pay formula more vigorously, more consistently, and with greater unison than they ever opposed unions. Business opposition to public protection of airline unions clearly diminished by the end of 1936. Management resistance to government intervention in setting the pilots' pay, on the other hand, actually increased after 1936. Government officials, as well as members of Congress, were all far more enthusiastic in their support of the pilots' right to bargain collectively than in their support of Federal protection of pilots' salaries. Yet the pilots won victory after victory. They managed to turn a revised version of the Post Office formula into a Federal law that remained in force for nearly half a century.

The original Post Office formula was rather complex, but its underlying principles

³ Studies of union leadership in the 1930s underscore the role played by the rank-and-file in the struggle for unionization and legislation (see Cohen, *Making a New Deal*, chapt. 7), and this essay too sought to find rank-and-file activism among the pilots. Unfortunately, however, the surviving records of the Air Line Pilots' Association are, by and large, mute on the rank-and-file. ALPA's membership, to be sure, did take active part in letter-writing and petition-signing campaigns, yet evidently, the rank-and-file pilots played only a secondary role in ALPA's legislative struggle. Hence the ambiguous outcome of the struggle. On the one side, the ALPA leadership did indeed score a great legislative victory which benefited the rank-and-file for decades; but on the other, the ALPA leadership turned unresponsive, undemocratic, and far removed from the rank-and-file.

⁴ *Air Line Pilot*, April 20, 1932; Paul T. David, *The Economics of Air Mail Transportation* (Washington, DC: The Brookings Institution, 1934), 197–198; George E. Hopkins, *The Airline Pilots: A Study in Elite Unionization* (Cambridge, MA: Harvard University Press, 1971), 213–214; *The New York Times*, Nov. 1, 1931.

were crystal clear: first, air mail pilots should be remunerated in proportion to the number of miles they flew, and second, air mail pilots should be compensated for the extra risks they undertook, namely, the risks of night flying and flying over hazardous terrain.

A 1925 Post Office Department report describes the pilots' pay scale, which consisted of two elements: a base salary and a mileage rate. The base salary increased with the number of miles flown at night and with the length of service. The mileage pay too increased with night flying, but varied according to the type of terrain over which the air mail plane flew (the more hazardous the terrain, the higher the rate). In all, the average yearly earning of an air mail pilot in 1925 was \$6750 or \$563 per month.⁵

The average earnings of pilots carrying mail remained essentially unchanged for the next five years. But the Post Office formula was falling to pieces under the impact of the Depression. Partly due to cuts in the amount of subsidies paid to the air mail contractors by the Post Office, partly as a result of the introduction of faster and larger planes, but mostly because of the worsening of the Depression, one carrier after another abandoned the Post Office formula between 1931 and 1933. In December 1932, three alternative methods of payment were used by the air mail carriers: a base pay plus a mileage rate (United), a base pay plus an hourly rate (American, TWA), and flat salaries (Northwest, Pan American).⁶

Such was the state of the pilots' pay on the eve of the National Recovery Administration's code hearing. The NRA's deputy administrator for air transport was Malcolm Muir, president of the McGraw-Hill publishing company. The code was drafted by the Aeronautics Chamber of Commerce—a formidable trade association representing both airline and aircraft companies.⁷ On August 9, 1933, the Chamber submitted to the NRA a code covering wages and hours for all airline employees including pilots, co-pilots, cabin attendants, shop mechanics, service mechanics, radio operators, and apprentices. The code prescribed a minimum wage of \$250 a month and maximum monthly hours of 110 for pilots. Article III of the proposed code allowed employers to

⁵“‘Salaries of Pilots,’ A Report of the Post Office,” December 3, 1924,” reprinted in U.S. Congress, Senate. *Hours, Wages, and Working Conditions in Scheduled Air Transportation*, S. Document 208, 74th Cong., 2nd Sess., 1936, 27.

⁶*Air Line Pilot*, Dec. 1932; U.S. Senate, *Hours, Wages, and Working Conditions*, 28–32; but see also *Monthly Labor Review*, 38 (1934), 349; and *Wages and Hours in Air Transportation*, 1931, Bulletin No. 575 (Washington, DC, 1933), 2–3.

⁷Above all, the Chamber represented the interests of the large carriers. Prior to the passage of the Air Mail Act of 1934, air mail contractors were permitted to own shares in companies engaged in all phases of the aviation industry. Practically every contractor did so, typically through the incorporation of airline carriers and aircraft manufacturing firms under the ownership of a parent holding company. United Air Lines, for example, was owned by United Aircraft and Transport Corporation, a holding company which owned the Boeing Airplane Co., the Pratt and Whitney Aircraft Co., the Sikorsky Aviation Corp., the Chance Vought Corp., the Stearman Aircraft Co., the Hamilton Metalplane Co., and the Northrup Aircraft Corp. Similarly, American Airways was owned by the Aviation Corporation, a “super holding company,” which at its peak in 1930 had about 80 subsidiaries. TWA, Eastern, and Western Air Express, likewise, were all owned by the North American Aviation (NAA) group together with the Curtiss Airplane and Motor Co., the Wright Aeronautical Corp., the Douglas Aircraft Corp., the Sperry Gyroscope Co., the Ford Instrument Co., and the Berliner-Joyce Aircraft Co. In 1933, the NAA came under the control of the General Motor corporation. See “No. 1 Airplane Company,” *Fortune*, 5 (April 1932), 46–47, 126–127, 130–133; “Dollars in the Air,” *Fortune*, 9 (May 1934), 164; *Aviation*, 25 (Dec. 29, 1928), 2102, 27 (July 6, 1929), 25, 45, 50; *Corporate and Legal History of United Airlines and Its Predecessors and Subsidiaries, 1925–1945* (Chicago, 1953), 157–159, 194–165, 170–171; Henry L. Smith, *Airways: the History of Commercial Aviation in the United States* (New York, 1942), Chapt. 12; Elsbeth Freudenthal, *The Aviation Business from Kitty Hawk to Wall Street* (New York: The Vanguard Press, 1940), 100–107.

choose between paying pilots "an hourly or monthly rate for flying." The code did not speak of mileage pay at all.⁸

The proposed code was unacceptable to ALPA. The code hearing was held on August 31, 1933, and received extensive coverage in the industry's principal organ *Aviation* and in the *Air Line Pilot*. Both journals agreed on one thing: of the 20 witnesses who appeared before the NRA administrator and his assistants, the pilots' advocate Fiorello LaGuardia was by far the most effective. The ex-Congressman was not only the star witness of the hearing but also helped the pilots formulate their union strategy. On several occasions prior to the hearing, LaGuardia had advised Behncke to press for the removal of the pilots from the code's provisions, and on the eve of the hearing he met with ALPA's executive committee and persuaded unconvinced members to adopt that position. He had two powerful arguments. First, the minimum wage provision should not apply to airline pilots because they were professionals and the proposed code explicitly excluded "persons employed in a professional, managerial, or executive capacity." Second, the maximum hours provision should not apply to pilots because their hours were already under regulation through the Department of Commerce which was in charge of airline safety.⁹

Following the conclusion of the hearing, members of the Pilots' Committee pleaded their case before top officials of the Commerce and Post Office Departments, key senators, and influential labor leaders. And within a few days NRA administrator Malcolm Muir decided to exempt the pilots from the code on professional grounds. Muir's decision was quickly challenged by the leading carriers. On September 21, the "Big Five" declared that a uniform hourly wage scale (plus basic pay) for pilots would be effective October 1. The union rejected the new formula outright, responded with a threat of a nation-wide pilots' strike, and filed a complaint against the carriers with the National Labor Board. In the meantime, Secretary of Labor Frances Perkins intervened to arrange a 30-day truce between ALPA and the airlines. On September 30, 1933, Senator Wagner announced that the NLB would assume jurisdiction over the wage dispute "in the interest of industrial peace and [the] successful working of the NRA."¹⁰

The NLB heard the case on October 4. Following a day-long hearing, Wagner appointed a fact-finding committee to study the problem, iron out differences between management and the union, issue a recommendation, and report back to the NLB. Characteristically, the three-member Fact Finding Committee represented labor (Behncke), management (American Airways president Lester Seymour), and "the public" (New York Supreme Court Judge Bernard Shientag, acting as chair). Judge Shientag combined the hourly based formula favored by the carriers with the mileage-based formula preferred by the union and handed down a compromise report to Wagner. Using the report to draw up a new formula, the NLB issued a ruling on May 10, 1934.¹¹

⁸The proposed code is printed in *Aviation*, 32 (Sept. 1933), 290–291, but see also *Air Line Pilot*, Aug. 1933.

⁹David L. Behncke to Edward F. McGrady, July 29 and Aug. 1, 1933, NRA, RG9, Box 527, National Archives (NA), Washington, DC; *Air Line Pilot*, Sept. 1933; "Code of Fair Competition for the Air Transport Industry: Transcript of the Hearing," Aug. 31, 1933, 41–45, NRA, RG9, Box 239, NA; *Aviation*, 32 (Oct. 1933), 311–312. The quotation is from *Aviation*, 32 (Sept. 1933), 291.

¹⁰*The New York Times*, Sept. 12, 22, 23, 26, 27, 1933; *Aviation*, 32 (Sept. 1933), 297; *Air Line Pilot*, Sept. 1933; NRA Release No. 890, Sept. 23, 1933, NLB, RG25, Box 12, NA. The quotation is from *The New York Times*, Oct. 1, 1933.

¹¹*New York Times*, Oct. 3, 5, 28, 29, Nov. 5, 7, 1933; *Aviation*, 32 (Nov. 1933), 354, (Dec. 1933), 382, 33 (June 1934), 190.

The ruling prescribed a complex wage formula which consisted of four elements: a base pay, an hourly rate, a mileage rate, and extra pay for flight over hazardous terrain. The hourly wage rate varied with the speed of the aircraft, ranging from under 125 to over 200 miles per hour. The mileage rate was an additional pay for each mile flown in speeds in excess of 100 miles per hour. The ruling also set limitations on hours as well: "Eighty-five hours of flying shall constitute the monthly maximum for pilots."¹²

Known as Decision 83, the ruling granted the pilots a generous share in productivity gains due to improved airline technology. Although an hourly wage rate was incorporated into the formula, the essential element remained the link between the number of miles flown, the speed of the aircraft, and the level of earnings. By the end of the 1930s practically every mile flown was in excess of 100 miles per hour and therefore entitled the pilots to considerable mileage pay. At the same time, the hourly wage too went up as aircraft speeds increased.

Behncke had understood the significance of the decision. "I will admit," he said again and again during the 1930s, that Decision 83 "is not exactly what was desired," that it "is not all that it should be—but it isn't so bad." It constitutes a "satisfactory foundation" for the protection of pilots' salaries: "a hitching point to which we can anchor our efforts to establish fair and reasonable wages and working conditions for pilots."¹³

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The struggle for collective bargaining in the air transport industry dates back to 1932. It was a short-lived struggle and took place in a political climate that was mostly pro-labor. It was won in 1935–36—the apogee of the New Deal—the year in which Wagner's National Labor Relations Act was debated, enacted, and first implemented.

In April 1932, James M. Mead, Chairman of the House Post Office Committee, introduced a resolution instructing the Postmaster General to ensure that "in all future negotiations concerning air mail contracts, extensions, certifications, etc., the privilege of collective representation be accorded to the pilots employed by any and all of the companies engaged."¹⁴ A few weeks later, ALPA proposed a bill aimed at extending the provisions of the RLA to air carriers and their employees. The bill was introduced in the House by Fiorello LaGuardia and in the Senate by Hiram Bingham, a Connecticut Republican. The Senate Committee reported the bill favorably but it did not reach a vote.¹⁵ The House Committee on Interstate and Foreign Commerce held a lengthy hearing on the bill in which several influential witnesses and committee members voiced opposition, and the bill died in committee.

At the time the bill was introduced, the RLA of 1926 was the most comprehensive labor statute in existence. The public utility nature of the railroad industry fostered collective bargaining and government intervention in labor disputes, and consequently, the underlying philosophy of the law was heavily reliant on negotiations to settle

¹²NLB, "In a Matter of the Air Line Pilots' Wage Dispute," Case No. 83, May 10, 1934, NRA, RG9, Box 530, NA. See also Claude Puffer, *Air Transportation* (Philadelphia: The Blaikston Co., 1941), 548–552, for a clear exposition of the formula.

¹³*Air Line Pilot*, May 1934; ALPA, Proceedings of the 1938 Convention, 199, ALPA Papers, Archives of Labor History and Urban Affairs, Wayne State University (WSUA), Detroit.

¹⁴U.S. Congress, House. *Air Pilots*, Hearing before the Committee on Interstate and Foreign Commerce, 72nd Cong., 1st Sess., 1932, 44–45.

¹⁵U.S. Congress, Senate. *Amendment of the Railway Labor Act*, Report 713, 72nd Cong., 1st Sess., 1932, 1–5; U.S. Senate, *Hours, Wages, and Working Conditions*, 1936, 68.

disputes. The act prescribed a definite procedure for collective bargaining by independent representatives selected “without interference, influence or coercion,” and another procedure for mandatory mediation, voluntary arbitration, and fact finding. Because no decision or recommendation by any of the boards established by the act was binding, the law was rather weak and compliance relied exclusively on the weight of public opinion.¹⁶

Public opinion played a central role in airline disputes as well. Like the railroads, air transport was an industry charged with a public interest and therefore entitled—in the eyes of the bill’s promoters—to public protection. The House hearings resulted in an extended debate on the nature of the new airline industry and its similarity to the railroads. Appearing before the committee to support the bill were ALPA representatives, the International Brotherhood of Electrical Workers, three of the railway brotherhoods, and Congressman LaGuardia. Representatives of the major air carriers gave evidence in opposition to the statute. The committee also received letters from key labor, industry, and administration officials: AFL President William Green supported the bill; Postmaster General Brown opposed it; Charles Lawrence, Chairman of the Aeronautics Chamber of Commerce also opposed the bill; Samuel Winslow, Chairman of the Board of Mediation, thought the bill was “workable” though he was somewhat ambivalent; Joseph Eastman of the Interstate Commerce Commission had “no opinion ... as to the ... desirability of such legislation.”¹⁷

Proponents of the bill argued that (1) the recent merger movement among the airline operators destroyed the balance of power between capital and labor and therefore made it necessary for the pilots to unite; (2) placing the airline pilots under the Railway Labor Act would enhance industrial peace by means of an orderly resolution of labor disputes; (3) the amendment was indispensable for promoting the safety of pilots and passengers alike, as Frank Ormsbee testified before the committee.

Opponents of the bill argued that the air transport industry was by no means comparable to the railroads in term of scale (the total number of airline employees in 1932 did not exceed 5000 whereas 890 railroad concerns gave employment to 2,000,000 workers); that labor relations in the air transport industry were harmonious; and that neither the RLA nor LaGuardia’s bill addressed safety issues at all. On the contrary, all matters of airline safety were firmly in the hands of the Department of Commerce.¹⁸ The bill’s opponents managed successfully to challenge every point made by the proponents. As a result, the bill did not survive the committee hearing and died in the summer of 1932.

The air mail scandal presented ALPA with another opportunity. On February 9, 1934, President Roosevelt canceled the air mail contracts effective 10 days later.¹⁹ A Congressional investigation headed by Senator Hugo Black had prompted the cancel-

¹⁶See Charles Rehmus, “Evolution of Legislation Affecting Collective Bargaining in Railroad and Airline Industries,” in Charles M. Rehmus, ed., *The Labor Railway Act at Fifty* (Washington, DC, 1977), 7–13; Harry D. Wolf, *The Railway Labor Board* (Chicago: University of Chicago Press, 1927), Chapt. 16; Irving Bernstein, *The Lean Years* (Boston: Houghton Mifflin Co., 1960), 215–220; and Robert Zieger, *Republicans and Labor, 1919–1929* (Lexington, KY: University of Kentucky Press, 1969), chapt. 9.

¹⁷U.S. House of Representatives, *Air Pilots*, 1932, 4, 22–26, 31–32.

¹⁸U.S. House of Representatives, *Air Pilots*, 1932, 2, 4, 5–13, 32, 35–36, 40–42. The quotations are on pp. 7, 43.

¹⁹“Executive Order: Transportation of Air Mail during Emergency Created by Annulment of Domestic Air Mail Contracts,” Feb. 9, 1934, Official File (OF) 19, Box 11, FDR Papers, Roosevelt Library (RL), Hyde Park, New York.

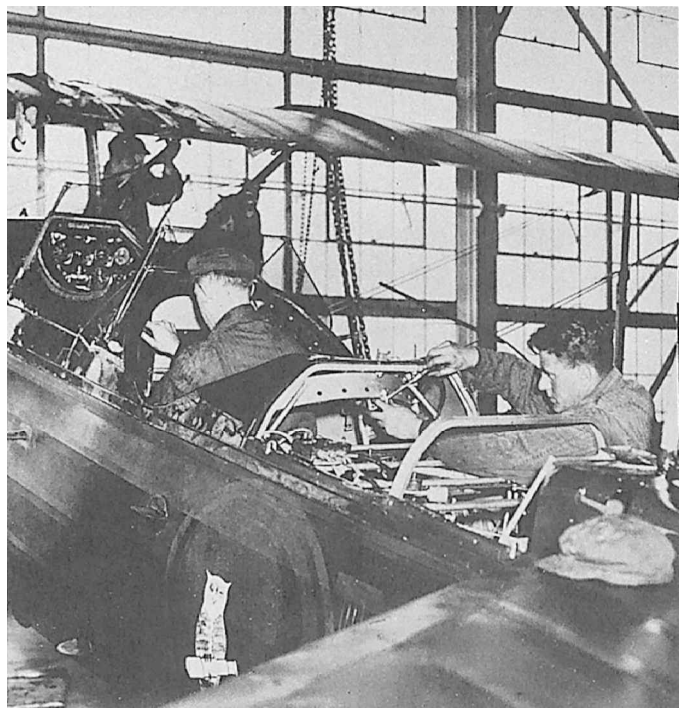


FIG. 1. Preparing an Army plane for mail service.



FIG. 2. A crashed Army mail plane.

lation. The "Black Committee" found that contracts were routinely obtained by fraud and conspiracy, and that Walter Brown, Hoover's Postmaster General, had systematically favored the large established airlines.²⁰

After annulling the contracts, Roosevelt issued an order directing the inexperienced Army Air Corps to carry the mail. The outcome was disastrous. At the end of the first week of Army operations five pilots were dead, six were injured, and Republican politicians charged the administration with "legalized murder."²¹ The nation was shocked and the administration alarmed, Roosevelt had no choice but to ask Congress to enact new legislation which would open private mail contracts to competitive bidding. The new legislation, the President suggested, should provide for "contracts on the basis of honest payment and honest service," and put an end to the well-documented "evils of the past," namely, "excessive salaries, unearned bonuses, and illegitimate personal-expense accounts."²² Senator Hugo Black called for the enactment of a new law that would "cleanse" and "purify" the aviation industry.²³

The new law, both Roosevelt and Black agreed, should also provide federal protection to airline pilots. Deeply affected by the public outcry resulting from the bloody experience of the Army Air Corps, on the one side, and being subjected to intense lobbying efforts on the part of ALPA leadership²⁴ on the other, both men believed that granting the pilots special protection was in the interest of public safety. Accordingly, the original Black-McKellar ("Air Mail") bill contained a definite provision (Section 11) authorizing the Secretary of Commerce to prescribe minimum wages and maximum hours for pilots. Members of the House and Senate committees, which held

²⁰"Senator Hugo Black discusses 'Aviation and the Air Mail Contract' over CBS," Feb. 16, 1934, 2-3, Container 477, Hugo Black Papers, Library of Congress (hereafter LC), Washington, DC. The air mail contracts, the committee charged, were handed to a select group of airline and aircraft executives in a series of "spoils conferences." Attended by the Postmaster General, only the air mail carriers were invited to send representatives to these conferences. Appearing before the senate committee, a representative of a small non-mail carrier testified that he had "crashed" such a meeting and "went in anyway," but was thrown out after being told by one of the participants: "We have been authorized to draw up ... [a] new air mail picture for the country." Although the closed meeting was held at the invitation of the Postmaster General, Senator Black made it appear as if it was a conspiracy among monopolies of the worst kind. See U.S. Senate, *Investigation of Air Mail and Ocean Mail Contracts*, 9 Parts. Hearing before a Special Committee, 73rd Cong., 2nd Sess., 1933-34. Part 4, 1443-1457. The quotations are from 1446-1447, but see also testimonies of Paul Braniff, Part 4, 1739-1751, 1856-1862, Part 8, 3357-3656, and Walter Brown, Part 6, 2349-2749, and Part 7, 2830-2839.

²¹See *Time*, Feb. 19, 1934, 30-31, Feb. 26, 26, Mar 5, 46-47, Mar. 19, 53-54, 57; *The New York Times*, Feb. 11, 17, 1934; *Aviation*, 33 (March 1934), 92; James A. Farley, *Behind the Ballots: The Personal History of a Politician* (New York: Harcourt, Brace and Co., 1938), 264-265, *Jim Farley's Story: The Roosevelt Years* (New York: Whittlesey House, 1948), 46-47; and Arthur M. Schlesinger Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin Co., 1958), 451-452.

²²Franklin Roosevelt to Hugo L. Black, Mar. 7, 1934, Container 477 Hugo Black Papers, LC.

²³U.S. Congressional Record, 73rd Cong., 2nd Sess., 1934, Vol. 78, 7623. But see also U.S. Senate, *Investigation of Air Mail and Ocean Mail Contracts*, Part 4, 1695-1710, 1795-1836, and Part 5, 2247-2303.

²⁴On Feb. 22, 1934, for example, the ALPA president wrote Marvin M. McIntyre, Roosevelt's secretary, asking him to bring to the President's attention a letter suggesting that any new air mail legislation should include a clause protecting the pilots' wages and hours. In his letter, Behncke reminded Roosevelt that the National Labor Board was presently reviewing the pilots' case, and urged the President to listen to the views of the NLB members before proposing the new legislation. Following the letter, a delegation of ALPA representatives arrived at the White House. McIntyre ("a very good friend of the pilots") conferred with the delegation and promised the pilots to "personally" deliver their message to the President. Later that day ALPA representative Mal B. Freeburg wrote Postmaster General Farley: "Mr. McIntyre has asked us to submit to you a suggestion which was developed in our conference at the White House this morning." See Behncke to McIntyre Feb. 22, 1934, and Freeburg to Farley Mar. 1, 1934, OF 19, Box 11, FDR Papers, RL.

hearings on the bill, were quite supportive of such a provision, notwithstanding the opposition voiced by representatives of the major carriers with the notable exception of United.

Union leaders opposed the minimum wage provision in the words of ALPA's representative Edward Hamilton, because it precluded collective bargaining, because "the minimum invariably becomes maximum," and because authorizing the Secretary of Commerce to set the minimum wage was "in fact a dictatorship." Instead, Hamilton suggested linking the pilots' pay to "decisions of the National Labor Board" and granting pilots, mechanics, and laborers the right to collective bargaining: "We have included mechanics and laborers ... because they are not organized" and "need protection more than we do."²⁵ The proposal was quickly incorporated into the revised bill which passed the Senate on April 28 and the House on May 10.²⁶

ALPA's amendment tied the pilots' pay to the NLB ruling, transforming Decision 83 at one stroke into a federal law, providing airline employees with the right to collective bargaining. ALPA's amendment did not invoke much opposition on the part of the employers. The union took advantage of the industry's vulnerable position, lobbied successfully both Senator Hugo Black (who led the debate on the Senate floor) and Representative James Mead (who sponsored the bill in the House), and in the end, managed to keep the amendment in the final bill. The mounting Congressional criticism of the air mail contractors, the evidence clearly suggests, was instrumental in ALPA's legislative success.

This 1934 success needs to be evaluated in the context of the recovery legislation. The intent of Congress in enacting Section 7a of NIRA was the endorsement of the right of workers to form unions and bargain collectively, yet the employers gave the statute their own interpretation. One way to interpret Section 7a was to form "employee representation plans" or company unions, as hundreds of companies did during the fall of 1933, soon after the passage of NIRA. Another was to refuse compliance with the awards of the National Labor Board.²⁷

²⁵The quotations are from U.S. Congress. House. *Air Mail*, Hearing before the Committee of the Post Office and Post Roads, 73rd Cong., 2nd Sess., 1934, 270–271, but see also 266, 248–249, 376. The extent of union organization among the early airline mechanics is unknown; evidently, quite a few had been members before joining the industry but kept their membership secret in order not to be dismissed. See U.S. House of Representatives. *Air Pilots*, 1932, 46; and Senate. *To Amend the Railway Labor Act to Cover Every Common Carrier by Air Engaged in Interstate or Foreign Commerce*. Hearing before a Subcommittee of the Committee on Interstate Commerce, 74th Cong., 1st Sess., 1935, 10. In January 1934, Louis Needham, President of the airline mechanics' lodge in Brownsville, Texas, wrote Hugh Johnson: "Under yours and the President urging many workmen in the air transport industry have organized local unions. The result has been [a] bitter and determined opposition by the air line operators, as we have learned by communication between locals. Many violations of the spirit of the code and the "yellow dog" contract law have been made to stop the spread of unionization ... The workingmen of this nation look upon you and President Roosevelt as messiahs almost ... and we are all mutely cheering whenever we hear of your valiant attack upon the strongholds of privileged and greedy money kings." Needham to Johnson, Jan. 1, 1934, NRA RG9, Box 530, NA. In October 1934, the AFL granted the International Association of Machinists (IAM) exclusive jurisdiction over all airline mechanics, and subsequently, the IAM launched a drive at unionization. *Machinists' Monthly Journal*, 48(5) (May 1936), 276–277.

²⁶See U.S. Congress. Senate. *To Revise the Air Mail Laws*, Report No. 574., 73rd Cong., 2nd Sess., 1934, 3; U.S. House of Representatives. *Air Mail Contracts*, Report No. 1428, 73rd Cong., 2nd Sess., 1934, 2; and for a good summary of the legislative history of the measure see Francis A. Spencer, *Air Mail Payments and the Government* (Washington, DC, 1941), 70–79.

²⁷See Lyon Leverett, et al., *National Recovery Administration, An Analysis and Appraisal* (New York: Da Capo Press, originally published 1935), 470–475; Alfred L. Bernheim and Dorothy Von Doren, Eds., *Labor and the Government: An Investigation of the Role of Government in Labor Relations* (New York: 20th Century Fund/McGraw-Hill Co., 1935), chapt. 4; Brody, *Workers in Industrial America*, 108, 126, 138–46; Dubofsky, 111–115.

Airline carriers employed both tactics. Company unions in the air transport industry were formed among the pilots on one major line (TWA),²⁸ among the mechanics on two other lines, and among all employees except the pilots on still another line. Non-compliance with the awards of the NLB was equally widespread. Altogether, five airline disputes—all involving pilots—were brought before the NLB and its successor the first National Labor Relations Board (NLRB), during the short period of their existence. Four of the cases were minor: the dismissal of union activists in two cases (TWA, United), the discrimination against the pilots of a merged carrier in another (Eastern), and the employer's refusal to bargain collectively in still another case (Long and Harmon Airlines). The fifth had been the famous dispute over the pilots' pay formula which was resolved by Decision 83.

The decision was very difficult to enforce. Not a single air carrier implemented Decision 83 for at least 30 days after it had been rendered; nor did the NLB or the NRA's Compliance Division make efforts to secure its observance. Even after Congress had incorporated the decision into the Air Mail Act a month later, two or three airline carriers were still violating it.²⁹ One method used by the airline carriers to evade compliance with Decision 83 was to negotiate agreements with the pilots at substantially lower salaries than the NLB scale and to cite a collective bargaining clause inserted into Section 13 of the Air Mail Act as authority.

Section 13 contained two provisions: (1) it prescribed that the rate of wages to pilots should "confirm to decisions of the NLB"; and (2) it guaranteed the right of collective bargaining to pilots and other employees. The two provisions were not easily reconcilable. How, then, was the statute interpreted? Edward Hamilton, ALPA's legislative analyst, thought that the NLB rate should be paid in all cases save those in which collective bargaining agreements to pay higher wages were negotiated. The employers, by contrast, viewed the collective bargaining clause as a provision allowing them to negotiate wage rates lower than the NLB scale. Paying their pilots reduced wages, a few carriers went one step further and violated the statute altogether by signing individual employment contracts with the pilots rather than collective agreements.³⁰

Such violations prompted the airline unions to seek an amendment of the Air Mail Act³¹ and try, once again, to pass Title II of the RLA (the 1932 bill). The RLA, of

²⁸TWA's company union (the "Pilots' Council") was formed in April 1931 shortly after TWA had commenced operation. On Oct. 1, 1933, the Pilots' Council ratified the hourly pay scale proposed by TWA management, and subsequently, members of the Council filed petitions with the NLB denying the existence of a wage dispute. On Dec. 29, TWA President Richard W. Robbins wrote NLB member Francis Haas: "We again request that your board rule forthwith that there is no controversy between the pilots and management of TWA, and that the case, so far as TWA is concerned, be dismissed." ALPA opposed Robbins' request and demanded TWA union elections. Conducted by mail, the elections took place on Feb. 3, 1933 and ALPA lost 31 to 50 to the TWA pilots' association. See Richard W. Robbins to Francis J. Haas, Dec. 29, 1933, NLB RG25, Box 27; NRA Release No. 3107, Feb. 3, 1934, NRA RG9, Box 530, NA.

²⁹U.S. Senate, *Hours, Wages, and Working conditions*, 1936, 66–67, 772, 74–75; *Air Line Pilot*, Aug., Oct., Nov., 1934.

³⁰U.S. Congress. Senate. *Revision of Air Mail Laws*, Hearing before the Committee on Post Offices and Post Roads, 73rd Cong., 2nd Sess., 1934, 5; and *Air Line Pilot*, June 1934, but see also U.S. Senate. *Hours, Wages, and Working Conditions*, 1936, 73.

³¹See U.S. Congress. Senate. *To Amend the Air Mail Act of 1934*, Hearing before the Subcommittee of the Committee on Post Offices and Post Roads, 74th Cong., 1st Sess., 1935, 11–105; Behncke to Black, Apr. 9 and May 9, Black to Behncke, Apr. 10, and Behncke to McKellar, May 9, 1935, Container 183, Hugo Black Papers, LC; Behncke to McIntyre, May 10, McIntyre to Behncke, May 15, and McIntyre to Eugene Vidal, May 15, 1935, OF245, Box 2, FDR Papers, RL.

course, had improved significantly since ALPA's first attempt at legislation,³² and accordingly, on April 1, 1935, ALPA Representative Edward Hamilton wrote Hugo Black asking him to introduce Title II in the Senate.³³ Black quickly introduced the bill, and on April 11, Behncke wrote thanking him for his prompt action and asking him to arrange for the pilots' representatives to appear before the committee.³⁴ A week later, the ALPA president wrote Senator Burton Wheeler, Chairman of the Senate committee dealing with the bill, explaining the need for legislation.

The distinctive feature of airline labor relations, Behncke wrote, was the legal prohibition on strikes: "there is a law calling for a prison sentence, fine, or both, under which any person ... may be convicted for stopping or retarding the movement of the United States mail." ALPA therefore had studied the situation, "uncovered the Railway Labor Act, and found it ideally suited for the peaceful resolution of labor disputes." Indeed, the need for such a measure had become evident: Behncke noted that Captain E. V. Rickenbacker, Eastern Airline's general manager, took a "high-hatted, arrogant stand, refusing even to submit the controversy to arbitration," and as a result, Eastern pilots voted to strike. But a strike was by no means inevitable. The entire dispute could be settled quickly, the ALPA president reassured the Senator, if at present, Title II of the RLA was law.³⁵

Behncke mailed a copy of the letter to the White House, asking Roosevelt's secretary, McIntyre, to give the matter "your usual thorough attention." In addition, he sent a copy to Black requesting further assistance. Black, in turn, promised to discuss the matter with Senator Kenneth McKellar, Chairman of the Senate Post Office Committee, and advised Behncke to contact McKellar directly.³⁶ On May 20, 1934, a Subcommittee of the Interstate Commerce Committee—made up of three senators appointed by Burton Wheeler—opened the hearing on Title II of the RLA.

The Senate hearing was remarkable in two ways. First, unlike the 1932 attempt to enact Title II, and the 1934 and 1935 attempts to pass the Wagner Act, virtually no opposition to the Black bill was voiced during the entire proceeding before the Subcommittee of the Senate Committee on Interstate Commerce. Second, the 1932 debate on Title II and subsequent debates on the Wagner Act focused on the right to organize and engage in collective bargaining. During the 1935 Senate hearing on the Black bill the right to bargain was not even an issue, because four days prior to the hearing—on May 16, 1935—the Wagner bill passed the Senate by a vote of 63 to 12.³⁷ As a result, the hearing on Title II focused almost exclusively on a comparison between the Railway Labor Act and Wagner's National Labor Relations Act, and the main argument in favor of the RLA was that it served the interests of the public better, that it was more likely than the Wagner Act to promote airline industrial peace.

³²The 1934 amendment of the RLA put an end to the company union phenomenon by making it unlawful for a carrier to contribute to a company union, to induce employees to join a company union, or to interfere with the rights of employees to join the labor organization of their choice. It also outlawed "yellow-dog" contracts and invalidated any such contracts in existence. See Bernstein, *New Deal Collective Bargaining Policy*, chapt. 4, and George M. Harrison, "Railway Labor Act," *American Federationist*, 41(10) (Oct. 1934), 1053-1057.

³³Hamilton to Black, Apr. 1, 1935, Container 183, Hugo Black Papers, LC.

³⁴Black to Hamilton, Apr. 3, 1935, Behncke to Black, Apr. 9, 11, 1935, Container 183, Hugo Black Papers, LC.

³⁵Behncke to Wheeler, Apr. 17, 1935, 3, Container 183, Hugo Black Papers, LC.

³⁶Behncke to Marvin H. McIntyre, Apr. 18, 1935, OF 249, Box 2, FDR Papers, RL; Behncke to Black; Apr. 18, 19, 1935, Container 183, Hugo Black Papers, LC.

³⁷U.S. *Congressional Record*, 74th Cong., 1st Sess., 1935, vol. 79, 7689.

Edward Hamilton in contrasting the two labor laws for ALPA, aptly described the RLA as a statute providing “a more complete and thorough means of working ... things out.” Hamilton said: “I think ... the best part of that act is this: That it makes the duty on the part of both parties to put forth every reasonable effort to negotiate a working agreement.” The RLA (as amended in 1934) created the National Mediation Board whose main function is to “bring the parties together ... disperse their suspicions ... and educate them into the good features of collective bargaining, how it should be done and how it should be worked.” Hamilton concluded, “There is nothing in the Wagner bill that provides for that ...”³⁸

Behncke was nevertheless still uncertain. Shortly after the conclusion of the senate hearing, on June 15, he wrote Hamilton, expressing “some apprehensions” regarding the labor protection clause of the RLA. Section 2 of the RLA was “a bill of rights that put the Wagner bill to shame,” Hamilton responded at once, reminding the union president that the RLA outlawed company unions, guaranteed the “right of self organization” and “collective bargaining without interference,” and provided for a majority rule. In addition, other sections of the RLA were “wholly lacking in the Wagner bill. My understanding [wrote Hamilton] is that that part of the Wagner bill which permitted voluntary arbitration has already been stricken out, and all th[at] is left is a bill of rights similar to but not as effective as section 2 of the Railway Labor Act.”³⁹

Title II of the RLA passed the Senate on July 25, 1935, with only two minor amendments and without a debate. It passed the House eight months later.

* * * * *

The Civil Aeronautics Act is made up of some 250 provisions, only five of which are devoted to labor relations. Yet the labor question dominated much of the hearings on the act. Among all witnesses who appeared at the hearings, ALPA president Behncke and Edgar S. Gorrell, president of the newly formed industry trade group Air Transport Association (ATA) gave the longest testimonies.

From the outset, ALPA representatives were deeply involved in the legislation. All airline employees were protected by the RLA but only the pilots demanded federal protection above and beyond the provisions of the RLA; only the pilots sought to inject Decision 83 into the new bill. As a result, the union leadership proposed an amendment incorporating Decision 83 into the new bill, extending its application to cover air mail carriers engaged in foreign operations, and stipulating the holding of an air carrier's certificate upon compliance with the RLA.⁴⁰

Only the Senate bill included the pilots' amendments prior to the hearing. The House bill, instead, included a labor clause drafted by the employers. H.R. 9738 applied only to air mail carriers (and excluded non-mail carriers), did not cover foreign operations, and upheld the validity of decision 83 “until such time as working agree-

³⁸U.S. Congress. Senate. *To Amend the Railway Labor Act to Cover Every Common Carrier by Air Engaged in Interstate or Foreign Commerce*, Hearing before a Subcommittee of the Committee on Interstate Commerce, 74th Cong., 1st Sess., 1935, 6–9.

³⁹Behncke to Hamilton, June 15, 1935; Hamilton to Behncke, June 17, 1935, Box 3, folder 5, ALPA Papers, WSUA. But Hamilton ignored an obvious and important difference between the two bills: the right to strike was more limited under the RLA than under the Wagner bill.

⁴⁰See U.S. Congress. House. *Aviation*, Hearing before the Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess, 1937, 168; Senate. *Regulation of Transportation of Passengers and Property by Aircraft*, Hearing before a Subcommittee of the Committee on Interstate Commerce, 75th Cong., 1st Sess., 1937, Part 1, 52.

ments or contracts” were negotiated. In other words, Decision 83—the House bill implied—was an emergency stop-gap measure undertaken by the NLB in the dark days of 1933–34. It was no longer valid.⁴¹

Appearing four times on Capitol Hill—in 1937 and 1938, before the House Commerce Committee as well as the Senate Subcommittee—ATA President Edgar Gorrell delivered a closely argued attack on the pilots’ demand for Federal protection. His main line of argument was that ALPA’s proposal was “redundant” because it undermined collective bargaining. Decision 83, he reminded the legislators, had taken place two years prior to the enactment of Title II of the RLA, at the time airline pilots had no legal protection; since Title II had become law in 1936 there was no longer any need for protective legislation.⁴² He believed that the 1934 ruling of the “defunct National Labor Board,” was intended to provide “only a temporary expedient,” not to impose an “iron clad schedule of pay and hours.” He therefore pleaded before the congressional committee that it act with utmost caution and prudence before imposing such a costly measure upon the industry.⁴³

Bencke’s performance before the congressional committees clearly benefited from his gift for rhetoric. On the one hand, he offered few substantive points. He argued that the RLA was “strictly a mediation law” and therefore “requir[ed] a great deal of cooperation by both sides ... to make it function properly.”⁴⁴ He noted that even when a labor contract was signed, it did not necessarily guarantee full protection because under the RLA a contract could be terminated by each party upon notice.⁴⁵ And he pointed out that pilots’ protection was in the interests of both airline safety and national defense, that uniformity was the only way in which the union could control standards, and that a uniform method of compensation was embedded in Decision 83.⁴⁶ But, equally important, he appealed to the sentiments of lawmakers, to their sense of admiration and fascination with airline flying. Taking full advantage of his sympathetic listeners, Behncke stubbornly refused to modify any part of ALPA’s legislative agenda.⁴⁷

In the end, ALPA’s amendment was adopted by the House Commerce Committee with only minor qualifications. As a result, both the Senate and House bills now contained a labor section linking the pilots’ wages and hours to Decision 83. Reported favorably by the two committees, the bills moved on to House and Senate floors.

The CAA passed the House on June 11 and the Senate on June 13. Ten days later, on June 23, 1938, it was signed by the President.⁴⁸ “There is no parallel in our labor

⁴¹U.S. Congress. Senate. S. 3659. *A Bill to Promote the Development of Safety, and to Provide for the Regulation of Civil Aviation and Air Transport*, 75th Cong., 3rd Sess., 1938, 61–62; House. *To Create a Civil Aeronautics Authority*, Hearing before the Committee on Interstate and Foreign Commerce, 75th Cong., 3rd Sess., 1938, 10.

⁴²U.S. Senate, *Regulation of Transportation*, 1937, Part 2, 449–450; House of Representatives. *Aviation*, 1937, 303, 358.

⁴³U.S. House of Representatives. *Aviation*, 1937, 303, 359; *To Create a Civil Aeronautics Authority*, 1938, 369.

⁴⁴U.S. House of Representatives. *To Create a Civil Aeronautics Authority*, 1938, 243; Senate. *Civil Aviation and Air Transport*, Hearing before a Subcommittee of the Committee on Interstate Commerce, 75th Cong., 3rd Sess., 1938, 70, 90.

⁴⁵U.S. House of Representatives. *To Create a Civil Aeronautics Authority*, 1938, 214–215.

⁴⁶U.S. House of Representatives. *To Create a Civil Aeronautics Authority*, 1938, 225–226, 241–242, 245; *Aviation*, 172, 174; Senate, *Civil Aviation and Air Transport*, 1938, pp. 71–72.

⁴⁷See esp. House of Representatives. *To Create A Civil Aeronautics Authority*, 1938, 221–225.

⁴⁸See Bernard Schwartz, ed., *The Economic Regulation of Business and Industry: A Legislative History of U.S. Regulatory Agencies*, 5 volumes (New York: Chelsea House, 1973), vol. 4, 2987.

history,” wrote Mark Kahn, a lifelong student of airline labor relations, “for the legislative protection ... which the pilots thus obtained.”⁴⁹ Section 401(1) of the CAA contained four passages, two calling for compliance with Decision 83 (domestic, foreign operations), one for compliance with the RLA, and the remaining clause upholding the rights of “pilots ... copilots or other employees ... to obtain by collective bargaining higher rates of compensation [than those prescribed by Decision 83].”⁵⁰ These clauses established the framework within which airline industrial relations evolved for the next four decades. They granted an agency of the federal government the power to regulate airline labor relations in the interests of public safety, industrial peace, and national defense. They legitimized political intervention in airline labor disputes for the purpose of enforcing both the RLA and the CAA labor provisions, vested the authority to do so with the Civil Aeronautics Board, and in this way, fostered close cooperation between airline management, labor and the government throughout the regulatory era.

* * * * *

Behncke continued to lead the union through the contract negotiations. The fundamental question faced now by the union leadership pertained to ALPA’s bargaining strategy. Should the union engage in industry-wide bargaining or should it embark on single-employer bargaining. Behncke quickly realized that ALPA had nothing to gain from industry-wide negotiations. The conventional goal associated with such a strategy was to take wages out of competition by enforcing uniform standards across carriers. This goal, however, was already met by the new regulatory environment, in other words, the economic provisions of the CAA ensured uniform contracts.⁵¹

The Railway Labor Act allowed the parties to select their own bargaining units. Yet the bargaining environment of the RLA encouraged settlements preserving industrial peace: industry-wide negotiations could have triggered nation-wide airline strikes, contrary to the explicit goals of the act. Behncke used this argument in his campaign for single-employee contracts. The leading member of each negotiation team, he managed to use the previous settlement with one carrier as the starting point for negotiations with another, staggering the negotiations across the industry, and taking advantage of the negotiating carrier’s vulnerability to strikes. The first ALPA contract was signed with American Airlines in May 1939; the second (July 1939) with TWA. By July 1941, every major domestic carrier had signed an employment agreement with ALPA, and in June 1945, Pan American Airways signed a contract as well.⁵² Behncke’s legislative accomplishments outlived his tenure as ALPA president, which ended in

⁴⁹Mark L. Kahn, “Collective Bargaining on the Airline Flight Deck,” in Harold M. Levinson, Charles M. Rehmus, Joseph P. Goldberg, and Mark L. Kahn, eds., *Collective Bargaining and Technological Change in American Transportation* (Evanston, IL: Northwestern University Press, 1971), 471.

⁵⁰U.S. Congress. House. *Creation of Civil Aeronautics Authority*, H. Report 2635, 75th Cong., 3rd Sess., 1938, 20–21.

⁵¹On pattern bargaining, and industry-wide negotiations, see Thomas K. Kochan and Harry C. Katz, *Collective Bargaining and Industrial Relations* (Homewood, IL: Irwin, 1988), 129–130, 139–140; and Peter Cappelli, “Airlines,” in David B. Lipsky and Clifford B. Donn, eds., *Collective Bargaining in American Industry: Contemporary Perspectives and Future Directions* (Lexington, MA: Lexington Books, 1987), 149–153.

⁵²Kahn, “Collective Bargaining on the Airline Flight Deck,” 492, 497; Herbert R. Northrup. “Collective Bargaining by Air Line Pilots,” *Quarterly Journal of Economics*, 60(4) (Aug. 1947), 556; Hopkins, *Airline Pilots*, 182; *Flying the Line: The First Half Century of the Airline Pilots’ Association* (Washington, DC: ALPA, 1982), 95, 105, 112.

1952. "It is quite astonishing, in retrospect, that a temporary solution to a pilot pay dispute recommended in 1934 by the National Labor Board ... is still the primary basis for pilot wage determination," Mark Kahn wrote in 1971, noting: "Decision 83 is still ... fully in force as the legal minimum wage formula for pilots."⁵³ It is even more remarkable, one may add, that the organized pilots managed to improve the NLB pay formula substantially over the course of the post-war years.

Two major ALPA victories overshadowed all others in this respect. The first was the incorporation of a new pay element ("gross weight pay") into the NLB formula in the 1940s. The second was the application of the *improved* formula to jet aircraft in the late 1950s.

With the coming of the four-engine propeller aircraft soon after the end of the war (the DC4 "Skymaster", the Lockheed Constellation, and later the DC6 and DC7), ALPA insisted upon a revision of Decision 83 to compensate pilots for the increase in the size and weight of planes. The major carriers were unified in their opposition to the new demand. Following a two-year struggle that involved the appointment of an airline emergency board by President Harry Truman, the eruption of a major strike among TWA pilots, and intervention of the National Mediation Board in that dispute, ALPA won. By January 1948, "gross weight pay" was added to the contracts negotiated by ALPA and every major trunk line carrier.⁵⁴

The arrival of jet technology 10 years later triggered another industry-wide labor dispute. Led by American Airlines, the major carriers proposed to discard Decision 83 and negotiate instead a new contract based on the changing requirements of the pilots' job, not the changing characteristics of the new equipment. Determined to preserve Decision 83 and thus the principle of what ALPA called "increment pay," the pilots fought back successfully: the first contract upholding the NLB pay formula on jets was signed by ALPA and National Airlines in January 1958, thereby setting an important precedent. Two years later, the industry pattern was well established with every major carrier signing a collective bargaining agreement modeled on National's. And, in 1970, with the introduction of the Boeing 747, the improved NLB wage formula was promptly applied to the new gigantic plane, hence retaining its four key elements: a base pay, an hourly pay, a mileage pay (varied with speed), and a gross weight pay.⁵⁵

⁵³Kahn, "Collective Bargaining on the Airline Flight Deck," 603.

⁵⁴Andrew Jackson Cooper, "The Wages of Airline Pilots: The System of Wage Computation, the Wage Level, and Wage Structure of Pilots Employed by U.S. Scheduled Airlines," (unpublished PhD dissertation, Princeton University, 1961), 99–101; Mark L. Kahn, "Wage determination for Airline Pilots," *Industrial and Labor Relations Review*, 6(3) (April 1953), 327–30.

⁵⁵Cooper, "Wages of Airline Pilots," 111–112; Mark L. Kahn, "Labor Management Relations in the Airline Industry," in Charles M. Rehmus, ed., *The Railway Labor Act at Fifty*, 111–112; "Collective Bargaining on the Airline Deck," 559–560, "Airlines," in Gerald G. Somers, ed., *Collective Bargaining: Contemporary American Experience* (Bloomington, IN: Indiana University Press, 1980), 358. The new contracts granted the pilots a generous pay increase. A Delta pilot flying a Douglas DC-8 (273,000 lbs., 530 mph) received a 41% increase over a pilot flying a four-engine piston DC-7 (122,000 lbs., 325 mph); a United pilot in charge of a DC-8 got a 37% raise over the rates paid to a DC-7 pilot, and an American pilot flying a Boeing 707 (248,000 lbs., 271 mph) saw his earnings jump 48% above those of a DC-7 pilot. See John M. Battsell, *Airline Industrial Relations: Pilots and Flight Engineers* (Boston, MA: Division of Research, Graduate School of Business Administration, Harvard University, 1966), 104, in conjunction with Kahn, "Collective Bargaining on the Airline Flight Deck," 446.