

BEFORE THE
NATIONAL MEDIATION BOARD

In the Matter of
THE FLIGHT DECK CREW MEMBERS
OF
FEDERAL EXPRESS CORPORATION

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Case No. R-6044

OBJECTIONS TO CERTIFICATION OF ELECTION

Kenneth R. Masterson
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ATTORNEYS FOR FEDERAL
EXPRESS CORPORATION

January 14, 1993

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Federal Express ("the Company" or "the carrier") files these objections to the election pursuant to §§10.3, 10.4, 10.5, and 11.5 of the National Mediation Board Representation Manual. The carrier alleges that the conduct engaged in by the Air Lines Pilots Association ("ALPA"), the United States Pilot Association ("USPA"), and other individuals so tainted laboratory conditions that a true and accurate determination of the representation choices of the crewmembers was impossible.

Attached to these objections is some of the documentary evidence Federal Express has gathered during the course of this campaign. Management has also been contacted by individuals who have stated they were harassed, intimidated and threatened by union supporters during the course of the campaign. However, management has not asked or insisted that these individuals be interviewed or give affidavits concerning these incidents because the carrier was concerned that such interviews or requests for affidavits, if given during the voting period, might be alleged to be

unlawful interrogation or surveillance. Federal Express thereby requests an additional twenty (20) working days to present supporting affidavits and to supplement this initial filing. Federal Express' objections are as follows:

**I. THE USPA AND ALPA MISREPRESENTED THE BOARD'S
VOTING AND ELECTION PROCESS THROUGH ITS
DOCUMENTS, LITERATURE AND COMMUNICATIONS**

(A) By the United States Pilots Association

On October 25, 1992, the United States Pilots Association (USPA) formally announced its intention to run as an independent alternative to the Air Line Pilots Association (ALPA). (Exhibit 1). USPA's initial campaign motto appeared to be Write USPA In, however, by November 3, 1992, USPA added the phrase "A vote NO is a vote for ALPA" to its literature. (Exhibit 2). USPA highlighted its "A NO vote. . . is a vote for ALPA" claim three (3) different times in its November 3 letter and repeated the phrase in virtually all subsequent distributions. (Exhibit 3). It also echoed the new slogan on its telephone hotline, (Exhibits 4 & 5) and unreservedly told crewmembers "remember, if you vote no at this time, you're voting for ALPA". (Exhibit 4). USPA's continual misrepresentations concerning the effect of a no vote caused frustration and confusion in the Federal Express crewforce and led some crewmembers to cast ballots for union representation when they were actually against any union representation at Federal Express.

By posturing itself as the only alternative to ALPA representation, the USPA subverted the no representation option available to Federal Express crewmembers. In its wave of misrepresentations aimed at convincing, confusing and ultimately deceiving crewmembers about their representation choices, USPA collected votes from crewmembers who did not want representation at all.

USPA's actions are a most flagrant violation of both the National Mediation Board's (NMB) representational procedures and voting process and the statutory mandate of the Railway Labor Act (RLA). See e.g. 45 U.S.C. §152, Third. Whenever carriers have failed to accurately and completely represent the Board's voting policies and procedures, the NMB has pounced upon the carrier and ordered rerun election after rerun election. See U.S. Air 17 NMB 377 (1990); Metroflight, Inc. 13 NMB 284 (1986); Zantop International Airlines, Inc. 6 NMB 834 (1979) and Allegheny Airlines 4 NMB 7 (1962). USPA's campaign conduct misled Federal Express crewmembers about their voting rights and options. Federal Express crewmembers believed that a no representation option was no longer available even though that was what many voting crewmembers desired. By telling crewmembers who did not want a union to vote for USPA, USPA "conned" crewmembers into endorsing some form of union representation whether USPA or ALPA. USPA's misrepresentations have made a complete mockery of the rerun election, the Board's voting process, and the RLA.

If all this were not enough, the USPA also twice duplicated and distributed an NMB sample ballot, Form NMB-R-2(a) with instructions to write-in USPA. (Exhibits 6 & 7). Finally, as if to flaunt its misrepresentations and celebrate its victory in deceiving not only the crewmembers but also the NMB, the USPA brazenly attached another misrepresented NMB ballot to its January 5, 1993 distribution titled "NMB Squashes NO Group Petition and Company Motions". (Exhibit 7).

The carrier will be seeking affidavits from confused crewmembers who voted for USPA because of these misrepresentations and will present them to the Board in its supplemental filing.

(B) By the ALPA

The NMB has consistently held carriers responsible for failing to inform fully the electorate of all the voting alternatives available to them. See e.g. MetroFlight 13 NMB 284 (1986), Laker Airways 8 NMB 79 (1981). In this election, ALPA's agent, the Federal Express Pilots Organizing Committee (FEPOC), failed to inform crewmembers on at least three separate occasions, of all the options available to ballot holders who wished no representation. (Exhibits 8 through 10).

ALPA also deliberately misrepresented the Board's rerun election decision in this case. On October 20, 1992, one day after the NMB ordered a rerun election, the FEPOC hotline reported that the Board had used three (3) specific allegations - furlough rumors, the dues obligation misrepresentation and the formation of the Scope Committee - to justify its order for a rerun election. (Exhibit 11). The October 20 hotline shows that ALPA understood the Board's ruling. However, by November 12, 1992, ALPA issued a press release that misrepresented the NMB's ruling. (Exhibit 12). ALPA included in its press release a claim that the Board had cited Federal Express for "coercive communications". No coercive communications finding was ever made by the NMB but ALPA deliberately broadened, misrepresented and then distributed this exaggeration to the Federal Express crewforce.

**II. ALPA DELIBERATELY DISTORTED AND MISREPRESENTED
CARRIER PRACTICES, POLICIES, AND PROCEDURES**

On July 22, 1992, Theodore Weise, Senior Vice President of Federal Express' Air Operations Division wrote to both FEPOC and the Federal Express Pilots for a Non-Union Operation (FEPNO) (USPA was added when it announced its representational effort in October 1992) stating that E-mail (Electronic Mail) distribution lists were not to be used for

solicitation purposes as it showed up on individual employee screens reserved for business communication. (Exhibit 13). The Weise letter was prompted by a FEPOC committee person's solicitous use of an E-mail distribution list in the New York area domicile. Notwithstanding his restriction, Weise attempted to give all sides access to some portion of E-mail by offering each group and individual pilots the opportunity to use an E-mail bulletin board system for distribution of campaign literature.

On August 21, 1992, Eric Vartanian, Chairman of FEPOC, wrote back to Weise concerning the E-mail bulletin board offer. (Exhibit 14). While Vartanian indicated a general appreciation for the establishment of an E-mail bulletin board, FEPOC declined the access offer for its group, indicating that FEPOC preferred to use the individual E-mail bulletin board screen for comments. On November 3, 1992, Weise issued instructions to the groups and individual crewmembers on how to access the E-mail bulletin board system. (Exhibit 15).

Even though ALPA was intimately involved in the dialogue concerning the E-mail bulletin board system and knew the genesis, history and purpose behind Weise's offer, the November 14, 1992 ALPA hotline referred to the E-mail bulletin board as follows ". . . . [T]he E-mail campaign bulletin board [is a device] where the company offer(s) the forum in order to monitor and control the discussion". (Exhibit 16). Although ALPA knew its statement to be a blatant lie, it made the misrepresentation anyway. By making it appear that Federal Express was attempting to surveil the crewforce through E-mail, ALPA created an opportunity for itself to disparage management. By publishing this utterly false statement to the Federal Express crewforce, FEPOC deliberately misrepresented Federal Express practices.

ALPA's campaign literature also grossly misrepresented Federal Express crewmembers' career earnings and compensation. (Exhibit 17). ALPA employed a so-called "independent" expert to enhance and overstate pilot pay and benefit levels at unionized carriers while simultaneously misrepresenting, minimizing, discounting, or completely ignoring comparable Federal Express pay, benefits and work rules. ALPA's manipulation of this independent expert deceived pilots about their pay, benefit, and work rule levels.

Finally, in an effort to divert attention from its own legislative history of opposing Federal Express efforts to have non-union pilots treated as legal equals with their union counterparts for purposes of establishing a separate "B" pension plan, ALPA fabricated a statement about the Company's intentions in fighting for this legislative relief. According to ALPA's hotline of November 5, 1992, had HR11 (the bill containing the Federal Express pilots pension provision) become law, the "Company would have had the opportunity to leave our pilots' retirement unchanged and to extend all other employees retirement age beyond 60, thereby reaping tremendous actuarial benefits". (Exhibit 18). This statement had absolutely no basis in fact and was designed to derogate and completely misrepresent the Company's efforts concerning this legislation.

III. UNION SUPPORTERS ENGAGED IN ILLEGAL POLLING, COERCION, INTERROGATION, AND INTIMIDATION TO HAVE EMPLOYEES VOTE FOR LABOR REPRESENTATION

In Mercury Services, Inc. 9 NMB 312 (1982), the Board said the following about both carrier and union polling:

In all mail ballot elections conducted by the Board, ballots are sent to the home address of the employees using address labels supplied by the carrier.

Employees are free to vote in the privacy of their own homes, without being subject to pressure from carrier or union officials. No one except employees of the National Mediation Board knows who voted in the election. No one, including the Board's employees, know how the voters who do cast ballots actually marked their ballots. To vote for representation the employee simply marks the ballot and returns the properly-attested envelope with the ballot enclosed to the Board. To vote against representation, the employee need only refrain from voting. It is no business of the carrier or the organization whether or how any employee votes or does not vote. [Emphasis added]

Id at 320

In the current case, Federal Express has been voluntarily informed by several crewmembers that a union group has used telephone representatives and union officials to call crewmembers at their homes for the purpose of determining if they voted in this election. This activity is clearly improper interference under Board decisions, amounts to surveillance, coercion, and intimidation and is an independent basis for ordering a rerun election. The carrier will present its evidence, along with supporting affidavits, to the Board after the vote count.

Similarly, various members of flight management have been informed by crewmembers that union supporters have systematically threatened non-union supporters with failed check-rides, blacklisting, and future employment problems if they fail to support a particular union or the union movement in general at Federal Express. Again affidavits concerning these threats will be presented during the supplemental filing period.

IV. ALPA MISREPRESENTED THE RAILWAY LABOR ACT DURING THE COURSE OF THIS CAMPAIGN

On November 9, 1992, Frederick W. Smith, CEO of Federal Express, asked both Randolph Babbitt of ALPA and Mark Estabrook of USPA to engage him in a series of three (3) debates to discuss the advantages and

disadvantages of unionization before the Federal Express crewforce. (Exhibit 19). Mr. Smith stated that he was asking all sides to waive objections so discussions, dialogues or questions made in the course of the debates would not be used for creating interference objections and so the debaters did not have to become unduly concerned about how their responses might later be attacked or defended by their attorneys.

Initially Mr. Estabrook conditionally accepted Mr. Smith's invitation (Exhibit 20) however, he later declined. Mr. Babbitt chose to respond to Smith's offer in a letter dated November 12, 1992. (Exhibit 21) Babbitt's response used the debate invitation in a way Smith had predicted some might be tempted to use the debate - as "objections fodder". Babbitt accused Smith of attempting to unlawfully insert himself into the campaign, of intentionally attempting to violate the NMB rules and processes, of trying to make himself (Smith) the overseer of the NMB process and of "contaminating the election process" by even suggesting the debate. Needless to say, Mr. Babbitt was not interested in debating Mr. Smith or Mr. Estabrook under any circumstances.

Babbitt intentionally twisted the NMB rerun decision, the voting process, and the law in order to justify his refusal to debate. The NMB had never denied Smith the right to be involved or to speak on union issues as Babbitt claimed in his debate response. Smith had not stated or even suggested, that he would violate the RLA or any NMB principles in offering to debate, but Babbitt ignored Smith's statements and accused him of attempting to violate both the NMB's processes and the RLA. Finally, by preaching to Smith about what Smith could do or say in the rerun election, it was Babbitt, and not Smith, (as Babbitt alleged) who was setting himself up as the overseer of the NMB process.

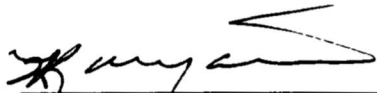
Mr. Babbitt's allegations attempted to convince the Federal Express crewforce that he was forced to decline the debate offer before the first word was ever uttered, because any other course would have violated the Railway Labor Act. Babbitt implicitly acknowledged that he had overstated his case on the debate when he later suggested in a subsequent letter that a debate with FEPOC pilots might be possible. (Exhibit 22). Clearly, if Babbitt believed all the rhetoric of his first response, he would not have suggested any future debates. By distorting and twisting the Board's rerun decision, its policies, and the law for benefit of the ALPA campaign, Babbitt's actions constituted interference with the Board's process and procedures.

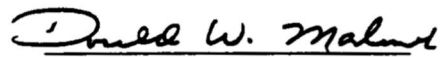
Finally, ALPA also improperly trespassed on Federal Express property for the purpose of engaging in solicitation during the campaign. Specifically, ALPA brought non-Federal Express employees onto Federal Express property as either guests of crewmembers or under the guise of being interline jumpseaters in order to lobby Federal Express crewmembers in the Federal Express Memphis crew lounge. There were at least two (2) visits by ALPA MEC officials from other airlines in the Memphis crew lounge during the course of the campaign and Federal Express will provide affidavits from flight management who will attest to the presence of these ALPA MEC officials in the Federal Express crew lounge on specific dates during this campaign period.

ALPA knew, by past practice and its own past conduct, that these non-employees would not be allowed to trespass on Federal Express property for the purpose of representational solicitation, so ALPA avoided seeking management approval and improperly brought the MEC officials onto Federal Express property without permission.

The carrier submits the incidents, conduct and evidence presented herein destroyed the laboratory conditions necessary for a full and fair election and asks that the Board order a rerun election in this case.

Respectfully submitted,


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General Counsel


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections to Certification of Election was served on the following parties by Federal Express Overnight Letter on January 14, 1993:

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