

Federal Express Pilots for a Non-Union Operation, Inc., Jose R. Bravo, James G. Hutto, Richard D. Lichtermann, Grover N. Lipe, Jr., Mark S. Lombardo, Edward A. Lyons, and Steven R. Oliver *v.* National Mediation Board and Air Line Pilots Association, 70 F.3d 637 (D.C. Cir. 1995)

## Court of Appeals for the D.C. Circuit

**Filed:** October 25th, 1995

**Precedential Status:** Non-Precedential

**Citations:** 70 F.3d 637

**Docket Number:** 94-5357

70 F.3d 637

315 U.S.App.D.C. 76

**NOTICE: D.C. Circuit Local Rule 11(c) states that unpublished orders, judgments, and explanatory memoranda may not be cited as precedents, but counsel may refer to unpublished dispositions when the binding or preclusive effect of the disposition, rather than its quality as precedent, is relevant.**

**FEDERAL EXPRESS PILOTS FOR A NON-UNION OPERATION, INC., Jose R. Bravo, James G. Hutto, Richard D. Lichtermann, Grover N. Lipe, Jr., Mark S. Lombardo, Edward A. Lyons, and Steven R. Oliver, Appellants,**  
**v.**  
**NATIONAL MEDIATION BOARD and Air Line Pilots Association, Appellees.**

No. 94-5357.

United States Court of Appeals, District of Columbia Circuit.

Oct. 25, 1995.

Before: SILBERMAN, SENTELLE and HENDERSON, Circuit Judges.

JUDGMENT

PER CURIAM.

- 1 This appeal of an order of the District Court, which dismissed a challenge to the National Mediation Board (NMB), was considered on the briefs filed by the parties and the oral argument presented October 11, 1995. The court has determined that the issues presented do not require an opinion. See D.C.Cir.Rule 36(b). It is
- 2 ORDERED AND ADJUDGED that the District Court's order issued October 21, 1994, be affirmed in full. This court has repeatedly noted that it may review NMB certifications "only upon a 'showing on the face of the pleadings that the certification decision was a gross violation of the [RLA] or that it violated the constitutional rights of an employer, employee, or Union.' " Professional Cabin Crew Ass'n v. NMB, [872 F.2d 456](#), 459 (D.C.Cir.) (quoting International Ass'n of Machinists v. TWA, [839 F.2d 809](#), 811 (D.C.Cir.), amended, [848 F.2d 232](#), cert. denied, [488 U.S. 820](#) (1988)), cert. denied, [493 U.S. 974](#) (1989). In determining whether the NMB has grossly violated the RLA or violated the Constitution, a court may only take a "peek at the merits." Professional Cabin Crew Ass'n, [872 F.2d at 459](#) (citing International Bd. of Teamsters v. Brotherhood of Ry., Airline & S.S. Clerks, [402 F.2d 196](#), 205 (D.C.Cir.), cert. denied sub nom. Brotherhood of Ry., Airline & S.S. Clerks v. NMB, [393 U.S. 848](#) (1968)). This "peek" must reveal an error patent on the face of the matter without resort to broad policy arguments. Professional Cabin Crew Ass'n, [872 F.2d at 459](#).
- 3 In this case, the petitioner alleges bias in NMB's standard ballot and "majority-of-the-majority" voting rule through a study attached to its pleading. This court will not review these procedures for inherent bias unless this bias is of a constitutional dimension. See International Ass'n of Machinists, [839 F.2d at 812 n. 1](#). One sparse study offered by petitioners does not approach this threshold. This court must therefore affirm the District Court.
- 4 The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely position for rehearing. See D.C.Cir.Rule 41.