

BEFORE THE
NATIONAL MEDIATION BOARD

In The Matter Of)
THE FLIGHT DECK CREW MEMBERS)
of)
FEDERAL EXPRESS CORPORATION)

NMB CASE NO. R-6044

REPLY OF FEPNO IN SUPPORT OF
MOTION FOR RECONSIDERATION

This Board determined, consistent with its requirements at §11.5 of its Representation Manual, that the allegations and supporting evidence raised by FEPNO and the carrier in their Objections to Certification of Election due to union interference were sufficient to establish a prima facie case of election interference by the union.

Based upon its consideration of the supplemental submissions and union responses provided for at §11.5 of the Representation Manual, the Board was required to decide whether election interference occurred.

"If the board is able to make a determination on the basis of written submissions, it will do so." Representation Manual §11.5

Here, however, unable to make a decision based upon the written submissions, the Board proceeded in accordance with its own mandate:

"In certain cases, however, the Board will conduct further investigation, either through confidential interviews, Board hearings (in camera and/or public) or otherwise." Representation Manual §11.5

What is complained of by FEPNO in its Motion for Reconsideration is not that the Board did not follow its procedures,

but that the same were only given lip service and not substantively applied by Mediator Oppenberg despite her mandate and obligation.

It is necessary that the Board representative conduct the investigation with extreme impartiality, thoroughness and accuracy. Representation Manual §2.1

Here, Mediator Oppenberg contacted the carrier in conjunction with the Board mandated on-site investigation and provided the carrier with the names of Federal Express flight deck crew members with whom she intended to conduct the required "confidential interviews."

The Mediator described the procedures she employed in selecting the interviewees to all parties.

The interviews were to be conducted with persons who were not active campaigners for or against union representation.

Mediator Oppenberg advised that she only intended to interview (and interviewed despite protestations that the number of persons selected were not significant) 19 flight deck crew members out of a class of 2,279 persons!

It can hardly be said that interviewing .08% of the class or craft involved in a dispute where:

- a) a *prima facie* case of election interference by the union was been held to exist by the Board; and,
- b) the Board was unable to make a decision based upon the written submissions which, by Board rule, require "further investigation";

constitutes "further investigation" conducted with Board mandated "extreme impartiality, thoroughness and accuracy."

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Moreover, and further exacerbating the problem, a full third of the interviewees were not simply union supporters as ALPA alleges but were persons who were members of the union's organizing committees, the union's transitional Master Executive Council, or who were clearly and openly identified as active union campaigners the Mediator advised she intended to exclude.

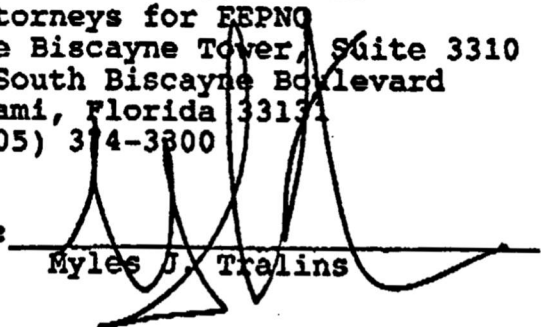
Here, the Board not only initially found the existence of *prima facie* evidence of election interference but it subsequently determined in its Findings Upon Investigation-Certification of June 14, 1993, that the union's conduct was "appropriate as opposed to the coercive nature which the same conduct would have when engaged in by a carrier."

Predicating this decision on interviews with only .08% of the class involved (of whom an entire third were union organizers and activists) cannot and does not meet the NMB's requirement to conduct a further investigation with Board mandated extreme impartiality, thoroughness and accuracy, particularly when the Board itself has found that the union conduct was, in fact, of a "coercive nature."

Accordingly, equity, good conscience, fundamental fairness and due process require that a thorough, impartial and accurate "further investigation" be conducted as required by the NMB's own rules.

Respectfully submitted,

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