

BEFORE THE
NATIONAL MEDIATION BOARD

In the Matter of)

THE FLIGHT DECK CREW MEMBERS)

of)

FEDERAL EXPRESS CORPORATION)

Case No. R-6044

SUPPLEMENT TO CARRIER'S OBJECTIONS
TO CERTIFICATION OF ELECTION

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EXPRESS CORPORATION

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TABLE OF CONTENTS

	<u>PAGE</u>
I. Background	1
II. Introduction	2
III. ALPA Interrogated Crewmembers Regarding How They Voted, Thus Leaving the Impression That Retaliation Against Individuals Who Voted Against Them Was Possible. False Survey Information Was Also Leaked and This Influenced the Election	3
A. Background	3
B. ALPA's Interrogation	5
C. Rumors of Wilson Survey	11
IV. USPA Disseminated Altered NMB Ballots and ALPA and USPA Misrepresented NMB Voting Procedures	12
V. Alpa Threatened, Harrassed, and Coerced Crewmembers and Misrepresented the Carrier's Policies and Procedures	16
A. ALPA Threatened, Harassed, and Coerced Crewmembers	16
B. ALPA Misrepresented the Carrier's Policies and Procedures	17
VI. If Necessary, the National Mediation Board Should Conduct an On-Site Investigation and Interview Crewmembers	21
VII. Conclusion	22

UNITED STATES OF AMERICA
NATIONAL MEDIATION BOARD

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I. BACKGROUND

On January 14, 1993 Federal Express Corporation ("Federal Express" or "Carrier") filed its Objections to Certification of Election and asserted that the Airline Pilots Association ("ALPA"), The United States Pilot Association ("USPA"), and certain individuals destroyed the laboratory conditions necessary for a fair and free election. On or about January 19, 1993 the Federal Express Pilots For a Nonunion Operation ("FEPNO") filed additional objections to certification based upon union misconduct and the National Mediation Board's ("Board" or "NMB") election process itself.

On January 22, the Board found that "the Carrier and FEPNO have provided a sufficient basis to establish a prima facie case of election interference." The Board established a submission schedule for the parties with March 8, 1993 as the final day for ALPA/USPA response.

The Carrier files this submission and relies on its Objections filed on January 14, 1993 and the documentary evidence attached to those objections. Federal Express also relies upon the extensive documentary evidence, including confidential affidavits,¹ provided to the Board contemporaneously with this submission.

II. INTRODUCTION

The Railway Labor Act vests responsibility for conducting fair and free elections with the NMB. 45 U.S.C. § 152, Third, provides:

Representatives ... shall be designated by the respective parties without interference, influence or coercion by either party ... and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives.

When defining the term "influence," the NMB has been guided by the interpretation set forth by the United States Supreme Court in Texas and New Orleans R.Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548 (1930):

"Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other of derogation of what the statute calls "self-organization." The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purpose of this Act than in relation to well known applications of the law with respect to fraud, duress and undue influence (emphasis supplied).

The test in any case of alleged interference is whether the laboratory conditions which the Board seeks to promote have been contaminated.

¹ Federal Express submits the attached affidavits on the express condition that the names of the declarants be kept confidential pursuant to 29 C.F.R. § 1208.4 (B). Federal Express has provided ALPA and USPA redacted versions of these affidavits.

Atchison, Topeka & Santa Fe Railway Co., 12 NMB 95, 114 (1985), citing Zantop International Airlines, 6 NMB 834 (1979). See Also Emery Air Charter, 19 NMB 337, 350 (1992); EgyptAir, 19 NMB 166, 172 (1992); USAir, 17 NMB 377, 415 (1990); America West Airlines, 17 NMB 79, 95 (1990); Long Island Railroad, 12 NMB 187 (1985); Laker Airways, 8 NMB 236 (1981). When the objectionable conduct occurs after the ballots have been mailed to employees, but prior to the date by which they must be returned, there is an even greater reason for overturning the results of an election. Metroflight, 18 NMB 532, 543 (1991) ("Many of the actions in the present case tainted the laboratory conditions necessary for a fair election because they occurred during a time when they would have the most impact, during the election.").

In this case, it is undisputed that ALPA brazenly announced and then executed a scheme by which it subjected employees to systematic polling, list keeping, interrogation and surveillance. This conduct purposefully occurred at a time when it would have the greatest coercive influence on the class or craft -- while the employees were contemplating whether to return a ballot. Such conduct by a union clearly deprives employees of "the opportunity to make a choice concerning representation free of interference, influence or coercion" which this Board is duty bound to protect. See Key Airline, 13 NMB 153, 161-62 (1986).

III. ALPA INTERROGATED CREWMEMBERS REGARDING HOW THEY VOTED, THUS LEAVING THE IMPRESSION THAT RETALIATION AGAINST INDIVIDUALS WHO VOTED AGAINST THEM WAS POSSIBLE. FALSE SURVEY INFORMATION WAS ALSO LEAKED AND THIS INFLUENCED THE ELECTION.

A. Background

The Wilson Center for Public Research ("Wilson") was hired by ALPA prior to the voting period to conduct a "survey" during the voting

process (Exhibit 38). Despite ALPA's claims to the contrary, the main purpose of the survey was to identify who had voted in the election, and for those who had returned a ballot, how they had voted. ALPA quite openly admitted this in its January 22, 1993 hotline: "Unions ... are allowed to use polls and interviews ... to gauge the pilots support for representation. We use polling for just those purposes ..." (Exhibit 37).

ALPA literally interrogated hundreds of crewmembers (Exhibit 42, page 2. See also Exhibits 1, 3, 4, 5, 6, 8, 9, 10, 11, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32). These interrogations occurred before and during the voting period--December 4th, to January 14th. All during this period, Wilson contacted the crewforce and interrogated them regarding their vote (Exhibits 36-42). After Wilson contacted a crewmember, an ALPA representative--usually a member of the organizing committee--followed up with a second or third call (Exhibits 3, 5, 7, 11, 13, 18, 26, 29).

Affiant #11² provides a typical summary of ALPA's conduct. It also effectively describes the effect the interrogations had on the crewforce. Affiant #11 states that he/she was called on January 2, 1993 and was asked a series of questions. He/she states, "It was clear to me the intent of the question was to determine where I stood on the union issue." ALPA specifically asked, "Whether I had returned my ballot, was holding my ballot, or if I had torn my ballot up." Affiant #11 also states, "I am sure that the intent of the phone call was to get a

² Affiant numbers correspond with Exhibit numbers. Affiant #11's statement is at Exhibit 11, Affiant #12 is at Exhibit 12, etc.

definite "no" I won't help, or "yes," I am in favor of ALPA, and I will help. I feel that a list, (Black List if you want to call it), was being made of those crewmembers who opposed organization."

When ALPA and Wilson called, they identified the individuals by name; thus, impressing on the crewmember that the "survey" was not confidential. The lack of privacy was reinforced when the call from Wilson was immediately followed by a call directly from the organizing committee. Crewmembers were also personally interrogated during hub turns (See Exhibits 1, 18, 22, 31). Many affiants stated that the totality of ALPA's conduct resulted in crewmembers being intimidated and harassed (Exhibits 1, 2, 12, 13, 18, 26).

Early in the campaign a series of false rumors leaked that ALPA was supported by approximately 33% of the crewforce, that USPA was supported by approximately 33% of the crewforce, and that approximately 33% of the crewforce wished no union (Exhibits 14, 19). These numbers were allegedly based on the preliminary "Wilson survey" poll results. As it later became apparent, this "leaked" survey result was actually a campaign tactic by ALPA to deceive "no" supporters to vote for USPA. ALPA recognized it did not have sufficient support to win the election but that it had much more support than USPA. It circulated this rumor and played on people's fears in order to confuse and solicit "no" voters to vote for USPA.

B. ALPA's Interrogation

ALPA's extensive polling campaign during the entire election period consisted of at least three facets. First, ALPA widely circulated information that it had hired a "professional" survey organization to take a poll regarding crewmembers' views on issues and how crewmembers intended to vote. Second, all during the voting period, from December

4th until January 14th, the Wilson Group, this "professional" organization, systematically called crewmembers and questioned them. If the crewmember was not home, the Wilson Group questioned the crewmember's spouse. The "survey" began with questions concerning the crewmembers' opinions on wages, hours, and conditions of employment. Then, the representative asked every individual whether they had received a ballot, whether they had returned their ballot, and who they had voted for if they returned their ballot. If they were talking with a spouse, they asked the spouse the same questions.

Finally, after the Wilson Group interrogated the crewmember about his voting decision, the crewmember was contacted immediately by the ALPA Organizing Committee (FEPOC) and further interrogated regarding how he/she planned to vote. ALPA and the Wilson Group did not represent that the employees' responses were confidential or that the names of crewmembers were not being shared with members of the ALPA Organizing Committee. ALPA gave all crewmembers the unmistakable impression that a list of all employees and how they voted in the election was being maintained. It is undisputed that ALPA's primary goal was to determine whether or how each crewmember had voted. Also apparent was ALPA's intent to coerce and threaten voters by leaving the unmistakable impression that ALPA was keeping a list of those who did not vote for ALPA.

The NMB has expressly prohibited carrier and union questioning regarding an employee's vote. In Mercury Services, Inc., 9 NMB 312 (1982), the Board said:

... employees are free to vote in the privacy of their own homes, without being subject to pressure of 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 mark their ballots. ... It is no business of the carrier or the organization whether or how any employee votes or does not vote (emphasis added).

Mercury Services, 9 NMB at 320. In Southwest Airlines Co., 13 NMB 120, 123 (1986) the Board reiterated this position, "...no one except employees of the National Mediation Board knows who voted in the election."

It is important to distinguish ALPA's conduct in this election from the general polling which ALPA contends is engaged in by unions on a regular basis. In the instant case, ALPA did not simply contact people prior to the voting period and inquire as to their views on issues of interest. Instead, during the voting period ALPA engaged in a massive and systematic program of interrogation to discover how every crewmember was voting and to place pressure on those crewmembers who were not voting. Literally, ALPA forced its way into the voting booth -- the privacy of the employee's home -- and attempted to "stare over crewmember's shoulder" as he or she made a decision how to vote.

ALPA freely admits it engaged in exactly this conduct. In literature distributed to the crewforce and on its telephone hotline, ALPA reminded employees that it was interrogating them regarding their voting preference. Its conduct made clear that they recorded how employees were voting. At no time did ALPA even give lip service to or pretend that it was not tracking and listing the employee's vote.

ALPA's interrogation of employees while they cast their ballot violates all generally accepted norms for voting in the United States. Section 11.308-1 of the NMB Representation Manual reinforces the importance

of maintaining the confidentiality of an employee's decision whether to vote:

Secrecy of ballots: All materials which might disclose whether particular employees cast ballots or refrain from voting must be secured from view prior to permitting any non-NMB employees to observe the final tabulation of the ballots.

Similarly, a plethora of cases decided by the National Labor Relations Board hold that keeping lists for employees who vote is *per se* improper. For example, in Sound Refining, Inc., 267 NLRB 1301 (1983), the Board held:

.... We find that [union] list keeping violated the Board's prohibition of the keeping of any list by election observers of employees who have or have not voted. We further find that this action was not *de minimis*. Moreover, we find that petitioners' failure to present any direct evidence that any employee other than petitioner witnessed this list keeping does not detract from our finding this to be a meritorious objection to the election.

Sound Refining at 1301. Also see Piggly Wiggly #011, 168 NLRB 792 (1967). (The Board's policy prohibits the keeping of any lists of persons who have voted in a Board election.); See also Michem, Inc., 170 NLRB 362 (1968) (Board rule prohibiting distractions, electioneerings, prolonged conversations, immediately prior to employee casting vote).

Interrogating employees and identifying how they plan to vote as ALPA did in this case has broad policy repercussions. ALPA proudly advertised this sophisticated means of interrogating crewmembers' views on representation. Tolerating ALPA's conduct in this case will result in other unions copying ALPA. Even more "scientific" and intrusive means of interrogating employees will follow. Further, surveys of this type inevitably result in "leaks" of the poll results. If the "leaks" are inaccurate, they influence voters to vote in a manner which may not truly reflect their desires. The only way to stop this

distortion of the voting process is for the NMB to find interrogation of this type to be a per se violation of the Act.

In the context of this case ALPA's interrogation destroyed the laboratory conditions. ALPA freely admits that polling by a party with the power and ability to "retaliate" against a crewmember is inherently destructive of the laboratory conditions. Mid Pacific Airlines, 13 NMB 178, 190 (1986) (Employers engaged in misconduct by polling employees regarding their sentiments for or against a union) (See Exhibit 37). In the instant case, ALPA claimed throughout the campaign that it had power comparable to that of a carrier. As such, ALPA should be held to the same standard as a carrier.

In the airline industry, ALPA is a well financed and powerful organization. As ALPA constantly reminded crewmembers during the campaign at Federal Express, ALPA has a large war chest and maintains many experts and lawyers dedicated to dealing with airline issues. Additionally, the crewmembers at Federal Express are well aware of the many lawsuits involving ALPA. ALPA has a long history of lawsuits by crewmembers who claim their individual rights have been violated. See Straessle v. ALPA, Va. Cir.Ct., No. 121-112 (1/15/93) (Former pilots allege that ALPA "black listed them within the airline industry because they crossed union picket lines"); Peterson v. ALPA, 759 F.2d 1161 (4th Cir. 1985) (Plaintiff alleges ALPA coerced Piedmont into firing him to support ALPA work stoppage); Barthelemy v. ALPA, 897 F.2d 999 (9th Cir. 1990) (ALPA alleged to have violated duty of fair representation by retaliating against employee for improper personal motives).

The ability of ALPA to retaliate has surfaced at Federal Express in the past. In 1990, ALPA mailed letters to many former Flying Tiger pilots threatening to seek past dues. These letters were widely

discussed and perceived by numerous crewmembers to be threatening and coercive (Exhibit 52). Federal Express crewmembers are quite familiar with ALPA's ability to retaliate in a meaningful way if, and when, it wishes. This obvious power and opportunity to retaliate is compounded by the fact known by all crewmembers that should ALPA become the certified bargaining representative of the pilots, this organization will ultimately control through the negotiation process all proposed terms and conditions of employment for the crewmembers. Of grave concern to many crewmembers is ALPA's role in representing them in future negotiated grievance procedures or in an individual FAA administrative hearing where the pilot's license and future career is at risk. Clearly ALPA's power over the crewmembers and the organization's ability and opportunity to retaliate if it chooses to do so in either obvious or subtle ways cannot be ignored by the Board especially as it relates to ALPA's invasion of the secrecy of the balloting process.

ALPA's interrogation of employees regarding their vote is inherently coercive because it raises the specter of future retaliation, allows direct pressure to be applied against crewmembers who do not wish to be represented by a union, and destroys the basic concept of a secret ballot election. The crewmembers at Federal Express had every reason to believe that ALPA was recording how they voted. ALPA's conduct, described below, of crowding the crew lounge on particular nights and interrogating employees in person exacerbated the atmosphere of interrogation and coercion.

In summary, ALPA's intensive interrogation of employees on the telephone regarding how and whether they voted during the voting period is inconsistent with basic concepts of ensuring a free and fair vote and requires a new election. It is a per se violation for either a carrier

or a union to interrogate an employee as to whether or how an employee has voted by conducting a systematic telephone questioning campaign during the voting period. Even if it were not a per se violation, in the context of this case ALPA must be held to a standard comparable to a carrier. The real ability of ALPA to punish individuals who oppose ALPA combined with their interrogations and the hostile environment created by ALPA supporters destroyed the laboratory conditions.

C. Rumors Of Wilson Survey

During the voting process, preliminary "results" from ALPA's systematic interrogation of eligible voters leaked to the crew force. ALPA supporters claimed that the initial survey indicated that approximately 33% of the employees favored ALPA, 33% favored USPA, and 33% favored no union. The communication of "results" throughout the electorate was inevitable and the reasonable and foreseeable consequence of ALPA's improper polling of the crewforce during the voting period, as ALPA formally announced its intention to conduct the polling and then did so. The dissemination of such information during the voting period is inherently destructive of the laboratory conditions, particularly where, as here, the alleged "results" were cloaked with "legitimacy" by virtue of the source, i.e., the Wilson/ALPA "scientific survey." The destructive nature of the circulation of poll "results" was exacerbated by the alleged "results" communicated: that 66% of the voters favored representation. Such "results" were designed to cause voters who did not desire representation to view the election as a choice only between ALPA and USPA and to cast a vote for one of the unions. Clearly ALPA sought to influence persons who did not desire ALPA representation to vote for USPA, thereby ensuring that more than 50% of the

employees would vote for representation. This is a classic case of a wrong-doer reaping the benefits of its ill-gotten gains.

The NMB has recognized that misconduct occurring during the balloting period and timed in such a way as to affect the results of the election improperly influences employees and destroys the laboratory conditions. See America West Airlines, Inc. 17 NMB 79, 98 (1989). ALPA's "leaked" survey had the unquestioned effect of encouraging employees to vote for USPA even though they preferred no union. Misrepresentations which occur during the six week voting period cannot effectively be rebutted by the carrier.

In summary, the Wilson survey which was "leaked" to crewmembers during the voting period tainted the election. This was inevitable and encouraged employees to vote for USPA. Crewmembers returned their ballots based on these misrepresentations, the laboratory conditions were destroyed, and the resulting tally of votes does not accurately reflect the true wishes and desires of the crewmembers.

IV. USPA DISSEMINATED ALTERED NMB BALLOTS AND ALPA AND USPA MISREPRESENTED NMB VOTING PROCEDURES

Federal Express' January 14, 1993 Objections To Certification of Election included the altered NMB ballots circulated by USPA. It also included copies of the documents which constantly informed crewmembers that "A no vote is a vote for ALPA" (January 14, 1993 Exhibits 1-8). ALPA also misrepresented the Board's processes by, among other things, failing to fully explain the voting procedures (See January 14, 1993, Exhibits 8-12).

These misrepresentations distorted and confused crewmembers regarding their voting options (See Exhibits 14, 32, 33, 34, 35). As one affiant stated, "I was personally confused on how to vote in order to

make my vote reflect what I really wanted. Sound confusing?" (Exhibit 35).

USPA duplicated and disseminated on two occasions the NMB's sample ballot (Form NMB-R-2(a)). It altered the document to indicate that crewmembers should write in the name "USPA." While circulating this altered NMB ballot, both USPA and ALPA misrepresented the Board's voting process and omitted essential aspects of the Board's voting procedures. Both unions did this in order to deceive crewmembers and to entice "NO" supporters to vote for USPA. The altered NMB ballot combined with the misrepresentations of the Board's processes destroyed the laboratory conditions and tainted the election.

A union may not disseminate documents or information which misrepresents election procedures, implies agency support of the labor organization, or coerces employees in the free selection of a representative; the laboratory conditions of the union election must not be disturbed. Long Island Railroad Company/International Brotherhood of Teamsters and United Transportation Union, 12 NMB 187 (1985). In Long Island Railroad Company/International Brotherhood of Teamsters, the United Transportation Union (UTU) disseminated a letter which purported to explain the neutrality of the National Mediation Board in the election process. The UTU also forwarded a sample ballot to all employees. The ballot indicated an "X" in the right hand margin indicating a preference for the UTU. A rival union claimed the letter and sample ballot misrepresented election procedures and implied that the National Mediation Board approved the literature. While the Board ruled that the distribution of the marked, sample ballot did not warrant setting aside the election, it based its decision on the finding that the UTU's

literature was of poor quality and that the union did not misrepresent NMB procedures.

The circumstances in this case differ greatly from those in Long Island. Here, the USPA's altered ballot appeared "official" and its distribution was combined with misrepresentations of the Board voting process. In cases where such misconduct has occurred, this Board has not hesitated to overturn the results of an election. Allegheny Airlines, 4 NMB 7, 12 (1962).

In this campaign, USPA announced its intention to run as an independent alternative to ALPA, and by November 3, 1992 USPA campaigned on the phrase "A vote NO is a vote for ALPA." 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, including on the back of the sample ballot. It also echoed the new slogan on its telephone hotline, and unreservedly told crewmembers, "Remember, if you vote no at this time, you're voting for ALPA." 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. These misrepresentations combined with the altered NMB ballot distorted the election results and destroyed the laboratory conditions.

ALPA also contributed to the destruction of laboratory conditions when it misrepresented Board procedures. The NMB has consistently held carriers responsible for failing to fully inform 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 failed to inform crewmembers on at least three separate occasions of all the options available to ballot holders (January 14, 1993, Exhibits 8-10).

The integrity of the entire election process is destroyed if the NMB allows parties to alter NMB ballots and circulate the false ballots with misrepresentations of the Board process. The NMB representation process requires that voters have an accurate understanding of the significance of casting their ballots. In past cases where carriers have been found to have misled voters concerning the Board's election process, the election results have been set aside. See, e.g. US Air, 17 N.M.B. 377 (1990). Metroflight, Inc., 13 N.M.B. 284 (1986); Alleghany Airlines, 4 N.M.B. 7 (1962). ALPA and USPA's misrepresentations in this case, have had a much more significant effect on this election than any of the cases cited above. In Alleghany, for example, employees wishing to vote against representation perhaps did not understand the distinction between returning a ballot with "no union" written on it and not returning a ballot at all. Either way, however, the employees' basic sentiment against representation was expressed. Here, however, the union's misrepresentations resulted in employees voting for a labor organization when their true sentiment is against any labor representation at all.

Finally, the official NMB ballots widely circulated by USPA leave the unmistakable impression that the Board supports USPA. The marked ballot also gives the clear impression that in a rerun election, the crewmembers must vote for ALPA or for USPA, and that there is not a "no representation" option.

In summary, the USPA's dissemination on two occasions of an altered ballot combined with ALPA and USPA's misrepresentations regarding the voting process destroyed the laboratory conditions and tainted the election. USPA's conduct of continually stating, "A NO Vote Is A Vote For ALPA" and ALPA's refusal to inform crewmembers of the options and consequences of their vote confused crewmembers and a new election is necessary to identify the true desires of the crewforce.

**V. ALPA THREATENED, HARASSED, AND COERCED
CREWMEMBERS AND MISREPRESENTED THE CARRIER'S
POLICIES AND PROCEDURES**

A. ALPA Threatened, Harassed, and Coerced CrewMembers

ALPA engaged in several very public activities which harassed and coerced crewmembers. ALPA's persistent interrogation, discussed above, is one form of harassment and coercion. ALPA also created a threatening and intimidating environment by bringing non-employee ALPA organizers into the crew lounge during night turns at the Memphis Hub. Several affiants complained of this practice (Exhibits 1, 2, 9, 16, 17, 20). ALPA representatives also engaged in visible and coercive conduct by threatening arguments with other crewmembers, and by crowding crew lounge tables and making it very difficult for other crewmembers to perform their work (Exhibits 22, 24, 31, 50).

ALPA threatened and harassed crewmembers on an individual basis. For example, Affiant #46 testified that he/she was threatened with possible retaliation for future check rides if he/she did not support ALPA. Affiant #1 stated that an identified ALPA supporter told him/her, "When ALPA got on the property, I would be black balled and my name would be put on a list." Affiants 22, 24, 31, & 50 testified that ALPA's practice of crowding large numbers of

supporters into the crew lounge during nightly hub turns, the bringing in of non-employee ALPA supporters to solicit employees during work time, and the union's habit of occupying work space with ALPA literature also created a hostile environment. Numerous other affiants complained they were subjected to harassment and verbal abuse because of their views (Affidavit #1, 24, 50). Rumors of these threats were widely circulated during the voting period and many crewmembers were affected by ALPA's misconduct. This hostile environment was further exacerbated by the systematic calling of all crewmembers and interrogating them regarding their voting intentions. The efforts underway to decertify ALPA at USAir and Delta Airlines puts intense pressure on ALPA to win at Federal Express (Exhibit 51). ALPA is desperately seeking a victory at Federal Express in order to add the substantial influx of dues from Federal Express crewmembers.

In summary, the National Mediation Board does not condone threats or coercion, and the Board will not tolerate unions or carriers who threaten or coerce employees. See Aerovias De Mexico 18 NMB 130, 138, (1991), Air Wisconsin 16 NMB 235, 237 (1989). ALPA threatened, harassed, and coerced crewmembers by interrogating employees in person and on the telephone, and by threatening retaliation -- including possible job loss through failing check rides -- if they did not support ALPA.

B. ALPA Misrepresented The Carrier's Policies and Procedures

ALPA also falsely accused Federal Express of improper motives in establishing an "E-mail" (electronic mail) bulletin board for all employees. Theodore Weise, Senior Vice President of Federal Express' Air Operations Division, explained that the E-mail bulletin board was set up as a means to allow employees to effectively communicate while minimizing the negative impact on operations (Exhibit 23). The Company was also motivated by

maintaining certain levels of privacy for employees in their personal E-mail files.

On July 22, 1992 Theodore Weise 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 distribution lists were not to be used for solicitation purposes because they appeared on individual employee screens reserved for business communications (January 14, 1993 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 (January 14, 1993 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 (January 14, 1993 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." (January 14, 1993 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 totally misrepresented Federal Express compensation levels as they compare to other airlines (January 14, 1993 Exhibit 17). William J. Cahill and Augustus Lauer both submitted affidavits (Exhibits 48 and 49) establishing that ALPA's numbers were based on inflated wage rates of other airlines and misrepresented salary levels at Federal Express. The ALPA literature bases its assumptions on false potential career earnings (such as the length of time it takes to make a wide body Captain, the amount of time an average pilot will spend as a wide body Captain, etc.) and fails to mention recent contract concessions at Delta Airlines, Northwest Airlines, and U.S. Air.

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. For example, this "expert" totally misrepresented Federal Express retirement benefits. His report assumed no contributions by Federal Express in a "B-Plan." The report failed to note that

Federal Express contributes to a Profit Sharing Plan, a version of a "B-Plan." This totally misrepresents the retirement benefits of Federal Express pilots in comparison to pilots of other major airlines. The report also assumed the worth of Federal Express pilots' retirement to be 7.5% of their total earnings. This, too, is a misrepresentation. The records show that the plan has been worth 11.6% at Federal Express for the past 15 years. ALPA's manipulation of salary levels deceived pilots about their pay, benefit, and work rule levels (Exhibits 48 and 49).

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." (January 14, 1993 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.

Ann Dickey, Managing Director of Government Affairs, states in her affidavit that Federal Express has pursued legislative pension relief because it believes unionized pilots should not enjoy a level of benefits legally unavailable to nonunion pilots. She stated it was totally false, as claimed by ALPA on November 5, 1992 that the Company pursued legislative change in order to leave the pilots retirement unchanged and to extend all other employees' retirement age beyond 60 (Exhibit 15).

**VI. IF NECESSARY, THE NATIONAL MEDIATION BOARD SHOULD
CONDUCT AN ON-SITE INVESTIGATION
AND INTERVIEW CREWMEMBERS.**

If a carrier had engaged in the conduct which ALPA readily admits (calling crewmembers at home during the voting period and interrogating them as to their voting preference), the Board likely would require a new election. The statutory provisions of the Railway Labor Act which regulate representation elections do not distinguish between the misconduct of a carrier and the misconduct of a labor organization. 45 U.S.C. § 152, Fourth; 45 U.S.C. § 152, Ninth.

Federal Express and FEPNO have provided ample evidence of union misconduct in their submissions. Approximately 53 affidavits and exhibits have been filed providing strong evidentiary support for the objections. This evidence centers on ALPA's pattern of interrogating crewmembers regarding their vote, ALPA and USPA's misrepresentation of Board voting procedures and distribution of an altered NMB document, ALPA's misrepresentations in campaign literature, and ALPA's threats, intimidation, and coercion of crewmembers.

This evidence alone provides a basis for setting aside the election. Should the Board believe that additional evidence is needed, it can comply with its statutory mandate and guarantee basic due process in this case only if it conducts personal interviews with both the affiants and randomly selected individuals from the crewforce. Despite the natural reluctance on the part of employees to divulge evidence of ALPA misconduct to the carrier, many have done just that; however, if the NMB feels that more information regarding this misconduct is necessary or desirable, the Board is in the best position to collect

such additional information due to its status as a neutral government agency.

When ALPA filed its Notice of Election Objections based on carrier interference on August 21, 1991 alleging violations by Federal Express, the Board conducted a thorough investigation. The NMB personally interviewed affiants and questioned them regarding their knowledge, and the Board randomly selected crewmembers to be interviewed. The Board made factual determinations and rendered a decision in October 1992. If the Board has any doubt of the unions' misconduct in this case, it must now conduct the same kind of investigation.

In addition to the evidence submitted in this document, Federal Express also supports and adopts the FEPNO's objections regarding the Board's voting process and procedures. Federal Express expressly reserves the right to question the statutory and due process issues raised by FEPNO in its future submissions to the Board.

In summary, Federal Express' January 14, 1993 submission and this document with its supporting evidence articulate clear, unequivocal violations of the Railway Labor Act. The affidavits establish that crewmembers have information which support these violations. The NMB can verify this evidence and, if necessary, develop even more, by conducting an on-site investigation.

VII. CONCLUSION.

The events immediately preceding the mailing of the ballots and during the voting period violated every conceivable standard by which any type of election should be conducted, much less a representation election under the Railway Labor Act. Employees were subjected to blatant misrepresentations and altered NMB ballots designed to misrepresent the

voting process and to deceive crewmembers. A host of other serious improprieties occurred during the voting period which impaired employees' free and uncoerced choice in the election and destroyed the secrecy of the balloting process. In accordance with ALPA's calculated scheme, crewmembers systematically were contacted at their homes, interrogated as to whether they had voted, and then pressured to vote for ALPA.

If the NMB permits this election to stand in the face of ALPA's nefarious scheme of polling, interrogation and influence while employees contemplated whether to vote, the NMB will be placing its imprimatur on ALPA and every other union injecting themselves into the privacy of voters' homes during the voting period. ALPA and other unions will be limited only by their imagination in concocting "scientific" methods for improperly determining whether an employee has voted for representation and, if not, determining how best to influence and coerce the employee into casting a ballot for representation.

Laboratory conditions are essential to determine the uninhibited desires of employees in a representation election. The Board must be assiduous in ensuring that such conditions have not been compromised and should not hesitate to condemn the blatant misconduct in this case. Such misconduct has no place in an NMB election as it creates conditions which make impossible a sober, informed exercise of the franchise. The Board should send a strong message that it will persevere in its efforts to ensure that the laboratory conditions so necessary to a free and fair election are maintained by both unions and carriers.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appearance was served on the following parties by overnight letter on February 4, 1993.

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