

BEFORE THE
NATIONAL MEDIATION BOARD

In The Matter Of)
)
THE FLIGHT DECK CREW MEMBERS)
) Case No. R-6044
 of)
)
FEDERAL EXPRESS CORPORATION)

MOTION OF FEDERAL EXPRESS CORPORATION
FOR RECONSIDERATION OF THE NATIONAL
MEDIATION BOARD'S JUNE 14, 1993 FINDINGS
UPON INVESTIGATION - CERTIFICATION

COMES NOW Federal Express Corporation, pursuant to Section 15.0 of the National Mediation Board's Representation Manual, and files this Motion for Reconsideration of the Findings Upon Investigation and Certification of the Air Line Pilots Association (ALPA) as the bargaining representative of the flight deck crew members employed by Federal Express. In support of this Motion, Federal shows the Board:

1.

On May 30, 1991, ALPA filed an application with the Board seeking to represent the pilots at Federal Express. ALPA launched an aggressive and multifaceted campaign directed at the pilots. Federal Express was drawn into the debate by ALPA's distortions and misrepresentations regarding Federal Express management and working conditions. ALPA's campaign also sparked the formation of a group called the Federal Express Pilots for a Non-Union Operation, or FEPNO.

2.

In accordance with its People-Service-Product ("PSP") philosophy, Federal Express management has historically communicated a great deal with its employees. During the ALPA campaign, Federal continued to provide information to its crewforce. Because of its concern that pilots were being flooded with one-sided communications from ALPA that presented an inaccurate picture of the issues involved in the decision of whether to be represented by a union, Federal Express openly and lawfully presented its views and opinion of unions in many of its communications with the pilots.

3.

The day before the ballot count, ALPA filed with the Board a "Notice of Election Objections Based On Carrier Interference." As amended by later ALPA submissions, there were eight categories of objections, one of which was that Federal had tainted "laboratory conditions" by communicating with its employees.

4.

After investigating ALPA's objections, the Board on October 19, 1992, dismissed most of ALPA's objections. The Board ruled in favor of ALPA on the objection relating to the carrier's exercise of free speech, stating that:

While each of the carrier's actions here, standing alone, may not have constituted interference, per se, the pervasiveness of the carrier's campaign does concern us. Although the Board allows some involvement by carriers in representation matters, the carriers have a far more limited role in election campaigns than the organizations. That role is more limited than the overall level of campaign activities taken by the carrier in the instant case.

There is a level of carrier communication, as in this case, which overwhelms an employee's right to select or not select a collective bargaining representative without carrier interference or influence. Indeed, in this case the Board's investigation revealed that many employees began to disregard election material due to its sheer volume.

When a carrier's statements and material override, or render moot, the union's campaign, we find it objectionable and not within the employer's role as anticipated by the Act.

Federal Express, 20 N.M.B. 7, 51-52 (1992).

5.

Based on its conclusion that laboratory conditions had been violated, the Board ordered a rerun election to be held on an expedited basis. Federal Express, 20 N.M.B. at 52.

6.

In the period leading up to the rerun election, ALPA continued its barrage of union communications. Other active campaign participants included the United States Pilots Association ("USPA"), purportedly an independent union, and FEPNO. As a result of the Board's decision, Federal Express was

forced to adopt a far more passive role than in the first election. Although numerous matters arose during the second campaign that Federal felt compelled to address, the Board's October, 1992, decision caused management to refrain from making legally permissible communications due to the fear that the Board might find that such lawful communications would taint the election. Meanwhile, ALPA went so far as to have a nominally independent entity call pilots during the voting period to find out their level of support for ALPA. Pilots who expressed ambivalence were called back by an ALPA representative.

7.

Both Federal Express and FEPNO filed objections to the second election based on the activities of ALPA and USPA. The Board assigned Mediator Gale L. Oppenberg to investigate those objections.

8.

Both Federal Express and FEPNO submitted affidavits from pilots who experienced intimidation or confusion due to ALPA's telephone interrogation and ALPA and USPA's misrepresentations regarding election procedures. Federal Express encouraged Mediator Oppenberg to interview as many pilots as possible in order to gauge the improper effect of ALPA and USPA's actions. However, Mediator Oppenberg informed Federal Express counsel Steven H. Taylor that she would interview only approximately 20 "neutral" crewmembers and that all interviews in Memphis had to

be conducted within a 48-hour period. This limited her sampling to the point where the "investigation" became a meaningless exercise.

9.

On June 14, 1993, the Board issued its Findings Upon Investigation - Certification, of which Federal Express now seeks reconsideration. The Board denied the objections regarding ALPA's interrogation of employees by declaring that there was no evidence "that ALPA's conduct had any effect on the crew members' exercise of their right to free choice of representatives." Federal Express, 20 N.M.B. 486, 534 (1993). The Board reached this conclusion despite the fact that "many crewmembers provided statements that they 'believed' that ALPA would retaliate against them for their lack of support or their anti-ALPA stance." Id. The Board found this evidence insufficient, apparently because there was no conclusive proof that ALPA had actually retaliated against them. Id. ("neither the carrier nor FEPNO provided any evidence to support these allegations [by the many crewmembers]"). Compare Federal Express, 20 NMB 50, 51 (1992).

10.

The laboratory conditions in which the representation election was supposed to have been conducted were destroyed by ALPA's conduct that caused crew members to believe that ALPA would be retaliating against them. Regardless of whether ALPA

actually carried out any such threats, the threats themselves and the fear they engendered among the voters prevented a fair election reflective of the true desires of the electorate.

11.

The Board should reconsider its June 10, 1993 decision on the following grounds:

1. The Board's October 14, 1992, decision unlawfully chilled the First Amendment right of Federal Express to communicate its views to its employees and to respond to communications by ALPA and USPA during the rerun campaign;
2. The Board's refusal to interview more than an insubstantial number of pilots in connection with objections filed by Federal Express and FEPNO constitutes a derogation of its statutory duty to investigate representation disputes; and
3. The Board's June 14, 1993, decision violates the First Amendment and Equal Protection rights of Federal Express by applying wholly inconsistent and irreconcilable standards for determining whether laboratory conditions have been destroyed based on whether the conduct that produced the same effect on employees was engaged in by a union or a carrier.

12.

Federal Express also adopts and supports the legal and factual issues raised in the Motion For Reconsideration filed by FEPNO, and the carrier requests the Board to reconsider its decision in light of the issues raised in FEPNO's Motion. Consistent with Section 15 of the Board's Representation Manual, Federal Express does not restate, here, its previous objections and challenges. Federal Express requests the Board to reconsider all its decisions relating to all the factual and legal issues raised by the carrier and FEPNO in their previous submissions. The carrier expressly reserves the right to challenge the NMB's actions and decisions based on all the reasons articulated by FEPNO and Federal Express in the numerous letters and submissions previously filed with the Board in Case No. R-6044.

WHEREFORE, Federal Express respectfully requests that, on the basis of the new matters raised herein, the Board reconsider its June 14, 1993 decision and invalidate the certification issued to ALPA that same date.

Respectfully submitted,



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Managing Attorney

ATTORNEY FOR FEDERAL EXPRESS
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of June, 1993, served a copy of the foregoing Motion Of Federal Express Corporation For Reconsideration Of The National Mediation Board's June 14, 1993 Findings Upon Investigation - Certification upon the individuals indicated below by mailing a copy of same via United States mail, postage prepaid, addressed as follows:

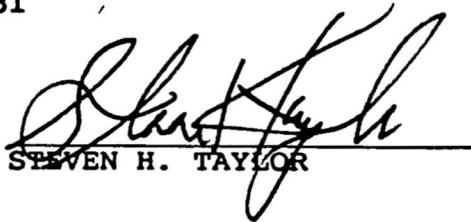
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