

BEFORE THE
NATIONAL MEDIATION BOARD

In the Matter of)
)
FLIGHT DECK CREW MEMBERS)
)
OF) NMB CASE NO. R-6044
)
FEDERAL EXPRESS CORP.)
)
SOUGHT TO BE PRESENTED BY:)
)
THE AIR LINE PILOTS ASSOCIATION)
)
_____)

DECLARATION OF ERIC VARTANIAN

I, Eric Vartanian, declare and state as follows:

1. I am a DC-10 captain presently employed by the Federal Express Corporation ("Fed Ex"). In January 1991, I became Chairman of the Federal Express Pilots Organizing Committee ("the Organizing Committee"). As of October 23, 1992, the date the NMB ordered a re-run election, the Organizing Committee consisted of twelve Federal Express pilots. The other eleven members of the Organizing Committee were Jack Burke, John Curtin, Jim Dearborn, John Dill, Whitey Drossel, J.X. Golich, Don Grant, Gary Peterson, Jim Vinson, John Whitehead and Don Wilson.

2. In March, 1991, the Wilson Center for Public Research, Inc. ("the Wilson Center") conducted a polling survey for ALPA which showed that there was a high level of support for

union representation among Fed Ex pilots. During the Spring of 1991, the Organizing Committee collected authorization cards from nearly 70% of Fed Ex pilots. Based on the high level of support for ALPA evidenced by the number of signed authorization cards and suggested by the poll results, the Organizing Committee assumed that ALPA had sufficient support to win the election even allowing for some erosion of support. During the course of the campaign, the Organizing Committee did not recognize the extent to which the carrier's election interference had eroded ALPA's support. As a result of this experience, the Organizing Committee and ALPA determined that polling surveys were necessary to enable us to respond quickly and effectively to any possible erosion of support for ALPA during the re-run campaign.

3. In addition, when the re-run election was announced, the Organizing Committee wished to know how pilot attitudes and concerns might have changed during the fourteen months since the August 22, 1991 ballot count so that it would be better able to address pilot questions and concerns and to communicate effectively with the pilot group during the relatively short re-run election period. The Organizing Committee also wanted the Wilson Center to utilize polling to identify pilots who had a somewhat favorable view of union representation and then provide the names of those pilots to the Organizing Committee, so that members of the Organizing Committee could then concentrate their personal contacts and telephone calls on this potential pool of ALPA voters.

4. The Wilson Center did not provide the Organizing Committee or ALPA with the name of any pilot who said he would not vote or who said he opposed representation. The Wilson Center also advised us that its policy was not to provide clients with the names of respondents who had either requested or raised concerns about confidentiality.

5. The Wilson Center polling study was conducted in three phases with different questionnaires used in each phase. Wilson Center Executive Director Philip Comstock provided reports by telephone to ALPA Assistant Director of Representation Ken Cooper and/or ALPA Staff Organizer Dennis Higgins and, on occasion, members of the Organizing Committee. Polling results and analyses were reported to and discussed among members of the Organizing Committee. It was the policy of the Organizing Committee not to discuss the polling survey results with pilots who were not on the Organizing Committee and every effort was made to assure that this policy was followed. Contrary to Fed Ex's assertion, the Organizing Committee did not publicize or disseminate polling results in written form, through recorded telephone Hotline messages or in any other way. We were concerned that communicating positive results to the pilot group would encourage complacency among our supporters and that communicating negative results would discourage potential supporters from joining us. Contrary to the allegations contained in the carrier's objections, the Organizing Committee

did not leak any false survey information during the campaign and would have had no interest in doing so for the reasons stated above.

6. On the weekend of November 21 and 22, 1992, Phil Comstock provided detailed interim reports to Ken Cooper, Dennis Higgins and members of the Organizing Committee on phase one of the polling survey. Phil Comstock reported that support for union representation had grown significantly since the first election in which ALPA had lost by less than one percent of the vote. Phil Comstock also reported that at the Memphis crew base, support for ALPA, USPA and no representation was about equally divided with approximately 33% shares of support for ALPA, USPA and no representation. Support for ALPA was reported to be considerably stronger and support for USPA was considerably weaker in the outlying crew bases.

7. Phil Comstock reported that pilots were especially concerned about issues relating to retirement pay. He also advised us that a significant number of pilots seemed to want more information about ALPA's organizational structure and had practical questions about dues and membership obligations.

8. Based on the polling survey data, Phil Comstock reported that pilots from other airlines were considered to be the most trustworthy source of information on the question of union representation and that the Organizing Committee should

consider this factor when planning future communications to the pilot group.

9. Phil Comstock also determined that it appeared that ALPA might eventually be able to persuade some of the USPA supporters and therefore recommended that it would be advantageous not to alienate those potential ALPA supporters by strongly criticizing USPA.

10. Phil Comstock further reported that interviewer comments from the first several days of polling revealed that pilots in the Memphis crew base exhibited a significant fear of employer reprisals against pilots who favored representation. Interviewers did not find such fears being exhibited by pilots in the outlying crew bases.

11. After discussing the results of the polling survey, the Organizing Committee decided to take a number of actions to address the interests and concerns of pilots. The Organizing Committee included more explanations in its communications addressing ALPA's organizational structure and also included more information about union dues and other obligations of union membership. Additional communications also placed greater emphasis on issues relating to retirement pay.

12. Based in large part on the polling survey results, the Organizing Committee decided to offer Fed Ex pilots more

exposure to pilots from ALPA-represented carriers to provide an outside perspective on the representation question. We decided that in our future communications to the Fed Ex pilots, we would include letters from pilots at ALPA-represented carriers which discussed the representation issue. We also decided to send Fed Ex pilots a copy of the newsletter produced by the ALPA leadership at Delta. The Organizing Committee also arranged to have several pilots from ALPA-represented carriers available to answer questions and meet Fed Ex pilots both on the phone and in person.

13. The Organizing Committee also decided to refrain from strongly criticizing USPA so as not to alienate potential future ALPA supporters. We made a concerted effort to switch USPA supporters to ALPA supporters throughout the remainder of the campaign.

14. The second phase of the polling survey was designed to determine whether the preferences of pilots who preferred USPA or some form of representation other than ALPA had changed since the first phase of polling. The Organizing Committee wanted to assess the impact that the campaign conduct of Fed Ex management and the NO Committee were having on this group of pilots. A description of the most significant aspects of this conduct follows in paragraphs 15 through 34.

15. During the first phase of polling, Fed Ex Chairman and Chief Executive Officer Frederick Smith publicly challenged

ALPA President Randolph Babbitt and USPA Interim Organizing Chairman Mark Estabrook to a series of three debates to be conducted according to his proposed debate rules.

16. Mr. Smith announced the debate challenge in a letter dated November 9, 1992 distributed to all Federal Express Crewmembers in which he asserted that the debates "[w]ill provide each of us [Captain Babbitt and Second Officer Estabrook] with the opportunity to explain the advantages of the system we each hope our pilots will ultimately embrace." (A copy of this letter and the proposed debate rules is attached as Exhibit 1). Mr. Smith attached the debate challenge letter to a separate "red letter" distributed to all Federal Express Crewmembers. In explaining the debate challenge, Mr. Smith stated in the red letter that:

[t]he election boils down, in the final analysis, to a choice between two very dissimilar systems-collective bargaining as represented by both ALPA and USPA on the one hand and P-S-P on the other. I believe an open debate, with hard-hitting questions and honest answers, will provide each crewmember with better input for decision making.

(A copy of the red letter is attached as Exhibit 2). Mr. Smith concluded the red letter by stating that:

[I] consider the decision facing you to be a critical one and hope that you'll have the benefit of the three debates I have proposed before you make your decision. I'll keep you posted once I hear from Captain Babbitt and Second Officer Estabrook.

(Exhibit 2). Mr. Smith's two pages of proposed debate rules included a provision whereby "[e]ach side agrees not to file objections to remarks made during the debates."

17. By letter dated November 10, 1992, Mark Estabrook conditionally accepted Mr. Smith's debate challenge with the proviso that he did not agree to waive potential objections. (A copy of this letter is attached as Exhibit 3).

18. Captain Babbitt rejected the debate challenge in a letter to Frederick Smith dated November 12, 1992 which was distributed to all Federal Express pilots. (A copy of this letter is attached as Exhibit 4).

19. Mr. Smith responded to Captain Babbitt's letter with a letter distributed to all Federal Express Crewmembers by stating that:

[I] plan to continue pursuit of the debates I proposed because I feel that you, Second Officer Estabrook and I owe that to our crewmembers. I hope you'll reconsider. If not, we will just have to go ahead and plan for your chair at the debates to remain empty.

(A copy of this letter is attached as Exhibit 5).

20. On November 15, 1992, Mark Estabrook advised Mr. Smith that he assumed that Mr. Smith was no longer interested in participating in a debate. (A copy of this letter is attached as Exhibit 6).

21. By letter dated November 16, 1992, Mr. Smith advised Second Officer Estabrook that he was still interested in participating in a debate. (A copy of this letter is attached as Exhibit 7).

22. Second Officer Estabrook advised Mr. Smith by letter dated November 18, 1992 that he no longer wanted to participate in a debate, because he feared that the debate would be used by ALPA as a basis for a challenge to the election. (A copy of this letter is attached as Exhibit 8).

23. In another letter addressed to Captain Babbitt and distributed to all Fed Ex. crewmembers, dated November 24, 1992, Mr. Smith stated:

While there are many issues for Federal Express pilots to consider, whether you accept it or not, leadership is clearly one of them. Contrary to your letter, it is obvious that you and I and Second Officer Estabrook are part of the choice they must take. That is one reason why debates would be in the best interests of Federal Express pilots.

(A copy of this letter is attached as Exhibit 9).

24. Fed Ex management reminded pilots of the debate challenge through its campaign communications and press statements. For example, Fed Ex advised pilots on the first page of its publication "Late-Breaking News" that "[t]he Memphis Commercial Appeal has covered in great detail CEO Fred Smith's invitation to debate crewmember issues with ALPA president Randolph Babbitt and Second Officer Mark Estabrook...." Copies

of these newspaper articles which contained quotations from Fed Ex management were reproduced and included in that issue of "Late Breaking News." (A copy of this publication is attached as Exhibit 10).

25. The Organizing Committee believed that Mr. Smith's public debate challenge was a ploy designed to pressure ALPA into submitting to a process that would greatly expand Mr. Smith's role in the campaign to that of active participant and self-appointed overseer of the election campaign process. The Organizing Committee was also extremely troubled by the proposed suspension of laboratory conditions during the debate. The Organizing Committee had been presented with the choice of either consenting to a process that it believed would interfere with the elections by enabling the carrier to assume a far greater role in the campaign than to which it was entitled, or rejecting the debate challenge and being attacked as an enemy of free speech, afraid to answer tough questions. The Organizing Committee was forced into this predicament because Fed Ex sought to inject itself into the election campaign.

26. The Organizing Committee was very concerned that Mr. Smith's debate challenge and the decision of ALPA based on the recommendation of the Organizing Committee to reject the proposal could erode ALPA's support. The Organizing Committee wanted to know whether its response to the carrier's conduct had succeeded in blunting the impact of the interference.

27. The Organizing Committee was also concerned that the pervasiveness of Fed Ex's anti-union campaign was again interfering in the election and causing ALPA's support to erode. During the approximately four week period between the phase one and phase two polling, Fed Ex sent three separate booklets to the homes of Fed Ex pilots urging them to oppose union representation.

28. During the first week of December, 1992, pilots began receiving a fifteen page booklet from Fed Ex management entitled "A Union could be more than you bargained For...." in which it describes approximately thirty scenarios in which it warns pilots "you're taking a risk" if you vote for union representation." (All emphasis in original.) For example, the first scenario suggests that Fed Ex management could "unilaterally impos[e] pay, benefit or workrule changes on the pilots" if the parties were released from mediation and then warns "you're taking a risk" if you vote for union representation. (A copy of this exhibit is attached as Exhibit 11).

29. During the second week of December, 1992, pilots began receiving a twelve page booklet from Fed Ex management entitled "A Trip Down Memory Lane" which began with the introduction "If you have forgotten what it was like to work for a unionized airline ...isn't it worth taking a trip down memory lane before you decide whether to vote? The booklet then

introduces twenty-five inflammatory passages with a question beginning with the words "DO YOU REMEMBER." For example, the seventh passage asks

DO YOU REMEMBER, as a union member, worrying about the possibility that you would get fined, sanctioned or blacklisted for saying something that your union didn't like? If you can remember what it was like when you had to worry about b___ s___ like that, aren't you better off under our current system?

(Emphasis in original.) (A copy of this booklet is attached as Exhibit 12).

30. It is, in fact, Fed Ex management and not the Organizing Committee that attempted to coerce pilots by suggesting that ALPA would be keeping a blacklist. (Exhibit 12).

31. During the third week of December, 1992, pilots began receiving a twelve page booklet from Fed Ex management entitled "Telling You What You Want to Hear." The booklet then introduces twenty separate sections with the words "HAVE THEY TOLD YOU." For example, the second passage asks

HAVE THEY TOLD YOU they really wanted to debate Fred Smith and answer all your tough questions to make your decision in this election a lot easier, but their lawyers just wouldn't let them?

(Emphasis in original.) After referring to Randy Babbitt and the Organizing Committee the passage then concludes with the questions

Wouldn't it have been better to hold the issues up to the light of day? Only you can judge the motives but remember, Fred Smith suggested the debates and was willing to stand on the Company's record. He still is.

(A copy of this booklet is attached as Exhibit 13).

32. In addition to the above three booklets, Fed Ex management sent memoranda and other anti-union communications to the homes of pilots and frequently distributed these materials in duplicate to individual pilot company mailboxes. Fed Ex also erected large billboards in the Memphis area urging pilots to oppose union representation.

33. After the conclusion of phase one polling, the NO Committee sent a videotape entitled "Broken Promises" to the homes of all Fed Ex pilots. The videotape contained numerous misrepresentations and distortions about ALPA's history of representing pilots at other carriers intended to cast ALPA in the worst possible light. The NO Committee also sent anti-union newsletters and campaign communications to the pilot group throughout the campaign and also operated a telephone hotline which played recorded messages replete with distortions and anti-union rhetoric. The Organizing Committee was very concerned about whether the misleading videotape and the NO Committee's other communications were causing an erosion of ALPA's level of support among the pilot group.

34. On December 2, 1992, after the conclusion of phase one polling, the NO Committee submitted a Petition For Reconsideration to the NMB requesting that the NMB either reconsider its decision to use the standard ballot in the re-run election, thereby precluding USPA's participation, or depart from prior NMB policy by requiring either union to obtain the support of an absolute majority of eligible voters in order to be certified. The Organizing Committee wanted to know what impact the Petition was having on ALPA's level of support among the pilot group and was also concerned that the pending Petition was causing pilots to hold their mail ballots.

35. Shortly after the second phase of polling was completed, Philip Comstock reported that there was some deterioration in USPA support but no corresponding deterioration in the level of interest in union representation. Although the loss of support for USPA had not directly translated into support for ALPA, he explained that the issue of experience appeared to be taking hold as a determining issue to USPA's detriment. The Wilson Center did not provide the names of any pilots to Dennis Higgins, the Organizing Committee, ALPA, or any other person or entity as a result of the phase two polling survey.

36. The purpose of the third phase of polling was to identify pilots who were either undecided or who held a somewhat favorable view of ALPA so that members of the Organizing Committee could continue to concentrate their personal contacts

and follow-up calls on these potential ALPA voters. The survey was also designed to assess the ongoing impact of the campaign conduct of Fed Ex management and the NO Committee on ALPA's level of support away from the pilot group. This final polling survey also reminded ALPA supporters of the election so that they would mail in their ballots.

37. On several occasions during late December and early January, Phil Comstock reported that phase three polling results showed that ALPA's support appeared to be holding and that the percentage of pilots who said they intended to vote was increasing.

38. Shortly after the phase one polling survey was tabulated, the Wilson Center provided Dennis Higgins and the Organizing Committee with written lists containing the names and telephone numbers of pilots who had a somewhat favorable view of union representation. These pilots could presumably still be persuaded to vote for ALPA by telephone calls, personal contacts and mailings from the Organizing Committee. The Wilson Center did not provide us with the names of respondents who had either requested or raised concerns about confidentiality.

39. During the latter stages of the phase three polling survey in early January, the Wilson Center provided Dennis Higgins with written lists containing the names and telephone numbers of additional pilots that the Wilson Center believed were potential ALPA supporters. The Wilson Center did

not provide us with the names of any phase three respondents who had either directly or indirectly requested or raised concerns about confidentiality.

40. The Wilson Center did not provide the Organizing Committee with any lists of pilots either verbally or in written form except for those described in the above two paragraphs.

41. Members of the Organizing Committee attempted to speak with the pilots identified above either in person or by telephone. We attempted to assign members of the Organizing Committee to make these contacts based on whether a Committee member was a friend or acquaintance of that particular pilot. If no member of the Organizing Committee was even acquainted with that pilot, then we would try to assign the contact to a member of the Organizing Committee based in the same domicile or who had begun working at Fed Ex at approximately the same time.

42. In addition to calling the pilots identified by the Wilson Center, the Organizing Committee also called Fed Ex pilots as part of an ongoing, independent phone canvass operation conducted throughout the re-run election campaign to encourage pilots to vote for ALPA. The phone canvass operation was not coordinated with the Wilson polling surveys except to the extent that during the first and third phase of polling, the Wilson Center provided the Organizing Committee with names of some pilots who had a somewhat favorable view of union representation. Thus, Fed Ex pilots would be receiving calls from the Wilson

Center and from Fed Ex pilots through the phone canvass. It would have also been possible for a pilot who had been assured of confidentiality, to be called independently through the phone canvass operation.

43. At the outset of the re-run campaign, the Organizing Committee made a conscious decision to attempt to contact as many Fed Ex pilots as possible to encourage them to vote for ALPA. Members of the Organizing Committee and Fed Ex pilot volunteers telephoned other Fed Ex pilots and engaged them in discussion about the representation issue. In essence, pilots were talking to other pilots about whether they wanted union representation. During these conversations, callers would inquire as to the preferences of individual pilots in order to determine whether more time and resources should be spent on encouraging that particular pilot to vote for ALPA representation. In this way, callers would not need to spend time preaching to the converted. Similarly, callers would not need to engage in long discussions with pilots who strongly opposed ALPA representation. If, however, an undecided pilot had questions or sought more information, the caller could respond to the questions and send information.

44. It is important to realize that the Organizing Committee had no knowledge of whether any particular pilot contacted during the phone canvass or in the Wilson Center

polling surveys had actually voted, or had even responded honestly and accurately to our inquiries.

45. The Organizing Committee did not invite, encourage or urge USPA to initiate a write-in campaign. In fact, the Organizing Committee had no control or influence over whether an independent union mounted a write-in campaign. The Organizing Committee did not coordinate any aspect of campaign strategy or collude in any way with USPA.

46. The history of the re-run campaign also makes clear that the Organizing Committee and USPA were not coordinating efforts. For example, when Frederick Smith challenged ALPA and USPA to a debate, USPA initially accepted the debate proposal. (Exhibit 3). The Organizing Committee rejected the debate proposal. (Exhibit 4). USPA eventually claimed that it had been willing to debate, but that it was now concerned that by doing so, it would provide ALPA with grounds for challenging the election at a later date. (Exhibit 8). Blaming ALPA for not wanting to debate, rather than blaming Fed Ex management for injecting itself into the campaign, is hardly indicative of a coordinated Organizing Committed/USPA campaign.

47. Further evidence that ALPA and USPA were not coordinating campaign efforts can be found in the Organizing Committee's November 14, 1992, recorded Hotline which stated in reference to Frederick Smith's debate proposal that "[i]t served

to promote the stature and credibility of the USPA, a write in organization with no legal show of support...." (Fed. Exh. 16).

48. The collusion claim is also belied by the four pages of comparisons drawn between ALPA, USPA and the NO group in the Organizing Committee's January 6, 1993 newsletter entitled "Final Approach" where the Organizing Committee states that USPA "has no experience in negotiation," "has never negotiated for a Retirement Program" and will not have the financial resources available to provide many important services. (Fed. Exh. 17 at 4-7).¹

49. The Organizing Committee did not engage in any conduct intended to threaten or harass crewmembers or that was capable of having that result. During the course of the campaign, the Organizing Committee received no reports whatsoever of any pilots who expressed any fear of reprisals by ALPA, the Organizing Committee or its supporters against pilots who opposed representation. The Organizing Committee was not aware of any ALPA supporters who threatened or harassed crewmembers opposed to representation and would not have condoned any such conduct if it had been brought to its attention.

50. The Memphis crew lounge is a large room where Fed Ex pilots check in for their flights and obtain the documents they must read prior to departure. The crew lounge is divided

¹The cover of the newsletter is incorrectly dated 1992 instead of 1993.

into a work area and a rest and relaxation area. The work area of the crew lounge contains three check-in stations, waist-high work counters and an area where Fed Ex employees prepare and dispense flight documents. The work area is where pilots obtain the documentation required for their flights. The rest and relaxation portion of the lounge contains crew lockers, more than 1,000 pilot mailboxes, a coffee service area, televisions, couches, chairs and two conference tables.

51. Fed Ex pilots arriving on inbound flights to Memphis almost always enter the crew lounge after their arrival. Approximately several hundred pilots utilize the Memphis crew lounge on any given weeknight between the hours of 11:00 p.m. and 4:00 a.m. At around 11:00 p.m., pilots begin arriving in Memphis on inbound flights. These pilots almost always enter the crew lounge after their arrival. Many of these pilots work "hub turns" and remain in the crew lounge for several hours. A hub turn refers to an assignment in which a pilot who has completed an inbound flight then waits in the hub for several hours while packages are sorted before departing on an outbound flight. Pilots rarely depart on outbound flights before 2:30 a.m. Departures continue until approximately 4:00 a.m. Pilots must report to one of several check-in stations located throughout the crew lounge at least one hour before their departure.

52. Prior to checking in for their outbound flights, pilots have a considerable amount of free time in which to pursue

personal activities. During this time, many pilots can be observed reading, watching television, checking their mailboxes, speaking on the telephone, using computer terminals, getting coffee at the coffee service area or engaging in conversations.

53. In order to provide Fed Ex pilots with more exposure to pilots from ALPA-represented carriers so that they could hear an outside perspective on the representation question, the Organizing Committee invited United Airlines Captain Charles Pierce to Memphis to meet informally with Fed Ex pilots. In the past, Captain Pierce had served as Secretary of ALPA. He is currently a line pilot at United Airlines ("United") holding no union office.

54. On three consecutive nights beginning on the night of December 8th and 9th, I personally accompanied Captain Pierce on each of his three visits to the Memphis crew lounge and was with him at all times during his visits.

55. On each night, Captain Pierce, wearing his United uniform, displayed his United identification card to the Fed Ex security guard posted near the entrance to the flight operations building where the Memphis crew lounge is located. The appearance of the United identification card is conspicuously different from the Fed Ex identification card that I displayed. The Fed Ex security guard in no way questioned or challenged Captain Pierce's entrance onto Fed Ex property.

56. During each of his three visits to the Memphis crew lounge, Captain Pierce remained seated next to a conference table in the non-working area of the lounge. Captain Pierce did not walk around the lounge approaching, greeting or soliciting pilots; he simply waited for Fed Ex pilots to approach the conference table where we were seated. Although Captain Pierce was seated, he was somewhat conspicuous because he was wearing a United uniform. Fed Ex pilots approached him of their own accord. If a pilot approached me as Chairman of the Organizing Committee, I would introduce him to Captain Pierce. Neither I nor any other member of the Organizing Committee made any public announcements advising pilots of Captain Pierce's presence. Nor did we circulate through the crew lounge spreading the word of his presence.

57. The Memphis flight duty officer is the senior management representative responsible for supervising all flight management and air operations on the property from approximately 11:00 p.m. until approximately 4:30 a.m. In performing these duties, flight duty officers spend a large majority of their time in the crew lounge area.

58. On each night that Captain Pierce visited the Memphis crew lounge, Flight Manager Fred Peters served as the Memphis flight duty officer. On the first night Captain Pierce and I visited the crew lounge, I spoke with Fred Peters before midnight shortly after I entered the crew lounge. I told him

that Captain Pierce was a United pilot who would be visiting the crew lounge as my guest. Peters raised no objection whatsoever to Captain Pierce's presence. On the next two nights, Peters was also present in the crew lounge and again raised no objection whatsoever to Pierce's presence.

59. I personally made sure that Captain Pierce's visits ended by 1:30 a.m. so as not to interfere in any way with pilots during flight check-in operations. In fact, at 1:30 a.m. on the morning of his first visit, I interrupted and broke up a discussion on the subject of representation that Captain Pierce was having with a Fed Ex pilot. The discussion had attracted an audience of approximately twenty pilots around one of the conference tables. This turned out to be the largest audience that Captain Pierce attracted at any time during his three visits.

60. Throughout my career at Fed Ex, I have observed pilots from other carriers visiting the Memphis crew lounge. Fed Ex management has never announced a rule barring pilots from other carriers from entering the crew lounge.

61. Although the Organizing Committee did not consider Captain Pierce's conduct to have even come close to falling within any definition of solicitation, we nevertheless refrained from inviting non-Fed Ex pilots into crew lounges after Fed Ex management first voiced its objection.

62. Fed Ex has alleged that the Organizing Committee set up tables in the crew lounge with ALPA propaganda which interfered with pre-flight preparation. The Organizing Committee's limited campaign activities in no way interfered with flight crew planning and did not intrude upon the work space of Fed Ex pilots.

63. Organizing Committee members placed ALPA campaign materials on a small part of one of the conference tables in the rest and relaxation area of the crew lounge. Committee members would usually sit at the conference table and place the campaign literature directly in front of them so that they could be available to discuss the representation issue and answer questions. The Committee members and the campaign materials would together occupy a small portion of one conference table.

64. Committee members generally removed any remaining ALPA campaign materials from the conference tables before the departures of the morning outbound flights. We removed our campaign literature because we didn't want it to be discarded if we left it unattended. I frequently removed ALPA campaign materials from the conference table at this time of the morning and stored them in my locker.

65. Fed Ex management, the NO Committee, ALPA and USPA all distributed campaign materials in the Memphis crew mailboxes during the campaign. I also observed piles of USPA and NO Committee literature left unattended on conference tables in the

crew lounge. I often observed individual pieces of all varieties of campaign literature left behind by crew members in various locations of the Memphis crew lounge.

66. On many occasions, I have observed commercial solicitations lying on the conference tables of the crew lounge. For example, I have occasionally noticed private advertisements for such items as crew bags, uniforms and name tags piled on the conference tables and even on the work stations in the work area of the crew lounge. I have also observed advertisements from realtors in these locations.

67. In November, 1992, the Organizing Committee held a meeting in a small Memphis satellite crew lounge adjacent to the Flight Operations building. Approximately 25 Fed Ex pilots attended the meeting. A few days after the meeting, Fed Ex management advised us for the first time that formal representational meetings were not to be held on Fed Ex property. As a result of that notice, the Organizing Committee did not hold any more formal meetings on Fed Ex property.

68. In a November 3, 1992 memorandum from Senior Vice President of Air Operations Theodore Weise distributed to all flight crewmembers, Fed Ex announced that it "[i]s affording E-mail bulletin board access to the Federal Express Pilots'

Organizing Committee (FEPOC) and the NO group." (Fed. Exh. 15)² (emphasis added). Fed Ex's justification for creating the electronic mail ("E-mail") bulletin board format was that "it did not want the campaign interfering with business operations and crewforce communications." (Fed. Exh. 15).

69. Fed Ex also announced that "individual pilots wanting to comment on the representational issue may do so through a separate E-mail bulletin board. The Company will also have an E-mail bulletin board for its campaign statements." (Fed Exh. 15) (emphasis added). Fed Ex invited "[i]ndividual crewmembers" to "[t]ype in their own statements about the need for or against representation and explained that "[p]ilots wanting to read what any group or individual pilots have to say on the representational issue can do so by accessing the E-mail bulletin board and reading the comments." (Fed Exh. 15).

70. Fed Ex management created the bulletin board on its own initiative and not in response to a request from the Organizing Committee. Moreover, the Organizing Committee believed that Fed Ex's justification for creating the bulletin board had no basis in fact.

71. The Organizing Committee believed that Fed Ex sought to have campaign communications made in a forum that it

²Exhibits attached to Fed Ex's January 14, 1993 Submission will be referred to as ("Fed Exh. ____"). Exhibits submitted with Fed Ex's February 4, 1993 Submission will be referred to as ("Fed Supp. Exh. ____").

could monitor. Fed Ex management invited individual pilots to make comments or statements "about the need for or against representation" which it could then read. Pilots could also reasonably believe that Fed Ex had the capacity to determine whether individual pilots were accessing particular messages. This is because each Fed Ex pilot has his or her own identification number and password which was needed to gain access to the Fed Ex E-mail system. It would, therefore, be reasonable for a pilot to believe that Fed Ex management had the ability to determine whether a pilot had accessed the messages of Fed Ex management and the NO Committee.

72. By warning that "[i]f profanity or vulgarity appears on any screen, Federal Express reserves the right to delete and discipline the crewmember or group who engages in this type of conduct" (Fed. Exh. 15), Fed Ex also suggested to the pilot group that it would be reading the messages on the screens.

73. By establishing a bulletin board for the NO Committee, Fed Ex not only lent legitimacy to the group, but also provided it with free, unlimited, instantaneous access to the entire pilot group.

74. Fed Ex Senior Vice President Theodore Weise incorrectly asserts in his affidavit that I wrote to him in my capacity as Chairman of the Organizing Committee "declining the access offer for the FEPOC [Organizing Committee] group indicating that they preferred to use the individual E-mail

bulletin board screen for comments". (Fed Supp. Exh. 23, ¶ 6).

In my letter to him dated August 21, 1992, I wrote

While I appreciate your establishment of a campaign bulletin board in E-mail, our organizing committee must decline its use. Any statements of support for ALPA which may appear on that bulletin board will be the personal views of individual pilots. The closing section of any personal E-mail messages sent by organizing committee members will not include Federal Express Pilots Organizing Committee, or any words to that effect.

(Fed Exh. 14) (emphasis added).

75. Fed Ex management has always permitted and continues to permit Fed Ex pilots to use its Electronic Mail System ("E-mail") to send messages to other Fed Ex pilots. The Organizing Committee had no objection to the continuation of this long-standing policy of allowing pilots to use E-mail for their personal use and to express their personal views. What should have been very clear from my August 21, 1992 letter, however, was that the Organizing Committee had no intention of using an E-mail bulletin board set up by management specifically for campaign use. Thus, when Mr. Weise announced that Fed Ex was establishing campaign bulletin boards for the Organizing Committee and the NO group, he knew that the Organizing Committee would not be using the E-mail bulletin board.

76. The November 3, 1992 letter distributed to all flight crewmembers announcing the creation of a campaign bulletin

board was followed six days later by Frederick Smith's public debate challenge. (See paragraphs 15-26 above). Members of the Organizing Committee, including myself, believed that Fed Ex management was attempting to create and control a forum in which it would conduct an E-mail debate between the Organizing Committee, the NO group and Fed Ex management that would parallel the proposed debate between Captain Babbitt, Mark Estabrook and Frederick Smith.

77. The Organizing Committee expressed this view in its November 14, 1992 Hotline, stating that Frederick Smith's debate challenge "was a refinement of the E-mail campaign bulletin board where the Company offered the forum in order to monitor and control the discussion."

78. The Organizing Committee elected not to utilize the bulletin board to distribute its campaign communications.

I declare under penalty of perjury that the foregoing is true and correct.


Eric Vartanian

Executed on February 16, 1993