

UNITED STATES OF AMERICA  
NATIONAL MEDIATION BOARD

In the Matter of )  
THE FLIGHT DECK CREWMEMBERS )  
OF ) Case No. R-6044  
FEDERAL EXPRESS CORPORATION )

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CARRIER'S REPLY IN SUPPORT OF ITS  
OBJECTIONS TO CERTIFICATION OF ELECTION

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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 Air Line Pilots Association ("ALPA"), the United States Pilots Association ("USPA"), and certain individuals destroyed the laboratory conditions necessary for a fair and free election. On February 5, 1993 Federal Express filed its Supplement To Carrier's Objections. On February 22, 1993 USPA and ALPA filed their Response To Carrier's Objections. This document is the Carrier's Reply to the unions' recent submissions.

## II. INTRODUCTION

ALPA's systematic interrogation of crewmembers during the voting period--telephoning in excess of one thousand crewmembers on three to four occasions--then questioning them as to how they were actually voting destroyed the laboratory conditions of this election. ALPA does not deny it engaged in exactly this conduct. In fact, ALPA provides extensive documentation detailing the scientific nature of its interrogations. Federal Express contends based on National Mediation Board ("NMB") precedent, National Labor Relations Board ("NLRB") precedent and procedures, and generally accepted principles of secret balloting in the United States, that interrogating employees as to how they are actually voting during the voting period is inherently destructive of the laboratory conditions necessary for a fair and free election.

ALPA defends its conduct in two ways. First, it attempts to obfuscate its interrogations by labeling it "polling" and arguing that the Carrier objects to its polling. Federal Express does not object to union polling. The Carrier recognizes that ALPA has a right to poll crewmembers on a wide range of issues. What ALPA cannot do--and what every court or agency that has addressed this issue has ruled a union cannot do--is engage

in a systematic program of interrogating crewmembers while they are voting and ask them, "Are you now voting and if so, for whom?" ALPA has no legitimate or lawful reason for knowing how people are actually voting as they vote.

Second, ALPA argues the NMB should ignore or reject its own precedent and procedures. ALPA argues that the NMB has little authority to prohibit a union from engaging in conduct which, by definition, "influences" crewmembers.<sup>1</sup> ALPA argues that a carrier has a limited role in a union campaign, and a carrier's standard for engaging in election interference is very high. A union, on the other hand, can engage in limitless conduct. If there is a union standard, it is so low that it is non-existent.

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<sup>1</sup>The Railway Labor Act, 45 U.S.C. § 152, Third, provides:

Representatives ... shall be designated by the respective parties without interference, influence or coercion by either party. (Emphasis Added).

In Texas and New Orleans R.Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548 (1930), the Supreme Court ruled:

"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." (Emphasis Added).

ALPA's argument is totally contrary to NMB precedent. In Air Wisconsin, 16 NMB 235, 239-240, (1989) the Board ruled that the "tests for union interference and carrier interference are the same." In Mercury Services, Inc., 9 NMB 312 (1982), in Southwest Airlines, 13 NMB 120, 123 (1986), and in the National Labor Relations Board voting procedures as evidenced by Michem, Inc., 170 NLRB 362 (1968) and Sound Refining, Inc., 267 NLRB 1301 (1983), it was held to be inherently coercive for a carrier or a union to interrogate and to keep lists of employees as they are voting. When a carrier interrogates employees as ALPA did in this case, it is a gross destruction of laboratory conditions. The NMB must recognize that this same conduct engaged in by ALPA in this case also destroys laboratory conditions.

The National Mediation Board is presented with a very clear policy choice in this case. ALPA contends a union must engage in conduct which borders on the barbaric before laboratory conditions are destroyed. Federal Express contends there is a single standard for conduct which destroys laboratory conditions. While specific conduct by a carrier may affect laboratory conditions differently than when the same conduct is engaged in by a union, the standard for preserving the laboratory conditions is the same for a carrier and a union. If

conduct by either party compromises the fragile laboratory conditions of an election, the election must be set aside and a new election must be held.

In summary, ALPA readily admits that it systematically interrogated employees and asked, "How are you voting?" These interrogations occurred as crewmembers were voting.<sup>2</sup> Questioning was conducted by a professional, union-affiliated organization. It was not mere "polling" of opinions nor was it fellow employees discussing the merits of representation. It was persistent interrogating conducted by hired trained professionals. In addition, ALPA sanctioned conduct, and members of the Organizing Committee threatened crewmembers, which created a hostile and intimidating work environment. A union's conduct need not reach barbaric proportions before the laboratory conditions are destroyed. At some point, a union's conduct crosses the line to improper conduct. ALPA's conduct in this case is an example of a union "crossing the line."

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<sup>2</sup>Interrogations of this nature, by anyone, are inherently coercive. Hundreds of crewmembers, themselves, have come forward to complain by and through the FEPNO Organization. This is not simply the carrier complaining of ALPA's conduct.

### III. REPLY TO ALPA'S SUBMISSION

#### A. ALPA's Submission, Section II

ALPA misapplies the Board's legislative history on pages 3-6 of its memorandum, and then makes a strange argument that because a carrier must conduct itself at a very high standard of conduct during a representation election, it follows that a union may conduct itself at a very low standard of conduct (ALPA Submission, pp. 5-6).

The legislative history cited by ALPA does not address the authority of the NMB to "police" union conduct in representation elections. Eastman's and Harrison's comments relate to regulating and punishing carrier or union misconduct which violates the RLA, and not to whether the NMB can find that a union destroyed laboratory conditions in a representation election. There are no provisions in the RLA comparable to Sections 8(a) and 8(b) of the NLRA. Unlike the NLRB the NMB does not adjudicate unfair labor practices. Clearly, however, the Board has long recognized its duty to regulate the conduct of carriers and unions in a representation election. ALPA claims, "the legislative history indicates that Congress did not intend that elections be set aside because of alleged "interference" by employees or their representatives" (ALPA Submission, p. 4). This is not the legislative history, and more important, it is contrary



to seventy years of NMB practice and procedure. In fact, the Board's January 22, 1993 letter stated that based on the facts shown in Federal Express' Objections (and largely admitted by ALPA in its submission) "the Carrier and FEPNO have provided a sufficient basis to establish a prima facie case of election interference."

The NMB has uniformly held that the laboratory conditions in a representation election cannot be destroyed by either the union or the carrier, and the standard for election interference is the same for both the carrier and the union. See Air Wisconsin 16 NMB 235 (1989) ("...the test for union interference and carrier interference are the same: whether the laboratory conditions have been contaminated..."). Similarly, the Board has investigated allegations of union interference on numerous occasions. See Rich International Airways, 14 NMB 66 (1986); Air Wisconsin, 16 NMB 235 (1989); Aerovias de Mexico, 18 NMB 130 (1991). While identical factual situations involving a carrier and a labor organization may lead to different conclusions, the standard does not change.

Another illogical claim by ALPA is that as the level of conduct required of carriers in representation elections increases, the level of conduct required of unions decreases. The NMB's ruling on Federal Express' conduct in the 1991 election has generally been accepted among the

legal community as another example of the NMB's increasingly high standard for carriers in election matters. The NMB ruled that while a carrier's conduct, in part, may be proper, the sum of the activity may destroy the laboratory conditions. ALPA contends on pages 5 and 6 of their submission that because carriers have a limited role in representation campaigns, unions are allowed a "very high threshold for a finding of union interference." There is absolutely no logical, philosophical, moral, or legal basis for this conclusion. If carriers are increasingly held to a high "factual" level of conduct, it does not follow that unions should be allowed an increasingly low "factual" level of conduct. The standard is the same. There is not an inverse relationship between carrier and union conduct in an election. The NMB must expressly reject ALPA's arrogant contention that the NMB has little or no authority to limit union conduct during a representation election.

ALPA asserts that employees must be allowed to question fellow employees as to their views and opinions on representation. Federal Express agrees, but this assertion misses the mark. The interrogations in this case were not employees discussing issues with other employees. Rather, the conduct which destroyed laboratory conditions was interrogations by strangers--employed by an organization

which is funded by the largest and most powerful unions in the country--utilizing modern and sophisticated methods to interrogate employees while they voted.

If ALPA's conduct in this case consisted of "employees talking to other employees," perhaps it would not be objectionable. Similarly, if Wilson did nothing but poll individuals prior to the election period as to their views on work issues, opinions on unions, etc., that also might not be objectionable. But when Wilson, hired and controlled by non-employees, trained in sophisticated techniques of interrogation, systematically calls hundreds and hundreds of crewmembers and asks on three or four occasions, "How are you voting?" as crewmembers actually vote, that is objectionable conduct.

B. ALPA's Submission, Section III A

ALPA devotes six pages in this section deflecting its conduct by claiming that its campaign of relentless interrogation was nothing more than mere "polling" (ALPA Submission, pp. 6-11). Federal Express does not challenge ALPA's right to use the Wilson Center for polling. ALPA has an interest in survey information. It has the right to question crewmembers regarding their views. What ALPA does not have a right to do is engage in a systematic

interrogation of crewmembers during the voting period as to how they are actually voting.

ALPA cites several NLRB cases for the proposition that unions should be allowed to poll individuals prior to an election. This has never been challenged by the Carrier. None of the cases cited by ALPA permit a union to question during the election, and ALPA does not have a right to interrogate crewmembers as they are voting. ALPA attempts (and fails) to distinguish Mercury Services, Inc. and Southwest Airlines Company. In Mercury Services, the NMB found that carriers could not ask employees to turn in their ballots to the carrier because it enabled the carrier to identify how individuals were voting. The rationale for not allowing individuals to return their ballots to the carrier or union is the same rationale as exists in the interrogation cases. That is, it is inherently coercive for the carrier and the union to attempt to know how employees are voting as they vote.

ALPA attempts to downplay the significance of language in Mercury Services as a "passing comment" (ALPA Submission, p. 9). It is certain that the National Mediation Board is not so cavalier as to make "passing comments" in its decisions. When the NMB articulates a standard and opines a rationale for that standard, it is there to provide guidance for future conduct. The NMB's

language in Mercury Services is not a "passing comment in dicta." It is the rationale for the decision and a guide for future conduct by carriers and unions. While ALPA argues differently, the Board's standards and its rationale as contained in published decisions can be ignored by a party only at its peril. Otherwise, carriers and unions must operate without any guidance as to permissible conduct.

ALPA does not provide a justification or rationale for why it needs to know how employees are voting as they vote. An examination of the polling questionnaire and Comstock's affidavit shows that all the information which ALPA contends it needs to run an effective campaign is available without interrogating employees as to how they are voting as they vote. There is no legitimate reason why ALPA needs to know during the voting process how and whether each employee has voted.

ALPA claims its questioning was not coercive because "there is no assurance that the information obtained is accurate." Why are employees untruthful unless they are intimidated by the question and fearful that a truthful response will result in retaliation by ALPA? Similarly, why would crewmembers request confidentiality if the question, itself, was not inherently coercive? If ALPA's grant of confidentiality converted these coercive interrogations into "non-coercive" polling, why weren't all

responses confidential? ALPA never publicly stated that these interrogations and their responses were confidential. During the questioning, the questioner never offered to make the crewmembers' responses anonymous or confidential. The reason is obvious, now, and it was obvious to 2,280 crewmembers during the election: ALPA was recording responses and identifying specific individuals; then, it was contacting and pressuring these people to vote for ALPA.

ALPA's interrogations were inherently coercive. The question in this case is not whether ALPA's interrogations were coercive--they were. The question is whether the Board will hold unions to a proper standard of conduct in representation elections and order a new election to identify the true sentiments of the crewforce.

C. ALPA's Submission, Section III B (1)

In this section, ALPA continues to "justify" its interrogations under the guise of "polling." Again, no one is challenging a union's right to poll employees regarding their views. But, no union can be allowed to interrogate employees as to whether and how they are actually voting during the voting period. It is totally unnecessary and inherently coercive and intimidating.

ALPA claims its misconduct is justified based on the conduct of others during the campaign. Specifically, ALPA contends that the carrier engaged in a "negative campaign" and that FEPNO circulated false information. ALPA even refers to the old equitable doctrine of "unclean hands" to justify its conduct. The concept of quid pro quo and the idea that the union can justify its misconduct by pointing to the alleged misconduct of others is contrary to the goal of preserving "laboratory conditions" during a representation election.

Federal Express conducted itself properly in this campaign. Randall Babbitt, ALPA's President, admitted as much in a recent New York Times article. (See Exhibit 12.) Notwithstanding, the conduct of others is totally irrelevant in determining whether ALPA destroyed the laboratory conditions in this election. ALPA recognizes it "crossed the line" in interrogating crewmembers; now, it is scrambling to justify its conduct.

ALPA goes into great detail in its memorandum and in Phillip Comstock's affidavit regarding the types of lists that were kept and how they were maintained. First, there is no legal or practical basis for distinguishing Wilson and ALPA. Wilson, by Comstock's own affidavit, is closely aligned with ALPA and other labor unions. If Wilson has a list of how crewmembers are voting or have voted, ALPA also

has these lists. Even if it were credible to believe that these massive lists never made it from the Wilson Group (the "left hand") to the Organizing Committee (the "right hand"), Wilson is ALPA's agent, and as such, Wilson's information is ALPA's information.

Additionally, there were obviously many lists being maintained by ALPA. ALPA readily admits that the Organizing Committee, itself, engaged in a massive telephone campaign and asked crewmembers how they were voting during the voting period. Regardless of the precise number and location of lists, it is incontrovertible that during the voting period ALPA engaged in a systematic program of identifying how each crewmember was voting and of recording that person's vote on a list.

ALPA's implication that these lists were not maintained for the purpose of blacklisting crewmembers misses the point. Whether ALPA kept lists of individuals for the purpose of threatening, coercing, and intimidating them is irrelevant. ALPA engaged in a broad based, well publicized program of interrogating crewmembers regarding how they were voting. They did not guarantee or preserve the confidentiality of the results of the questioning. Most crewmembers were contacted and many were contacted numerous times. That lists were maintained is an inevitable and logical conclusion reached by crewmembers



based on the nature of ALPA's conduct. Crewmembers were repeatedly called by Wilson and asked how they were actually voting. The Organizing Committee followed the Wilson survey and asked hundreds of crewmembers the same question.

Neither the NMB or the NLRB has required complainants to procure evidence that a party's misconduct had a direct and immediate impact on how a particular person voted. It is difficult, if not impossible, to assess the effect particular conduct has on a voter. "Detecting the subjective reaction of employees to electioneering requires an expedition into the thought processes of the electorate, a journey that administrators and courts are ill equipped to make." NLRB v. Gulf States Cannery, Inc., 583 F.2d 757, 759 (5th Cir. 1978). For that reason, "if the challenged action had a tendency to influence the outcome of the election, then the election should be invalidated," 585 F.2d at 759.

In this case, the affidavits and ALPA's own admissions show that the union's systematic program of interrogation had a tendency to influence the outcome of the election. ALPA admits that many employees requested confidentiality, and concedes that for some employees their only option was to lie about their sentiments. If a Carrier had engaged in this conduct, it would be per se

objectionable conduct. Surely, a powerful union like ALPA cannot engage in this same conduct without similarly destroying the laboratory conditions. Despite ALPA's novel attempt to completely obliterate the concept of union misconduct during a representation election, ALPA's systematic program of interrogating employees regarding how they were voting mandates that this election be set aside. A new election should be conducted and ALPA must be prohibited from "interrogating employees in the voting booth."

ALPA admits that its systematic interrogation of crewmembers during the voting period generated a list of voters and their voting preference. It attempts to justify this misconduct by lamely claiming that it only wanted to identify "pilots who had a somewhat favorable view of union representation" (ALPA Submission, p.14). Of course, even if true, members of the Organizing Committee only needed to compare such a "list" to the list of employees in the craft or class in order to create another "list" of pilots who either were "undecided" on the representation issue or were opposed to representation. ALPA blithely ignores the fact that to come up with any type of "lists," its hired professionals had to interrogate hundreds of voters during the voting process. Moreover, ALPA's assertion that it only wanted to identify "pilots who had a somewhat

favorable view of union representation" is belied in E. Vartanian's affidavit (paragraph 36). He states that "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 ...." (emphasis supplied). ALPA would have us believe that it is somehow "acceptable" for it to take this list and use it to pressure "undecided" voters and those who have a "somewhat favorable view of union representation" to vote for ALPA. This is a classic case of a wrongdoer using its ill-gotten gains for improper purposes.

On page 18, footnote 3, ALPA attempts to distinguish NLRB cases which prohibit list-keeping during a representation election. ALPA claims there is a difference between the improper conduct engaged in by individuals in the cited NLRB cases and the conduct engaged in by ALPA in this election. Federal Express agrees, there is a difference. ALPA's conduct here is much more invasive and intimidating than the conduct in the NLRB cases. List-keeping in the context of an NLRB election tells a person nothing more than who is voting. It is impossible to know whether individuals are voting for or against representation. In the RLA context, knowing whether a person votes is equivalent to knowing how they voted.

Finally, ALPA again claims their interrogations are not coercive because a "pilot's response is totally voluntary and may not even be truthful." Individuals refuse to tell the truth for a reason. The only reason an individual gives a false answer is because that person is afraid of telling the truth. By definition, this is a "coercive" question. Further, any crewmember interrogated as to how he is voting will assume that a refusal to respond is tantamount to a negative response.

In summary, the interrogation of crewmembers as to how they are voting is inherently coercive. ALPA never promised confidentiality in its literature, and in fact, the responses were not confidential. ALPA concedes that some individuals' responses might not be truthful; this is tantamount to admitting that individuals are intimidated by the question. The NLRB prohibits list-keeping during an NLRA election. Even stronger policy reasons justify prohibiting interrogations and list-keeping in the context of the NMB balloting process.

D. ALPA's Submission, III B(2)

ALPA contends the Carrier has not presented evidence that individuals were actually intimidated by the union's interrogations. First, any individual who voted for ALPA for fear of retribution is certainly not going to come

forward after the election and give a sworn statement to the carrier. If the Board feels evidence of this type is useful, it is one reason why an on-site investigation is essential. Random interviews of crewmembers will produce such testimony.

Second, direct evidence of this nature need not be shown. As discussed above, any conduct which has a tendency to influence the outcome of the election destroys the laboratory conditions. It is not essential that the Board find individuals willing to come forward and admit that they were coerced.

That the interrogations in this case had a tendency to influence the election is beyond question. Even isolated interrogations by a carrier would be improper. Here, ALPA hired professionals to systematically interrogate in excess of one thousand crewmembers. ALPA admits some employees did not tell the truth and others requested confidentiality. Crewmembers did this because the interrogation was intimidating.

The NMB must appreciate that many crewmembers at Federal Express have a real and genuine fear of ALPA. (See Exhibits 1-10.) They believe ALPA has both the ability and motive for retaliating against non-supporters. ALPA has power in the airline industry unlike any other union in any other industry. (See Exhibit 11.) As the enclosed

affidavits show, the fear of blacklisting, retaliation on check rides, denial of jumpseat privileges, and even verbal and physical harassment is real. As discussed in the Carrier's February 4 submission, ALPA's history at Eastern and Continental, and demands made by ALPA for dues on former Flying Tiger pilots, have raised a legitimate belief that retaliation from ALPA is likely. This fear of retribution by ALPA coupled with ALPA's aggressive interrogations certainly had the tendency to influence the election.

Finally, ALPA, claims on page 20 of its submission that the interrogations were not coercive because it had "no way of knowing how any pilot actually voted." This is blatantly false. In fact, ALPA asked nearly every pilot, some on several occasions, how they were actually voting. Other than intercepting each ballot, what better way is there to find out how people vote than to hire professionals to repeatedly call and ask as they vote? Concerned pilots had no choice but to lie, hang up the telephone, or refuse to answer. To any logical person, hanging up on ALPA or refusing to answer is tantamount to saying, "I'm not voting for ALPA." Surely the Board does not want to establish a policy where the only manner by which an individual can avoid intimidation is by lying about whether (how) he/she voted.

ALPA's closing paragraph on page 21 and 22 of its submission is a preview of future union conduct if the NMB allows systematic interrogation of employees during the voting process. ALPA contends it must be allowed "in person" or by "telephone solicitation" to contact pilots and interrogate them regarding how they are actually voting during the voting period. If the NMB allows ALPA to engage in this conduct, it is logical that ALPA and other unions will hire professionals to visit the homes of crewmembers and question them "face to face" as to how they are actually voting.

One of the Board's most important duties is to ensure that representation elections are conducted under laboratory conditions. The standard for preserving laboratory conditions is the same for carriers and unions. ALPA has absolutely no legitimate right to know during the voting process how individuals are voting. The sanctity of an individual's vote is beyond question. ALPA destroyed the laboratory conditions by hiring professionals and engaging in a systematic program of interrogation to find out how pilots were voting during the voting period. A new election must be ordered.

E. ALPA's Submission, Section III B (3)

Federal Express stated in its objections that survey "leaks" are the inevitable consequence of union interrogation during the voting period. Further, these "leaks" have a tendency to influence how other crewmembers vote, thereby destroying the laboratory conditions.

ALPA concedes that survey results were leaked. On page 22 of its submission ALPA states "the evidence presented by Federal Express suggests that there may have been a few isolated instances in which pilots that were not on the Organizing Committee might have learned of these results, and quite naturally, discussed them with colleagues." "Leaked" surveys unquestionably influence voters. Even ALPA concedes that "the Organizing Committee was concerned that communicating positive results to the pilot group would encourage complacency among ALPA supporters and that communicating negative results would discourage potential supporters from supporting the campaign," (ALPA Submission, p. 22). ALPA's survey data "leaked" to the crewforce. ALPA and Federal Express agree that "leaks" influence elections. Conduct which influences the election destroys laboratory conditions.

Incredibly, ALPA states on page 23, "there is nothing inherently wrong or coercive about an employee organization communicating the results of a pilot poll to



other employees." The policy ramifications of this statement are immense. ALPA's position is not only does it have the right to call three or four times during a representation voting period and question an employee as to how he/she is actually voting, but it then has a right to disseminate that information during the campaign. ALPA agrees this conduct "influences" the voting population, but ALPA contends that because it is a labor organization it is immune from the NMB's normal standards for preserving laboratory conditions. There must be restraints on this type of union conduct during a representation election. A union cannot openly and blatantly influence elections by leaking survey data obtained during the voting period without the NMB ordering a new election.

F. ALPA's Submission, Sections IV - VII

Contrary to ALPA's claims that there is no evidence to support "threats" and "coercion," Federal Express' February 4 submission includes approximately thirty affidavits which discuss either specific instances of threats and intimidation or explains the generally hostile environment created by ALPA. Also contrary to ALPA's claims, the affidavits identify improper conduct which can be traced directly to leaders of the ALPA Organizing Committee and to sanctioned ALPA campaign conduct.

ALPA continues to misapply the Board's standard for identifying improper union conduct. It is not necessary to show that ALPA's threats and coercive conduct had an identifiable and direct effect on the vote of specific individuals. If conduct or a statement had a tendency to influence the election, the laboratory conditions are destroyed.

The evidence of improper conduct was provided in the Carrier's previous submissions. ALPA's reply does nothing to rebut these affidavits. If the NMB wishes to verify FEPNO and Carrier affidavits and obtain corroborative evidence of harassment, intimidation, and confusion as to the voting process, it must conduct an on-site investigation and interview crewmembers.

1. ALPA's Submission, Section IV A and B

ALPA augmented its campaign of voter interrogation, described above, by engaging in threatening, harassing, and coercive behavior aimed at crewmembers making night turns at the Memphis Hub. While ALPA asks the NMB to dismiss this objection because of lack of evidence, the fact remains that Federal Express has submitted 11 affidavits describing the coercive effect that these activities had on the crewforce. These affidavits provide the NMB with an independent basis for overturning the results of the

election, or at least conducting a further investigation into these objectionable activities engaged in by ALPA.

2. ALPA's Submission, Section V A

On two occasions prior to the vote, USPA disseminated an altered NMB ballot. While that activity alone can have the effect of destroying the laboratory conditions necessary for a completely uncoerced selection of representation, (see Long Island Railroad Company/International Brotherhood of Teamsters and United Transportation Union, 12 NMB 187 (1985), USPA exacerbated this objectionable conduct by coupling the altered ballot with other misrepresentations of the Board's voting process. Specifically, USPA's "A vote NO is a vote for ALPA" slogan, when combined with its circulation of the altered ballots showing how to write in USPA, served to effectively eliminate voting "NO" as an option for a number of crewmembers. Such conduct unquestionably destroyed laboratory conditions.

3. ALPA Submission, Section V B

ALPA also engaged in misrepresentations of NMB procedures which were destructive of laboratory conditions. As with its objectionable conduct regarding interrogating crewmembers, ALPA tries to excuse its

misrepresentations by misreading NMB case law. Despite ALPA's characterization of Metroflight, Inc., 13 NMB 284 (1986), as "totally inapposite," that case holds that carriers are responsible for fully informing the electorate of all of the voting options available in the election. It is undisputed that on numerous occasions, ALPA failed to inform the crewforce of all its options in this election. Where such a failure serves to mislead voters, as in the case here, the election results should be set aside.

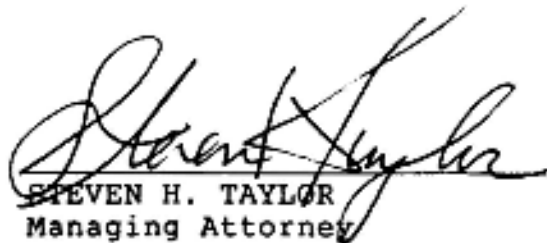
Other ALPA misrepresentations during the course of the campaign also constitute objectionable conduct. For example, ALPA falsely accused Federal Express of improper motives in establishing an electronic mail bulletin board for employee use during the campaign. ALPA also misrepresented career earning potentials at Federal Express as compared to other carriers and the Company's efforts regarding pension relief legislation. This misconduct, along with the other evidence regarding interrogation of crewmembers, provides ample basis for setting aside the election. However, if the NMB should feel that more information is needed for the Board to discharge its statutory mandate to conduct an election free of interference, an on-site investigation should be conducted.

#### IV. CONCLUSION

ALPA contends that except, perhaps, for egregious misconduct which approaches the unconscionable, labor organizations cannot destroy the laboratory conditions in a representation election. ALPA throughout its brief systematically diminishes the role the NMB plays in regulating a union's conduct in representation elections. It dismisses a clear and unequivocal NMB precedent as a "passing comment." ALPA brazenly states that a union has unlimited authority to hire professionals to contact "in person" and on the telephone thousands of crewmembers at their home and to directly, repeatedly ask how they are actually voting while they are voting. ALPA then boasts that it can do this with impunity because, "The NMB has never overturned an election based on allegations of union interference" (ALPA Submission, p. 6).

The NMB in its 1992 decision, Federal Express, 20 NMB 7 (1992), imposed upon carriers an extremely high level of conduct during representation elections. It found that the volume of material, alone, could justify the Board ordering a new election. Now, ALPA contends that the same standard allows a union unbridled ability to interrogate well over one thousand crewmembers as they vote and to disseminate voting survey results as the voting takes place. Conduct of this kind incontrovertibly influences the election and intimidates large numbers of crewmembers.

In this case, the NMB must recognize that ALPA has "crossed the line," that its conduct cannot be condoned, and that a new election must be ordered.<sup>3</sup>



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<sup>3</sup> Federal Express also continues to support and adopt FEPNO's objections regarding the Board's voting process and procedures. Federal Express expressly reserves the right to question in future submissions to the Board and Courts the statutory and due process issues raised by FEPNO.