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FACSIMILE TRANSMITTAL SHEET

DATE: January 19, 1993
TO: Lee Seham, Esq.
FAX NO. 1-212-753-8101
RE: Fed Ex Flight Deck Crew Members Petition
FILE NO. 785.001
FROM: Myles J. Tralins, Esq.
COMMENTS:

NUMBER OF PAGES NOT INCLUDING COVER SHEET:

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January 19, 1993

William A. Gill, Jr.
Executive Director
National Mediation Board
1301 K Street
250 East
Washington, DC 20572

BY FAX

Re: In the Matter of The Flight Deck Crew Members
of Federal Express Corporation

Dear Mr. Gill:

This afternoon we filed Objections to Certification of Election Due To Election Interference by Airline Pilots Association and United States Pilots Association on behalf of our client, Federal Express Pilots for a Non-Union Operation (FEPNO).

Attached to our Objections are exhibits in the form of Affidavits and Statements made by individual pilots concerning election interference by the Air Lines Pilots Association (ALPA) and the United States Pilots Association (USPA).

A number of the objections were signed with the request that same be held confidential because of flight crew members' fears that they would be subject to retaliation by the unions in the form of blacklisting, harassment and job interference.

Accordingly, we have removed the Affidavits and statements given to us on a confidential basis from the copies of Federal Express Pilots for a Non-Union Operation (FEPNO)'s objections delivered to the other parties and have substituted a form affidavit attached to this letter so that the parties are aware of the substance and nature of the *prima facie* evidence we have submitted, albeit without identifying the individual flight crew members by name.

BEFORE THE
NATIONAL MEDIATION BOARD

In The Matter Of)	
THE FLIGHT DECK CREW MEMBERS)	
of)	NMB CASE NO. R-6044
FEDERAL EXPRESS CORPORATION)	

**OBJECTIONS TO CERTIFICATION OF ELECTION DUE TO ELECTION
INTERFERENCE BY AIRLINE PILOTS ASSOCIATION
AND UNITED STATES PILOTS ASSOCIATION**

Federal Express Pilots for a Non-Union Operation ("FEPNO") files its Objections to Certification of Election pursuant to 45 U.S.C. §152 Second, Third & Ninth and §§ 10.3, 10.4, 10.5 and 11.5 of the National Mediation Board Representation Manual.

FEPNO alleges that the conduct engaged in by the AIR LINES PILOTS ASSOCIATION ("ALPA") and the UNITED STATES PILOTS ASSOCIATION ("USPA") prior to and throughout the rerun election ordered by the National Mediation Board ("NMB") so tainted the laboratory conditions required by the NMB that a true and accurate determination of the representation choices of the crew members was impossible.¹

In support of its Objections, FEPNO submits the attached affidavits and statements of Flight Deck Crew Members which provide prima facia evidence that the laboratory conditions under which the

¹ FEPNO incorporates and adopts as part of these Objections the Objections to Certification of Election filed by FEDERAL EXPRESS on January 14, 1993, and the arguments FEPNO previously raised in its previously filed Petition for Clarification or Reconsideration as supplemented.

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election was to have been conducted was so tainted by ALPA and USPA that a rerun election is required.

1. USPA Misrepresentations Were Intended to and Did Confuse Flight Deck Crew Members to the Extent that a Significant Number Voted for a Union Despite Wanting No Union At All.

On or about October 15, 1992, the "United States Pilots Association Organizing Committee" disseminated by mail to the Flight Deck Crew employees of Federal Express an announcement as to its formation as "an independent union designed by and for Federal Express pilots" seeking, *inter alia*, "a collective bargaining alternative to ALPA" to be selected by means of a write-in vote on the NMB ordered rerun election ballot.

Additional communications were sent to the Flight Deck Crew employees of Federal Express by USPA on November 3, 1992 and November 11, 1992, with, *inter alia*, the following representations:

- a) "Legal counsel advised in February of this year that the NMB would likely restrict participation in a new election to those organizations who participated in the last election-specifically ALPA."
- b) "When the NMB issued their recent decision, they specified a "standard ballot." This kind of ballot allows for a write-in vote in the space titled "any other organization."
- c) "According to NMB rules, if the majority of pilots votes for union representation, then the union that receives the majority of votes cast becomes the representative for the pilots."
- d) "To vote NO at this point is in fact a vote for ALPA!"

Communications were also made to Flight Deck Crew members through USPA's pre-recorded telephone hotline which also made misrepresentations that a no vote was a vote for ALPA.

USPA on numerous occasions distributed to crew members, as part of its campaign, literature advising crew members that "a no vote is a vote for ALPA" along with copies of the NMB official ballots with instructions to write-in USPA. This further distorted proper NMB election procedures by indicating to pilots that the only alternative to ALPA was a vote for USPA.

USPA's misrepresentations that it was the only alternative to ALPA and that a no vote was effectively a vote for ALPA so confused and frustrated the crew members' understanding as to the NMB's policies and procedures for a free and fair election that the crew members' freedom of choice was effectively taken away as is evidenced by the Affidavits and Statements attached as Composite Exhibit "A"

The mischaracterizations by USPA of the NMB's standard balloting procedure in the re-run election operated to "interfere with, influence, or coerce" Flight Deck Crew members into voting for USPA by asserting that the application of the Board's policies and procedures has deprived the employee of his or her right to a "No" vote as to certification.

2. ALPA Engaged in Illegal Polling Practices Intended to Coerce and Intimidate Employees to Vote for ALPA.

On December 2, 1992, the Fedex (ALPA) Organizing Committee ("FOC") stated in its newsletter that it had "engaged the services of the Wilson Center for Public Research" to conduct an ongoing independent scientific polling of our employee group."

The FOC stated that the polling questions will be "very open-ended and seek only your opinions" and will be used to "help us

better answer your questions." (See Newsletter attached as Exhibit "B")

It should be noted that one of the objections filed by ALPA in its Notice of Election Objections Based on Carrier Interference dated August 9, 1991 was an objection to indirect polling of employees by Federal Express.

ALPA has engaged in the exact activity it previously objected to!

Moreover, not only does ALPA freely admit it engaged in polling but ALPA accomplished the polling through one of the most direct means possible, telephone solicitation.

Furthermore, ALPA's so-called polling was no more than an artifice and device to identify those crew members who had elected not to vote and interrogate and coerce said employees into voting for ALPA.

ALPA first directed its "Public Research" service to conduct telephone "interviews" so that ALPA could identify crew members who had not yet voted or had decided not to vote.

Once the crew members were identified who had not voted or did not intend to vote, the "Public Research" service reported the same to ALPA so that it could target the specific employees to coerce, harass or intimidate them into voting as is evidenced by the attached Affidavits and Statements of Flight Deck Crew Members. (Exhibit "C")

The "Public Research" service contacted crew members and initially asked innocuous questions which shortly became very pointed questions as to whether or not the crew member had voted, who the crew member voted for and other specific views of the crew member as to ALPA and the unionization of Federal Express.

The "Public Research" service even acknowledged to a crew member that it had the names of all of his fellow employees, implying that a voting record was being kept and that a blacklist would be made of those who opposed organization.

The polling of employees as to their voting is directly contrary to the secret ballot procedures of the NMB and constitutes interference in and hinderance to a fair and free election.

For this reason alone, a rerun election is warranted.

3. ALPA Intimidated, Harassed and Coerced Crew Members by Soliciting Votes in the Flight Operations Crew Room.

ALPA set up tables in Federal Express's flight operations room to solicit votes. The flight operations rooms are used by Federal Express crew members to prepare their flight plans and relax between and prior to flights.

The actions of ALPA by establishing solicitations tables in flight operations rooms disrupted the normal procedures of the crew members.

Again, during this rerun election ALPA engaged in the very conduct it complained of in its Notice of Election Objections based on Carrier Interference dated August 9, 1991!

ALPA's express purpose was to pressure and coerce flight crew members to support and vote for it as is evidenced by the Affidavits and Statements attached as Composite Exhibit "D".

4. **The Election Process as Conducted Deprived Flight Deck Crew Members of their Right to Choose Organization and Representation.**

Finally, as is evidenced by the attached Affidavits and Statements, many affected Federal Express employees in addition to the 700 plus FEPNO members believe that the election, as conducted, deprived them of their right to choose whether or not they desired union organization.

These employees voted for one union over the other even though they did not wish union representation at all.

Other employees refrained from voting at all because they believed that the election as conducted was fundamentally unfair. (Composite Exhibit "E")

No better illustration exists as to the fundamental unfairness of the election process objected to.

An election which, as structured here, lends itself to abuse by misrepresentation by the contestant unions and results in coerced voting to choose between the perceived lesser of two evils, must not be allowed to stand.

Here, the actions of USPA and of ALPA are so egregious that each constitutes *prima facie* evidence of election interference.

Accordingly, FEPNO respectfully requests that the NMB conduct an investigation as to the election interference, influence and

coercion by USPA and ALPA and order a rerun election using the procedures suggested by FEPNO in its earlier petition.

Finally, while FEPNO believes that the Affidavits and Statements submitted herewith constitute *prima facie* evidence of election interference, FEPNO respectfully requests twenty working days to submit to additional evidence that a rerun election is warranted and submits to the Board that the two working day period provided for is far too short to allow it to obtain the volume of supporting evidence available to it from Flight Deck Crew Members who are located all over the world.

Respectfully submitted,

TRALINS AND ASSOCIATES
Attorneys For FEPNO

Myles J. Tralins

CERTIFICATE OF SERVICE

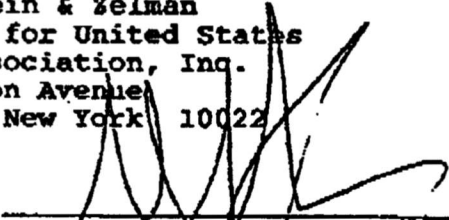
I hereby certify that a true and correct copy of the foregoing Supplement to Petition for Clarification or Reconsideration was served on the following parties by telefax delivery and overnight delivery on December 8, 1992:

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