



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol. 142

WASHINGTON, THURSDAY, OCTOBER 3, 1996

No. 141

Senate

The Senate met at 9 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, help us to live beyond the meager resources of our adequacy and learn that You are totally reliable when we trust You completely. You constantly lead us into challenges and opportunities that are beyond our energies and experience. Then You provide us with exactly what we need. Looking back, we know that we could not have made it without Your intervention and inspiration. And when we settle back on a comfortable plateau of satisfaction, suddenly You press us on to new levels of adventure in our living. You are the disturber of any false peace, the developer of dynamic character and the ever present deliverer when we attempt what we could not do on our own.

May this be a day in which we attempt something humanly impossible and discover that You are able to provide the power to pull it off. Give us a fresh burst of excitement for the duties of this day so that we will be able to serve courageously. We will attempt great things for You and expect great things from You. Through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator MCCAIN of Arizona, is recognized.

SCHEDULE

Mr. MCCAIN. Mr. President, on behalf of the leader, I should like to remind all Members of today's Senate schedule. This morning, the time between now and 10 a.m. will be equally divided for debate on the FAA reauthorization conference report. At 10

a.m., there will be a 15-minute rollcall vote on the motion to invoke cloture on the FAA conference report. I hope that the Senate would invoke cloture this morning so that we can complete action on this important measure. If cloture is invoked, it is possible that we may adopt the conference report at a reasonable time today.

I also remind my colleagues that there are a number of other legislative items in the clearance process including possible action on the parks bill. With the cooperation of all Senators, we can finish these items in time for sine die adjournment of this Congress today.

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

Mr. MCCAIN. Mr. President, I now ask unanimous consent that the time

NOTICE

A final issue of the Congressional Record for the 104th Congress will be published on October 21, 1996, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-220 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m., through October 21. The final issue will be dated October 21, 1996 and will be delivered on October 23.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record at Reporters."

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 512-0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

WILLIAM M. THOMAS, *Chairman.*

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper containing 100% post consumer waste

S12217

until 10 a.m. be equally divided between the proponents and opponents, myself managing the legislation for this side, and the Senator from Massachusetts, Mr. KENNEDY, managing for the other side.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, perhaps we could have information concerning the division of that time. I would guess it is less than 1 hour equally divided. Is that correct?

The PRESIDENT pro tempore. To be exact, it is 56 minutes.

Mr. MCCAIN. Mr. President, since the Senator from Massachusetts is not here, I will begin with an opening statement. I allow myself 10 minutes.

Mr. President, I want to talk about this critical aviation bill for a few minutes, and I want to begin with the most important part of it. That is the section that has to do with aviation safety.

This bill has some very important and critical aviation safety items included in it. We all know how important and compelling a problem this is and a challenge for America and the world. We continue, unfortunately, to have serious airline accidents that continue to take place not only in this country but around the world, including the latest being another tragedy in Peru just in the last several hours. There is no doubt that aviation safety is a vital and compelling issue and one on which I believe we have made important progress in this bill.

Specifically, this legislation eliminates the dual mandate and reiterates safety being the highest priority for the FAA. This legislation facilitates the flow to the FAA of operational and safety information, and the FAA may withhold voluntarily submitted information.

It authorizes the FAA to establish standards for the certification of small airports so as to improve safety at such airports.

It mandates that the NTSB, the National Transportation Safety Board, and the FAA must work together to improve the system for accident and safety data classification so as to make it more accessible and consumer friendly and then publish such accident data.

It requires pilot record sharing. It requires the sharing of a pilot's employment records between former and prospective employers to assure marginally qualified pilots are not hired.

It also discourages attempts by child pilots to set records or perform other aeronautical feats.

Also, Mr. President, it requires that the Federal Aviation Agency and the National Transportation Safety Board work together on this terrible issue, very difficult issue of notification of the next of kin. Every time there is one of these crashes, there is a problem as far as the notification of the loved ones, and it was an obligation of ours to work this out. There have been a

number of hearings following these tragedies, and we hear the compelling stories of the lack of notification, wrongful notification, and lack of sensitivity in the care and services provided to the family members. We have to clean this up and we do that in this bill.

As far as aviation security is concerned, Mr. President, it requires the FAA to study and to report to Congress on whether some security responsibilities should be transferred from the airlines to airports and/or the Federal Government. I do not think there is any of us today who believe that security at airports is at the level we want it to be, and a very recent inspector general report clearly indicated that. We have to do a much better job.

The FAA in this legislation is directed to certify companies providing airport security screening.

It bolsters weapons and explosive detection technology by encouraging research and development. As you know, Mr. President, the only available technology today is very expensive, very large, very slow and sometimes not completely mission fulfilling. I believe that there is the technological capability out there in America and the world to develop the kind of weapons and explosive detection technology that we can put in place in our airports in a short period of time.

This legislation requires that background and criminal history records checks be conducted on airport security screeners and their supervisors.

It requires the FAA to facilitate interim deployment of currently available explosive detection equipment.

It requires the FAA to audit the effectiveness of criminal history records checks.

It encourages the FAA to assist in the development of passenger profiling systems.

It permits the Airport Improvement Program and Passenger Facility Charge funds to be used for aviation safety and security projects at airports.

The FAA and FBI must develop an aviation security liaison agreement.

The FAA and FBI must carry out joint threat assessments of high-risk airports.

It requires the periodic assessment of airport and air carrier security systems.

And it requires a report to Congress on recommendations to enhance and supplement screening of air cargo.

Mr. President, there is more aviation safety and security benefits in this bill which I will cover later this morning. There is a requirement to enhance airline and air traveler safety by requiring airlines to share employment and performance records before hiring new pilots, as I mentioned before.

But most important, it provides for the thorough reform of the FAA, including the long-term funding reform of the FAA to secure the resources to ensure we continue to have the safest,

most efficient air transportation system in the world.

For a long period of time we worked on a bipartisan basis with the Secretary of Transportation, the Director and Deputy Director of the FAA, in trying to come up with ways to fund our national aviation system and its safety and security-related aspects. Right now the national air transportation system is primarily funded by the airline ticket tax, which accounts for more than \$6 billion of the \$9 billion that is necessary to fund the FAA on an annual basis. Unfortunately, the discretionary budget caps will simply not provide the budget flexibility to continue to fund today's service levels from the FAA, let alone the funding necessary over the next several years to meet the continued growth anticipated in virtually every facet of aviation. We must be able to fund the FAA and the national air transportation system in America through user fees. Those that use the system should be required to pay their fair share to provide a stable source of funding for the FAA's critical safety and operational activities and not the general taxpayer.

This bill sets up a 21-member commission which will make recommendations which will be required to be acted on in a relatively short period of time so we can come up with this very important, stable, and critical funding of the national air transportation system.

Again, I cannot help but mention one other aspect of this problem that is a clear dereliction of duty on the part of the Congress, and that is, on December 31, 1996, the airline ticket tax is going to lapse again. At the present time the airline ticket tax, with the addition of general taxpayer dollars, is the major method of funding aviation in America. Congress let it lapse last Christmas and it lapsed for a long period of time—until just a few months ago. During that time, the aviation trust fund was depleted by \$5 billion. I think it will be a terrible thing, a terrible thing, to let this Congress go out of session—which we probably will—without reinstating the ticket tax, which is going to expire on December 31, 1996.

I would like to tell my colleagues and I know my friend, Senator FORD of Kentucky, feels as strongly as I do, as does the chairman and ranking member of the committee, Senator PRESSLER and Senator HOLLINGS. We are going to address this issue early in the 105th Congress in whatever way we can. We cannot allow this fund to be depleted so we are unable to fund these much-needed aviation safety, airport security, and air traffic control modernization projects in America.

I am not going to point at specific committees or specific Members of the Senate or the House. But to allow the airline ticket tax to lapse is a violation of our fundamental obligations to the American people, and that is to ensure their safety and security. We cannot do that without adequate and stable long-

term funding. So I want to again enter a plea, especially to the Finance Committee, that we address this issue as soon as possible early in the next Congress.

I reserve the remainder of my time.

The PRESIDENT pro tempore. The distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 1 minute. Then I am going to yield 5 minutes to the Senator from Illinois.

Mr. President, as we are gathered here this morning, I want to reiterate our position with regard to the FAA bill. Those of us who oppose the addition of the special interest provision are in support of the FAA conference report otherwise. We had indicated we were quite glad to put that whole conference report on the continuing resolution. We could have done that on Monday and we would not be here today.

We would have taken an independent bill, a freestanding bill without this provision, and passed it either Monday when the House was in or any other day in the belief the House would accept it.

So we do not yield to any of our colleagues in our interest in moving ahead with the FAA conference report. But what we find unconscionable is the inclusion of this special interest provision which is going to disadvantaged working men and women who are trying to play by the rules of the game and whose interests would effectively be compromised by this particular provision.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. KENNEDY. I yield 5 minutes to the Senator from Illinois.

The PRESIDENT pro tempore. The distinguished Senator from Illinois.

Mr. SIMON. Mr. President, as Senator KENNEDY said, everyone is for the FAA bill. The question is this amendment that was tacked on that was neither in the House version nor in the Senate version. Let us just go over what it does again. It benefits one company—one company. It interferes in litigation. The Presiding Officer, Senator THURMOND, for whom I have come to have great respect, has seen in the Judiciary Committee that when we interfere in litigation, with rare exceptions we make a mistake in the U.S. Congress.

Third, it interferes in a labor-management negotiation that is going on. We should not be taking one side or another. I do not know who is right. All I know is Congress should not be deciding this.

We interfere also in a competitive situation. How does this affect UPS? How does it affect the Postal Service? How does it affect other competitors? No one knows. But people can sure guess.

Then, finally, the process is wrong. We have not had a hearing on this. The committee of jurisdiction has not had a

hearing on this very complicated and, obviously, controversial labor-management issue. It has been rejected. Just a few weeks ago the Appropriations Committee rejected this very amendment. Yet we see it sliding in on a conference committee here.

What it does, in essence, is it says Federal Express and all its employees are to fall under regulations that govern airlines. It so happens Federal Express has about 35,000 truck drivers who, under this legislation now, are going to be considered like airline pilots as far as labor-management relations. That is not the way to govern.

It may be this is very meritorious. Let us have a hearing. Let us go through the normal process. But it should not be stuck on in a conference when neither the House nor the Senate had it, when this has been rejected several times by both the House and the Senate.

Mr. BREAUX. Will the distinguished Senator yield for a question?

Mr. SIMON. I will let the Senator from Louisiana get his own time here.

Mr. BREAUX. I just was going to ask a question of the Senator.

Mr. SIMON. You may ask a very brief question.

Mr. BREAUX. Isn't the current situation that Federal Express in its total package is considered under the Railway Labor Act right now? Is that not the current situation? Is it the current situation that Federal Express is considered to come under the Railway Labor Act now?

Mr. SIMON. It is a matter of controversy right now before the National Labor Relations Board, as I understand it. What we are doing is we are moving in and making a decision. That is not the way we ought to operate here.

We ought to have a hearing. We ought to proceed in the normal way. This is obviously a matter of controversy. This is not how you solve controversies and how you make good legislation.

I yield the remainder of my time back to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDENT pro tempore. The Senator from Massachusetts has 22 minutes.

Mr. KENNEDY. I yield myself 13 minutes.

Mr. President, regardless of the outcome of today's vote, this week of debate has already accomplished something very important for the American people. It has placed a spotlight on a cynical Republican attempt to help one of their corporate friends at the expense of that company's employees.

They had hoped to carry out their scheme in the shadows, so that no one would recognize the injustice that was being done. That part of the Republican plan has already failed. The entire country now knows that the Republican Congress is ending as it began, with an assault on working men

and women and their families. Key Republicans in Congress have conspired with Federal Express to amend the Railway Labor Act in order to deprive Federal Express workers of their right to form a local union. The company is bent on obtaining this unfair advantage before the Republican Congress adjourns, because they know that a Democratic Congress will never approve this special interest provision.

Truck drivers employed by Federal Express in Pennsylvania began organizing a union several years ago, because they had not received a raise in more than 7 years. They were also worried about worker safety and about losing their jobs to subcontractors and seeing full-time jobs cut back to part time. It is unconscionable for the Senate to intervene on the side of Federal Express management to deny those workers their basic rights under the National Labor Relations Act.

Mr. President, this is not a technical correction. Rider proponents falsely claim that this is a technical correction to an inadvertent action taken in the Interstate Commerce Commission Termination Act of 1995. This is substantive. The Congressional Research Service analyzed the ICC Termination Act and found "The deletion of express companies from section 1 of the RLA does not appear to have been inadvertent or mistaken." That is an independent judgment made by the Congressional Research Service after reviewing the history, reviewing the conference itself and evaluating the various documents.

Second, the administration does not consider this to be technical. Let me, again, read the letter from the Office of Management and Budget, representing the position of the administration and the President:

The administration believes that the provision is not a technical amendment in transportation law. In fact, it could result in a significant shift of the relationship between certain workers and management.

They recognize that it is not a technical correction.

The Democratic members of the House Aviation Subcommittee have also recognized that this is not a technical correction. Read the debate over in the House of Representatives and you will see it. Every Democratic member of the Aviation Subcommittee points out that this is not a technical correction, and the Parliamentarian of the House of Representatives made a judgment that it was not a technical correction and required the House of Representatives to have an independent vote on this measure.

Mr. President, the history of the FedEx rider in the House and Senate is out there for every Member of this body to understand. They never had a hearing on a rider in the House Aviation Subcommittee or the full Transportation and Infrastructure Committee; never had a hearing on the rider in the Senate Aviation Subcommittee or full Committee on Commerce, Science and Transportation.

House Republicans tried to attach this to the fiscal 1996 omnibus appropriations bill and failed. House Republicans tried to attach it to the National Transportation Safety Board Authorization Act, and it failed. House Republicans tried to attach it to the Railroad Unemployment Act Amendments, and it failed.

Senate Republicans supported attaching it to the Labor-HHS Appropriations bill in the Appropriations Committee, and it failed. The rider was not on the FAA Reauthorization Act when it passed the House, and it wasn't when it passed the Senate. The rider was added in the reauthorization conference committee just before the end of this conference.

Mr. President, now that we know that it is not technical, now that we know that this has been pursued constantly by the Republican leadership in the House of Representatives, supported overwhelmingly by the Republican Members in the House of Representatives, with opposition by an overwhelming majority of Democrats in the House, we will see a similar reflection of that here later on this morning.

Mr. President, this issue is in litigation. The Federal Express truck drivers started organizing in 1991. In December of 1991, the Federal Express truck drivers filed a petition with the NLRB for an election to decide whether a majority of them desire representation. This matter is currently in litigation. The number of the case is 4-RC-17968.

There are Members who say it is not in litigation. It is in litigation, and it is before the NLRB and in active consideration at this time. What we are doing by this action is wiping out the opportunity for that issue to be adjudicated by the NLRB. We are stacking the deck for one side. We are refusing to let the National Labor Relations Board make a judgment about the truck drivers.

The fact of the matter is, UPS has a situation almost exactly the same as Federal Express: Those workers who are associated with the airlines are considered employees of air carriers, and thus covered by the Railway Labor Act, while those who drive the trucks are under the National Labor Relations Act.

Federal Express has been declared an air carrier, and they should be with regard to their air operation. The question now is, what about the truck drivers who drive for Federal Express? What about Federal Express's proposed expansion, such that the principal part of their operation is going to be in trucks rather than in the air? That is a legitimate issue. It is currently before the National Labor Relations Board.

Supporters of this rider are saying that those grievances, those rights, those interests of working men and women are going to be vitiated because of the power of Federal Express, one single company. We are legislating for one single company, make no mistake about it.

Mr. President, why do I call this Federal Express amendment a Republican ploy? Let me show you the evidence, and it is overwhelming. In the House, the key advocates of this amendment were Members of the Republican leadership, and each and every time it was offered in the House, it was offered on behalf of the Republican leadership. They voted in the House and closely followed party lines: of the 218 Members who voted for it, 199 were Republicans. 198 Members of Congress opposed it; 168 of those voting no were Democrats.

On the cloture motion that we will be voting on shortly, nearly all Republicans will vote to keep the amendment in the bill, and a solid majority of Democrats will vote against cloture in order to remove the offensive Federal Express provision.

This antiworker amendment is clearly a Republican ploy for another reason. It is consistent with what they have done throughout this session, whether it has been to eliminate the Davis-Bacon Act or to gut other worker protection laws. The average construction worker—may we have order, Mr. President?

The PRESIDENT pro tempore. The Senate will be in order.

Mr. KENNEDY. Mr. President, we have seen the Republican leadership try to compromise the incomes of construction workers, the second most dangerous industry in the United States, with five times more accidents than any other group of workers in this country. The average income of a construction worker is \$27,500 a year. Yet the Republicans made an effort time after time after time here in the Senate of the United States and in the House of Representatives to undermine their income.

There was opposition to the increase in the minimum wage. The story is there and has been written. Republicans fought it every single step of the way, although hard-working families who are at the bottom rung of the economic ladder, who are our teachers' aides, who work in nursing homes as health care aides, who clean buildings for the American free enterprise system—these are hard-working men and women who have families, and we believe that hard work ought to be rewarded and that we should not deny those hard-working Americans a decent income. The Republicans oppose that.

Whether it was on Davis-Bacon, the increase in the minimum wage, or the earned-income tax credit, which benefits workers who earn less than \$30,000, on each and every one of those issues involving workers' rights, the Republican leadership in the House and the Senate fought us tooth and nail. They fought us tooth and nail at the beginning of the Congress, and the last act of this Congress will be to undermine the legitimate rights of working men and women who are only trying to play by the rules under the National Labor Relations Act.

The Federal Express workers may be able to persuade their coworkers to support organizing or they may not, but they shouldn't have the rug pulled out from under them as Republicans have tried to do to other workers over the period of this Congress.

Mr. President, I reserve the remainder of my time.

Mr. McCAIN addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Arizona.

Mr. McCAIN. Mr. President, I yield 4 minutes to the Senator from Texas, Senator HUTCHISON.

The PRESIDENT pro tempore. The distinguished Senator from Texas is recognized.

Mrs. HUTCHISON. Thank you, Mr. President.

Mr. President, if someone is watching this debate today, they might think we are arguing about a labor bill. Mr. President, we are not arguing about a labor bill. Whether Federal Express can have one union or six unions is not the purpose of this bill, nor should it be the focus of this debate, nor should it have held up this Senate for the last 4 days.

Because the issue here is whether we are going to reauthorize the FAA and give them the tools they need to keep our airlines and our airports safe. That is the issue. That is the importance of sending this bill to the President. Because if we get bottled up in other extraneous issues and procedures, Mr. President, what we are going to lose is the ability for the FAA to immediately deploy certification of the detection equipment that is necessary to protect air traffic passengers, the protection against terrorist bombs. That is what we are talking about today.

The detection equipment we have today was put in place when we had hijacking as a problem in this country. And since that equipment has been put in place, we have not had hijackings of airlines in America. But that is not the same type of equipment you need to detect the sophisticated bombs that have been able to be put in buildings and airplanes around the world, or subway systems. So what we are trying to do is protect the traveling public.

We are seeing smokescreens here about minute labor issues, and we are seeing procedural measures taken against a very important big-picture bill that will give the FAA the tools it needs. It will allow the FBI and the FAA to collaborate in every high-risk airport city. We need the FBI to work with the FAA because they have unique capabilities that are not there in the FAA. So we need that to happen. It can start today. Baggage match, something that is done for foreign travel, will now be looked at to see if we can do it domestically, so that if a passenger gets on a plane, we will know that that passenger is matched to bags in the compartment beneath, and we will not have bags going on a plane without the passenger that checked that bag in.

We need to be able to allow the passenger facility charges and the fees

that go on the airline tickets to be used for antiterrorism and safety measures. That will be authorized in this bill.

Mr. President, we are not looking at deciding in Congress and spending 4 days of Congress' time to determine whether FedEx is going to have one union or six. Our purpose here today is to pass a bill that protects every American and every visitor to our country who is traveling in airports and on airplanes with the safety they deserve. We can do it if we will keep our eye on the ball and do what is responsible for the U.S. Senate. It would be irresponsible for us to allow some minor disagreement on a labor matter that does not have to be decided by Congress to, in fact, hold up a bill that will provide safety for flying passengers in America.

Thank you, Mr. President.

Mr. FEINGOLD addressed the Chair.

Mr. KENNEDY. Mr. President, 5 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, thank you.

There has been some confusion in this body about whether this is a big issue or little issue, technical issue or substantive issue. Well, I think the argument that this is somehow just a technical debate has been pretty well shredded by the reality of what has happened this week.

Let me just quickly read again from the letter from the Office of the President, the administration, from Franklin Raines, of the Office of Management and Budget, which says:

The administration believes that the provision is not a "technical amendment" to transportation labor law. In fact, it could result in a significant shift of the relationship between certain workers and management. We hope Congress will not jeopardize aviation safety, security, and investment initiatives as it comes to closure on this issue.

Mr. President, the Senator from Texas just again tried the ploy of saying this is a minor issue. She said, a "minute" labor issue. Well, does anyone believe, after the almost herculean effort to keep this provision in, that this is a minor issue? This is a major, major issue to one very powerful corporation in this country.

Let us focus again on what this intense major debate is about. It is about whether one powerful corporation is going to be able to get its way in the closing hours of this Congress and push through a special interest provision aimed at only one thing—it is aimed at only one thing: protecting this powerful company from its workers trying to form a union.

Mr. President, this apparently is not the only time that this corporation, Federal Express, has used this type of procedure to benefit its own interests. Let me say here, I do not think Federal Express is a bad corporation. Obviously, it provides tremendously impor-

tant services in our economy, as do other services, such as UPS. But you cannot ignore the record.

Last night, I and other Members of the Senate received a letter from Public Citizen, a nonpartisan public interest group. They express frequently a direct interest in the way this body does business. This is what Public Citizen wrote about the effort to push FedEx's special interest provision through in the FAA conference report. They said:

This is not the first time or the second time that Federal Express has used last-minute tactics to gain passage of controversial amendments to law. In the 1990 aviation authorization bill, with no hearings, exemption from local noise requirements for aircraft were pushed through. In the 1994 aviation authorization bill, Federal Express was involved in getting preemption of State regulation of truck prices, routes and services through the Congress with no hearings in the Senate where the amendment was added to an unrelated bill and only a last-minute hearing in the House during the conference negotiations. State officials were outraged at the way this was maneuvered. In 1995, motor carrier safety standards were eliminated for Federal Express type trucks in the National Highway System legislation. In 1996, the anti-labor provision Federal Express seeks to get enacted in the aviation authority conference report is [just] the most recent in a long string of such maneuvers.

These issues [they say] are major public policies that deserve appropriate hearings and evaluation. The public is already angry about the way wealthy business interests dominate the congressional decision-making process. This history of Federal Express sponsored legislation, combined with the millions of dollars it spends each year lobbying, campaign contributions, and providing air transportation services to key members of Congress, undermines our democratic system. Federal Express has a long history of opposition to government regulations. But when they want to block their employees' efforts to form a union and gain an unfair advantage over their competitors, the sky's the limit on money and political muscle they will use to get their own customized regulatory protection made into law.

Those are words by Joan Claybrook from Public Citizen. And this is not an isolated, innocent, or minor matter to the corporation pushing it.

Mr. President, let me repeat one phrase from this letter. This kind of activity "undermines our democratic system."

However anyone feels about the underlying merits of the issue, the process which is taking place is repugnant. As the distinguished Senator from Illinois, [Mr. SIMON] has said, if this corporation succeeds, this will be a textbook example for years to come of how special interests have perverted the democratic process. I hope we will do the right thing and just say no to this.

Mr. President, let me simply say, as a conclusion, I have heard speakers all week, and especially this morning, say that we have to pass this bill because of airline safety; we have to pass this bill because of the airline tax extension; we have to pass this bill because of airport aides. And I agree. We have to pass this bill. How can all of those things, how can all of those things be

less important than this one provision for Federal Express?

It seems inconceivable to me that those on the other side, given their commitment to those issues and those concerns, would not drop this provision at this point and let the bill be passed today and be signed by the President.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. McCAIN. Mr. President, I yield 6 minutes to the Senator from South Carolina, Senator HOLLINGS.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I'll come right to the point, it is not a question of one company succeeds. It is the question of one Congress can succeed. Congress made the error, not Federal Express. Federal Express had nothing to do with the dropping of the language when we passed the ICC termination bill last December. We made that mistake. We are on trial. And this distortion: coming in here and flyblowing a wonderful company—"antiworker," "a Republican attack," "slash Medicare," "slash education"—none of that has anything to do with it.

Let us assume that Federal Express was antiworker. That would have nothing to do with this particular issue. What we did here with my amendment—and incidentally, "Republican," I have been a Democrat since 1948. I think you were just learning to drive at that time. So you can't define who is a Democrat, we will see how the Democrats vote.

At that particular time we came in here and we said, "Wait a minute. When we left, we had a hearing. Been having a hearing quite regularly all over." Who is to be heard? Not the merits of workers' rights, the merits of the truth. Find somebody, some Senator, some Congressman. I have challenged him now for 3 days during this filibuster, find me anybody who says otherwise than that it was an honest mistake. It is our duty to try to correct it.

Every time we try, we go down the list, filibuster, filibuster, filibuster. Yes, you have the political power. You have held the whole Congress up for 3 days. Every time we try to get it anywhere, you are going to filibuster, filibuster, filibuster, trying to take advantage of an honest mistake.

We have heard from all the Congressmen, Republican and Democrat, all the Senators, Republican and Democrat, and we all agree that it was a mistake. You cannot find anybody who says it was not a mistake. To come in here trying to correct an honest mistake, and they flyblow a company with antiworker/Medicare/Medicaid and all that extraneous garbage—they know no shame. We are not going to filibuster. We are ready to vote. We are ready to vote and try to get a political division here today on what this Senator has been trying to clean up.

We tried to get the other side to look at the intent. I am looking at the conference report by Mr. SHUSTER, the ICC

Termination Act, last December 15. "The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act."

Now, that is exactly what was intended. That is the law. The Railway Labor Act is just exactly what truck drivers and pilots and Federal Express have been under since 1973 when they started business.

I felt like Archimedes, who said, "Eureka, I found it" when the Senator from Massachusetts cited 4-RC-17698. I ask unanimous consent to have printed in the RECORD excerpts of the final Board decision.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL MEDIATION BOARD,
Washington, DC, November 22, 1995.

Re NMB File No. CJ-6463 (NLRB Case 4-RC-1698) Federal Express Corporation.

JEFFREY D. WEDEKIND,
Acting Solicitor, National Labor Relations Board, Washington, DC.

DEAR MR. WEDEKIND: This responds to your request dated July 17, 1995, for the National Mediation Board's (Board's) opinion as to whether Federal Express Corporation (Federal Express or FedEx) and certain of its employees is subject to the Railway Labor Act, as amended, 45 U.S.C. §151, et seq. The Board's opinion, based upon the materials provided by your office and the Board's investigation is that Federal Express and all of its employees are subject to the Railway Labor Act.

I.

This case arose as the result of a representation petition filed with the National Labor Relations Board (NLRB) by the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW). The UAW initially sought to represent a unit of Federal Express's employees including "all regular full and part-time hourly ground service employees in the Liberty District."¹ On December 9, 1991, the UAW amended its petition to exclude "ramp agents, ramp agent/feeders, handlers, senior handlers, heavyweight handlers, senior heavy weight handlers, checker sorters, senior checker/sorters, shuttle drivers, shuttle driver/handlers, office clerical employees, engineers, guards and supervisors as defined in the Act [NLRA]." The titles remaining in the UAW's petition include: service agents, senior service agents, international document agents, couriers, courier/handlers, tractor-trailer drivers, dispatchers, courier/non-drivers and operations agents.

The UAW argues that the employees it seeks to represent in Federal Express' Liberty District are employees subject to the National Labor Relations Act (NLRA). The UAW acknowledges that pilots and aircraft mechanics employed by Federal Express are subject to the Railway Labor Act. However, the UAW contends that the two-part test traditionally employed by the Board to determine whether an entity is a carrier should be applied to the unit of employees it seeks to represent in Federal Express' Liberty District. According to the UAW, the employees it seeks to represent in the Liberty District do not perform airline work and are not "integral to Federal Express' air transportation functions."

Federal Express asserts that it is a carrier subject to the Railway Labor Act and, as a

carrier, all of its employees are subject to the Railway Labor Act. Federal Express notes that the Board and the courts have repeatedly found it to be a carrier subject to the Railway Labor Act. According to Federal Express, the job classifications remaining in the petition are integrally related to Federal Express' air transportation activities. Federal Express contends that it is a "unified operation with fully integrated air and ground services." According to Federal Express, allowing some employees to be covered by the National Labor Relations Act and others to be subject to the Railway Labor Act would result in employees being covered by different labor relations statutes as they are promoted up the career ladder.

Federal Express contends that the two-part test suggested by the UAW is not appropriate in this case. According to Federal Express, the Board uses the two part test to determine whether a company is a carrier, not to determine whether specific employees of a carrier perform duties that are covered by the Railway Labor Act. Federal Express cautions that adoption of the test suggested by the UAW "would drastically alter labor relations at every airline in the country." According to Federal Express, under the UAW's test, most categories of employees except pilots, flight attendants and aircraft mechanics would be subject to the NLRA.

The Board repeatedly has exercised jurisdiction over Federal Express. *Federal Express Corp.*, 22 NMB 279 (1995); *Federal Express Corp.*, 22 NMB 257 (1995); *Federal Express Corp.*, 22 NMB 215 (1995); *Federal Express Corp.*, 20 NMB 404 (1993); *Federal Express Corp.*, 20 NMB 394 (1993); *Federal Express Corp.*, 20 NMB 360 (1993); *Federal Express Corp.*, 20 NMB 126 (1993); *Federal Express Corp.*, 20 NMB 91 (1992); *Federal Express Corp.*, 20 NMB 7 (1992); *Federal Express Corp.*, 19 NMB 297 (1992); *Federal Express Corp.*, 17 NMB 24 (1989); *Federal Express/Flying Tiger*, 16 NMB 433 (1989); *Federal Express*, 6 NMB 442 (1978). There is no dispute that Federal Express is a carrier subject to the Railway Labor Act with respect to certain Federal Express employees (i.e. Pilots; Flight Attendants,³ Global Operation Control Specialists; and Mechanics and Related Employees; Stock Clerks; and Fleet Service Employees). However, the Board has not addressed the issue raised by the UAW: whether or not certain Federal Express employees are subject to the Railway Labor Act.

The NLRB initially requested the NMB's opinion as to whether FedEx is subject to the RLA on July 1, 1992. However, on that date, the NLRB granted the UAW's request to reopen the record and the file was returned to the NLRB. The NLRB renewed its request on July 17, 1995 and the NMB received the record on July 31, 1995. The NMB received additional evidence and argument from FedEx and the UAW on August 17, 1995 and September 5, 1995.

II.

Federal Express, a Delaware corporation, is an air express delivery service which provides worldwide express package delivery. According to Chairman of the Board and Chief Executive Officer Frederick Smith, Federal Express flies the sixth largest jet aircraft fleet in the world.

Federal Express' jet aircraft fleet currently includes Boeing 727-100's, Boeing 727-200's, Boeing 737's, Boeing 747-100's, Boeing 747-200's, DC 10-10's, DC 10-30's and McDonnell-Douglas MD-11's. Federal Express also operates approximately 250 feeder aircraft, including Cessna 208's and Fokker 27's. It has over 50 jet aircraft on order.

Federal Express currently serves the United States and several countries in the Middle East, Europe, South America and Asia, in-

cluding Japan, Saudi Arabia and Russia. According to Managing Director of Operations Research Joseph Hinson, Federal Express does not transport freight that moves exclusively by ground to or from the United States.

* * * * *

III. DISCUSSION

The National Mediation Board has exercised jurisdiction over Federal Express as a common carrier by air in numerous published determinations. *Federal Express Corp.*, 22 NMB 279 (1995); *Federal Express Corp.*, 22 NMB 257 (1995); *Federal Express Corp.*, 22 NMB 215 (1995); *Federal Express Corp.*, 20 NMB 666 (1993); *Federal Express Corp.*, 20 NMB 404 (1993); *Federal Express Corp.*, 20 NMB 394 (1993); *Federal Express Corp.*, 20 NMB 360 (1993); *Federal Express Corp.*, 20 NMB 126 (1993); *Federal Express Corp.*, 20 NMB 91 (1992); *Federal Express Corp.*, 20 NMB 7 (1992); *Federal Express Corp.*, 19 NMB 297 (1992); *Federal Express Corp.*, 17 NMB 24 (1989); *Federal Express/Flying Tiger* 16 NMB 433 (1989); *Federal Express*, 6 NMB 442 (1978). In eight of those determinations, the Board exercised jurisdiction over ground service employees of Federal Express. The substantial record developed in this proceeding provides no clear and convincing evidence to support a different result.

A.

Section 181, which extends the Railway Labor Act's coverage to air carriers, provides:

"All of the provisions of subchapter 1 of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service, 45 U.S.C. §181. (Emphasis added.)"

Federal Express is an air express delivery service which holds itself out for hire to transport packages, both domestically and internationally. Federal Express and the UAW agree that Federal Express and its air operations employees, such as pilots and aircraft mechanics, are subject to the Railway Labor Act. The disagreement arises over whether Federal Express' remaining employees are subject to the Railway Labor Act. The UAW argues that the employees it seeks to represent do not perform airline work and are not "integral to Federal Express' air transportation functions." Federal Express asserts that all of the employees sought by the UAW are integrally related to its air express delivery service and are subject to the Railway Labor Act.

Since there is no dispute over whether Federal Express is a common carrier by air, the Board focuses on whether the employees sought by the UAW's petition before the NLRB are subject to the Railway Labor Act. The Act's definition of an employee of an air carrier includes, "every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service". The Railway Labor Act does not limit its coverage to air carrier employees who fly or maintain aircraft. Rather, its coverage extends to virtually all employees engaged in performing a service for the carrier so that the carrier may transport passengers or freight.⁹

In *REA Express, Inc.*, 4 NMB 253, 269 (1965), the Board found "over-the-road" drivers employed by REA subject to the Act stating:

¹Footnotes at end of letter.

"It has been the Board's consistent position that the fact of employment by a 'carrier' under the Act is determinative of the status of *all* that carrier's employees as subject to the Act. The effort to carve out or to separate the so-called over-the-road drivers would be contrary to and do violence to a long line of decisions by this Board which would embrace the policy of refraining from setting up a multiplicity of crafts or classes. As stated above, there is no question that this particular group are *employees* of the carrier (Emphasis in original)."

The limit on Section 181's coverage is that the carrier must have "continuing authority to supervise and direct the manner of rendition of * * * [an employee's] service. The couriers, tractor-trailer drivers, operations agents and other employees sought by the UAW are employed by Federal Express directly. As the record amply demonstrates, these employees, as part of Federal Express' air express delivery system, are supervised by Federal Express employees. The Board need not look further to find that all of Federal Express' employees are subject to the Railway Labor Act.

B.

In the Board's judgment, the analysis of the jurisdictional question could end here. However, Federal Express and the UAW have directed substantial portions of their arguments to the "integrally related" test. Specifically, the participants discuss whether the employees the UAW seeks to represent are "integrally related" to Federal Express' air carrier functions. The Board does not find consideration of the "integrally related" test necessary to resolve the jurisdictional issue, however, review of the relevance of this test is appropriate.

The UAW argues that the employees it seeks to represent are not integrally related to Federal Express' air carrier functions and therefore are not subject to the Railway Labor Act. Federal Express asserts that the NLRB and federal courts have found its trucking operations integrally related to its air operations.¹⁰

However, the Board does not apply the "integrally related" test to the Federal Express employees sought by the UAW. Where, as here, the company at issue is a common carrier by air, the Act's jurisdiction does not depend upon whether there is an integral relationship between its air carrier activities and the functions performed by the carrier's employees in question. The Board need not consider the relationship between the work performed by employees of a common carrier and the air carrier's mission, because section 181 encompasses "every pilot or other person who performs *any* work as an employee or subordinate official of such carrier or carriers. . . ." (Emphasis added).

Even if the Board were to assume arguing that the "integrally related" test applies to the facts in this case, the Board would hold in concurrence with the recent decision in *Federal Express Corp. v. California PUC*, *supra*, at note 10, that the "trucking operations of Federal Express are integral to its operations as an air carrier." 936 F.2d at 1078. Employees working in the other positions sought by the UAW perform functions equally crucial to Federal Express' mission as an integrated air express delivery service. As the record demonstrates, without the functions performed by the employees at issue, Federal Express could not provide the on-time express delivery required of an air express delivery service.

The Board has employed the "integrally related" test when it has examined whether to apply the trucking exemption under §151 of the Act. *O/O Truck Sales*, 21 NMB at 269; *Florida Express Carrier, Inc.*, 16 NMB 407

(1989). Specifically, the Board has applied the "integrally related" test when it has considered trucking operations conducted by a subsidiary of a carrier or a company in the same corporate family with a carrier. In *Florida Express, supra*, the Board found Florida Express, a trucking company which is a wholly-owned subsidiary of Florida East Coast Railroad, to be a carrier subject to the Railway Labor Act. In *O/O Truck Sales, supra*, the Board found O/O Truck Sales, a trucking and fueling company which is a wholly-owned subsidiary of CSXI (which is commonly owned with CSXT), to be a carrier subject to the Railway Labor Act. In contrast, Federal Express directly employs truck drivers, couriers and all other employees sought by the UAW's petition.

C.

The UAW argues that the Board should apply the two-part test used by the Board in other factual settings for determining whether an employer and its employees are subject to the Railway Labor Act. See, for example, *Miami Aircraft Support*, 21 NMB 78 (1993); *AMR Services, Corp.*, 18 NMB 348 (1991). The Board does not apply the two-part test where the company at issue is engaged in common carriage by air or rail. The Board applies the two-part test where the company in question is a separate corporate entity such as a subsidiary or a derivative carrier which provides a service for another carrier. In those situations where the Board applies the two-part test, it determines: 1) whether the company at issue is directly or indirectly owned or controlled by a common carrier or carriers; and 2) whether the functions it performs are traditionally performed by employees of air or rail carriers. Under this test, both elements must be satisfied for a company to be subject to the Railway Labor Act. Federal Express is an admitted carrier and the employees at issue are employed directly by Federal Express. Accordingly, the two-part test does not apply to this proceeding.

Even if the two-part test were applicable, the employees at issue here would be covered by the Railway Labor Act. Federal Express, as a common carrier, has direct control over the positions sought by the UAW. In addition, the Board has found that virtually all of the work performed by employees sought by the UAW's petition is work traditionally performed by employees in the airline industry. For example: couriers, *Air Cargo Transport, Inc.*, 15 NMB 202 (1988); *Crew Transit, Inc.*, 10 NMB 64 (1982); truck drivers; *Florida Express, Inc.*, 16 NMB 407 (1989); customer service agents; *Trans World International Airlines, Inc.*, 6 NMB 703 (1979).

CONCLUSION

Based upon the entire record in this case and for all of the reasons stated above, the Board is of the opinion that Federal Express Corporation and all of its employees sought by the UAW's petition are subject to the Railway Labor Act. This finding may be cited as *Federal Express Corporation*, 23 NMB 32 (1995). The documents forwarded with your letter will be returned separately.

By direction of the NATIONAL MEDIATION BOARD.

STEPHEN E. CRABLE,
Chief of Staff.

FOOTNOTES

¹The Liberty District includes portions of southeastern Pennsylvania, southern New Jersey and Delaware.

²The dispatchers at issue do not dispatch aircraft.

³FedEx no longer employs Flight Attendants.

* * * * *

⁹Two courts have held that certain employees of a carrier who perform work unrelated to the airline industry are not covered by the Railway Labor Act.

Pan American World Airways v. Carpenters, 324 F.2d 2487, 2488, 54 LRRM 2487, 2488 (9th Cir. 1963); *cert. denied*, 376 U.S. 964 (1964) (RLA does not apply to Pan Am's "housekeeping" services at the Atomic Energy Commission's Nuclear Research Development Station); and *Jackson v. Northwest Airlines, Inc.*, 185 F.2d 74, 77 (8th Cir. 1950) (RLA does not apply to Northwest's "modification center" where U.S. Army aircraft were reconfigured for military purposes). Work functions described in *Carpenters* as "substantially identical" to those before the Ninth Circuit were held by another court to be within the "compulsive" jurisdiction of the Railway Labor Act. *Biswanger v. Boyd*, 40 LRRM 2267 (D.D.C. 1957). The Board has not had the occasion to make a final determination regarding the appropriate application of this line of cases.

¹⁰*Federal Express Corporation v. California Public Utilities Commission*, 936 F.2d 1075, 1078 (9th Cir. 1991). *Chicago Truck Drivers v. NLRB*, 99 LRRM 2967 (N.D. Ill. 1978); aff'd. 599 F.2d 816, 101 LRRM 2624 (7th Cir. 1979).

Mr. HOLLINGS. This particular decision on page 2 covers every kind of driver you can think of—shuttle drivers, tractor-trailer drivers, dispatchers, courier nondrivers, courier drivers, and right on down, and I want to read to you in this limited time the final decision: "The Board is of the opinion that Federal Express Corporation and all of its employees sought by the UAW's petition are subject to the Railway Labor Act." Signed, Stephen E. Crable, the chief of staff, and as a unanimous decision by the other members.

That was filed on November 22, 1995, almost a year ago. This is the initiative to try to change it. The opponents are the ones trying to pull the rug out from under that decision because it was at the NLRB—they know and we all know in 50 years and 100 decisions the NLRB has never reversed a decision that was unanimous by the National Mediation Board.

To talk about litigation, for 5 years they had wonderful lawyers. The employees were there with all kinds of hearings and everything else, but they act like what we are trying to do is change the rules in the middle of the game. We are trying to correct a mistake.

Mr. President, there is no question in my mind this is an outstanding company. I have "The 100 Best Companies," and I could read it. But, simply stated, the Senator from Illinois is totally out of order with respect to this issue of the way to govern; one people, one Congress. We are the ones who made the mistake, not Federal Express. This is the way to try to correct it. We know we faced a filibuster at every particular turn you could possibly think of. We know this is partisan onslaught. We know this nonsense about working people and working families and slashing education.

Under the Railway Labor Act, you have every right and interest to organize, and in fact 65 percent of the workers under the Railway Labor Act are organized. Under the NLRA, the National Labor Relations Act, only 11 percent are organized. So they are wrong when they act like we are trying to change the rules. We are trying to get it back to exactly where the parties were. We are here now because they have the legal power to delay us for 3 days, intimidate and terrorize.

I thank the distinguished Chair.

Ms. MOSELEY-BRAUN. Mr. President, the bill before us today, H.R. 3539, the Federal Aviation Administration Authorization Act of 1996, is important legislation. It reauthorizes the Airport Improvement Program, providing needed grants to States and to airports for airway improvements, helps to improve safety and airport security, and makes a number of other important contributions to aviation.

In Illinois, O'Hare airport in Chicago could expect more than \$8.5 million next year. The Peoria airport could receive \$860,000. The airport in my State's capitol, Springfield, should receive more than \$660,000 if this legislation is enacted. The Southern Illinois Airport Authority, which operates an airport in Carbondale, expects more than \$1.5 million if this bill becomes law.

These grants are important to these and other airports in Illinois, and to airports across the country. They are what keep our airports functional and safe, and help maintain the air transportation infrastructure of our country that fuels our economy. Congress can hardly afford to adjourn without the passage of this legislation.

This bill even includes a provision that I worked very hard on, along with my colleague from Oregon, Senator WYDEN, that will allow communities to participate in the process of improving safety at their railroad crossings. Under a 1994 law, communities did not have this option. They were essentially directed to install extremely expensive safety devices, or their locally imposed whistle ban would be revoked. I am delighted that we were able to work out an amendment to this 1994 law that gives communities the flexibility they need to improve safety from the local level, and not just by Federal dictate.

It is therefore very disheartening that, despite the obvious merits of this legislation, despite the fact that this is a good, bipartisan bill, and despite the fact that it will allow communities to participate in the process of improving railroad crossing safety, I am forced to vote against this entire bill because of one sentence that was inserted by the conference committee and dubiously labeled a clarifying amendment.

Mr. President, supporters of this one sentence argue that it is, in fact, a technical correction—a clarifying amendment—and that it corrects a mistake that occurred when the Congress drafted and approved the legislation eliminating the Interstate Commerce Commission. I am not on the Commerce Committee, and I am not familiar enough with the details of the legislative language that was used when Congress eliminated the Interstate Commerce Commission to evaluate the merits of that claim.

I do know, however, that a technical correction does not provoke the kind of controversy that this one sentence amendment has provoked. Technical corrections are, by definition, non-

controversial. They change details of legislation or of law in ways that do not have substantive effects on policy.

Technical corrections do not result in my staff being bombarded by calls, faxes, and letters—which is exactly what has happened since this sentence was discovered in the FAA Authorization Conference Report.

Technical corrections do not prompt Senators to demand a full reading of the text of legislation. Yet the other night we listened while the bill clerks diligently read the text of almost the entire FAA bill for 3½ hours.

Technical corrections do not lead to filibusters, and Mr. President, I believe that is exactly where we are today, in the midst of a filibuster over a supposed clarifying amendment.

Technical corrections do not tie the Senate in knots and hold the 104th Congress in legislative session for several days after we were scheduled to adjourn sine die.

Technical corrections do not motivate press conferences, where workers express their fears that this provision will allow their company to trample their employment rights. Regardless of the substantive merit of this claim, or the claims of either side in this debate, a provision that is this controversial is not a technical correction.

Technical corrections do not require five or six attempts to be inserted into legislation. That is the history, however, of this sentence. Attempts were made to attach the provision to fiscal year 1996 appropriations legislation. Those attempts failed. An attempt was made to attach it to the NTSB reauthorization. That attempt failed. Members tried to attach it to the Railroad Unemployment Act amendments, and failed. An attempt was made to attach it to this year's Department of Transportation appropriations bill. That attempt failed. Another attempt was made to attach it to the fiscal year 1997 omnibus appropriations legislation. That attempt failed as well. This is not the legislative history of a technical correction.

This is the history of a highly contentious provision that many people believe will directly affect their lives. This is the legislative history of a provision that one company believes will give it the upper hand in negotiations with some of its employees. This is the legislative history of a provision that should be the subject of a hearing—but it has never been the subject of a hearing, in either the House or the Senate.

This provision has never even been debated in either the House or the Senate. It had never passed either body—and yet it found its way into the conference report on this important legislation reauthorizing the Federal Aviation Administration.

It is deeply unfortunate that this highly controversial sentence has been attached to such a valuable piece of legislation. It is deeply troubling that this provision has never been the subject of a hearing or been debated on its

merits. I deeply regret that I must oppose this legislation, because in the 11th-hour, a highly controversial provision has been attached to the bill under the guise of a clarifying amendment.

It is my hope that the Senate will be able to clean up this FAA bill and act on it immediately, before the end of the 104th Congress. This bill is too important for airports, our transportation infrastructure, and our economy, to let it be derailed by one controversial, 11th-hour amendment.

I urge all of my colleagues to vote against cloture, and support a clean alternative to this bill.

Mrs. BOXER. Mr. President, the pending conference report is a very important piece of legislation that means nearly \$4.6 billion in grants to airports across America the next 2 years and as much as \$75 million in entitlement and apportionment funding this year to airports in my State of California. It also authorizes funds over the next 2 years for operations, equipment, and research of the Federal Aviation Administration.

And, in a very important change in public policy, the bill ends the FAA's dual mandate of regulation of civil aviation and promotion of air travel. After this bill becomes law, the primary mission of the FAA will be to ensure the safety of the flying public.

The bill also contains important provisions that will increase security at the nation's airports and begin implementation of the Gore Commission recommendations to enhance security. This bill will immediately authorize heightened airport employee screening checks and criminal background checks and will facilitate sharing of information on pilot records.

As far as I know, not one single senator opposes this FAA authorization bill. So why are we still here?

We are still here because of an unusual parliamentary move in the conference on this bill last week, in which a provision that was not in either the Senate-passed bill or the House-passed bill was added in conference. That move is what triggered the fierce debate we have had on this issue since last Saturday.

Had that provision—relating to labor organizing rules for employees of Federal Express—not been added in conference, the Senate would most likely have adjourned several days ago.

Those who oppose the provision have exercised their rights to debate it at length. So today there will be a cloture vote on the conference report. And while I support the FAA reauthorization bill, I will vote against cloture on this conference report for two reasons:

First, I strongly object to the procedure that was used to add this provision to the bill in conference. I understand that under the rules, the conferees had the right to do what they did. However, what is legal is not necessarily prudent and constructive.

Given the facts—that the underlying bill is noncontroversial and a very important and necessary measure to pass

this year, that we are now at the end of this session of Congress, and that the new provision is quite controversial—adding such a provision in conference was bound to cause great turmoil. The conferees should have anticipated that it might endanger, or at the least, delay, passage of the underlying bill.

I wish that the conferees had acted with greater prudence in the interest of passing the important FAA Reauthorization legislation.

Second, I strongly oppose the labor provision itself. I am not an expert on labor law or transportation law. But after reviewing the law in question and the facts of this case, I conclude that the provision that was added is in fact a special exemption from applicable labor organizing rules for one company.

The provision's supporters argue that it is merely a "technical correction" to the Interstate Commerce Commission Termination Act of 1995. They claim that Federal Express is an "express carrier", not a "motor carrier" for purposes of labor organizing rules.

Why is this classification so important?

For the working people, the employees of Federal Express, it makes all the difference—between being able to organize like other employees of other companies across the country, on a local basis, or having to organize nationally, drastically reducing their ability to organize.

According to the Surface Transportation Board, the agency that assumed regulatory responsibilities of the ICC when it was terminated by Congress, in a June 14, 1996 letter from Chairman Linda Morgan, Federal Express was never considered to be an "express carrier" by the ICC.

Chairman Morgan states in that letter that Federal Express, has always been classified as a "motor carrier", not an "express carrier".

I believe the law and the facts are clear. Federal Express is and always has been a "motor carrier", subject to the labor organizing rules of the National Labor Relations Act, which allows employees to organize locally.

The provision that was inserted in the conference report is a special exemption from the labor organizing rules that apply to "motor carriers" such as Federal Express.

If the proponents of such an exemption wish to debate this proposal, they have every right to introduce legislation, hold hearings on it, and try to move it through Congress. But I believe that it is inappropriate and imprudent to attempt to push it through in a conference report in the last hours of this session.

Mr. LEVIN. Mr. President, the conference report now before us includes language which would restore the express carrier classification within the Railway Labor Act. This rider was not included in the FAA reauthorization bill as passed by either the House or the Senate. It was inserted into the

legislation in the conference. This is not the right way to legislate.

The language that was inserted by the Conference Committee into the FAA Reauthorization Act was deleted by the ICC Termination Act of 1995 (Public Law 104-88), a law passed by Congress. That deletion was included in the legislation when it was before the House and when it was before the Senate and was a part of the conference report as adopted by both Houses. It was not a modification made in the enrollment process, as has been suggested.

Concerns have been expressed that removal of this provision from the FAA reauthorization would greatly delay or kill this bill. That is not accurate. I support the FAA reauthorization. It is important for America and for Michigan. Virtually all Members of the Senate support this bill. There is a bill at the desk in the Senate which contains all of the language of the FAA reauthorization bill now before us with the single exception that it does not contain the provision causing so much controversy. The bill at the desk could be taken up and passed immediately. Regardless of the outcome of this cloture vote, the FAA reauthorization is virtually certain to be enacted before this Congress adjourns sine die, as it must be.

It is now amply clear that issue involved in the provision added in conference is a significant one. It can and should be the subject of hearings and full consideration by the appropriate committees of jurisdiction. It can and should be considered early in the 105th Congress.

For these reasons, I will oppose the motion to invoke cloture. I will vote in favor of final passage of the FAA reauthorization bill which I strongly support.

CLOTURE VOTE ON FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION

Mr. PELL. Mr. President, on the cloture vote, which was one of the last votes—if not the last—I cast in this body, I departed from my customary practice of supporting cloture. I have cast some 350 votes for cloture during my 36 years in the Senate, often at variance with my own party and usually irrespective of the issues, except in extraordinary circumstances.

The vote today was one of those extraordinary cases. At issue was a provision that would grant an exclusive benefit to the management of one corporate entity, at the expense of long established principles of fair labor relations. Moreover, the provision was added in circumstances that were at variance with customary legislative practice and rules. So, in my view, the only proper course was to oppose the cloture motion in order to allow for consideration of alternative action.

As I leave the Senate, I continue to believe that cloture is a valuable tool

to prevent legislative deadlock. I recognize that in its more recent usage, it has become simply a test of supermajority strength on the one hand, and on the other, a defensive weapon for a minority. But in overall terms, the Senate does need a mechanism that will assure reasonable continuity of action and I am proud of my record of cloture votes in that regard.

Mr. KENNEDY. How much time remains on each side?

The PRESIDING OFFICER. On the side of the Senator from Massachusetts, there is 7 minutes, and 8 minutes on the opposing side.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

Mr. President, we all know what is going on here. Make no mistake about it. We all know what is going on here. This provision that is being put in is not a technical amendment, meant to correct an inadvertent drafting change. The Congressional Research Service, the President, and the House Members who spoke on the floor explained that this is not a technical correction. Any fair evaluation of history would demonstrate that.

This rider is being added to the FAA bill for Federal Express, now and for the future. Federal Express is expanding its trucking operations. Where UPS is concerned, the air carriers are under the Railway Act and the truck drivers are under the National Labor Relations Act. Initially, all of UPS was under the National Labor Relations Act because they used only trucks. When they added aircraft, the decision was made that UPS air carriers would be considered under the Railway Labor Act.

That is the same situation we have here. Federal Express started out just as an air carrier and now it wants to go into trucks. This is a preemptive strike to make sure that workers at the local level will not be able to have the same kind of justification for National Labor Relations Act coverage as they have at UPS or other companies. They are trying to manipulate the whole process and fix the game.

The fact is, Mr. President, they are moving now, as their principal officers point out, they are now expanding. In the future, according to Federal Express, only overnight packages traveling more than 400 miles will be flown; all others will travel on the road. The question is, are all of these trucks on the road going to be considered air carriers? That is the logic. That is the logic that is being presented here.

All we are trying to say is, let the National Labor Relations Board decide whether Federal Express's truck drivers should be under the National Labor Relations Act. If the workers can convince other workers to form a union, let them vote for a union. If they cannot, then they will vote against a union. But why have a legislative interruption that strips them of their right to vote?

I come back to the fact, Mr. President, with all respect to my colleague