securities regulators, and elimination of outdated provisions. While the two bills had much in common, they also differed in certain respects. I commend Senator D'AMATO for his leadership of the Conference Committee, which has successfully bridged the differences between the two bills. Credit also goes to Senator GRAMM, Senator DODD, Senator BENNETT, and the House Conferees. The final product is a reasonable bill that deserves support.

This bill has two major themes: first, improvement of mutual fund regulation, and second, reallocation of responsibility between Federal and State securities regulators. It is appropriate to review the regulation of mutual funds, given the tremendous growth in this segment of the financial services industry. Mutual fund assets now equal insured bank deposits in size. The legislation contains a number of provisions supported by the SEC that are intended to allow mutual funds to operate more flexibly. These provisions include allowing the SEC to require mutual funds to provide shareholders with more current information and to maintain additional records that will be available to the SEC. Given the importance that mutual funds now have as an investment vehicle for millions of American households, it is crucial that information be available for mutual fund shareholders, and these provisions address that need. Both the Senate and House bills contained provisions creating a new exemption for funds open solely to sophisticated investors know as qualified purchasers. In the conference report, the House and Senate reached a compromise on the definition of qualified purchaser.

With respect to the role of the States in securities regulation, let me say that State securities regulators play a crucial role in policing our markets. Still, dual regulation need not mean duplicative regulation. The State regulators themselves have convened a task force to recommend how securities regulation can be made more efficient and effective by dividing authority between the Federal and State level. This conference report retains the provision of the Senate bill, that the SEC may preempt State laws only with respect to securities traded on the New York Stock Exchange, the American Stock Exchange, the NASDAQ, or other exchanges with substantially similar listing standards. The provision in the House bill would have preempted State law for securities not traded on an exchange. The conference report does contain preemption provisions from the House bill that were not present in the Senate bill, addressing secondary trading and regulation of brokerage firms.

The House and Senate compromised on the investment adviser provisions of the Senate bill. These would have removed investment advisory firms with $25 million or more under management from State regulation. The conference report provides that investment adviser representatives of such firms will continue to be licensed by the States in which they have places of business. The bill does not prohibit a State from requiring that investment adviser representatives doing business in that State designate a place of business in the State, such as an address for service of process, for purposes of maintaining State licensing authority over such individuals.

This is a moderate bill, and appropriately so, for the Federal and State laws governing our securities markets and the participants in those markets are not in need of wholesale changes. All the evidence suggests that the U.S. securities markets are functioning well. Companies continue to raise capital in the U.S. markets in record amounts. In addition to established businesses, new companies have been raising capital in record amounts. Individual investor confidence in the securities markets, measured by direct investment in securities and investment through mutual funds and pension plans, remains high. The U.S. securities markets retain their preeminent position in the world.

As passed by the conference, this bill strikes a reasonable balance. It should improve efficiency in the regulation of our securities markets without unduly limiting the authority of the State regulators, thereby exposing investors to sharp practices. The bill received support from Democratic and Republican House and Senate conferees, and was passed by the House unanimously 2 days ago. I am pleased that the House and Senate, Democrats and Republicans alike, were able to reach consensus on this legislation.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the conference report be considered as adopted, the motion to reconsider be laid upon the table, and statements relating to the report appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The conference report was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, and passed, the Senate will stand in recess until 2:15.

Thereupon, the Senate, at 12:35 p.m., recessed until 2:13 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SMITH).

FEDERAL AVIATION REAUTHORIZATION—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. Under the previous order, there will be 3 hours of debate on the conference report equally divided.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I designate myself as being in charge of the time for this side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, I will be brief.

We have decided and the reality is that we will pass this bill. Under the unanimous-consent agreement we entered into yesterday, we will have a cloture vote on Thursday, it is obvious that there are well in excess of 60 votes for passage of this conference report. Unfortunately, for reasons that are not clear to me, the other side has chosen to delay until Thursday that cloture vote. Then, of course, there is the possibility of utilizing time after that.

Meanwhile, funding for much-needed projects is being held up. Funding for projects that are vital, in the view of many States throughout the country, which I will be describing at a later time, is being held up. I do not know why it is being held up. I do not know if it is at the behest of the Teamsters Union. I do not know if it is at the behest of some other labor unions. I do not know why. This provision was inserted by the Senator of South Carolina in conference and voted and carried nearly unanimously. It was the correction of a technical error. Now, the Senator from Massachusetts has tied up the Senate, going through the arcane obstruction and delay such as having the bill read for nearly 5 hours last evening. All but two pages of it were required to be read last night. I do not know why that happened, but the fact is we should be taking up this conference report and passing it right now. There are plenty of Senators who are still in town. We could do it now.

Why the Senator from Massachusetts insists on delaying these programs and projects—do you know what these programs and projects are? These are jobs. These are real jobs for working men and women around America who want to move forward to take their jobs and are now precluded from doing so until this conference report is signed.

The fiscal year ended last night at midnight. We are now a little more than 14 hours into the new fiscal year and thousands, literally thousands of men and women who are not working on these critically needed airport projects. We are now 14 hours into the new fiscal year where much needed improvements having to do with aviation safety and airport security are not being accomplished. We will go into Thursday at minimum, which is 2 more days away. Then the conference report is signed. Then it has to go to the President's desk for signature. We could be talking about several days, all because the Senator from Massachusetts objects to us moving ahead and voting on the conference report which has the overwhelming support of the Members of the Senate. Let me be clear, the provision in question was proposed on his side of the aisle in the conference, which was a technical correction to a drafting error and we all

know it was a technical correction—that is all.

I say to the men and women who want to go to work, who want to help build their communities, who want to improve aviation safety and airport security, who want to do the things that this Congress and the American people want them to do, I am sorry; I am sorry this bill is being held up for no good reason. People can draw their own conclusions as to why this legislation is being held up.

There is no excuse for it. There is no reason for it. I know that people who are members of airport authorities, people who are involved in small businesses around the airports that supply the equipment and all the materials that go into the various airport construction and modernization projects around this country are asking the same question.

Now, perhaps the Senator from Massachusetts does not care about these small business people. Most of them are not union people. They do not give $35 million to defeat incumbent Republican Congressmen and Senators. No, they do not. They are just small business men and women around America who are trying to do their job and have been told these construction projects would move forward at the beginning of the fiscal year.

Now they are not. Now they are not. They are being held up.

It is interesting that we should have the deep concern and abiding concern about raising the minimum wage to help men and women around America. I wonder how many months at the current minimum wage increase these people are going to have to work in order to make up for the days and possibly weeks that are involved in the delay that is being orchestrated by the Senator from Massachusetts and a handful of other Senators on the other side of the aisle. I am going to try to get those calculations done between now and Thursday.

I think it is unconscionable. I think it is outrageous. I strongly recommend that the Senator from Massachusetts, for the sake of his own State, for the sake of the programs in his own State, would want to move forward so these people can go to work, so these airports can be improved, so we can get these much needed airport projects done.

Mr. President, let me tell you what is in Massachusetts. General Edward Lawrence Logan Airport in Boston, MA, $3,691,173; Nantucket Memorial Airport, Nantucket, MA, $949,962; the Barnstable Municipal Airport in Hyannis, $797,690; Martha's Vineyard Airport, $500,000; Worcester Municipal Airport, $500,000; New Bedford Regional Airport, $500,000; Provincetown Municipal Airport, $500,000—a total of $7,438,826 in Federal dollar entitlements, matched by $3,539,692 in Federal dollar State apportionments—a total of $10,978,518 the people of Massachusetts right now are being deprived of.

I do not understand it. I do not understand it, especially since this fight is over. This fight is over because we all know what is going to happen on Thursday.

''General Edward Lawrence Logan Airport, Federal Aviation Grants, $2 million, Noise Grant Program, Funding Crisis Alert.''

This is from the mayor, Mayor Thomas M. Menino, City of Boston.

General Edward Lawrence Logan Airport, Federal Aviation Grants, $2 million, Noise Grant Program, Funding Crisis Alert.

A crisis exists which threatens future grants for airports.

Excise taxes, including the airline ticket tax, which funds federal airport grant programs, have expired.

Congress must pass a short-term extension of these taxes in order to make the aviation trust fund solvent again.

Please urge Boston's representatives in Congress to save the airport program.

Save the airport program? Mr. President, I want to tell the mayor of Boston I will do everything I can, but I suggest that he contact Senator KENNEDY.

This is harsh language. These are harsh things I am saying in the Senate Chamber. I realize that. It is late in the season. We are in a political campaign. But I want to repeat, there is no rationale or excuse. I see the Senator from Massachusetts on the floor, so I directly ask the Senator from Massachusetts—I directly beg him to let us move forward and have a vote immediately, an immediate vote on the conference report. He has already lost. Let us have a vote on the conference report now and let us get this over with, get the bill to the President of the United States and have him sign it so we can move forward with these critical airport projects and let the working men and women all over America who want to begin work on $9 billion worth of projects, let them get to work. Let these airport related improvements be made. Let the aviation safety and airport security programs be implemented.

I will read in just a minute the safety and security provisions that are in this bill which are being held up because of the Senator from Massachusetts' reluctance to allow us to move forward. Mr. President, there are various airport security and aviation safety projects which are in this bill, which I will not read at this time, but I can tell you that there are at least 100 or more all over the United States.

Let me tell you about some of the aviation safety and airport security provisions. This bill requires the FAA to study and report to Congress on whether some security responsibilities should be transferred from airlines to airports and/or the Federal Government. The FAA is directed to certify companies providing airport security screening. This legislation, as soon as the President signs it, bolsters weapons and explosive detecting technology by encouraging research and development. It requires that background and criminal history records checks be conducted on airport security screeners and their supervisors. It requires the FAA to facilitate the interim deployment of currently available explosive detection equipment. It requires the FAA to audit 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 safety and security projects at airports.

Mr. President, the Airport Improvement Program funds cannot be used for such safety and security projects at airports unless the Senator from Massachusetts lets us move forward with this bill.

The FAA and FBI must develop a security liaison agreement. We cannot begin on that. The FAA and FBI must carry out joint threat assessments of high-risk airports. We cannot begin on that.

It requires the periodic assessments of all passenger and air carrier security systems. It requires a report to Congress on recommendations to enhance and supplement screening of air cargo.

Mr. President, on aviation safety, it eliminates the dual mandate and reiterates safety be the highest priority for the FAA. It facilitates the flow of the FAA operational and safety information. The FAA may withhold voluntarily submitted information.

It authorizes the FAA to establish standards for the certification of small airports to improve safety of such airports. It directs the NTSB and FAA should work together to improve safety data classification so as to make it more accessible and consumer friendly and then publishes it.

It requires the sharing of pilot's employment records between former and prospective employers to ensure marginally qualified pilots are not hired. It discourages attempts by child pilots to set records or perform other aeronautical feats.

It also requires the FAA and NTSB to work together to develop a system so that the notification of the next of kin can be done in the most humane and compassionate fashion.

I do not know why the Senator from Massachusetts will not let us move forward. I ask at this time unanimous consent that we move immediately to the conference report and vote on it.

The PRESIDING OFFICER. Is there objection? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. Objection it heard.

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

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I ask unanimous consent that we go immediately to the bill on the calendar on the FAA authorization that is without the labor provisions.

Mr. MCCAIN. Reserving the right to object, the Senator from Massachusetts knows full well the House of Representatives, the other body, is out and is not coming back. The Senator from Massachusetts also knows——

Mr. KENNEDY. Regular order, Mr. President. Is there objection?

Mr. MCCAIN. I was stating my reservation.

The PRESIDING OFFICER. There is objection?

Mr. MCCAIN. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the House of Representatives is subject to the call of the Chair by the Speaker. As time-honored practice and procedures, they have followed that on countless occasions. I am glad we were able to clear the air of some of the comments that were made earlier by the Senator from Arizona.

Mr. President, I wish very much that we had been able to have passage of the FAA conference report. My friends and colleagues have talked about the urgency of these various programs. I do not know what delayed the members of the committee itself, or the conference, from bringing it to the Senate in these last hours. With all the points that were raised by the Senator from Arizona, I would have thought we would have had an opportunity to have this matter earlier in the consideration of the Senate Calendar. I do not know what happened during the course of those discussions or debate, but clearly the Republicans chaired those conferences and they bear a direct responsibility as to when those conferences are going to report back.

I heard the Senator from Arizona saying that, now that we have this in these final moments of the Congress, now we have to act. We ask: Where was this conference earlier in the course of this session? Why did we not act on it at an earlier period of time? Why is it one of the last pieces of legislation that we have before the Senate?

Clearly, it is because those who support this provision, which is the subject of our debate and discussion here this afternoon, felt they could jam the Senate in terms of this particular provision.

That is an old technique. The Senator from Arizona is familiar with it, as I am familiar with it. We ought to put it in some kind of a context.

The fact remains, Mr. President, when we had the continuing resolution before us yesterday, I was prepared to offer the FAA conference report without this special provision that benefits only one company and that will give it particular advantages, which it does not have at the present time, over the ability of their workers to organize into a union. But that was objected to by the Republicans.

Now they are saying, ''Well, why didn't we pass this?'' And they try to put the blame on the Senator from Massachusetts. We could have passed this overwhelmingly. I don't think there would have been a vote against it, if we had done it yesterday with a 10-minute time consideration. But, no, there was objection to that.

Now we say, ''All right, let's get into why now our Republican friends and some Democrats want to have this longer, drawn-out process and procedure.''

Mr. President, I want to address a few issues here this afternoon. We have other colleagues who will come to the floor who I hope will enter into this.

First of all, I want to point out that I wish that those who are saying that somehow we are delaying this and somehow there are safety considerations, I wish they had acted on those concerns yesterday. We could have done this. We could have passed it. Effectively, they said, ''No, we're not going to do that, we're not going to pass the FAA conference report without that special interest provision. We refuse to do it, even though the conference report has all those safety mechanisms.''

And now after they refuse to do it, they come over here on the floor and say, ''We should pass it right away. I ask consent we pass it right away because of these safety provisions.''

I think it is important to understand, and I know there are members of the committee who have a great deal more knowledge and experience about what is in this bill, but as I understand it, the operation account, which funds air traffic controllers, safety inspectors, security personnel, airport noise personnel, maintenance personnel, as well as everything and everyone that runs air traffic in the United States, not one of those operations is affected by the FAA reauthorization bill.

Also, security personnel who operate the metal detectors to screen baggage are employees of the airlines who use the terminal, and, therefore, are unaffected by this legislation.

Second, the facilities and equipment account pays for the display terminals, air traffic controllers, look-out radar equipment and other equipment used in the aviation industry. None of this is affected by the FAA reauthorization bill.

Third, the research account funds all sorts of aviation research. For example, FAA has funded research on the best x-ray machines for checking bags. All of this research is totally unaffected by the pending FAA authorization bill.

The Airport Improvement Program is the only FAA program that is affected by the pending FAA reauthorization bill, as I understand. AIP awards grants for airway improvements, and the contract authority for these programs depends upon the passing of the FAA reauthorization bill. While the AIP programs may be highly desirable, they do not affect the safety of the aviation industry, and those are the facts.

I think when we are taking a look at these scare comments, we ought to try and put this into some kind of perspective. We are going to have an opportunity to vote on this measure in 2 days, in any event, but safety is simply not affected by this bill. We know this is true because in 1994, the FAA reauthorization bill was not passed for almost 11 months. There was no question at that time with regard to safety. As I say, if there was such the urgency at the time, I suspect the Republicans who bore the responsibility of moving that process would have brought it forward at the time.

Mr. President, what is really at issue here, and why are we at this juncture? I refer, if I can, to some of the House debate. The House debated this issue. As a matter of fact, with all due respect for those who talk about a technical amendment, this was outside of the conference. We have a rule that is generally not enforced, historically, in this body, but the House does recognize that when matters are outside of the conference, that they have to get a special rule. That happened with regard to this particular measure. When all of those people say, ''Well, this was just a technical matter,'' the fact is, they needed a separate vote in the House of Representatives.

I quote the chairman, the Republican chairman, of the Aviation Committee over in the House of Representatives, Mr. SHUSTER, when he was questioned about why this new provision was added to the FAA reauthorization. Mr. SHUSTER, in response to Mr. MOAKLEY says:

> I would be happy to respond. Absolutely.
>
> It is outrageous, it is outrageous that we even have to deal with this issue this way, because it is nothing more than a technical correction. We think it is fundamentally wrong. . . because this is nothing more than a technical fix.

That is Mr. SHUSTER. But even the Parliamentarian understood that was not the case, because they did require separate debate and a separate vote.

I found reading the House debate very instructive, especially remarks by those who have the special responsibility, the members, of the Aviation Committee.

Mr. LIPINSKI—and I think this really points out quite well in a brief way what this issue is all about when Mr. LIPINSKI was recognized. He said:

> Let us focus on what this debate is really about. This provision for FedEx is another assault on the American middle class. The American middle class has been attacked for over 15 years by our Nation's terrible trade policies, technology, profit driven downsizing, profit-driven deregulation and systematic sinister weakening of unions. How, you ask? Let me explain.
>
> During the debate on the rule, I outlined the history of this dubious Federal Express provision. Let us take a closer look at what my colleagues are calling a technical correction.

During the debate, the House Members were talking about the different attempts, the five or six different attempts by Federal Express to have this provision included in other legislation.

House Republicans tried to attach it to the 1996 omnibus appropriations bill, and it failed. House Republicans tried to attach it to the NTSB reauthorization, and it failed. House Republicans tried to attach it to the Railroad Unemployment Act Amendments, and it failed. Senate Republicans supported to attaching it to the Labor-HHS appropriations bill in committee, and that failed.

So the rider was not on the FAA reauthorization bill when it passed the House, it was not on the reauthorization bill that passed the Senate, but it was added in the conference.

So this is not, Mr. President, just a little technical change. This is a long-committed, dedicated effort to, in a very significant and important way, at the outset, override the litigation which is currently taking place on this very issue.

That is interesting, isn't it? A legislative fix for something that is effectively in litigation at the present time in the NLRB. Federal Express wasn't taking a chance that the NLRB might rule in one particular way, and they wanted a legislative fix. They tried and tried and tried and tried again.

This is not a technical fix, Mr. President. This is a very purposeful, directed, well-organized effort to change the rules of the game right in the middle of the game. Change the rules. Why do I say ''change the rules in the middle''? Because it is, at the present time, in litigation. And what one side, Federal Express, is trying to do, is change the rules in the middle of that litigation.

Let me just continue with what Mr. LIPINSKI said:

> During the debate on the rule, I outlined the history of this dubious Federal Express provision. Let us take a closer look at what my colleagues are calling a technical correction.
>
> The last express carrier, as defined by the ICC, went out of existence 20 years ago, so at the ICC's suggestion the classification was removed from the statute because it was obsolete.
>
> But suddenly, after the ICC bill is signed into law, one company and its countless consultants decided that it might want to be an express carrier some day and started knocking on doors up here.
>
> I have already outlined the five other times FedEx has tried to get this provision into law. Judging by the consistent effort and expense they have gone to, it must really be important for them to remove this dead classification.
>
> But why? Federal Express would not go through all this trouble if they were not going to get something out of it. The fact is that it is much more difficult for a union to organize under the Railway Labor Act than under the National Labor Relations Act.

Mr. President, I explained that earlier. Under the Railway Labor Act, you have to have a national bargaining unit. Under the NLRB, you have local bargaining units. And each law applies to those relevant bargaining units.

What the purpose of this legislation is is to short-circuit the NLRB's making a judgment to put the trucking aspects of Federal Express under the Railway Labor Act, which will make it much more difficult for them to ever obtain union representation.

I continue:

> Under the RLA a unit of the company would have to be organized company-wide, while under the NLRA it can be done facility by facility.
>
> Why is this relevant for a company like Federal Express, which is currently classified as an air carrier and already subject to the RLA? Federal Express' operations have changed. No longer does every package get on a plane. Often it just goes on a truck to its destination.
>
> I understand that Federal Express' long-term plan is to truck in packages less than 400 miles away from their hubs around the country. Why would an airline like Federal Express rely so much upon trucks? Because it is cheaper. To their credit, Federal Express is planning for the future to remain competitive. It sure seems to be working.

They know where they are going, Federal Express. They are going into the trucks to deal with these issues. And they are trying to be characterized as an air carrier so that they will have different rules for the road in order to be able to halt the ability of the organizers to be able to go forward.

Mr. President, that position was stated just as accurately—and I would refer my colleagues and friends to Mr. OBERSTAR's statement which effectively says the same; and Mr. NADLER from New York, who effectively says the same. These are members of the House Transportation and Infrastructure Committee. These are not just Members of the U.S. House of Representatives, these are members of the committee of knowledge.

What they refer to, Mr. President, about this change is the ICC Termination Act of 1995 and the conference report. And if you look in the conference report, the general jurisdiction issues—first of all, if you look at page 154, you will see the Railway Labor Act amendments. In the first paragraph, the amendment strikes the term ''express company''—that is the term of art.

Then under the amendment to the Interstate Commerce Act's general jurisdiction provisions, it states, ''outdated references to express and sleeping car carriers which no longer exist, would be removed.''

And then you go on to the back and look and see who signed it. You find out that the signatories were all the members of the conference committee, Republican and Democratic alike. They all signed it. This idea that this suddenly slipped in the drafting of the measure, that somehow people did not quite understand, that it really is technical, it runs completely to the contrary.

It runs contrary to what the Congressional Research Service has found. It runs contrary to the explicit words in the legislation. It runs contrary to the conference report, which bears the signatories of the Democratic and Republican members of this conference committee here in the U.S. Senate.

That happens to be the bottom line, Mr. President. We understand that what FedEx has tried to do over a long period of time was rejected. And it was rejected because it was such an outrageous grab for preferential consideration by one company, and the history of it that demonstrates quite clearly that the effect of this particular change would dramatically alter and change the current litigation in which Federal Express is very much involved.

Mr. President, I come back now to what really this issue is all about, as far as I am concerned. It is not just so much all of these kinds of references, which I am sure during the course of the debate in the afternoon we will come back to, but I want to just get back to how Federal Express treats its employees. That is what we are basically talking about, how these changes are going to affect the welfare and the well-being of these various employees.

In 1991, Federal Express employees had gone 7 years without a pay increase. Today, we celebrated the increase in the minimum wage. We went 5 years without an increase in the minimum wage. In 1980, the minimum wage provided a livable wage for a family of three. Now, this year, prior to this day, a family of three would be $3,000 below the poverty wage.

We had a commitment in this country, Republicans and Democrats, to say that we are for men and women who are going to work for a living, that they be provided a living wage so they honor work. That is a fair and just position. We had difficulty in getting that measure even voted on here in the U.S. Senate. Republican leaders in the House and Senate refused to even be willing to give us a vote on it. Then, when we got an agreement to vote on it, they wanted to reduce it; and then after we passed it, they wanted to delay its implementation.

But today it went into effect for 4.6 million Americans—4.6 million, and $1,000 a year, $20 a week. And that went into effect.

But here, Mr. President, we have the Federal Express employees for 7 years without a pay increase. And the company planned to reduce the drivers' work hours and substitute temporary employees. That is what ignited the initial organizing drive in 1991. Federal Express responded by giving the workers a pay increase in 1992 and 1993.

But during the last 3 years, despite the booming business, Federal Express employees have not received any raise, and the company recently announced there would be no further across-the-board increases.

So the Federal Express employees are in the process of organizing a union. They want a better deal. And what are the kind of grievances they have?

Well, there is Al Ferrier. He has been a tractor-trailer driver for Federal Express for 17 years. He wants a better deal. He has had three knee surgeries, a shoulder surgery, following on-the-job injury. Mr. Ferrier was recently diagnosed with cancer. Federal Express responded to Mr. Ferrier's misfortune by giving him 90 days to find a new job.

Joe Coleman wants a better deal, too. He was Federal Express's longest service employee when the company fired him. With no union, there was no grievance procedure to protect him or to even give him a chance to prove that his dismissal was unjust.

I could take literally hours to go through this. I do not know whether Al Ferrier or Joe Coleman are going to have the support of their colleagues to be able to say that ''we want to be organized to pursue those,'' or not. I do not know that. We do not know in this particular forum whether they do or they do not. But they ought to at least be given a chance. We should not have the rug pulled out from under them. We should not change the rules of the road at a time when that issue is before the NLRB, and that is what this language does.

It is saying to the Al Ferriers and the Joe Colemans, and the countless other workers who feel they have not been treated fairly, we are going to take your opportunities away because we are going to change the rules of the game and put you under the Railway Labor Act, which means you are not going to try and just convince all of these in your local community or in your town; you are going to have to effectively convince everyone in this country because of the outreach of Federal Express.

These are real grievances. These are real families. These are real working men and women that are trying to do this. And all we are just saying is that we are not going to just stand by, by the sleight of the hand, and take away the legitimate interests of these working families. That is the issue.

We will hear later on about what we were really intending to do, and that this is really not going to change things. That is what the issue is: Whether these men and women have a right under the existing laws, existing laws here in the United States, to be able to make a judgment and a determination by convincing some, ''Come with us and let us form a union;'' or maybe they will be defeated.

We are not making a judgment on that. All we are saying to those who support our position is let them play by the rules that exist today—not in this legislation, not in this legislation that is being enacted here that was changed, which was never in the bill that passed the House or in the bill that passed the Senate and was basically discarded on a half a dozen different occasions and needed a special rule in the House of Representatives, even with people saying this is just a technical change, a technical change.

Well, the House Republican Parliamentarian understood this is certainly more than a technical change when he studied it and ruled on it. He understood it was more than a technical change. That is the only provision, the only provision of the conference report they had an independent vote on, because it was outside the scope and added at the final hour.

Mr. President, that is what we are looking at. Now we can say, well, is this really an isolated kind of circumstance in regard to Federal Express? I was absolutely startled reading through their pamphlets on the questions of what they were going to do about workers and how they would consider those that might want to get into a union. It is clear in reading through that book—and I see other colleagues that want to speak, so I will just touch on this point briefly. There is no question that the Federal Express is antiworker and the Federal Express Co. is not shy about its antiunion attitude. They distribute to managers a labor law book with specific instructions on how to prevent unionization efforts. On page 2 of the handbook Federal Express tells the managers, ''Our corporate goal is to remain union-free. We all have the responsibility of making unions unnecessary at Federal Express.'' Federal Express devotes a whole chapter to what are indications of union activity, and in one chapter they advise supervisors to be on the lookout for these signs and report problems by calling your local personnel representative, the Employee Relations Department in Memphis. What are these sinister signs? Employees begin leaving the premises for lunch in unusual numbers; employees show unusual interest in compensation, personnel, and other company policies.

Mr. President, maybe they are in the union, maybe they are not. I am not saying one way or the other, but we ought not to say we are going to change the rules of the road. If Federal Express has that attitude, so be it. But we ought to understand it and it makes it much clearer in understanding what this proposal is about, what this proposal is about and what their intention is about.

It is just a measure we wanted to make sure conformed with the previous legislation. You put this evidence together about what the activities of Federal Express have been, the efforts they have gone to change this, what their own corporate attitude is, what their conditions are in terms of their employees, and you find out and see very clearly what has been happening with regard to Federal Express employees.

Mr. President, there are others here that want to address the Senate but I will conclude with these brief remarks. There is no question that this provision was put in here purposely to affect Federal Express' clear interests. That has been demonstrated during the course of the debate not just in the U.S. Senate, but the House of Representatives and the actions by Federal Express. They are entitled, as a company, to pursue whatever interests they might have—I recognize that—but not to change the rules in the middle of the game. That is what they are doing—changing the ground rules.

Americans understood fair play. They see it every day. They saw it last night in the Dallas-Philadelphia game. They understand fair play. They understand you have a set of rules, you play by them. Not Federal Express. They want the rules changed, and not changed just for the future—in order to be able to carry forward their company policy to maintain themselves really free from pursuit of grievances by workers, and by undermining litigation that is currently in place.

We do not do that around here very often. We do not take legislative action to pull the ground out from families and workers in our country that are playing by the rules and thought they would play by this set of rules, and then to be in litigation and find out the Congress in the last hour is playing by a different set of rules. We do not act around here just to benefit one company. We take action clearly in a general way. There will be particular companies that are going to, for one reason or another, be adversely affected and impacted in an unfair and unjust way. We address those. We try to. We never do it as effectively as I think the public thinks we should. That is always complicated and difficult.

That is not what this is about. That is not what this is about. That is not this circumstance. This is a clear power grab by Federal Express to carry forward its antiworker philosophy, and it is changing the rules in the middle of the game. It is basically unworthy for the Senate to favor that particular position. All we are trying to do is to get that provision removed. We could have tried yesterday but we were prevented from doing that by the Republican leadership—to say OK, we will pass the FAA without this provision, send it over to the House, and as all of us know, everyone in this body knows, the House of Representatives is subject to the call of the Chair. This would fly through the House of Representatives. We heard the same arguments when we had the minimum wage that we could not pass, just before the August recess, because the House was going to be out. We had it on Lodine. If Members will remember, there was a special tax provision for one particular company that was added to an agricultural appropriation in the last hours and here on the floor of the Senate there was such a row by Members—Republican and Democrat alike—that this was a special provision for a special company. We heard at that time, ''We cannot do that now because the House of Representatives is not there.'' We know the House of Representatives at the call of the Chair passes those measures.

Given the vote in the House of Representatives, given the vote in the House of Representatives which was so incredibly close, a 20-vote difference, with 30 Republicans in the House of Representatives voting with the Democrats. Mr. President, 30 Republicans voted with the Democrats because they felt this kind of procedure was unworthy, 30 Republicans, and 15 Democrats went the other way. It was decided in the House by 20 votes.

Mr. President, they had the full debate. They understand this is a great deal more than just a technical amendment. It is a substance amendment. We ought to free this legislation from it and pass this legislation and get on with the rest of the country's business.

Could I ask how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 58 minutes remaining.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume. I will be very brief because the Senator from South Carolina is waiting to speak.

Mr. President, the Senator from Massachusetts keeps alleging that somehow we could pass this bill by removing this legislative provision and then getting it passed. And clearly, the Senator from Massachusetts is entitled to that opinion.

Unfortunately, it is not shared by the Democratic leader, Mr. DASCHLE, who had a press briefing this morning which I will quote from:

Question. Isn't the bottom line on this FedEx business, that if you don't pass the bill, and you do pass some sort of a continuing funding resolution or mechanism, that FedEx does not get its way and that the Teamsters do?

DASCHLE. Well, it's more complicated than that. At this point, we can't send a bill back to the House because I don't anticipate that they'll come back.

And because they won't come back, and there's no desire to. Any change we'd have to make would require unanimous consent. We're told any change to this bill would not acquire the necessary unanimous consent agreement there.

And as a result, we are really left with the conference agreement that has now been written. So our options are very, very limited. So it's not even a question of who wins or who loses with regard to that specific provision, the question is, are we going to pass a conference report that really needed to be passed yesterday?

Question. You've passed it, you've got a funding problem.

DASCHLE. Exactly.

Question. And you can't resolve that either.

DASCHLE. We can't resolve that. I mean, we have—short of bringing the House of Representatives back into session, we can't find another way, another vehicle, another funding mechanism.

And as I indicated, that the leadership in the House have already made it known that they don't plan to come back.

Question: So you've got to pass this bill?

DASCHLE. We've got to pass this bill.

I am sorry that the Senator from Massachusetts does not agree with his elected leader here in his party, who clearly says we have to pass this bill, which he also says we should have passed yesterday.

Why should we have passed it yesterday, Mr. President? Because there are thousands of men and women who are workers who are not working, who would be working if the Senator from Massachusetts had allowed this bill to pass, rather than have the bill read last night for 5 hours, as he did, and keeping this body tied up.

Mr. President, let me also point out that everybody is entitled to their opinion, but not everybody is entitled to their facts. The facts are that the Senator from Massachusetts stated that only Airport Improvement Program moneys, aviation improvement fund moneys, would be affected by the lack of passage of this bill. Mr. President, that is not correct. The aviation trust fund is unique. The Finance Committee and the Joint Committee on Taxation have studied this issue, and their staff state that the language in the code regarding ''meeting obligations of the United States,'' which, I repeat, is unique to this one section of the code, effectively means that all spending out of the trust funds bill will be stopped.

This means countless aviation safety programs, jobs, and airport construction programs will be affected, and are affected as we speak, but will be more affected as we wait until Thursday and will be more affected between the time the bill is passed and goes to the President's desk. Furthermore, if this bill is not passed, we cannot have criminal history background checks and the FAA will not be able to deploy $175 million for explosive detection technologies—many which are made in Massachusetts. I repeat, this information comes from the Finance Committee and the Joint Committee on Taxation both.

So the Senator from Massachusetts does not have his facts correct on what is stopping being funded. Let me give a brief comment on some of the projects that we have already heard from—some of the programs that are stopped: Providence, RI, debt service for a new terminal, letter of intent; Philadelphia, PA, site preparation for new commuter runway; Ithaca, NY, entitlement for runway project, phase 2; Albany County, NY, new terminal project; Parkersburg, WV, mud slide; Parkersburg, WV, finish a new airport; Buckhannon, WV, site preparation for runway extension; Buffalo, NY, terminal project, letter of intent; Portland, OR, runway reconstruction; Denver, CO, debt service for new airport, letter of intent; Seattle, WA, ongoing noise program; Memphis, TN, cash-flow problem.

The list goes on and on, Mr. President. We are already hearing from the airport managers who are not able to move forward on these critical airport projects. They are not able to move forward.

Mr. President, look, I am not familiar with FedEx. I certainly have known many of their employees. There are 125,000 of them. Allegation: Joe Coleman was fired and received no grievance. Joe Coleman was fired and received no grievance procedure. Truth: FedEx has an internal grievance procedure, and Mr. Coleman appealed his discharge and was reinstated in 1991. He subsequently quit. Allegation: Al Ferrier received injuries and was told to find a new job in 90 days. Truth: Mr. Ferrier was offered a full-time job, which he turned down, a month ago.

Mr. President, I don't know the facts of these cases. These are other responses to them. What the Senator from Massachusetts says may be true, but I have different information.

But what cannot be disputed here, Mr. President, is that thousands of workers are not working today or tomorrow or Thursday because the Senator from Massachusetts refuses to allow this bill to move forward and the conference report to be voted on, and that includes aviation safety and airport security.

Mr. President, let me finally say that this legislation does not prevent Federal Express from being subject to union organization. Federal Express will be treated as every other major corporation in America, which I hope the Senator from South Carolina will elaborate on, and will be subject to all of the laws that apply to all companies and corporations in the United States. If the workers of Federal Express want to become unionized, they will be allowed to do so under existing law.

I yield to the Senator from South Carolina such time as he may consume.

Mr. HOLLINGS. I thank the Senator from Arizona. Mr. President, the distinguished Senator from Massachusetts has just spewed out such a bunch of nonsense that it is hard to know where to begin. One is with respect to Federal Express. Like the Senator from Arizona, I am learning about Federal Express. I refer, Mr. President, to ''The 100 Best Companies to Work for in America,'' by Robert Levrig and Milton Moskowitz, of last year. On page 121:

The Federal Express invented overnight parcel delivery. U.S. employees: 77,700.

It is now over 105,000 domestic, and a total of 125,000, growing at 15 percent per year. But this particular edition has the top-top rating of five stars, and really about the highest rating is four stars. Thumbing through this when I was given it, I could not find any other company with the five stars. Let me show you immediately under that particular provision. On pay and benefits, Federal Express is rated four stars; under opportunities, four stars; under job security, five stars; in pride in work and company, four stars; openness and fairness, five stars; camaraderie and friendliness, four stars. The biggest plus, ''you probably won't get zapped.'' Biggest minus, ''you may not be an overnight success.''

Now, since the distinguished Senator has raised the point that the Senator from South Carolina is zapping the employees, I thought I would have to read that. At least Federal Express hasn't raised that point, or zapped anyone, according to that best-of-the-best edition. So I more or less have to clear the record to defend my record, because we are not about zapping employees. We are not about end-running. We are not about changing the rules in the middle of the game.

The truth is, Mr. President, that if we had known last December 22 that the little phrase ''express company'' was being dropped from the ICC Termination Act, and they would have said,

''Senator, we are going to have to drop this provision,'' I would have said, ''Wait a minute,'' if I would have known it, and I would have made that exact charge: You can't change the rules in the middle of the game.

Why do I say that? Because those same employees he talks about over in Philadelphia have had 5 years with their lawyer, and unlike what the Senator from Massachusetts has said about the board—I will read his statement from the CONGRESSIONAL RECORD. I refer to yesterday's RECORD at page S11854:

Federal Express challenged the petition, arguing that the entire company, including its truck drivers, is covered by the Railway Labor Act, not the National Labor Relations Act, and that therefore the bargaining unit for its truck drivers must be nationwide. The board has not yet decided the issue.

Absolutely false.

I ask unanimous consent to have printed in the RECORD excerpts of the decision of the board.

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

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

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

Re NMB File No. CJ–6463 (NLRB Case 41–RC–17698).

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.'' 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 [NLRB].'' 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, Global Operations 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-Douglass 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, including 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, 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 extended 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 relate 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.

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

''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 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.

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 issued 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 the employee or subordinate official of such carrier or carriers. . . . ''

Even if the Board were to assume arguendo 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. 0/0 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 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.

Mr. HOLLINGS. This decision is dated November 22, 1995. You don't have to read the entire decision. It is a very interesting thing, because back in 1991:

. . . UAW amended its petition to exclude ''ramp agents, ramp agent/feeders, handlers, senior handlers, heavyweight handlers, senior heavyweight handlers, checker sorters, senior checker/sorters, shuttle drivers, shuttle driver/handlers, office clerical employees, engineers, guards and supervisors as defined under the act.

So it was not any question about who all was to be covered because they had a chance to amend it. This is 5 years ago when this started. But let me read a couple of other points.

This is the National Mediation Board talking. It was a unanimous decision, never appealed and at the NLRB since last November. And in 50 years with 100 cases under the Railway Labor Act, the NLRB has yet to reverse it. And if he can show me—I was asking for the Senator or a House Member—that actually said, let's knock this express company reference out, I would jump off the Capitol dome. He can't find it.

It was an innocent mistake. It was after this finding of November 22, 1995, done in December 1995. So it was after the rules of the road that are now trying to be changed, and that is why we are trying to correct. That has been the most difficult thing. The Members really have not kept up with this at all.

But the NLRB requested the National Mediation Board's opinion. This is the customary process. I am learning a little bit of labor law. The NLRB initially requested the National Mediation Board's opinion as to whether FedEx is subject to the RLA on July 1, 1992. They held it up. However, on that date, the NLRB granted the UAW's request to reopen the record and to file with the NLRB.

While we hear that the poor workers have been trying to get their day in court, their lawyer is up there saying, ''Wait a minute. Hold it up. Return it to the NLRB.'' The NLRB renewed its request on July 17, 1995—3 years. I said, ''How in the world do you hold things up over there in 3 years?'' They said, ''I will tell you what happened, Senator. They have a wild one over there in this fellow Gould who is the chairman.'' And he was trying his dead level best to change the process of taking those under the Railway Labor Act to be determined by the National Mediation Board and have it determined by the National Labor Relations Board itself. He finally got outvoted. He tried for 3 years. He tried for whatever time he was there.

But that was the issue. I couldn't understand why they would hold it up, and why we have the Senator from Massachusetts crying about the poor workers are not having any of their rights, and they are trying to play by the rules. Come on.

Here you go. Let me read it to you. The NLRB renewed its request on July

17, 1995. The National Mediation Board received the record on July 31, 1995. The National Mediation Board received additional evidence and argument from FedEx and the UAW on August 17, 1995, and September 5, 1995.

This is the full unanimous decision of the National Mediation Board—November 22, 1995, for those who are over there struggling to get their day in court. Come on. They had 5 years to go after it. They can start again. I think it ought to be made clear because I want to read some of this to make sure that they all understand that we are not coming in here pulling the rug out from under employees. The Senator from Massachusetts says we are ''pulling the rug out''—after 5 years with their lawyer and everything else of that kind.

Everyone should understand that labor is very, very virile and strong under the Railway Labor Act. In fact, 65 percent to 70 percent of employees under the Railway Labor Act are organized, whereas in the private sector under the NLRB, the National Labor Relations Board, and the National Labor Relations Act, only 11 percent.

So this isn't trying to get a protective situation. We are not ''pulling the legislative rug out''.

Let me just read a couple of parts in the conclusion part because it says:

> The limit on section 181's coverage is that the carriers must have continuing authority to supervise and direct the manner of rendition and employees' service, the carriers' tractor-trailer drivers, operations agents, and other employees sought by the UAW employed by Federal Express directly. As the record amply demonstrates, these employees, as part of the Federal 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.

The contention of the Senator from Massachusetts is that we have to get the language out of this bill because we in conference tried to change the rules of the road; that we tried to pull the rug out so that they wouldn't be covered by the Railway Labor Act. The truth of the matter is, the very case he refers to in Philadelphia after 5 years and a unanimous opinion found just what I have read. We are trying to clear up the inconsistency of the dropping of the designation, which is appropriate and should be done. They know it. Let me read further.

> In the Board's judgment, the analysis of the jurisdictional question should end here.

However, I want to read a further paragraph.

> The UAW argues that the employees it seeks to represent are not integrally related to Federal Express's air carrier functions and, therefore, are not subject to the Railway Labor Act.

Going further, answering that argument on the next page:

> Even if the Board were to assume arguendo 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 Corporation v. California PUC . . . the trucking operations of Federal Express are integral to its operations as an air carrier. Employees working in the other positions sought by the UAW perform functions equally crucial to Federal Express's mission as an integrated air express delivery service.

Finally.

> . . . the Board is of the opinion that Federal Express Corporation and all of its employees sought by 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; Rush O'Keefe, Esq.; Paul Jones, Esq.; William Josem, Esq.; Arthur Luby, Esq.

I have been asking for a Senator or a House Member who said that we shouldn't make this change, the mistake that was made. They can't find one. I will ask. Give me that UAW lawyer that has made the motion in the last 11 months before the National Labor Relations Board. The gentleman says here, ''This is a matter that is currently in litigation.'' False—threw it back over there to the NLRB, and they are sitting on it like they sat on it for 3 years after UAW brought it. There is nothing you can do about it. You have the fellow Gould over there. He will squat. I can't get him up off his ''whatever.'' But I can tell you now. It is not in any litigation at all. It is unanimously determined on the merits, after 5 years and 11 months later, with no motion, no appearance, no nothing—just sitting on it over there.

This is a matter that is currently in litigation even while we are here today. It is like Edward R. Morrow down in the South Pacific or something in World War II. The Senator from Massachusetts says: We ought to let the litigation move forward, but the action that is taken on the FAA bill has preempted effectively the litigation which is under consideration even as we meet here today. Come on. Come on. Wait a minute.

There ought to be some test of the truth in the facts here. When the people who wrote the provision, trying to do the honest thing, get accused of pulling rugs out and jamming, I will take that test. I will ask the colleagues to study these facts and to see whether the Senator from Massachusetts is jamming it or the Senator from South Carolina is jamming it and then let them make their vote.

It is crystal clear what is going on here. It is crystal clear. Everybody wanted to correct it. But labor told us, they said, ''You are not going to do it. We are going to filibuster. We are going to veto it at the White House.'' I did remember that the Vice President was from Tennessee. I said, ''I don't think that that is going to happen. No.'' And I said, ''I don't think that they are going to filibuster.'' I think we can get 60 votes for the truth and facts.

Now we hear about the NLRB, referring to all of these cases like you cannot get a case up there. Hundreds and hundreds of cases here have been covered by the Railway Labor Act, and the technical correction does not change that status. It changes future proceedings, not the one the Senator is talking about that they can make another argument. They can make these arguments.

I ask unanimous consent to print in the RECORD this reference to all these cases.

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

FEDERAL EXPRESS IS COVERED BY THE RAILWAY LABOR ACT. THE TECHNICAL CORRECTION DOES NOT CHANGE THAT STATUS.

Since commencing operations 23 years ago, Federal Express and its employees consistently have been determined by the federal courts, the National Mediation Board and the National Labor Relations Board to be subject to the RLA. *See e.g., Chicago Truck Driver, Helpers and Warehouse Workers Union v. National Mediation Board,* 670 F.2d 665 (7th Cir. 1982), *Chicago Truck Drivers, Helpers and Warehouse Workers Union v. National Labor Relations Board,* 599 F.2d 816 (7th Cir. 1979); *Adams v. Federal Express Corp.,* 547 F.2d 319 (6th Cir. 1976), *cert. denied,* 431 U.S. 915 (1977); *Federal Express Corp.,* 22 N.M.B. 57 (1995); *Federal Express Corp.,* 22 N.M.B. 157 (1995); *Federal Express,* 22 N.M.B. 215 (1995); *Federal Express Corp., 22 N.M.B. 279 (1995); Federal Express,* 20 N.M.B. 666 (1993); *Federal Express,* 20 N.M.B. 486 (1993); *Federal Express,* 20 N.M.B. 404 (1993); *Federal Express,* 20 N.M.B. 394 (1993); *Federal Express,* 20 N.M.B. 360 (1993); *Federal Express,* 20 N.M.B. 7 (1992); *Federal Express,* 20 N.M.B. 91 (1992); Federal Express Corp., 17 N.M.B. 24 (1989); *Federal Express,* 17 N.M.B. 5 (1989); *Federal Express Corp, and Flying Tiger Line, Inc.,* 16 N.M.B. 433 (1989); *Federal Express Corp., 6 N.M.B. 442 (1978); Federal Express,* N.L.R.B. Case No. 22-RC-6032 (1974); *Federal Express,* N.L.R.B. Case No. 1-CA-22,685 (1985); *Federal Express,* N.L.R.B. Case No. 1-CA-25084 (1987); *Federal Express, N.L.R.B. Case No. 10-CCA-17702 (1982); Federal Express Corp., N.L.R.B. Case No. 13-RC-14490 (1977); Federal Express, N.L.R.B. Case No. 13-CA-30194 (1991). The charges filed with Region 13 in Chicago, Case No. 13-CA-3019 and Region 1 in Boston, Case No. 1-CA-22,585 were withdrawn after we presented the above evidence of our jurisdictional status.*

The National Mediation Board (NMET) recently ruled on Federal Express RLA status by stating unequivocally that ''Federal Express and all of its employees are subject to the Railway Labor Act.'' *Federal Express Corporation,* 23 N.M.B. 32 (1995).

The term ''employer'' under the National Labor Relations Act excludes ''...any person subject to the Railway Labor Act:'' 29 U.S.C. §152 (2). Excluded from the definition of ''employee'' under the National Labor Relations Act is''...any individual employed by an employer subject to the Railway Labor Act...'' 29 U.S.C.§152 (3). The Railway Labor Act defines ''carrier'' as ''... (including) every common carrier by air engaged in interstate or foreign commerce...''45 U.S.C. §151, First and §181. Federal Express is a common carrier by air engaged in interstate and foreign commerce, and is certificated pursuant to Section 401 of the Federal Aviation Act.

That interpretation of the statute consistently has been applied by the NMB. Section 201 of the RLA, 45 U.S.C. Section 181, provides that the Act ''shall cover every common carrier by air engaged in interstate and foreign commerce . . . and every air pilot of *other person who performs any work as an employee or subordinated official of such carrier or carriers,* subject to its or their continuing authority to supervise and direct the manner of

rendition of his service.'' (Emphasis added). In accordance with that legislative directive, anyone employed by an air carrier engaged in interstate or foreign commerce is covered by the RLA. As was explained in *REA Express, Inc.,* 4 N.M.B. 253, 269 (1965):

''It has been the Board's consistent position that the fact of employment by a ''carrier'' is determinative of the status of *all* that carrier's employees as subject to the Act. The effort to carve out or 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 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.''

The United States Court of Appeals for the District of Columbia Circuit noted in regard to the NMB's *Federal Express* case that ''the NLRB had 'never' asserted jurisdiction over'' (Federal Express'.'' *United Parcel Service, Inc.,* v. *National Labor Relations Board.* 92 F.3d 1221 (D.C. Cir. 1996). Federal Express has participated in five union representation elections conducted under the auspices of the National Mediation Board, the most recent in 1995, and presently is participating in a sixth RLA election.

The Ninth Circuit Court of Appeals in *Federal Express Corp.* v. *California Public Utilities Commission,* 936 F.2d 1075, 1978 (9th Cir. 1991), *cert. denied,* _____ U.S. _____, 119 LEd.2d 578 (1992) found:

''The trucking operations of Federal Express are integral to its operation as an air carrier. The trucking operations are not sonic separate business venture; they are part and parcel of the air delivery system. Every truck carries packages that are in interstate commerce by air. The use of the trucks depends on the conditions of air delivery. The timing of the trucks is meshed with the schedules of the planes. Federal Express owes some of its success to its effective use of trucking as part of its air carrier service.''

That court also stated:

''Federal Express is exactly the kind of an expedited all-cargo service that Congress specified and the kind of integrated transportation system that was federally desired. Because it is an integrated system, it is a hybrid, an air carrier employing trucks. Those trucks do not destroy its status as an air carrier. They are an essential part of the all-cargo air service that Federal Express innovatively developed to meet the demands of an increasingly interlinked nation.''

It clearly has been established that Federal Express is a carrier subject to the Railway Labor Act. Its employees are likewise subject to the Railway Labor Act. No court or agency has ever determined that Federal Express or any of its employees are subject to the National Labor Relations Act.

Mr. HOLLINGS. I thank the distinguished Chair.

Now, Mr. President, there was reference made to the CRS. I am just amazed. I thought they always had a pretty good record. They ought to give the fellow who works over there for the Congressional Research Service weekend leave. And the reason I say that, they have a guy named Vince Treacy, legislative attorney, and he was asked on September 27, just a few days ago, to give an opinion with respect to the coverage, the Railway Labor Act coverage of Federal Express as an express company. And he comes up totally in contradiction to all the laws and all the decisions, but more particularly he knows the request is made because we were trying to determine the intent of Congress: Was it as described by the Senator from Massachusetts, or an innocent mistake by my description?

Everybody agreed that there was a mistake made. We did not even know it was in there. And please, my gracious, instead of coming with the language itself in the act, he runs all around his elbow and refuses to put this in his three-page decision.

I read from the conference report of the ICC Termination Act of 1995 by Mr. SHUSTER on December 15, 1995. ''The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of the employees and employers by the Railway Labor Act.''

The distinguished chairman on the House side, Mr. SHUSTER, stated in the Chamber when this was debated a couple of days ago, that that was put in at the request of labor. We will show it to you in the RECORD. ''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 we see who comes in in the middle of the game trying to change the rules of the road. We see now who is trying to pull rugs out from under people. And they are using every gimmick in the book. This fellow will be looking for a job if I have anything to do with it, I can tell you that, because I have an analysis here going down each one of the points in the document.

I did not want to take the time of the distinguished Senator from Arizona, but, for example, Mr. Treacy says: ''If, at some future date, the NMB ruled that some Federal Express employees were employed in activities that were not integrally related to its operation as an air carrier, then those employees would count under the coverage of the NLRA as a matter of law.''

False. False. They raised precisely that point in the case we are talking about, and we have the National Mediation Board and its decision. Heavens above. We could not be more on target. They never called us or asked us about the history of this particular thing.

From Treacy's legal opinion they are running around now to give some kind of color, or credibility to their position: 'Moreover, it appears unlikely that Federal Express would constitute an express company subject to title 49, as that term is used in the proposed amendment.''

Where did you get that? He says later on here it could go either way. No one, including the author of this memo, disputes the fact that the REA was an express company. No one disputes that Federal Express was acquired and operated under certificates from REA. As the Interstate Commerce Commission stated in its decision transferring the certificates, and I quote, ''The evidence establishes a public demand or need for the proposed continuation of express service as previously authorized under the acquired REA certificates.'' That is the ICC decision No. 66562.

Then he states in here: ''The deletion of the term 'express company' from section 1 of the RLA does not appear to have been inadvertent or mistaken.''

That is an astonishing conclusion, Mr. President, because it ignores the ICC Termination Act itself, the very sentence I read. The change to the RLA was through a conforming amendment to the ICC Termination Act which included the provision, and I quote, ''The enactment of the ICC Termination Act shall neither expand nor contract coverage of employees and employers under the Railway Labor Act.''

I could read on and on. I ask unanimous consent, Mr. President, that this review of the CRS paper that was gotten up quickly and certainly very, very, at best, carelessly, if not intentionally, just 4 or 5 days ago for this case, be printed in the RECORD.

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

RESPONSE TO THE MEMO BY THE CONGRESSIONAL RESEARCH SERVICE

The September 27, 1996 memo by the Congressional Research Service [CRS] contains several inaccuracies which call into question the conclusions reached in the memo. For example:

Inaccurate statement: ''If, at some future date, the NNB ruled(sic) that some Federal Express employees were employed in activities that were not integrally related to its operations as an air carrier, then those employees would come under the coverage of the NLRA as a matter of law.''

Facts: The UAW raised precisely the same argument in the jurisdictional case involving Federal Express that recently was litigated. In response to that argument, the NMB held: ''. . . the Board does not apply the 'integrally related' test to that Federal Express employees sought by the UAW. Where, as here, the company at issue is a common carrier by air, the Act's [RLA'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''. *Federal Express Corporation,* 23 N.M.B. 32, 73–74 (Nov. 22, 1995).

Inaccurate statement: ''Moreover, it appears unlikely that Federal Express would constitute an express company subject to Title 49, as that term is used in the proposed amendment.''

Facts: No one, including the author of the CRS memo, disputes the fact that Railway Express Agency (REA) was an express company. Likewise, no one disputes that Federal Express acquired and has operated under the certificates acquired from REA. As the Interstate Commerce Commission stated in the decision transferring the certificates, ''The evidence establishes a public demand or need for the proposed continuation of express service as previously authorized under the acquired REA certificates.'' *Interstate Commerce Commission Decision.* No. MC–66562 (Sub-No. 2347), June 13, 1983.

Incorrect statement: ''* * * it appears logical and necessary to eliminate [coverage for express companies] from the RLA to preclude the ostensible coverage of nonexistent express companies''.

Facts: To state that express companies are nonexistent under the RLA, or that it is unlikely that Federal Express constitutes an express company, simply ignores the facts. In a case addressing the jurisdictional status of REA employees, the National Mediation

Board defined an express company as: ''The express business has always been one of pick-up and consolidation of traffic, turning it over to common carriers by rail or air for transport, and delivery by the express company to consignee at destination. In more recent times, this has been supplemented by over-the-road handling of their own business without an intermediate form of transportation''. *Railway Express Agency*, 4 N.M.B. 253, 269 (1965). The NMB defined an express company by describing precisely the service Federal Express provides.

Inaccurate statement: ''The deletion of the term 'express company' from [S]ection 1 of the RLA does not appear to have been inadvertent or mistaken''.

Facts: This rather astonishing conclusion ignores the ICC Termination Act itself. The change to the RLA was through a conforming amendment to the ICC Termination Act, which included the following provision: ''The enactment of the ICC Termination Act of 1995 shall neither expand nor contract the coverage of employees and employers by the Railway Labor Act . . .''. Public Law 104–88 (H.R. 2539), Sec. 10501(B).

Inaccurate statement: The memo suggests, consistent with organized labor's lobbying position, that it is more difficult for employees covered by the Railway Labor Act to organize. The memo states: ''This [amendment] would require those [express company] employees to organize under the limited craft bargaining units permitted by the RLA, rather that under the wide range of appropriate units afforded by the NLRA.

Facts: About 11% of the private sector workforce covered by the NLRA is represented by labor unions for purposes of collective bargaining. Some 65–70% of employees covered by the RLA are represented by labor unions. Which law is more conducive to union organizing? As with most of the unsupported conclusions in the memo, the memo again ignores the facts.

Mr. HOLLINGS. Now, Mr. President, let me take the full responsibility because there is no trickery in this whatever. It was openly discussed. My colleagues on the House side as well on this side, all agree that it was an innocent mistake. I do not think you could have Members supporting our position against the powerful Senator from Massachusetts and the powerful labor movement which has made this issue if it were not the case.

That is why we included it at my behest, because I wanted to make sure just exactly, in the expression of the Senator from Massachusetts, we were not going to change the rules of the road in the middle of the game. I think that game in Philadelphia is over. But if he thinks it is continuing, then it is in the middle of the game, because this was done in the ICC Termination Act of December 15 after the rule of the road on November 22, 1995.

I am glad the distinguished Senator from Arizona referred to these employees. That saves me time. It saves the Members some time. We could go through the history of this particular company and labor relations and various talking points, and you could be more than persuaded now as I have been because I did not think we were going to have this great rhubarb come up.

But ever since they were organized, back in 1983, I guess it was—no, 1973, because here is a 1979 decision—Federal Express has been an express carrier, first under the decision back in 1979. In 1936 the Railway Labor Act was amended to include air carriers, which very few people realize had included air carriers, including the one who suggested that we drop the language about ''express.''

Without reading that decision, we move to the 1993 decision of the National Mediation Board and on down the list of the various decisions from time to time. We find out there has been a total consistency for a company that is extremely well operated, is extremely patriotic, it takes care of its employees.

I have been through its facilities. When I went up to Alaska many years ago, we got there early and somebody said you ought to go over here and watch that operation they have over at Anchorage while we wait for our ride, which I did. I never realized the technological advance that had been made by this old Marine—or young Marine, as I look upon him, Fred Smith.

Before they take off in Japan, they have already computerized information and forwarded it to Anchorage. At Anchorage they have various ways for the State Department, Interior Department, Wildlife Service, textiles—Customs, and they have all those things. They know the packages. They know where new shipments are coming through, where there may be some textile fraud, where there may be some drugs; issues involving the Justice Department, the DEA.

As everything is unloaded in a matter of a couple of hours there, this mammoth plane, it goes into all those sockets, runs down these wheels, all those people are at their stations and this is down into the inner part of America.

All I could say to myself, understanding this particular point being raised, that, if you had me running around the countryside trying to argue a different union here and another union over here, with certain little organizers here—I want to emphasize this—that experience, because the distinguished Senator from Massachusetts says they are primarily the little towns. This crowd, UAW, is well represented. They know how to organize folks.

They spent 5 years on this Philadelphia case that has long since been decided unanimously against them. Now comes, the Senator from Massachusetts depicting: It is an ongoing litigation matter, they have not had their chance, they are playing by the rules and HOLLINGS is pulling the rug out from under them.

Nothing could be further from the truth. I would not engage in such conduct. I take offense even having me referred to in that way. I do not have to get into some company over there in Tennessee. But I certainly do not have to stand by and, just because they have a powerful Senator and a powerful labor movement, see a good crowd get rolled.

I am not going to be rolled.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a moment or two and then yield to my friend and colleague. The fact is, Mr. President, the Senator from South Carolina is still—still cannot show where the Federal Express is an express company under the Railway Labor Act. He cannot show it. It is not there. No court award has ever held Federal Express is an express company. The Federal Express has argued that time and time and time again.

The fact of the matter is, on the case he talks about, the National Labor Relations Board is still out there, it is still current. It is case 4RC17698—still current. He can say it is not current. It is current.

He can find fault with Mr. Gould. We have had the hearings on Mr. Gould that would show the way the National Labor Relations Board has acted since he has been up as being more expeditious, faster in terms of the considerations of various cases, and speeded up consideration in various regions more than any National Labor Relations Board of recent times. It has also seen a significant reduction in those terms.

I will just conclude at this point and say we can obfuscate this situation in any way that we might try. But the fact of the matter is, the part of Federal Express that flies is an airline. The part that is a truck, is a truck. What they want to do is take the trucking and put it in the airlines to make it more difficult for workers to be able to come together.

The fact of the matter is, UPS has airline designation under the Railroad Act, and has trucking designation under the National Labor Relations Act. The issue that is before the NLRA is exactly the same.

Sure, mediation has found Federal Express is an airline. The question is, whether the trucking should be considered under the National Labor Relations Act. They have found this division on UPS. They are their principal competitors. It does not take a lot of time to have people understand that is what the issue is. What is being attempted here is to say: Oh, no, we are not even going to let the National Labor Relations Board—we are going to effectively close that door down, cut off that case—which is active—and put them under the Railroad Act, which will make it much more difficult for them to be able to express their grievances.

That is common sense. People ought to understand. You have the post office, now, that is competing with air and trucking; you have UPS, air and trucking; and you have Federal Express, air and trucking. And you have the efforts, now, in terms of Federal Express, to vastly expand the trucking division. What their attempt is, now, is to get in with this special provision to

effectively exclude themselves from what their other competitors are involved in. Then they will be much more successful in terms of the bottom line. That is what we are talking about and that is what is at issue.

I think it is a commonsense fact because that is what the real world is all about. That is the issue which this legislation is attempting to undermine, that decision by the National Labor Relations Act on that particular issue in question and why it continues to be so insidious.

I yield time as the Senator from Illinois would want.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I have great respect for my colleagues from Arizona and my colleague from South Carolina. Senator HOLLINGS in many ways has contributed significantly. He has talked more candidly about the revenue situation that the Federal Government faces than any other Member of this body and I am grateful to him for that.

He also is the one who educated me on the whole question of gross interest versus net interest. One of the little games that administrations of both parties play is they list net interest rather than gross interest so interest does not look so bad. FRITZ HOLLINGS is the person who educated me on that.

But I think on this issue he is wrong. I think there are three questions that we have to ask ourselves. When you ask those questions, then you have to come to the conclusion that we are making a mistake.

First of all, who benefits? The answer is—no one has questioned this—one corporation, Federal Express, benefits. No one else benefits by this.

Second, there is the question of litigation that is pending. My colleague, the Presiding Officer, sits on the Judiciary Committee. He has not been there too long yet, but he will become, over time, one of the most valued members of the Judiciary Committee and of this body. I have said that, not just in his presence, but to others. I can tell you that, almost always, it is wrong to pass legislation that interferes in litigation. It is just bad policy.

And third, the process is wrong. We are going through this and there is no question it is a major change, without any hearings. When the Congressional Research Service says, ''The deletion of 'express company' from section 1 of the RLA does not appear to have been inadvertent or mistaken,'' my friend from South Carolina says they are wrong. I do not know who is right. But I would think the committee of jurisdiction ought to hold a hearing on this.

I also have great questions of whether we should interfere in a competitive situation.

Senator KENNEDY is correct when he says UPS is designated in two different ways, and Federal Express wants to be designated in only one way. Federal Express, as I understand it, has about 1,000 planes and 35,000 trucks. What they want to do is to be designated as an airline, including the 35,000 trucks.

Maybe that is what we should do. I doubt it, but maybe that is what we should do. I think we ought to at least hold a hearing on it.

I am also concerned, and I say this to my friend, the senior Senator from Arizona, Senator MCCAIN, who has been a leader, I think we have to honestly ask ourselves, why is Federal Express being given preferential treatment in this body now?

I think the honest answer is Federal Express has been very generous in their campaign contributions. I have to say, they have been good to PAUL SIMON. My guess is, if you check this out, you will see they have been good to every Member of this body. I am grateful to people who contribute, but I don't think they ought to set public policy because of those contributions. I think that is what is happening here.

We need to change the way we finance campaigns, and I commend my colleague, the senior Senator from Arizona, for being a leader in this area. The system distorts what happens here, and I think this is an example of that distortion.

They have good people, like George Tagg, who I think most of us know, just a very, very fine person. I think most of us frequently use Federal Express. I am not knocking the company. I say to the company leaders who, I am sure, are monitoring what is going on here right now, I think they are well on the way to winning a pyrrhic victory. I think they may well, as the Senator from South Carolina has suggested, get the 60 votes, but I think you will see that journalists, academicians and others are going to use this as an example of a special interest prevailing and the public interest not prevailing. Not to have a hearing on this fundamental question is simply wrong.

I hope that somehow a compromise might be worked out where a hearing would be agreed to and it would be agreed that the committee would act, not necessarily favorably, but the committee would act on it shortly after the first of the year.

This process is wrong. There is no question the underlying bill should pass, but I think we are doing a disservice to the Senate and to the Nation as we move ahead in this way.

Mr. President, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume. Let me, again, repeat my respect and affection for the Senator from Illinois, but in all due respect to the Senator from Illinois, if we are talking about campaign contributions here, I say to the Senator from Illinois, organized labor, the ones that are behind trying to kill the FAA reauthorization bill, has given a thousand times more—a thousand times more—in campaign contributions.

I would be glad to examine the campaign contribution reports to the Federal Election Commission as to who has been getting what money and how much has been given and compare this corporation, with what organized labor is doing.

I say to the Senator from Illinois, right now today, there is an unprecedented—without precedent—infusion of funds by organized labor unions into the congressional campaigns and the Senate campaigns, the likes of which I haven't seen in the 14 years I have been a Member of the Senate. I strongly suggest, before the Senator from Illinois suspects—suspects, as he said —that campaign contributions play a role here, that he look very carefully at the contributions by organized labor unions and the significant contributions that have been made by the individuals who are trying to knock out this legislative provision in the bill.

The Senator from Illinois makes a very serious charge about suspecting—about suspecting—campaign contributions. I will tell the Senator from Illinois, it is clear as to who has been making the campaign contributions. It's been organized labor, it's been an intensive effort.

The other Senator from Arizona and I know of over a million dollars—over a million dollars—that has been poured in by organized labor against one Congressman in the State of Arizona, a rural district, something like we have never seen before. We have never seen it in the history of our State.

So, look, I appreciate the efforts by the Senator from Illinois for campaign finance reform. I look forward to joining him and Senator Boren and others who have left the Senate who we need very badly in that effort, but to somehow think that Federal Express' campaign contributions have something to do with this legislation, when it pales in comparison with that of the campaign contributions and the phone banks and the organized labor leaders who show up and demonstrate in front of our colleague's every campaign appearance, I say to the Senator from Illinois, he has his priority skewed very badly.

Mr. SIMON. Will my colleague yield just for 30 seconds?

Mr. MCCAIN. I will be glad to yield to the Senator from Illinois.

Mr. SIMON. What you say underscores the point, that the way we finance campaigns today taints the whole process, there is just no question about it. We can exchange charges, but we need to improve the system.

Mr. MCCAIN. Mr. President, again, I repeat my great appreciation, my respect, and my affection for the Senator from Illinois. Nothing that I said should be construed as anything but a difference of view as to what role campaign finances and contributions may have played in this legislation, because there is no reason whatsoever for there to be any friction between myself and the Senator from Illinois, as he enters

the last few days of a distinguished career of service to the people of Illinois and this body. I hope the Senator took my response in that vein as he leaves the floor.

Mr. President, let me just correct one thing. A drafting error in the Interstate Commerce Commission Termination Act of 1995 created an ambiguity regarding the express companies status under the Railway Labor Act. That is acknowledged by the people who drafted the legislation and the Senator from South Carolina who was involved at the time in the drafting of that legislation. That is what we are doing here, we are correcting a technical error.

One provision states the intent of Congress:

> The enactment of the ICC Termination Act of 1995 shall neither expand nor contract the coverage of employees and employers by the Railway Labor Act.

However, a second provision drops express carriers under the Railway Labor Act. This was clearly inadvertent and a contradiction to the stated intent of Congress.

Those are just facts. Mr. President, I yield 10 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Thank you, Mr. President, and I thank the Senator from Arizona.

Mr. President, I am not a member of the Commerce Committee. If we could choose our committees without the restrictions of reality, I would like to be a member of the Commerce Committee. I join in this debate, nonetheless, because of the history with the Commerce Committee.

I don't know how far back some of the current Members go, but I was a very, from my present standpoint, young lobbyist for the U.S. Department of Transportation in the first 2 years of the Nixon administration. We didn't call ourselves lobbyists. They don't call them lobbyists today. They call themselves ''congressional liaison people'' or, in my case, I was in charge of congressional relations.

But we were lobbyists, and in the spirit of full and fair disclosure, I will use that term. My assignment from then Secretary John Volpe, who had been Governor of the State of Massachusetts, was to convince the Congress to pass the Airport Airways Act and create the Airport Airways Trust Fund.

My predecessors at the Department, who had been Democrats under the Presidency of Lyndon Johnson, had tried to do the same thing and had been unsuccessful, for a variety of reasons. There were some in the administration who said we would be unsuccessful as well. Representing a Republican President to a Democratic Congress, it was not supposed to be the most harmonious kind of circumstance.

So I came up here in the Senate, obviously not on the floor, but up in the gallery, and in Senators' offices and, with my staff, worked with the then-chairman of the Commerce Committee, Senator Magnuson, and ultimately succeeded in getting strong bipartisan support for the Airport-Airways Act and the creation of the aviation trust fund.

We thought, naively it turns out, that by creating the trust fund we would produce stability in funding for the FAA and airport-airways so that there would never be any doubt of the flow of funds for people involved in keeping our national airways safe.

So it comes as a moment of nostalgia to me to come to the Senate now, some 25 years later, and find that the flow of funds out of the aviation trust fund that I had a small hand in creating have been interrupted, cut off, jeopardized by an attempt to filibuster in this body the bill that would provide those funds, and that the intent of Congress, in which I participated to see to it that there would never be any challenge to that funding, has been frustrated here.

I understand the Senator from Massachusetts has every right to do what he is doing. I have participated in filibusters myself when I felt the cause was just and the point was well worth making. But I find this more an attempt to play to the gallery, if I may, than to address the issue, because it has been virtually conceded on both sides that it is simply a matter of time before the process plays itself out. The bill will pass. The money will be available to keep the airport and airways trust fund funding going to the FAA. The arguments have all been repeated again and again and again.

I find that a little sad from that past history. I was hoping to be able to look back on my career and say that the one thing I did while I was at the Department of Transportation was help remove the airport-airways thing from this kind of disruption. Now I see that that is not possible.

I sit here, not as a member of the committee, and hear the debate going back and forth. ''It was an innocent mistake.'' And, ''It is a technical correction.'' ''Oh, no. This is a major policy issue.'' Back and forth, back and forth, with voices being raised on both sides.

If I may, Mr. President, I am reminded of an experience in my even younger days, before I served in the Nixon administration, all the way back to my teenage years, the first experience I ever had listening to a debate in the Supreme Court.

This was a debate over the sentences that were given to the Rosenbergs back in the days when President Eisenhower was President. You say, what does that have to do with this? Absolutely nothing, except this one phrase sticks in my head.

In the course of that debate, one of the Supreme Court Justices asked one of the lawyers, ''Who are you?'' The lawyer was taken aback by this question, and gave his name. The Justice said, ''No. I know what your name is. What is your standing? Who are you with respect to this case?'' The man then said, ''Well, I represent somebody who is next friend of the Rosenbergs, a man named Edelman. I am the lawyer for Mr. Edelman.''

The Justice called for a law book. The debate went on for a bit, and the Justice interrupted the lawyer again and said, ''Is that the same Edelman as in the case of California v. Edelman?'' The lawyer was stunned that the Supreme Court Justice would have this in his mind, and he stumbled around and he said, ''Yes, it is.'' At which point the Justice closed the law book with a look of some disgust and said, ''A vagrancy case.'' ''Oh, no,'' said the lawyer. ''That was not a vagrancy case. That was a free speech case.''

It was the wrong thing to say to a Supreme Court Justice, who reopened the book and said, reading, ''California v. Edelman, a vagrancy case,'' at which point the lawyer compounded his mistake by saying, ''Well, it may say that on the heading, but if you'll read the case, you'll see that it was a free speech case.'' Whereupon, the Justice leaned forward and said, ''Let's ask Mr. Justice Clark. He wrote the opinion.'' And Mr. Justice Clark said, ''It was a vagrancy case.''

I remember that very clearly as a young teenager in my first experience with the Supreme Court. The reason I bring it up now is, I sit here as a Member of the Senate, not a member of the Commerce Committee, and hear this argument. ''It is a technical fix.'' ''No. It's not. It's a major policy question.'' And like the Justice, I would say, let us ask the man who wrote the opinion what it is.

The man who wrote the opinion, as I understand, in this case is the ranking member of the Commerce Committee, who says it is a technical fix. I heard him say so on the floor here. He says it is a technical correction. He is the ranking member of the committee from the minority party. The chairman agrees with him, the chairman from the majority party. I find that convincing, having heard the people who wrote the legislative words we are arguing about saying this is what it is.

I do not want to be in the position of that lawyer before the Supreme Court trying to say, ''The man who wrote the opinion doesn't know what the opinion really says.'' ''The man who wrote the provision doesn't really know what the provision really is.''

So, Mr. President, I hope we can move forward quickly. I hope, having made the statements, having discharged our political responsibilities to the various people on both sides who have urged us to do this, we can move quickly. I hope we can move this afternoon to say, all right, we have made our position clear. We have said what it is we have to say. We have satisfied the constituents that come to us and plead for support here.

Now we have at stake the safety, the continuance, the future of the Nation's

air system. Let us get on with it. Let us see to it that there is no challenge to the airport and airways safety and progress in this tremendously important area.

In my home State, we are trying to get ready for the Olympics in 2002. When the world comes to Utah in 2002, they are not going to come by ox cart the way they came the first time in the 1840's. They are going to come by air. When they come, the facilities have to be in place. The opportunity to get those facilities in place is being held up by our failure to provide this funding. I think that is a shame. I think we ought to move ahead.

Finally, I keep hearing all these things about how terrible Federal Express is. The most—I ask unanimous consent that I might be allowed the proceed for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. I hear how terrible Federal Express is. The only concrete statement really that I have heard is that Federal Express employees have gone for years without a pay increase. I realize that is a terrible thing. I have gone for years without a pay increase. Indeed, the whole time I have been in the Senate I have been denied a pay increase. I wish I had the salary I had before I came to the Senate when I took at least a 50 percent pay cut in basic pay, and more than that in bonus pay, in order to become a Senator.

I do not think that is a demonstration of prima facie that this company is antiworker, because if we accept that, then the Senate is clearly antiworker and we probably ought to do something about that, too.

So, Mr. President, I hope we could proceed with this and we could recognize that the positions have been staked out. The votes are where they are. I hope we will get on with it. I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take just a few moments. Mr. President, I am really somewhat startled by the fact that those of us in this body making about $130,000 a year are comparing ourselves with men and women making $30,000 a year and who have not gotten a pay raise for the last 7 years. We can make light of that fact, but it is not made light of for hard-working families that are trying to make ends meet and provide for their children and to meet responsibilities and pay a mortgage. I do not see how that kind of comparison really advances the argument. I do not believe it does.

Mr. President, I think it is a fair question and the Senator from Utah has raised it about this language. Is it, as I have suggested, Senator SIMON, Senator FEINGOLD, Senator HARKIN, Senator WELLSTONE, and others stated, that this was a carefully-crafted project in order to effectively diminish in a significant way the legitimate rights of men and women that are in this particular company, as Senator SIMON has pointed out; or was the Federal Express Co. deletion a matter that was decided by the conference committee—and the conference committee report actually bears the name of my friend and colleague from South Carolina.

I listened with interest to the Senator from Utah talking about going to the individuals that are the most familiar with this particular legislation. I have JIM OBERSTAR, the ranking Democrat on the House Transportation Infrastructure Committee and BILL LIPINSKI, the ranking Democrat on the House of Representatives Aviation Committee. This is what Mr. OBERSTAR says:

> The ICR staff itself recommended the elimination of the express carrier status. It was not an oversight. It is not something that someone forgot to do. It is not something that was neglected and drafted. It was not a drafting error, but it was done for good reason. The last express carrier went out of business in the mid-1970's. Federal Express purchased that carrier's operating certificates. The Surface Transportation Board, successor to the ICC, advises in writing Federal Express apparently never engaged in the operations authorized by these certificates. Subsequently, Federal Express obtained and operated new certificates.

Mr. President, here is Mr. OBERSTAR, who knows something about it. Then he continues along page 11463, September 27, 1996:

> We should not on the thin thread of a nonexistent operation of a dormant authority purchased and never used, lock this carrier into a statutorily established position within the meaning of the Railway Labor Act forever and ever. This is simply wrong.

Mr. President, Mr. OBERSTAR knows, as the ranking member, what he is talking about. This was not an oversight. This is the ranking member. Our friends say, ''Look at what people who understood, the men of the committee who spent the time.'' That is fine, that is a fair enough test. That is Mr. OBERSTAR.

We have other Members in the House. Mr. DEFAZIO points out:

> Unfortunately, what we have here, done at the very last moment, is to put an extraneous matter voted on by neither committees of jurisdiction, voted on neither by the House nor the Senate, to benefit one very large multinational corporation who has generously filled many campaign coffers of Members in this House and the other body. This is not a technical correction.

He says it is not a technical correction.

> Do trucks run on rails? No. Well, we are going to classify Federal Express, for the purpose of this bill, as a rail carrier.

Mr. President, we could go through the members of the relevant committees. Both Mr. NADLER and Mr. DEFAZIO in the House are members of the Transportation Infrastructure Committee, these are members of the committee saying this, not just myself and Senator SIMON.

Now, the fact of the matter is, Mr. President, it is not just us who are saying this. We are also looking at the Congressional Research Service. I know their report is demeaned out here on the floor of the U.S. Senate but the Congressional Research Service is to guide the Members of the Congress, the American Law Division of the Congressional Research Service.

We asked them, is this just an oversight or was it purposely intended to be done—so that the Members would understand whether they should accept the fact that this is just an oversight, we never would have permitted it, and therefore we are remedying a situation that happened; or whether it was recognition that that language should have been dropped for the reasons that we mentioned earlier and that now suddenly putting this language back in has an entirely different meaning. I think hopefully we understand that now, as the Senator from Illinois and others have pointed out.

This is the CRS report, ''The deletion of 'express' company''—those are the words—''does not appear to have been inadvertent or mistaken. To the contrary, the deletion appeared to be consistent with the statutory structure and the intent of Congress. Since the Railway Labor Act coverage has been triggered by Federal regulation of express companies, it appears logical and necessary to eliminate the cross-reference to title 49. Elimination of 'express' from the RLA appears to be a necessary step in harmonizing the Railway Labor Act with the title 49 of the code.''

This is an independent judgment. You can say I do not like that particular lawyer, I do not like that individual. You can threaten those individuals, I suppose, and say we will hope that that person does not continue to work at CRS. But the fact of the matter is, that is the independent judgment and decision, one in which I agree.

Now, taking what the conclusion would be from the CRS. If the amendment were enacted ''court decisions since that time have upheld NMB discretion in resolving representative disputes. On balance, the proposed amendment would appear to confuse, rather than clarify the question of Railway Labor Act coverage.''

On the one hand it can be argued the amendment would have no effect, and it is very interesting for those that are supporting this legislation to say, ''Look, it is not really going to have an effect,'' because they say it will not expand or contract the rights of the workers. Well, it is interesting that they are arguing that at this time. It also points on the other hand, it could be argued since neither Federal Express nor anyone was certified an express company subject to the title, it would follow that no employer would come under the coverage. Nonetheless, courts usually strive to give meaning to all enactments.

That is right. They are understanding and everyone is understanding

what this is about. This is Federal Express, their understanding, to be able to read the legislative history and understand. There is one company that will benefit, and proponents have argued the amendment would simply put the term back in the Railway Labor Act and would in no way affect, and proponents argue that the amendment merely corrects an error in order to preserve the proponents saying it will expand the coverage to ground-based employees of a carrier whose jobs are not integral to air freight operations.

There it is, Mr. President, exactly. UPS, the flight aspects are considered to be under the carrier provisions. Those that drive the trucks are considered under UPS under the National Labor Relations Act. Federal Express flies, they ought to be under the Railway Labor Act. The truckers ought to be—a judgment ought to be made. All we are saying by the National Labor Relations Board, all we are saying, let them make the judgment, not preclude them, not preclude them from making a judgment. That decision is before the National Labor Relations Board. And it will certainly be argued, if this becomes law, that this is exactly what is intended, to expand for ground transportation. That is the way the Federal Express is moving and expanding dramatically. It will give them extraordinary advantage. Put this back in and we don't know what the results will be. We do know, I think, what will happen. Federal Express will have another weapon to turn its back on the legitimate rights of workers and workers' rights.

Finally, that is what this is all about—whether these workers and workers' rights are sufficiently legitimate that they are going to appeal to those that are working in a particular community, to be able to make a decision and say, look, we feel that we can protect our rights better by becoming a union, or whether they say we don't want to choose a union. All we are saying is let them make the local choice, let them make the decision. UPS drivers have made that decision. That issue is before the National Labor Relations Board. Why take it away from the National Labor Relations Board and undermine those rights and put it under the Railway Act, which virtually says to all of those workers, we know you had the rights under the National Labor Relations Act, like they did in UPS, to go ahead and see if you can try and form a union. Maybe you will, maybe you won't. But we are letting you make that local choice and decision. But under this legislation, we are effectively saying, no way, not for you in this Federal Express Co. You are not going to be able to do it. That is, in effect, what this is all about.

Finally, Mr. President, I mentioned before that we are all for the extension of the Aviation Act. I don't know whether our colleagues were here earlier. I would have offered the FAA conference report without this provision on the CR and had a 10-minute discussion. We would have voted on that and the House would have accepted it. We would be off on our way to be able to do that. But the decision was made not to do that. So we are at least in the position now where we have to follow this procedure. But we are strongly committed to support that particular provision. We think that it is important.

Mr. President, I yield the floor and withhold the balance of my time.

Mr. MCCAIN. I yield 5 minutes to the Senator from Utah.

Mr. BENNETT. I thank my friend from Arizona. I will not consume much time. The Senator from Massachusetts appropriately corrected me on any suggestion that there is a similarity between the salary of a Senator and the salary of some of these workers, and I accept that correction on his part. I meant not to make that comparison. I didn't think I had made that comparison. But if he felt that was made, it was appropriate for him to raise the issue.

I would like to revisit the issue of the pay increase, because I have now been given some additional information that I did not have when I spoke before. The charge has been made that Federal Express has not given a pay raise to its employees in 7 years. I am now told that the truth is somewhat different, and that all kinds of programs relating to pay have been initiated within the last 3 years. There is now an opportunity for an employee to get professional pay. There is an incentive pay plan. There are programs for merit increases. And there is a program for best-practice pay. So the company has put in place this series of 4 opportunities, making all employees eligible for a pay increase that could be as high as 10 percent annually.

I think it is important, in the spirit of full disclosure, as we go about this debate, that we not leave on the record unanswered the charge that Federal Express has not made any pay increases available to any of its employees for 7 years, and the implication, therefore, it is the duty of the U.S. Senate to somehow punish them for this kind of activity on their part, when in fact they have put in place programs that make pay increases available to their employees up to the level of 10 percent annually.

If I may, again, without suggesting in any way any comparability between the salary of a Senator and the salary of some of the employees we are talking about here, I do wish that Members of the Senate could look forward to any kind of cost-of-living increase and not have had their pay frozen for the entire time I have been here. Maybe my coming caused that. If that is the case, I suppose there are plenty that hope I leave. I would like to think that was coincidental.

Mr. President, I repeat again what I said before. I think everybody has said whatever they want to say on this issue. It is clear that one side wants to take the opportunity to attack Federal Express and, thereby, perhaps tilt things in one direction or another in a time of a union election, to pay off whatever political debts to the unions that are urging them to attack Federal Express. The other side has made it clear that we want to get on with the legislative process of providing funds for the FAA.

I see no reason to repeat all of these arguments. I see no reason to wait until next Thursday to get this resolved. Everybody knows how it comes out, as the Senator from Illinois indicated when he spoke. I hope that people who are in leadership positions, who can deal with these things and deal with the Senator from Massachusetts, can sit down and get this thing resolved so that we can have a vote on it, let the Senate work its will, having heard all of the arguments, and get the money that is so desperately needed into the hands of the people who are so importantly in charge of something as significant as our Nation's airlines and safety.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume, and I will be brief.

Mr. President, let me remind my colleagues again, in the words of the distinguished Democratic leader, as he stated this just this morning:

> Question. So you've got to pass this bill?
> DASCHLE. We've got to pass this bill.

That is as simple as it is. I don't know exactly why the Senator from Massachusetts wants to drag out this procedure. But I do know this, Mr. President: We are now hearing from airport managers and workers, and even union members all over this country, who are asking why can't we move forward with our airport projects, why can't we begin the much needed repairs. We are even hearing from bureaucrats, who are saying, ''We want to work, we want to move forward on aviation safety and security measures that are necessary to safeguard the flying public.''

Why is it that we have to wait until Thursday for the bill to be completed and then sent over to the White House for signature? Why do we have to do that? I think that is a legitimate question, Mr. President.

On the subject of Federal Express, I don't know much about Federal Express, except that I see them everywhere. Members of my family, especially my wife, use that service quite a lot, along with a number of other organizations that deliver packages.

But I am not here to argue whether Federal Express is a good or bad corporation. In fact, I think that is a straw man, Mr. President. In fact, I think it is an evasion of what this debate is really all about. What this debate is about is whether there was a mistake or drafting error for which there needed to be made a technical correction in legislation that was passed in 1995, or whether there was not.

Now, the Senator from Massachusetts believes that had no relevance, that was not correct. He is entitled to that opinion, and I respect that opinion. I am not sure I see the point here in attacking a company and accusing them, and having a big poster board up there that says ''anti-worker.'' What does that have to do with anything that we are really debating here?

What it really has to do with is a union agenda to attack a corporation. Again, they are free to do that, and the rules of the Senate, I am sure, certainly allow the Senator from Massachusetts to do that. But that is not really what the debate is about. The debate is about whether an error that was made in drafting and enacting legislation should be corrected or not. It is that simple. Whether Federal Express is the best corporation or company in the world, or the worst, has no bearing on it.

So, again, I am sure that the Senator from Massachusetts seems to be enjoying relating anecdotes about the anti-employee behavior of Federal Express; although, in my experience, most corporations that mistreat their employees are not successful. But maybe this is an exception to my general experience in that area.

I don't claim to be an expert. But I am not sure how we really gain anything by continuing to try to discover whether Federal Express is a good or bad corporation. The question here is: Are we going to allow the airport projects and aviation safety programs—the aviation safety and airport security programs—to move forward, which will happen on Thursday anyway now, or are we going to continue to delay? We have already passed our deadline for completing this matter by some 17 hours.

The Senator from Massachusetts professes and I accept his sincere commitment to the working men and women of America. I do not question that at all. But I do question why he wants to delay the inevitable until Thursday, or Friday, or next week costing these working men and women I don't know how much other income because I don't know what their salary is, but at least a week's worth, if not 10 days worth. In some families, that means a lot. That really does mean a lot. There are only 52 weeks in the year when you can work and we are now costing these families income by not passing this critical legislation.

Now the Senator from Massachusetts is going to deprive those working men and women. I have no idea how many tens of thousands of them would be working on $9 billion worth of airport projects. I don't know how many there are. But I know they are going to be out there suffering as will their families.

The Senator from Massachusetts continues to sort of blame this side that we didn't pass the bill. We passed the bill and finished conference on September 23, in plenty of time, Mr. President. The conference report could have been passed and sent to the White House days ago before October 1, and this critical funding would have continued.

Now we are getting emergency phone calls from all over America. They are calling saying, ''What is the matter with you guys? What is the matter with you? You are hung up on some technical point here,'' and we are being deprived the ability to provide the critical aviation services to our citizens that they deserve. Frankly, I do not understand it.

I again urge the Senator from Massachusetts to allow us to move forward. We could have a vote on the conference this afternoon and pass it with 60 votes, or 51 if he would just let us have an up-or-down vote on the conference report. And we could be done with this. Instead the Senator from Massachusetts is choosing to drag this out for 3 more hours of debate tomorrow. And, very frankly, it is not clear to me what there is to debate more except to keep going over again and plowing over ground that has already been plowed, which by the way would not be a unique activity for this body. But at the same time there is a lot more at stake here than in the normal course of debate.

So again I want to urge the Senator from Massachusetts, take down your antiworker poster and let us talk about whether indeed this was a technical correction to a drafting error that needed to be made or not or whether the argument of the Senator from Massachusetts is correct that this is really a subject for the National Labor Relations Board. It may be. Let us try to convince our colleagues on the basis of whether that is, indeed, the case, or not.

I am willing and eager to engage the Senator from Massachusetts in open and honest debate on that issue. I am not eager to try to find out whether Federal Express is a good or a bad corporation because I do not think that is relevant to the issue and the question here. But I am afraid that is not going to be the case.

Finally, Mr. President, before I yield the floor, again this is an issue that must be resolved. It is going to be resolved. And we are not doing anything except penalizing working men and women all over America. We are jeopardizing the aviation safety of the American flying public. And we are not proceeding with the much needed modernization for our air traffic control system, and we are not moving forward in a myriad of ways that we critically must move forward with immediately.

Mr. President, I say with some self-serving comments that this has a huge bearing, and is an encompassing extremely important piece of legislation; the result of 2 years of work with the Secretary of Transportation, with the Administrator of the FAA, and with the Deputy Administrator of the FAA, Linda Daschle, who did such an outstanding job on this—an incredible job. Hundreds of hours were spent with Senator PRESSLER, the chairman of the full committee, Senator HOLLINGS the ranking member, Senator FORD, and me. I mean we have worked for literally 2 years on this very important legislation. And we had a couple of false starts I might remind my colleague from South Carolina. But we finally came up with legislation which really is important to the future of America.

Instead now we are hung up on what is fundamentally a difference of opinion as to whether a mistake was made in the drafting of legislation—and by the way, in view of those who were drafting the legislation, or whether Senator KENNEDY is correct, that this is a subject for the National Labor Relations Board.

It seems to me that we could pretty well ventilate that difference of opinion today and we could move forward with a vote on the bill today.

I again urge my colleague from Massachusetts to do that for the benefit of, if not the Members of the Senate who want to go home and campaign, the working men and women in America, tens of thousands of whom—if this debate drags out, I will have more specific statistics as to the incredible impact that this is having economically on America, not to mention the critical aviation safety and airport security reasons.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just speak briefly at this time.

I listened to my friend from Arizona talking about workers that are affected. I am asking what about those workers that are working for Federal Express that are playing by the rules who tried to get together and have their own set of grievances? What about those workers who have their case before in adjudication at the present time? What about those workers? What about their families? They have been waiting for months and months for a decision to see if their rights are going to be protected, and with the passage of this legislation effectively we are undermining those. I don't hear from the Senator from Arizona any concern about those workers. I would have thought that he would have been concerned with them.

Mr. President, we have debated about whether this was a mistake or not. I will not get back into the fact that we have had now the number of Members—Mr. LIPINSKI, ranking member of House Aviation, Mr. OBERSTAR, ranking member of the House Transportation, Mr. DEFAZIO on the Transportation Committee, and others in the House, and the members of the committee, plus CRS, all indicated that it was not just a passing factor, but that it was to give very clearly one company an advantage over others and being a serious disadvantage to workers.

Mr. President, the Senator from Arizona reminds me of that young person who shot his parents and then came before the judge, and said, ''I plead, give me mercy. I am an orphan.'' We said the other day on the continuing resolution that we would pass the conference report without the antiworker provisions, and he said, no, no. Where was all of his concern about the workers then? Where was all of his concern about what is going to happen out in these various airports then? Where was all of his concern about the importance of passing out legislation then?

Well, after that legislation was safely passed, it only took a little bit of time. And then he comes out here and says ''Oh, we have to pass this legislation now.''

Mr. President, we are quite prepared, if it is agreeable to Senator MCCAIN, to ask that we go to consideration of S. 2161, which is the FAA bill that is on the calendar now without the antiworker special interest Federal Express rider, and we are prepared to move ahead on that.

I get back time and time again from the Senator from Arizona: ''We can't do that because we are going to go out. We are going to go out.'' The fact of the matter is the House adjourned in 1994, and it came back and passed GATT. There are other examples that I will put in the RECORD of where the House came back in, the most recent with the GATT. They came back in and passed virtually immediately on the action that was taken by the Senate. It is done, and it has been done and historically done.

We could do that this afternoon. But no, no, no, no, no. He refused to do that because they want to stick it to these workers; stick it to the workers, pass this provision in there to stick it to the workers. They are the interest. This is my interest in terms of—

Mr. MCCAIN. I ask for a ruling from the Chair——

Mr. KENNEDY. I have the floor, Mr. President. I ask for regular order.

Their interest is my interest. That is basically what this issue is about.

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Arizona.

Mr. MCCAIN. Under the rules of the Senate, I do not believe the words of the Senator from Massachusetts, saying I want to stick it to the workers, is appropriate language for the Senate.

The PRESIDING OFFICER. The Senator will withhold.

The ruling of the Chair is that the language of the Senator from Massachusetts is not in violation of rule 19.

Mr. KENNEDY. I thank the Chair.

Mr. President, the issue of those workers—this is about Federal Express. They have rights. They have their interests. If they are against the workers and workers' rights, so be it. This is a free country. They can go within the context of the law. What we are basically talking about is the grievances that those workers have, who are trying to carry them forward, and we have legislation that would effectively undermine them.

I know the Senator from Utah is not on the floor. I hoped to just be able to clarify this position. As I understand, from 1984 to 1991, which is a period of 7 years, there was no pay increase; that in 1991, workers began to organize, and Federal Express gave workers a pay increase, and then another in 1993. In 1996, the company announced that there would be no further wage increases. That is my information. If that helps clarify the Senator's understanding of what I was trying to portray, that is fine.

Mr. President, this is an important issue. It is so easy to always find an excuse not to look out after working people. We heard from the Republicans month after month after month where they would not even permit the Senate of the United States to vote on an increase in the minimum wage. Month after month after month they said no. ''Over my dead body,'' was what they said in the House of Representatives. ''I will fight it with every sinew in my body''—an increase in the minimum wage to permit those Americans on the lowest rung of the economic ladder the ability to work and be out of poverty. No, they said. No, we have got other measures to consider in this Chamber. We are not going to permit that.

Then, finally, because of the American people's sense of fairness and decency, they had to relent in the Senate of the United States and the House of Representatives. Then they tried to cut it back. Then they tried to delay it in the conference. That is the record of the anti-worker leadership over the period of this last Congress.

The first thing they did was attack the Davis-Bacon Act. The average construction worker makes $27,500 a year, and that is too much for some on the other side; we are going to emasculate that. Second, we have got to cut back on the earned-income tax credit. Who benefits from that? Workers who make up to $28,000, $29,000 and their children. That is too much. We are going to cut back on those individuals.

The next thing we are going to do is make all of you pay more for your parents because we are going to cut back on the Medicare and give $245 billion of tax relief to the wealthiest individuals. We know what the record is of the Republican leadership over there.

I am not surprised at what the Senator from Arizona is saying now. All you have do is look at the record of this last Congress, and it has been anti-worker, anti-worker on a minimum wage, anti-worker on the earned-income tax credit, anti-worker on workers who are trying to get the Davis-Bacon provision so that those who have the skills ought to be able to get decent work, and cutbacks in education where the workers' children are going to school. Cut back on those programs. Cut back on the scholarship programs for those children who are going to college. To do what? Cut back on the Medicare, cut back on the Medicaid to give the tax breaks to the wealthy.

That has been the record. You do not have to listen to this Senator in October to make that out. The record is complete with the battles. So it is not a surprise to me when the Senator says we are concerned about workers, we are concerned about workers over here, and does not even mention those individuals who have very legitimate grievances and are being shortchanged by legislative action—shortchanged—and others who are going to be given some advantage, significant advantage, by statutory language.

This is not a question of oversight. All you have to do is read the record, read the unbiased analysis of those who observed the history of this particular provision. We know that. This is special legislation for a special company that has done what it could to frustrate workers from being able to proceed to pursue their legitimate grievances. That is what this is about.

That is what this is about. It is an issue we are fighting for, and it is an issue we are staying here another day for. For some, workers' rights are important. For some, the grievances of workers are important in this country, maybe not to others. Maybe not to others. But to some Senators, they are. They are worth fighting for. We will have that opportunity for the Senate to make a judgment on this on Thursday next at 10 a.m. We will then follow the rules of the Senate and abide by that decision. But until then, we are going to continue with everything that we can to make our case for justice and fairness for working families.

Mr. MCCAIN addressed the Chair.

Mr. KENNEDY. I reserve the remainder of my time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield myself 2 minutes.

I enjoy spirited debate in this Chamber. I enjoy an exchange of philosophy and ideas, and I learn from debate, especially with some of the more learned colleagues on the other side of the aisle. But I have to say, with all due respect to the President, I just grow weary, I grow weary when someone on the other side of the aisle says I want to stick it to workers, that I want to abandon old people.

That really has nothing to do with debate. That just has to do—even though the ruling of the Chair just was not in my favor, it is unnecessary, it is unwanted and, very frankly, I say to the Senator from Massachusetts, I am sorry that he has to lower the level of debate to impugning my character and motives for a position that I happen to take on this bill. I do not impugn the integrity, the motives of the Senator from Massachusetts. I believe that he has strongly held views. I believe that what is happening now is bad for workers of America, but I certainly do not

blame the Senator from Massachusetts and, very frankly, I do not look forward to further debate with the Senator from Massachusetts because it is obvious that it cannot be debated on a level that I think is in keeping with the tradition of this distinguished body.

Mr. President, I would like to reserve 8 minutes for Senator HUTCHISON when she arrives in the Chamber. In the meantime, I would like to yield time, what time there is between then and 8 minutes left for Senator HUTCHISON, to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President. I do not know where to come in. I know we finally have beaten them when they start debating the minimum wage bill, no pay increase, anti-worker, Davis-Bacon, scholarships for students. It reminds me during the war boarding ships in the Navy, they said, ''When in danger, when in doubt, run in circles, scream and shout.'' And so we now have to come to the floor of the Senate and talk about everything else but what is really at hand.

My distinguished colleague from Massachusetts thinks when he repeats something or says something, somehow that makes it true. He continually comes again and again and he says, well, the Senator from South Carolina cannot show that Federal Express is an express company under the Railway Labor Act. We filled the record. We will have go back to it again and again and again.

Since commencing operations 23 years ago, Federal Express and its employees consistently have been determined by the Federal courts, the National Mediation Board, and the National Labor Relations Board to be subject to the RLA. See Chicago Truck Driver, Helpers, Warehouse Workers Union v. National Mediation Board, 1982; Chicago Truck Drivers, Helpers and Warehouse workers v. NLRB in 1979; Adams v. Federal Express Corporation back in 1977; Federal Express Corporation, 22 N.M.B. 57 (1995); Federal Express Corporation, 22 N.M.B. 157, 1995; Federal Express Corporation, 20 N.M.B. 666 in 1993; Federal Express Corporation, 20 N.M.B. 486; Federal Express, 20 N.M.B. 404; Federal Express, 20 N.M.B. 394 in 1993; Federal Express, 20 N.M.B. 360 in 1993; Federal Express, 20 N.M.B. 7, 1992; Federal Express, 20 N.M.B. 91, 1992; Federal Express Corporation, 17 N.M.B. 24, 1989; Federal Express, 17 N.M.B. 5, 1989; Federal Express Corporation and Flying Tiger Line, 16 N.M.B. 433 in 1989; Federal Express Corporation, 6 N.M.B. 442, in 1978; Federal Express, Case No. 22–RC in 1974; Federal Express, NLRB case in 1985; Federal Express, NLRB case No. 1–CA 25084 in 1987; Federal Express, NLRB case in 1982; Federal Express NLRB case in 1982; another one, again, in 1977; 1991.

The National Mediation Board recently ruled—and this is a 1995 case—on Federal Express' Railway Labor Act status by stating unequivocally that ''Federal Express and all of its employees are subject to the Railway Labor Act.'' Federal Express Corporation, 23 N.M.B. 32 (1995).

I do not know how you make it more clear than that. You have that decision that said, in 1993, and I read, ''Federal Express Corporation has been found to be a common carrier as defined by 45 U.S.C. 151.''

Then I look at 45 U.S.C. 151, 1st, ''The term 'carrier' includes any express company.''

You read it to them; they don't want to listen. They just act like there is nobody else, they are here looking out for the workers, trying to make it an emotional thing, who is for the workers. I was around here for the workers when some of these were voting for NAFTA. We lost 400,000 jobs; the Mexicans lost 1 million jobs. We went from a $5 billion balance in trade, a surplus, to over an $18 billion deficit. I lost 10,000. I don't know how many this year. I know more than 10,000 by the middle of the summer. I lost 10,000 jobs down there.

GATT—I voted against GATT. I had to hold up the Senate and everything else of that kind, trying to make sense so we would not repeal 301. They kept on saying it was not repealed. Now they understand. The Japanese laugh at them. They say, ''Let's go to the World Trade Organization, WTO.'' Find out what you get out of that group.

So, do not run around saying, ''I am looking out for workers and helping workers, and you are antiworker.''

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired.

Mr. WYDEN. Mr. President, I rise in support of the conference report on S. 1994, to reauthorize the programs of the FAA. For the safety and security of every Oregonian who flies and for our smaller airports this legislation is critical.

I want to commend the chairman of the committee, the chairman of the Aviation Subcommittee, and especially the distinguished ranking member of the Aviation Subcommittee, Senator FORD, for their hard work. The conference report includes several provisions I have worked on. In particular, I take pride in those that make safety paramount at the FAA, that require making airline safety information available to the public and that strengthen security at our airports.

I also want to thank the managers for their cooperation in incorporating my amendment on train whistles. This provision will stop the Government from imposing a one-size-fits-all approach on communities with railroad grade crossings. Without this provision, towns across this country, like Pendleton, OR, would have had train whistles blowing night and day. My amendment will assure that the Federal Railroad Administration works with the people in Pendleton and elsewhere to develop appropriate safety measures for their grade crossings.

When we began the process, this was a relatively modest reauthorization bill. No safety or security measures to speak of. Now, these concerns are at the forefront, where they belong.

With this bill, we go beyond all the talk about safety. With this bill, we take the first step ever toward making information on airline safety available to the public. Finally, the traveling public will be able to get basic safety information in plain English.

Everyone who flies should be able to make informed choices about the airlines they fly and the airports they use. This legislation will help consumers do that.

Today, travelers can get plenty of information from the airlines about whether their bags will get crushed or their flights will arrive on time. With this bill, travelers will no longer have to go through the legalistic torture of the Freedom of Information Act to get basic safety information. They'll be able to get it online, from the National Transportation Safety Board.

No one thought this would be easy. I have talked to people in all parts of the aviation community—the FAA, NTSB, airlines, labor, manufacturers, pilots, and consumer groups—about the best way to do this. While there are certainly differences over how to do it, everyone agrees that it should be done. And I agree with those in the industry who say that anything involving safety should not be part of competition. But by having uniform definitions, standards, and public access to this information, I believe we will move safety out of the shadows and into the sunshine.

Also of special interest are the provisions seeking to improve aviation security.

This conference report will require more comprehensive employment investigations, including criminal history records checks, for individuals who will screen airline passengers, baggage, and property. We remove the legislative straitjacket that has hamstrung the FAA's efforts to deploy security equipment in airports.

When we talk about a security system that will cost as much as one B–2 bomber, we can't expect the airlines to shoulder that burden alone.

The conference report puts the administration on top of airport safety and security functions. Right now, this task is undertaken almost exclusively by the air carriers. From now on, the FAA will be firmly in charge.

Another problem is the lax attitude we have toward some of the most critical players: Those who monitor the x-ray machines. What is the point of having $1 million machines if these workers are being paid minimum wage and lack any basic training? Americans should not expect a second-class attitude will produce first-class security.

The amendment will toughen up the attention paid to these critical workers.

There remains, however, one glaringly weak link in the security chain.

It is that we don't even have an evaluation of the current status of security at our Nation's airports. We need a basic security baseline in order to establish goals and priorities. We need regular reports on whether the goals are being met. This is not rocket science. It is security 101. Although this is not included in the bill, I intend to work with the FAA on this in the coming months.

Finally, I want to note another very important provision for Oregon: Funding protection for smaller airports. These airports, such as Bandon and John Day and Klamath Falls, serve citizens in the more rural parts of my State. Without the funding formula in this bill, these smaller airports would suffer disproportionate cuts in grant funds when appropriations are tight. Unless I've missed something, there doesn't appear to be any extra airport improvement grant funding lying around.

Mr. President, there are many other important elements in this legislation. I want to conclude by again thanking the leaders of the Commerce Committee for their excellent work on a good aviation safety and security bill.

Mr. HOLLINGS. When does the time terminate? Right just before 5?

The PRESIDING OFFICER. There is 8 minutes remaining to the Senator from Arizona. He yielded those 8 minutes to the junior Senator from Texas, and 24 minutes remain to the Senator from Massachusetts.

Mr. HOLLINGS. I thank the Chair.

The PRESIDING OFFICER. The Chair, acting in his capacity as the Senator from Washington, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Texas has 8 minutes yielded by the Senator from Arizona.

Mrs. HUTCHISON. Mr. President, it is hard to imagine that we are really still here, talking about whether we are going to vote on an aviation security bill. We know that we must have this. We are trying to respond in a responsible way to the potential for terrorism in our airports. We are trying to make sure that the FAA has the tools that it needs for safety. Yet, we are being held up on a really technical point, not to mention taking people away from what they need to be doing right now with regard to the rest of this session. I do not understand it.

What we are talking about today is the most bipartisan solution to a real problem that we have in this Government, and that is the reauthorization of the FAA, which thousands of the traveling public depend on for the safety of our airline passengers, as well as the safety of our visitors to this country. We have the reauthorization before us, and it is October 1 and we are not able to move forward.

I would like to talk about a few of the things that are in this bill which we cannot do today because we are in the middle of some kind of filibuster, which really is meaningless because we are going to vote on this bill sometime before the end of this week. But here is what we are not able to do today because this bill has not been passed.

We are trying to get explosive detection devices certified by the FAA. There is $400 million in the continuing resolution that we passed last night, and it is for the technologies which are now available that we are not using in this country but that they are using in foreign countries for the detection of explosive devices that might be taken on an airplane.

These devices that could be certified, right now, today, if we could pass this bill, cannot be deployed without this provision. So we are losing valuable time in getting the best of the technology.

You may ask, ''Gosh, we put our bags through screens right now at airports.'' That is true, we do. But those screens were made to stop hijackers. Those screens were made to detect guns and knives, but not explosive devices, and particularly not the high-level, sophisticated explosive devices that we know are now on the market. But detection devices are available for those devices. We can detect those explosives if we can deploy the equipment and get it certified by the FAA, which we cannot do right now because this bill is being debated on a technicality that was decided by Congresses in the past and which has been decided by this Congress, and it is just a matter of time before we get to what will be an overwhelmingly positive vote that will show that this Congress has decided this issue.

We would require background checks for baggage and passenger screeners. We believe it is prudent to have background checks on the contracted-out employees who are doing this screening. That is in this bill. The FAA would be able to audit the criminal records checks for tarmac-access employees. That is provided in this bill, if we can pass it.

We are going to have a study that will determine if we can have baggage-match reports on domestic flights. One of the things that is done on overseas flights is matching baggage that is checked with the passengers. I believe this is going to be feasible on our domestic flights, because I think the technology is there that will keep us from having the delays that the airlines have been concerned about. So we want to be able to assess that, and that is provided for in this bill. But it is being held up now with this debate over a nonissue so that we are not going to be able to immediately go forward to implement tests on baggage match, which may be one of the most important ways to make our airlines and our airports more safe.

We are also going to ask the FAA in this bill, when it is passed, to look at how we can improve security for mail, for cargo. It is important that the sense of the Senate in this bill which says we believe that cargo security can be enhanced be passed, because if we can enhance cargo security, that is one area that really is pervasive in our aviation system, and it is really the underbelly, to use a pun, of aviation security.

We would require, in this bill, an aviation security/FBI liaison in cities with high-risk airports to coordinate with the FAA. This bill says that we think there needs to be a person in every FBI office where there is a high-risk airport—any airport that has international service—that in every FBI office, there should be a liaison with the FAA and with the airport to make sure that there is coordination, where information is exchanged, where the FBI can look at what the FAA is doing or what the airlines are doing for security, to give their opinion about whether it is sufficient or whether it could be improved.

In fact, we would have a joint threat assessment by the FAA and the FBI, and they want that authorization. Both entities want to work together, and they want the authorization to do that. It makes sense.

So why aren't they doing that? Because we are discussing a labor issue that was decided years ago. The people of America probably don't understand that, and many of us on this floor don't understand that either.

We are talking about taking away the dual mandate of the FAA, which is promotion of the airlines and safety. That has always been a kind of a conflict that has had to be resolved from time to time, and we are taking promotion out, because the airlines do a good job of that.

When the FAA was created back in the old days, airlines were just beginning, and people had to be convinced that airlines were going to be safe. But now we see the safety record of airlines, and it is terrific. You are safer on an airplane than driving to the airport, and that is a fact. So now we are going to make safety the mandate of the FAA, and that is proper, because passengers want to make sure that they are safe.

I think of the families of the passengers on TWA Flight 800 who went to France this week. They are trying to put their lives back together. I think of what those families are thinking about, what their loved ones felt when they were thousands of feet above the ground and, through no fault of their own, their lives were taken from them, and they were helpless.

We want to make it as safe as possible for every traveling American, and this bill will do it. Mr. President, there is no reason to be holding this bill up on matters that have been decided by this Congress. There is no reason to hold this bill up over a technical labor

issue that has been decided by this Congress. We have so many important safety issues in this bill that are being addressed. We should be responsible and get this bill out today so that we do not delay for 1 more day the deployment of the explosive detection devices that are ready to go on line and into our airports to provide the level of safety that our passengers require, expect, and are entitled to.

So, Mr. President, I hope that those who are holding up this bill, knowing that they will not succeed, but, nevertheless, imposing on their fellow colleagues to make some sort of point that is not being very well made and putting in jeopardy the safety of the flying public and people who go into airports by the hundreds of thousands in this country every day—we could be doing more, and we could be doing it right now. The FAA is waiting for this authorization. It is at hand. Why would we be delaying for the next 2 days when we could start the deployment today, this minute, of the explosive detection devices which are provided for in the continuing resolution that has already been signed by the President and all we need is the authorization to do it?

It is not responsible, and I call on my colleagues who are holding this bill up and ask them to be responsible and help us address these issues for the safety of Americans and our families and our loved ones.

Mr. PRESSLER. Mr. President, as chairman of the conference on H.R. 3539, the Federal Aviation Authorization Act of 1996, I rise in support of this critically important aviation safety and security legislation. Despite some unwarranted, partisan exchanges in the past few days—unwarranted because this is in no way a partisan issue—this is bipartisan legislation which enjoys strong support on both sides of the aisle. When we vote on final passage later this week, I believe this legislation quite deservedly will enjoy overwhelming support.

There are many Senators from both parties who had a hand in crafting this legislation. Today, I wish to express my personal thanks to some of my colleagues.

My good friend from Arizona, Senator MCCAIN, has been a driving force behind this legislation. As chairman of the Aviation Subcommittee, Senator MCCAIN set the lofty goal of meaningful reform of the FAA. Through Senator MCCAIN's tireless efforts, this legislation puts in place a mechanism to ensure the FAA is on firm footing to meet our aviation needs well into the new century. Senator MCCAIN's great vision in aviation policy can be seen throughout this conference report.

I also want to commend my good friend from Alaska, Senator STEVENS, who is really the unsung hero of this legislation. When we reached an impasse as to how best to address the question of long-term FAA financing reform, it was Senator STEVENS' thoughtful suggestion of an independent task force study that broke the deadlock. Those who have watched the debate on this conference report over the past week have seen firsthand Senator STEVENS' passion for aviation safety and improving the treatment of families of aviation disaster victims.

Let me also commend and thank my good friend from South Carolina, the ranking member of the Commerce Committee, Senator HOLLINGS, who provided important leadership on this conference report. Also, let me acknowledge the leadership of Senator FORD, the ranking member of the Aviation Subcommittee.

H.R. 3539 is a bipartisan, omnibus aviation safety and security bill. It reauthorizes the airport improvement program [AIP] and thereby ensures airports across the Nation will continue to receive Federal funding for safety-related repairs and other improvements. It reforms the FAA in a way which hopefully will reduce bureaucracy, increase responsiveness, and enhance the efficiency of that agency. The conference report also contains numerous provisions which will improve aviation safety, enhance aviation security and provide long overdue assistance to the families of victims of aviation disasters.

Mr. President, as I have said repeatedly in this body over the past few days, we have a responsibility to the American traveling public to pass this legislation before we adjourn. For instance, this legislation provides statutory authority to deploy explosive detection devices at our Nation's airports as recommended by the White House Commission on Aviation Safety and Security on which I serve. Even though yesterday the Congress approved funding to purchase these explosive detection devices, without passage of this conference report the Federal Government will not have statutory authority to deploy them. Such a scenario is completely unacceptable. The American public expects the level of security at our airports to be improved immediately. We must respond before the Senate adjourns.

Mr. President, I wish to speak for a few minutes about what this legislation means to my home State of South Dakota. In South Dakota, air service is critical to economic development. For example, the decision whether to open a new factory in a small city or where to locate a new business often turns on the availability of good air service. That was never more evident to me than when a company recently visited Rapid City, SD to consider relocating there. This move would create more than 100 new jobs. One of the very first questions they asked my staff concerned air service between Rapid City and a major hub airport. In South Dakota, air service and economic development go hand in hand.

Mr. President, this legislation is a great air service victory for South Dakota.

First, the legislation doubles the size of the Essential Air Service [EAS] program to $50 million. What does that mean? It means the cities of Brookings, Mitchell, and Yankton in my State will be ensured of a continued air service link to our national air service network. In addition to helping to protect existing EAS service in Brookings, Mitchell, and Yankton, I am hopeful that a $50 million EAS program will result in increased air service for these cities. A $50 million EAS Program is great news for the economy of South Dakota.

Second, the legislation ensures small airports such as those in South Dakota finally receive their full and fair share of AIP entitlement funds. Adequately maintained airports are critical to air service. They also are critical to air safety. Under the new AIP formula I helped develop in this conference report, South Dakota airports are big winners. For instance, AIP entitlement funds will increase at least $225,000 annually for the Sioux Falls Regional Airport, $170,000 for the Rapid City Airport, and $100,000 each for the Aberdeen, Regional Airport and the Pierre Regional Airport. Hopefully, improved airport facilities resulting from this formula adjustment will help stimulate increased air service in Sioux Falls, Rapid City, Aberdeen and Pierre. Again, such a result would be great news for economic development in those cities and our State. The new formula ensures they receive their fair share of Federal dollars.

Mr. President, this conference report should have passed the Senate last week. Regrettably, a few Senators have been using procedural maneuvers to hold up this vitally important aviation safety and security legislation over one provision they find objectionable. During debate, I have listened to those Senators mischaracterize this provision as some type of conspiracy by the Republican leadership. That baseless assertion could not be further from the truth. As the distinguished ranking member of the Commerce Committee, Senator HOLLINGS forcefully pointed out during yesterday's debate, the provision in dispute is a provision that Senator HOLLINGS, a senior Democratic Member of this body, offered. Moreover, there is nothing partisan about the Hollings amendment. In fact, it was supported by all five Senate conferees including Senator HOLLINGS and Senator FORD, two of the most respected Democratic Members of this body.

Yesterday during debate on the Hollings amendment, I heard several Members of the group blocking this legislation make blanket statements that the Hollings amendment is not truly a technical correction. With all due respect to those Members, I authored the ICC Termination Act. I know what we intended to do in that legislation. Therefore, I can unequivocally say they are dead wrong. In the ICC legislation, the Senate never intended to strip Federal Express or any person of rights without the benefit of a hearing, debate or even discussion. That point is

made crystal clear by section 10501 which reads ''the enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of the employees and employers by the Railway Labor Act.''

Mr. President, fairness dictates we correct that inadvertent error. That is precisely what the Hollings amendment does. It is exactly why I supported it in conference. It is why I continue to support it strongly.

This historic piece of aviation legislation reflects the outstanding work Congress does when it proceeds on a bipartisan basis. We should meet our responsibility to the American traveling public by passing it as soon as possible. Lets get the job done for the American public. I urge that the Senate immediately pass the conference report to accompany H.R. 3539.

Mrs. HUTCHISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Time yielded to the Senator from Arizona has expired. The clerk will call the roll and charge the time against the time remaining.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, I ask unanimous consent to speak for 5 minutes or less as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING THE LIFE OF HOWARD S. WRIGHT

Mr. GORTON. Mr. President, I speak here this evening to express my sadness and deep regret at the death last Saturday of a friend and civic activist in the city of Seattle, Howard S. Wright. Mr. Wright can appropriately be called one of the great builders of modern Seattle. He was the head of a major construction firm for many years. His company was responsible for the building of the tallest of our structures, among many others, a set of buildings with the vision behind which led to much more beautiful development in downtown Seattle.

After leaving the construction business, he went into the allied profession, development, and there also was not only successful, but successful in a way that will leave a long-term and positive impact on the city he so loved.

While Howard Wright was magnificently successful as a businessman, he also gave at least as much as he received back to his community in the form of his activities in charitable foundations, such as the Seattle Foundation; to the arts, through the Seattle Opera Association and the Arts Commission; through sports, as one of the original owners of the Seattle Seahawks; and in the field of horse racing; to his schools, Lakeside and the University of Washington; and to other enterprises too numerous to mention.

Another great Seattle citizen, a friend of both Howard Wright's and of mine, Herman Sarkowsky, was quoted recently as saying that Howard Wright had ''an insatiable appetite to learn everything about his city,'' to learn, Mr. President, and to do.

But, in addition to these objective statements about Howard Wright, I must add his own personal friendship to me and to all of my undertakings, his constant counsel and advice, and a sunny disposition, which never admitted that there was a task too great to be accomplished, that never admitted that there was not another friend to be made, another goal to be achieved.

Mr. Wright will be missed by his family, by his community, by all of the organizations to which he so unstintingly gave his time and his money, and by this U.S. Senator as a friend.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. What is the business before the Senate?

The PRESIDING OFFICER. The conference report on FAA.

Mr. DOMENICI. Is it appropriate for the Senator from New Mexico to ask unanimous consent for 5 minutes as in morning business?

The PRESIDING OFFICER. The Senator may seek unanimous consent.

Mr. DOMENICI. I also request unanimous consent that a legislative fellow in my office, a Mr. Larry Richardson be permitted on the floor?

The PRESIDING OFFICER. Without objection, it is so ordered.

ALLOCATION OF THE HIGHWAY TRUST FUND

Mr. DOMENICI. Mr. President, I seek the floor today just to make the record complete before the year ends with reference to what happened to the allocation of the highway trust fund or what is about to happen to it.

First, I want to put in the RECORD all of the States of the Union and the 1996 actual allocation, the percent and the dollar loss or gain from the 1996 allocation to the 1997 allocation. The minimum amount that States lost because of this new allocation is found in the last column of this chart. I ask unanimous consent that this chart be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOMENICI. Mr. President, what I understand and what I think happened is that the administration, principally through the Secretary of the Treasury's office, made a major error in calculating the flow of money into the Highway Transportation Trust Fund, and that means that the Federal money for projects in States like mine of New Mexico will drop $20 million—I should say at least $20 million—from last year's $169 million that we received.

Actually, the reason I say ''at least'' is because we did increase the obligational authority. So actually a State like mine and a State like the one of the Senator presiding here in the Senate should probably have received more in the 1997 allocation than they did in 1996. So this chart is just saying, if we would have received the same overall obligational authority—that is the big pot of money to be distributed—our respective States should have gotten at least what they got in 1996. Instead, they are getting less.

Now, the first point, Congress in that year did not change the formula. The formula was a multiyear operational formula that told the administration, between the Secretary of the Treasury which reports the receipts of the gasoline tax, and the Secretary of Transportation, to allocate pursuant to that multiyear formula.

Now, something happened because, as a matter of fact, more money was taken in, the formula was not changed, and we get less money—substantially less money. Now, it is very interesting.

On the other hand, it is almost incomprehensible to the Senator from New Mexico because some States got huge amounts of new money. For instance, New York gets $111 million less than this minimum I have been describing that they probably should have received. I have told the Senate about New Mexico. Then, if we look down and say, well, what happened to California? Well, California gets $122 million more than they would have received if we would have had a 1996 allocation of the same amount of money in 1996, even though we got more going into this formula now. And, interestingly enough, the State of Texas—I do not know how this all happened, it is almost some kind of phenomenal event—apparently for no real reason, the State of Texas got a $182 million increase. The State of Massachusetts, a $73 million decrease.

Now, frankly, I believe this error should have been corrected by this administration. In fact, ten Senators sent a letter to the Secretary of Transportation well before any drop-dead date with reference to sending the money out, urging that the Secretary of Transportation correct the error. We sent that letter on September 20th.

I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, September 20, 1996.

Hon. FEDERICO PEÑA,
Secretary of Transportation, Department of Transportation, Washington, DC.

DEAR MR. SECRETARY: We are writing regarding the Department of Transportation's decision to use data from the Treasury Department that includes a $1.6 billion accounting error in the calculation of highway apportionments for fiscal years 1996 and 1997.