



# Keeping FedEx Jobs in the Middle Class in Los Angeles

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A Blue Ribbon Commission Report • March 2009

## Commissioners

Congresswoman Linda Sanchez

Los Angeles Councilman Bill Rosendahl

Bishop Mary Ann Swenson, United Methodist Church

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# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## Blue Ribbon Hearing Commissioners

### U.S. REP. LINDA SANCHEZ

Linda Sanchez has represented California's 39th Congressional District since 2003. She is the first Latina in history to serve on the Judiciary and Ways and Means Committees. She is the first woman to serve as chair of the Subcommittee on Commercial and Administrative Law, and she also sits on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law and the Ways and Means Subcommittees on Trade and Social Security.

Sanchez is also the co-founder of the Labor and Working Families Caucus and serves on the House Committee on Education and Labor. Sanchez is a strong advocate for California's working families.

### LOS ANGELES COUNCILMAN BILL ROSENDAHL

Bill Rosendahl has represented the 11th District of Los Angeles since 2005. Rosendahl serves as vice chairman of the Commerce Committee, which oversees Los Angeles World Airports, including Los Angeles International Airport. Since taking office, Rosendahl has focused on stopping the expansion and promoting the modernization of the Los Angeles International Airport, standing up for tenants' rights and for affordable housing, protecting the environment, and promoting mass transit as a solution to traffic gridlock.

Prior to his election, Rosendahl was an educator and an award-winning television broadcaster with a long record as a leader in Los Angeles civic affairs.

### BISHOP MARY ANN SWENSON, UNITED METHODIST CHURCH

Bishop Swenson is assigned to the Los Angeles area with oversight of the California-Pacific Annual Conference. Swenson was ordained a deacon in 1973 and elder in 1976. She has pastored churches in California and Washington. Swenson was elected to the episcopacy by the Western Jurisdictional Conference in 1992 and assigned to the Denver area. She has been assigned to the Los Angeles area since 2000.

Swenson has emerged as an outspoken leader in the church on inclusiveness and issues of justice.

### ACKNOWLEDGEMENTS

The Commissioners would like to acknowledge and thank La Tijera United Methodist Church and Reverend Daisy Ho for providing the facility and hosting the Blue Ribbon Commission on Keeping FedEx Jobs in the Middle Class.

We would also like to acknowledge and recognize the FedEx workers and other panelists who provided powerful testimony during the hearing. The Commission recognizes it takes great courage and conviction for workers to come forward with testimony related to their jobs, especially with the knowledge and burden of knowing they may become targets of retaliation and retribution. We commend them for their courage.

# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## Executive Summary

FedEx, a corporation whose brand is known worldwide, enjoys revenues surpassing \$36 billion annually, with operating profits estimated to be \$2.9 billion. Although the corporation is divided into a complicated structure with several divisions and subsidiaries, its Express business accounts for the vast majority of revenues.

Over the past several years, FedEx has eroded standards for its employees in the Los Angeles area to the point where employees are in danger of slipping from the middle class.

On December 16, 2008, a Blue Ribbon Commission sponsored by Clergy and Laity United for Economic Justice (CLUE), the Los Angeles Federation of Labor and the International Brotherhood of Teamsters convened to hear testimony from employees of FedEx, industry experts, economists, policy analysts, clergy and human rights experts. The Commission was charged with investigating the practices of FedEx that threaten the economic stability of employees and to make recommendations to prevent employees from falling out of the middle class in Los Angeles.

### KEY FINDINGS

1. **Middle class jobs in the Los Angeles area make up the backbone of the local economy but are shrinking as a percentage of overall employment.**

Los Angeles needs good middle class jobs with good standards in order to sustain a healthy economy. Keeping FedEx jobs in Los Angeles and preventing an erosion of standards plays a vital role in the overall area economy. The risks to the local economy can be measured in the billions of dollars if a middle class pool of workers the size of FedEx is threatened.

2. **FedEx's systematic reduction in workers' benefits threatens the middle class status of employees.**

Many long-term FedEx employees enjoyed good benefits throughout their careers. However, over the past several years FedEx has steadily cut both health care and retirement benefits.

3. **FedEx appears to have a history of manipulating and violating laws which undermine the middle class status of employees.**

FedEx appears to have incorporated an acceptance of labor law violations as part of its corporate philosophy. FedEx has spent tens of millions of dollars on settlements in labor law disputes which make it impossible for the company to argue that widespread discrimination is based on mere perception and accusations alone.

FedEx Ground's business model rests on misclassifying its drivers as independent contractors, which places them outside the protection of most labor and employment laws.

4. **FedEx appears to have repeatedly denied workers' freedom of association, thereby diminishing its workers' ability to maintain and improve middle class standards.**

FedEx has a corporate union avoidance policy which includes an aggressive anti-union program that is promulgated at the highest levels of the company. The ongoing campaign of overt and covert tactics originates in the company's legal and human resource departments.

In 1996, FedEx successfully performed a legislative "sleight of hand" by changing workers' status to aid the company's union avoidance campaign. FedEx spent significant time and resources successfully lobbying Congress to move a group of workers out from under the National Labor Relations Act and place them under the Railway Labor Act, effectively taking away FedEx workers' freedom of association.

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5. Evidence suggests that FedEx does not recognize the human rights of employees.

According to a formal report issued in 2000 by Human Rights Watch, many employers engage openly, and secretly, in “a stunning array of union busting tactics...that are designed, at every step of the way, to undermine employees’ rights to select bargaining representatives free from management interference.” FedEx appears to be one of these employers.

### RECOMMENDATIONS

1. FedEx must adopt a policy of neutrality regarding employee efforts to organize.
2. FedEx must stop misclassifying workers in an effort to avoid employer responsibilities.
3. Congress must pass the Express Carrier Employee Protection Amendment.
4. Congress must pass the Employee Free Choice Act.

# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## Foreword

In late 2008, elected officials and community leaders in Los Angeles gathered at a local church to participate in a Blue Ribbon Commission hearing called “Keeping FedEx Jobs in the Middle Class.” Economists, FedEx employees, human rights experts and others provided evidence showing how FedEx undermines the quality of life and the future of its employees and their families. The testimony was distressing, and left many in the room with a sense of urgency that these issues be addressed immediately.

At risk is not only the stability of middle class employment, but also our communities. In times of economic crisis, it seems particularly important to ensure the future of our workers and their families. Stable employment and middle class jobs with trustworthy companies are critical to the health of our communities. But what happens when companies, like FedEx, seem willing to break the trust? The Blue Ribbon Commission heard testimony that FedEx has made unprecedented profits in recent years, and that its corporate leaders are earning significantly more revenue than competitors, even as the rest of the economy is suffering a downturn. Yet while this company enjoys success, it chooses to strip its employees of their earned benefits and pensions, and to openly violate their human and legal rights to organize for collective bargaining.

As is more fully detailed in this report, it is clear that FedEx feels little to no pressure to fulfill its responsibility both to its workers and to their larger community. Los Angeles, and this country as a whole, cannot afford to allow companies to show such reckless disregard for their communities and employees. Now more than ever we are in a time when corporations like FedEx must demonstrate community responsibility and accountability. Yet who will hold these corporate giants accountable? Where is our political leadership at this time? It is critical that our political and community leaders take appropriate steps to ensure not only the future viability of middle class jobs but also eliminate corporate abuse of workers and manipulation of labor law.

Now is the time for bold leadership. This report presents a myriad of possible solutions. It is incumbent upon our elected leadership to make the necessary decisions to protect America’s workers and their families, and to move forward to address the very real grievances against FedEx and other corporations whose practices undermine our community stability and diminish our middle class. Together we can reverse this trend and create change and preserve the legacy of America’s middle class.



Pastor Bridie C. Roberts  
Program Director  
Clergy and Laity United for Economic Justice, Los Angeles

# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## Introduction

FedEx, a corporation whose brand is known worldwide, enjoys revenues surpassing \$36 billion annually, with operating profits estimated to be \$2.9 billion. Although the corporation is divided into a complicated structure with several divisions and subsidiaries, its Express business accounts for the vast majority of revenues.

In contrast to FedEx's good public reputation, the corporation has a history of manipulating regulations, exploiting weak labor laws and undermining workers' freedom of association.

On December 16, 2008, a Blue Ribbon Commission sponsored by Clergy and Laity United for Economic Justice (CLUE), the Los Angeles Federation of Labor and the International Brotherhood of Teamsters convened at La Tierra United Methodist Church in Los Angeles to evaluate the precarious situation of FedEx workers and their role in the economy of Los Angeles as a whole. The Commission heard testimony from employees of FedEx, industry experts, economists, policy analysts, clergy and human rights experts. The Commission was charged with investigating the practices of FedEx that threaten the economic stability of employees and to make recommendations to prevent employees from falling out of the middle class in Los Angeles.

In addition to addressing the important role middle class jobs play in the Los Angeles economy, speakers also talked about the relationship between human rights and workers' rights. Speakers further testified that while FedEx at one time had adequate health care and retirement benefits, in recent years the company has slashed these benefits for employees who had once looked upon their jobs as long-term careers from which they could retire with economic security.

During this period of benefit cuts, according to testimony, FedEx was waging battle against workers on another front by systematically attacking their federal right to form a union. The company has a long history of aggressive union avoidance. Their tactics have included changing the status of workers under certain federal statutes in order to erect barriers to forming a union and misclassifying workers as independent contractors. In addition, where workers have been successful in moving an organizing campaign past an initial stage, FedEx has responded with a campaign of misinformation, intimidation and targeted harassment of union supporters.

This report presents the findings of the Blue Ribbon Commission hearing and offers recommendations to address the inequities that are threatening the middle class status of FedEx workers in the Los Angeles area and how they fit into the region's overall economy.

## Key Findings

### 1. Middle class jobs in the Los Angeles area make up the backbone of the local economy but are shrinking as a percentage of overall employment.

The Commission heard extensive testimony from economist Daniel Flaming of the Economic Roundtable. Flaming testified that building a labor market that provides sustainable jobs is crucial to the economic future of Los Angeles. A desirable quality of life for residents and public budgets that can provide decent schools, efficient transportation, and safe, clean public spaces all depend on the availability of middle class jobs for residents.

His testimony highlighted how incomes in L.A. are deeply polarized and stressed the importance of maintaining the middle class. According to Flaming:

- A quarter of Los Angeles households get by on less than \$25,000 a year. These households received only 4 percent of the \$241 billion in income that came to L.A. households in 2007.
- Another quarter gets by on more than \$100,000 a year. These households received 56 percent of the \$241 billion in income that came to L.A. households in 2007.
- Then there is a long, lonely stretch in between these two extremes. The household in the middle of Los Angeles' income distribution has an average annual income for all members of \$53,573. Substantial shares of these all-too-rare middle class jobs are held by union workers.

The population in Los Angeles has grown 16 percent since 1990, but there are fewer wage and salary jobs in 2008 than in 1990. Wage and salary jobs are those where employers comply with labor law and pay legally mandated employee benefits.

The informal economy is now the growth engine of the Los Angeles economy—growing outside of the stagnant formal labor market as a form of freewheeling economic anarchy. The informal economy creates wealth for employers and adds wealth to the region, at the expense of workers and the public social safety net.

If the American worker in other parts of the country is suffering, the Los Angeles worker is on life support. The cost of living in L.A. is 48 percent higher than the national average, but per capita income falls below the national average. And what's worse, L.A. residents are making less headway in raising residents' income than California or the nation.

A strong, growing economy requires that more working families become **self-sufficient**. This means:

- Paying wages that can really support a family; and
- Providing adequate benefits.

Creating a sustainable labor market in Los Angeles depends on a vibrant transportation sector. Our airports, seaports, rail and road infrastructure is the base of a goods distribution system that extends to much of the United States and the Pacific Rim. Yet many of the workers who bring the things we use to our offices, stores and homes are part of the working poor.

There is an acute need to raise earnings in Los Angeles. We can see the impact that workers who earn sustaining wages have on the overall economy if we look at the pay for aircraft mechanics and service technicians.

- The low-tier wage for this job in L.A., the wage at the 25th percentile, is \$24.31 an hour, or \$50,565 a year.
- The upper-tier wage for this job, the wage at the 75th percentile, is \$35.32 an hour, or \$73,466 a year.

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If 1,000 aircraft mechanics and service technicians receive the 75th percentile wage rather than the 25th percentile wage, this wage differential creates the following beneficial impacts as these workers spend their added income in L.A. County's economy:

- 236 more jobs are created in L.A.'s labor force, including:
- 46 more jobs in health and social services;
- 36 more jobs in the retail sector;
- 29 more jobs in restaurants;
- 28 jobs in professional, financial and information services;
- 13 jobs in schools;
- 10 manufacturing jobs; and
- 10 wholesale trade jobs.
- \$34 billion more economic output is generated in L.A.'s economy.
- The wage differential also generates substantial additional taxes:
- \$2.3 million more tax revenue for city, county and state government; and
- \$2.4 million more tax revenue for federal government.

The Commission also heard testimony from Jon Zerolnick, a policy analyst, on why keeping FedEx workers in the middle class matters to the overall economy of Los Angeles. FedEx mechanics and related workers have specialized jobs; they have invested years to acquire the skills needed to excel in their profession. Specifically:

- FedEx currently counts on the expertise of 400 aviation mechanics at their LAX facility—most of them living in L.A. (county).
- The stability of these middle class families is at risk due in part to an irresponsible trend; FedEx has outsourced aircraft maintenance work in at least 17 locations to third-party vendors—including work in L.A.
- FedEx mechanics have also lost their overtime work. For many years mechanics could rely on overtime hours to supplement their pay and keep them in the middle class. Recently, however, due to the outsourcing of work, their overtime has dried up.

In short, losing FedEx jobs in Los Angeles or an erosion of standards of existing FedEx jobs has an enormous and adverse impact on the overall area economy. The risks to the local economy can be measured in the billions of dollars if a middle class pool of workers the size of FedEx is threatened.

### **2. FedEx's systematic reduction in workers' benefits threatens the middle class status of employees.**

Many long-term FedEx employees enjoyed good benefits throughout their careers. However, over the past several years FedEx has steadily cut both health care and retirement benefits. Worker testimony indicated that many employees took the benefit package into consideration when they accepted their position at FedEx only to see those benefits disappear after years of service. Workers testified that they are now forced to work longer and retire later with less income and fewer health care benefits. Most of the company's cuts to employees' benefits came when profits were growing by 18 percent and 20 percent a year.

In 2003, FedEx chose to no longer offer their traditional defined benefit pension plan to newly hired employees, creating a two-tiered retirement system. On June 1, 2008, with little warning and no input or discussion from its workers, FedEx froze its traditional defined benefit pension for the rest of its employees. The new plan, FedEx's "Portable Pension Account," subjects employees' entire retirement security to the tumultuous stock market and

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capped employer contributions at 2008 levels with no inflation protection. In addition, FedEx began including employees' 401(k) contributions—employee contributions—as part of the FedEx retirement plan. In an effort to appease the loss of many employees retirement income, the company offered an increase in matching 401(k) funding tied to employee participation and maximum contribution.

Under the new company controlled “cash balance plan,” one worker testified that he will lose about \$230,000 in retirement income that would have accrued under the old plan and now is forced to work past his original target retirement age of 62. Less than one month after the Blue Ribbon Commission hearing, in January, 2009, FedEx froze the increased employer matching contributions to the employee funded 401(k) plan, leaving workers with a new retirement plan that is company controlled, subject to stock market trends and employee funded.

Cuts in employee benefits are not felt at the highest levels of the corporation: In 2007, the total compensation for FedEx's top five executives was \$44,418,838. In comparison, FedEx's largest competitor, UPS, spent a total of \$13,228,606 on their top five executives the same year.

In addition to exorbitant compensation, FedEx executives will likely benefit from the conversion to a “cash balance plan,” which tends to favor high income employees with many years of service. Until the pension freeze, FedEx provided its executives with a supplemental non-tax qualified pension plan called the FedEx Corporation Retirement Parity Pension Plan. With this additional executive retirement plan, executives were able to realize income above the Internal Revenue Code maximum annual benefit limitations of a tax qualified pension. In 2007, FedEx's Chief Financial Officer, Alan B. Graf Jr., had an additional \$7,911,321 in his corporate “parity” plan while the company was preparing to slash real retirement income for workers.

Workers also testified that health insurance has gotten more costly for employees while the quality of the plan has declined. The out-of-pocket maximum recently increased to \$3,000 per year in network, \$16,500 out of network per family in the “premier” plan. Co-payments have increased, coverage has diminished and employees pay 10 percent of the cost of prescriptions. Numerous medications are no longer covered. At UPS, the employer pays 100 percent of employee health benefits which includes medical, prescription, vision, dental, disability and life insurance. A mechanic at FedEx can expect to pay around \$258 per month for family coverage that does not include vision, dental or the additional annual out-of-pocket expenses or co-pays.

Many FedEx employees have also seen the elimination of the FedEx Profit Sharing Program, the Mechanics Incentive Program, the Best Practice Pays Operation, the Reliability Incentive Program, the Preventative Maintenance Incentives Program, the Recruitment and Retention Bonus Program, jump seat privileges and shift differentials.

Retirees are faring no better, with costs of retirees' health-care benefits expected to increase substantially by 2010. Those workers contemplating retirement under the diminished pension are subject to health insurance costs currently of \$800 plus per month with expected increases up to \$1,200 per month by 2010.

### 3. FedEx appears to have a history of manipulating and violating laws which undermine the middle class status of employees.

Witnesses also indicated to the Commission that FedEx incorporates regular violations of labor laws as part of their corporate philosophy. FedEx has spent tens of millions of dollars on settlements in labor law disputes which make it impossible for the company to argue that widespread discrimination is based on mere perception and accusations alone.

- In April 2007, FedEx settled a federal lawsuit for **\$55 million** filed by minority and female hourly employees for discrimination in disciplining and failing to offer promotion to minority workers. As a result of the lawsuit, FedEx has introduced new policies and agreed to allow a “Special Master” and “Monitoring Counsel” monitor these policies.

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- FedEx settled a California lawsuit by hourly employees for **\$30 million** and changed its policies nationwide to account for proper hours worked.
- FedEx Express is being sued in federal court by older couriers who allege age discrimination in the form of harassment and disparate treatment in job evaluations.
- FedEx Ground's business model appears to rest on misclassifying its drivers as independent contractors, which places them outside the protection of most labor and employment laws. The California Court of Appeals, however, decided that FedEx Ground's drivers are, in fact, employees, stating: "The essence of the trial court's statement is that if it looks like a duck, walks like a duck, swims like a duck and quacks like a duck, it is a duck."

There are 20 state- and ERISA-certified class-action lawsuits involving independent contractor status. In addition, there are nine states where lawsuits will proceed as individual claims where workers have brought their own suits.

In other proceedings, the IRS has tentatively concluded that FedEx Ground's pick-up-and-delivery owner-operators should be reclassified as employees for federal employment tax purposes.

- There are also 45 other purported class-action lawsuits and approximately 25 state tax and other administrative proceedings.

#### **4. FedEx appears to have repeatedly denied workers' freedom of association, thereby diminishing its workers' ability to maintain and improve middle class standards.**

Many FedEx employees have chosen to exercise their federal rights to organize a union only to realize those rights are as elusive as their disappearing retirement benefits.

FedEx has a corporate union avoidance policy which includes an aggressive anti-union program that is promulgated at the highest levels of the company. The ongoing campaign of overt and covert tactics originates in the company's legal and human resource departments.

According to testimony, tactics employed by FedEx in its anti-union campaign include intimidation, harassment, misinformation, discipline and other types of activities to foster a chilling effect on the work force. As evidence of the brazenness of the campaign, FedEx suspended a worker within weeks of his testifying before this Commission for an incident that happened months before the hearing. The disciplinary action taken against this employee appears retaliatory to the Commission and reinforces testimony of FedEx's attack on workers' rights.

Apparently, FedEx's aggressive union avoidance goes back many years. A 1993 cover letter accompanying a booklet from the FedEx legal department, called, *Keeping the People Philosophy Alive, Making Unions Unnecessary*, states:

*Enclosed you will find a new guide designed to provide Federal Express managers with basic information about union avoidance and union organizing...*

In addition to other publications, a document put out by FedEx in 1996, called *Guarding the Grail*, another union avoidance training manual, boldly states:

*Reason for workshop—union organizing activity aimed at FedEx and at ramps and stations in your area and is happening now, and each management participant's facility is vulnerable. FedEx is the "Holy Grail of organized labor," and we are in an organizing campaign which WE MUST WIN.*

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More evidence of this high level corporate union avoidance policy is seen in a publication of the FedEx Human Resource Services & Diversity Organization in 2006. According to this document, one of the key HRS&D strategic objectives is to “co-develop strategy with Labor Relations team on union avoidance.” The second page of the document informs readers of five “union avoidance trainings” and further states:

*Many of you have recently witnessed the Teamsters distributing flyers at several of our California locations. Organized labor in the U.S. has recently announced a shift in strategy, specifically targeting FedEx and several other large employers. To protect the FedEx Express PSP culture, HRS&D has partnered with Legal to develop union avoidance training for HR representatives, HR managers and operations management.*

*Because it is critical that we address these union organizing efforts in an appropriate manner, the union avoidance training will enable HR representatives and managers to recognize and proactively address union organizing issues. This training is designed to ensure managers are well prepared to minimize opportunities for union organization as well as make unions unnecessary at FedEx Express.*

The high-level union avoidance policy is evidenced as far back as 1983 in the introduction of a company booklet called *Managers Labor Law Book*, which credits the company’s success in large part to being “union free.” Page two of their *Labor Law Book* states their corporate goal: remain union free. The manual trains supervisors how to identify and combat various stages of union organizing.

This corporate philosophy can be witnessed in FedEx’s fierce anti-union campaigns among FedEx Ground and FedEx Freight employees.

FedEx has started an anti-union web site aimed at FedEx Freight workers. This web site, [www.fedexfreight-workplace.com](http://www.fedexfreight-workplace.com), offers a wide range of anti-union positions, “facts” and links to other anti-union web sites. This FedEx web site is one-sided and is based on information from organizations known to be vehemently opposed to unions.

The web site is used to supplement FedEx’s overall anti-union campaign implemented by regional managers, supervisors and dispatchers and includes anti-union videos, mandatory anti-union captive meetings, harassment, threats, intimidation and wrongful terminations.

According to testimony, implementation of the anti-union campaign has been widespread and pervasive.

Other aggressive tactics meant to instill fear include instances where pro-union employees were followed into restrooms by managers who look over stalls and who tell workers that if they organize, FedEx will close down their terminal.

Workers in the Los Angeles area have experienced FedEx’s commitment to remain union-free first hand. At their facility at LAX, FedEx continues to carry out an anti-union campaign among FedEx Express mechanics and related workers.

At LAX, FedEx held a series of mandatory meetings beginning in the summer of 2008. At the first meeting on June 1, 2008, management accused the Teamsters of getting into employees’ homes under false pretenses and then badgering them, ignoring the fact that the LAX union campaign is propelled by the workers themselves who want to form a union. Management further said that the Teamsters were giving false information to deliberately mislead FedEx workers. The manager also mentioned his own bad experience with a union and that there was no need for a union. He suggested workers should bring their issues to him and he would “negotiate” to make everything right.

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At a second set of meetings in July 2008, FedEx pulled in approximately 100 workers per meeting and presented an entirely one-sided view. The company announced that it would like workers to join a “committee” to “help resolve problems.” In a not-so-subtle threat, which focused on the national economic downturn instead of the company’s current profits, a PowerPoint presentation was shown that emphasized how tough the economy was and delivered the message that now is not the time for workers to organize a union. In case the message was lost on employees, managers mentioned “how tough” it is to find good jobs in this economy. Finally, managers accused the union of being “used car salesmen spouting rhetoric” when doing home visits.

Around the same time as the captive audience meetings, supervisors also called workers into their office for one-on-one meetings. Here, the supervisors repeated the same message described above.

On July 22, 2008, managers at LAX required workers to attend a mandatory lunch break to listen to a FedEx live video. In this video, FedEx managers again talked about the gloom and doom of the national economic situation and why it’s a bad time to form a union. The meeting included a high-level manager speaking about his negative experience with a union at Northwest Airlines.

In a systematic campaign to demonize and belittle the union—and to shift the focus away from cuts in employee benefits—the company has distributed anti-union literature to workers that attempts to discredit a Teamster pension fund; told employees that workers in America do not want unions; accused Teamsters General President James P. Hoffa of lying; and made allegations of union corruption and ties to organized crime. In a flier titled *Teamsters Uninvited Visits and Phone Calls to Employees’ Homes*, the company subtly suggests:

- By coming to your home the union is harassing you and the company would never do any such thing;
- The union is a salesman and will do anything to get into your home to deliver a carefully developed sales pitch;
- The union may be engaged in illegal conduct;
- The worker can call the police or put up “no solicitation” signs to keep the harassing union out;
- The company is the entity looking out for workers and protecting workers from the harassing union.

While the smear campaign targets the union and union representatives, it is also aimed at the workers. Pro-union workers report instances of management calling them “car salesman,” being singled out in crew meetings, being pointed and laughed at by managers and making other demeaning statements, while other workers who are leaders of the organizing campaign have been targeted for discrimination and harassment.

Outspoken union supporter Andy Guasto was told by a senior manager that union organizers could get their legs broken. This same worker was walked off the job and suspended for allegations that were later dropped. Union activist Lou Zurga was harassed when he clocked out for lunch for 30 minutes and went to the freight terminal and happened to talk about the union with a few workers there. He was told by management that he had “stolen” the time and feared he was going to be terminated although other workers often clock out for longer periods and go to the freight terminal with no consequences.

Comments have been made to union supporters about having “bull’s eyes” on their backs and managers have told workers to take off union lanyards while permitting workers to wear Seattle Seahawks, McDonnell Douglas and other lanyards.

# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## SPECIAL “FEDEx” LEGISLATION

The campaign to prevent workers from organizing is not limited to the boardroom or shop floors. FedEx has expended high levels of resources lobbying to exempt their employees from federal laws that cover employees of FedEx’s competitors.

In 1996, FedEx successfully performed a legislative “sleight of hand” by changing workers’ status to aid the company’s union avoidance campaign. FedEx spent significant time and resources successfully lobbying Congress to move a group of workers out from under the National Labor Relations Act and place them under the Railway Labor Act, effectively taking away FedEx workers’ freedom of association.

This was done during the Federal Aviation Administration Authorization when FedEx and its congressional allies placed special “express carrier” language in the bill, without any hearings or debate. This was done in response to an organizing effort by the United Auto Workers and sets an insurmountable barrier for workers to organize.

In 2008, the House of Representatives passed an FAA Authorization bill that stipulated which employees of express couriers fell under the Railway Labor Act and the National Labor Relations Act. In response, FedEx CEO Fred Smith, without acknowledging the apparent hypocrisy of FedEx’s position, testified that it was not fair for the House Transportation chairman to move FedEx employees back under the National Labor Relations Act without public hearings.

FedEx has run this extensive and expensive anti-worker campaign “under the radar” while simultaneously building a positive image for its global brand. The catastrophic consequences of this policy were explained to the Commission by Jon Zerolnick, a Research and Policy Analyst for the Los Angeles Alliance for a New Economy. His findings include:

- Unions are responsible for building and broadening the middle class in America and are the best way average Americans can ensure a middle class future for themselves and their families.
- Unions have been able to raise the wages and benefits of their members, bringing millions into the middle class. But unions also fought to pass legislation that defines middle class jobs. Laws such as:
- The Fair Labor Standards Act, which created the 40-hour work week and the first minimum wage;
- The Occupational Safety and Health Act, ensuring safety in the workplace;
- The Social Security Act, providing benefits to unemployed and retired workers; and
- Workers' compensation laws, giving workers injured on the job medical coverage and compensation for lost time.
- Union membership has a direct impact on a region’s economy. As one would expect, union members earn higher wages—union members had median earnings nearly 30 percent larger than nonunion workers—and the wages they earn add to the local economy and tax base.
- Union members are also more likely to have health insurance. The U.S. Bureau of Labor Statistics reports nearly 80 percent of union workers receive employer-provided health insurance, compared with only 50 percent of nonunion workers—so the cost of their care isn’t borne by public health care facilities and strained hospital emergency rooms.
- Unions raise wages for all workers. Studies show that the larger the percentage of union workers in an industry or region, the greater the wages for even nonunion workers.
- It has been shown that unions can reduce wage inequality: Unions raise wages the most for low- and middle-wage workers and workers without college degrees.
- Union members have an even wider impact on a region’s economy, lifting up all workers by fighting to increase federal and state minimum wages and leading the successful living wage movement which has already resulted in more than 150 local living wage laws nationwide.

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- Beyond the direct economic impact of union members, unions reinforce the middle class and lift up America's communities in important ways. According to the U.S. Department of Labor, a higher rate of unionization means lower rates of poverty, crime and failing schools.

The Commission believes that workers stand a better chance of staying in the middle class if they can avoid being victimized by an unscrupulous employer. Workers can best do this by engaging in an effort to protect themselves—in this case, by joining a union. Furthermore, when an employer attacks the right to form a union rather than the problem workers are attempting to remedy (such as benefits, working standards, retirement, etc.), workers still have a fighting chance to retain middle class status through a union contract. However, when the employer attacks benefits and the rights of the workers, it is a one-sided slaughter that sucks workers out of the middle class.

This two-pronged attack is the approach taken by FedEx for years, with dire consequences for its workers. FedEx has attacked both employee standards and the ability of employees to engage in their federal rights to protect themselves. The only possible outcome is a new class into which most FedEx employees will eventually fall: one with neither benefits nor a voice. It is the opinion of the Commission that this company philosophy has and will continue to erode the middle class status of FedEx employees.

### **5. Evidence suggests that FedEx does not recognize the human rights of employees.**

Reverend Teresa Santillana of Hawthorne United Methodist Church offered testimony on the relationship between human rights and workers' rights. In essence, her testimony was that workers' rights to form a union and engage in collective bargaining are recognized human rights.

Reverend Santillana's testimony reminded the Commission that on December 10, 1948, the United Nations General Assembly adopted the International Declaration of Human Rights, one of the world's most important and historic documents, proclaiming the basic human rights of all individuals. Articles 23 and 24 of the declaration assert that "everyone has the right to form and to join trade unions" and that all individuals have the right to respect and dignity on the job, pay that supports a worker and his family with dignity, and time for rest and leisure.

In addition to workers' rights being recognized by the United Nations, most major U.S. religious institutions and denominational bodies also recognize the importance of a worker's right to unionize and be treated with respect. As Reverend Santillana stated, "For our communities, it is a sacred and moral right to be able to care for one's self and one's family with dignity." The United Methodist Church, where Reverend Santillana serves as an elder, is the largest single Protestant Christian denomination in the country. The official social principles of the United Methodist Church are explicit. They state:

*We claim all economic systems to be under the judgment of God no less than other facets of the created order. Therefore, we recognize the responsibility of governments to develop and implement sound fiscal and monetary policies... We support the right of public and private employees to organize for collective bargaining into unions... Further, we support the right of both parties to protection in so doing and their responsibility to bargain in good faith within the framework of public interest.*

Reverend Santillana further told the Commission that "It is clear from both the scriptures of our ancient traditions and the asserted rights and laws of our land, that a worker's right to organize without intimidation and harassment is a moral issue and a human right."

However, according to a formal report issued in 2000 by Human Rights Watch, many employers engage openly, and secretly, in "a stunning array of union busting tactics... that are designed, at every step of the way, to undermine employees' rights to select bargaining representatives free from management interference." FedEx appears to be one of these employers.

According to Reverend Santillana, it is the responsibility of our government and our society to protect work-

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ers and their families as they fight for respect and a voice in the workplace. It is also the responsibility of government to hold corporations accountable for their actions, and refuse to reward companies, like FedEx, with government contracts until they respect the rights of their workers. Anything less is irresponsible stewardship of our shared economic resources and a violation of human rights.

Therefore, we have chosen to summarize this entire section of our findings in one statement: On a moral—as well as legal—level, workers’ rights are human rights.

## Recommendations

### Recommendation 1

#### FEDEX MUST ADOPT A POLICY OF NEUTRALITY REGARDING EMPLOYEE EFFORTS TO ORGANIZE

FedEx has manipulated, abused or otherwise taken advantage of workers, competitors, Congress and laws. It has established a history of discrimination against employees, and denied them the basic mechanism to deal with such issues—the federal right to organize. FedEx has gone out of the way to create an atmosphere that makes it nearly impossible for employees to organize.

Between the time of the Blue Ribbon Commission hearing and the writing of this report, FedEx suspended, under questionable circumstances, one of the employee witnesses who provided testimony to the Commission. This type of retaliation is neither uncommon by FedEx nor does it go unnoticed by coworkers. Acts of discipline and intimidation of union supporters serve to muzzle potential activists and chill organizing efforts.

Similar to FedEx’s creation of a “Special Master” and “Monitoring Counsel” as a result of the federal lawsuit against it by minority and women employees, a tight monitoring system must be established to prevent discrimination against workers who attempt to exercise their federal rights to organize. FedEx has proven that it is incapable of monitoring its own behavior without outside, neutral bodies with binding decision making powers.

The only way to remedy the poisoned atmosphere which FedEx has spent years creating, and to guarantee that employees will have a clean environment to exercise their federal rights to organize, is for FedEx to repudiate its campaign against employees’ rights and adopt a true stance of neutrality. This commitment must be real and in writing and monitored by independent parties who have the ability to enforce the policy. The policy must be endorsed and enforced at the highest levels of the company, and there must be an accompanying policy to deal with supervisors and managers who violate the neutrality. Neutrality should prohibit managers and supervisors from campaigning against organizing efforts, including conducting anti-union meetings and distributing anti-union literature, and give union representatives non-disruptive access to employees at company facilities when invited by employees.

### Recommendation 2

#### FEDEX MUST STOP MISCLASSIFYING WORKERS IN AN EFFORT TO AVOID EMPLOYER RESPONSIBILITIES

FedEx Ground operates an oppressive and multi-component anti-union campaign to deny its delivery drivers their right to organize a union and other legal protections. FedEx Ground’s tactics start with classifying drivers as independent contractors, despite the company exercising control over drivers’ work conditions. Labor law states that independent contractors cannot form a union. FedEx Ground uses this loophole to misclassify drivers as independent contractors with the primary purpose of preventing workers from forming a union. Unfortunately, workers misclassified as independent contractors and desiring to form a union face a protracted, expensive and grueling process to prove their employee status.

FedEx should immediately stop this practice and agree to recognize the employee status of FedEx Ground workers.

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## Recommendation 3

### CONGRESS MUST PASS THE EXPRESS CARRIER EMPLOYEE PROTECTION AMENDMENT

By manipulating regulatory agencies and using its political influence, FedEx Express has been able to secure complete coverage under the Railway Labor Act (RLA) as an air carrier. This has allowed the company to misclassify many workers not involved in air operations with the sole intent of preventing them from organizing a union. Under the RLA workers must organize on a system-wide basis. In addition, the RLA has an unreasonable threshold of majority support of all eligible company employees, not just those who vote. Under the RLA a worker who does not participate in an election is considered a vote against the union. Whereas, under the National Labor Relations Act (NLRA), which covers FedEx's peers, workers form unions at individual work sites through a majority vote.

Undoing FedEx's legislative sleight of hand that adds obstacles to employees' rights to organize is critical to employees' efforts to retain middle class status. The "Express Carrier Employee Protection" amendment makes clear that workers who are employed in the air operations of an express carrier are covered under the Railway Labor Act (RLA), while those employed in the ground or trucking operation are covered under the National Labor Relations Act (NLRA). The "Express Carrier Employee Protection" amendment simply places workers under the proper labor law jurisdiction.

This change would enable certain employees to organize under the National Labor Relations Act, which is the same federal law that covers employees of FedEx's competitors.

The "Express Carrier Employee Protection" amendment recognizes the distinction between workers employed in the air operations of a company and those who are not, and places them under the proper labor law jurisdiction.

Utilizing an act of Congress as a union avoidance tactic through extensive lobbying can only be undone by additional congressional action. If Congress fails to pass this amendment, effectively righting a wrong, it will result in the further erosion of middle class jobs. Over the past decade, FedEx has attacked and eroded worker benefits in a way that would not have been possible had Congress not granted them special status in 1996. This single act, perpetrated with no public or employee input, has cost workers millions of dollars in wages and retirement benefits and allowed the employer to make unilateral and adverse changes to health care policy by avoiding the bargaining process.

In the interest of fairness, competitiveness in the package delivery industry, and protecting the rights of workers to organize, the Commission strongly urges the passage of this amendment.

## Recommendation 4

### CONGRESS MUST PASS THE EMPLOYEE FREE CHOICE ACT

The middle class is shrinking and struggling to stay afloat. Health care and retirement benefits are vanishing and wages are not keeping pace with the cost of living. The American middle class grew in large part because of workers' ability to engage in collective bargaining in order to have input into their wages and benefits. More and more workers are unable to exercise their right to form a union due to intimidation and retaliation in the work force. The system for forming unions is broken. While many CEOs enjoy contracts that provide them financial security regardless of the stability of the company, workers are subjected to an intense campaign of intimidation if they desire a contract that gives them a voice in their jobs.

According to findings from a study by Cornell University scholar Kate Bronfenbrenner, 92 percent of private sector employers force employees to attend anti-union meetings and 80 percent require supervisors to attend training sessions on attacking unions when the company is faced with employees who want to form a union. While making these sessions mandatory is permitted under current law, union organizers do not

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enjoy remotely similar opportunities to present their case. Moreover, when employers are in fact found to have violated the law, the penalties are so minute (frequently as simple as posting a single notice), as not to have any deterrent effect whatsoever.

Other research conducted by Peter D. Hart Research Associates indicates that 60 million U.S. workers would join a union if they could but, as Bronfenbrenner and the testimony of witnesses before this Commission have made clear, they are faced with intimidation, harassment and retaliation if they try.

Reform of labor laws is needed in order to allow workers to engage in freedom of association, form unions and build on the middle class standards that are fundamental to the nation's economic stability. According to Nobel Prize winning Princeton economist Paul Krugman:

*...you can do a lot to enhance workers' rights. One is to start laying the groundwork to pass the Employee Free Choice Act, which would make it much harder for employers to intimidate workers who want to join a union...the legislation will enable America to take a huge step toward recapturing the middle class society we've lost.*

The Employee Free Choice Act would expedite the union certification and bargaining processes, allow workers to become certified by the National Labor Relations Board after a majority of workers sign authorization cards and allow them to proceed to bargaining within 10 days of being certified. Under the current system, workers wait months between the time they file for a union election and the time the election actually takes place, allowing employers plenty of opportunity to run their anti-union campaign of fear and intimidation.

The Employee Free Choice Act would provide for liquidated damages of three times back pay if employers were found to have unlawfully terminated pro-union employees and the act would impose a \$20,000 penalty against employers for each violation of the act.

Under the act, if a union and employer cannot agree upon the terms of a first collective bargaining agreement within 90 days, either party can request federal mediation, which could lead to binding arbitration if an agreement still cannot be reached after 30 days of mediation. Such legislation would reduce the likelihood of strikes during first contract negotiations.

Passing the Employee Free Choice Act will level the playing field when workers attempt to exercise their rights of freedom of association. The act does not provide special status to employees or employers but merely provides an avenue for employees to self organize in an attempt to obtain or retain middle class status.

# Blue Ribbon Commission on Keeping FedEx Jobs In the Middle Class

## Agenda

### Welcome and Introduction of Commissioners

Pastor Bridie Roberts, Program Director, Clergy and Laity United for Economic Justice (CLUE), Los Angeles

### Invocation

Reverend Daisy Ho, La Tijera United Methodist Church

### Pledge of Allegiance

Jim French, Senior Aircraft Maintenance Technician, FedEx Express, Los Angeles

### Commissioners' Opening Statements

U.S. Representatives Linda Sanchez, 39<sup>th</sup> District

Los Angeles City Councilman Bill Rosendahl

Bishop Mary Ann Swenson, United Methodist Church, Los Angeles

### Panel I: The Struggle to Keep Middle Class Jobs in Our Community

Withbourn Hunter, Senior Aircraft Maintenance Technician, FedEx Express, Los Angeles

Daniel Flaming, President, Economic Roundtable

Jon Zerolnick, Senior Research/Policy Analyst, Los Angeles Alliance for a New Economy (LAANE)

### Panel II: Federal Express; the State of the Company

Terrence Weatherspoon, Senior Research Analyst, International Brotherhood of Teamsters

Dan Forrand, Senior Aircraft Maintenance Technician, FedEx Express, Los Angeles

Roger Valle, Senior Aircraft Maintenance Technician, FedEx Express, Los Angeles

### Panel III: FedEx and the Right to Organize a Union

Reverend Teresa Santillana, Hawthorne United Methodist Church

Eric Herzog, Senior Aircraft Maintenance Technician, FedEx Express, Los Angeles

Rudy Hernandez, Pickup & Delivery Driver, FedEx Freight, San Bernardino

### Public Comment Period

### Closing Remarks

Rusty Hicks, Political Director, Los Angeles County Federation of Labor, AFL-CIO

### Closing Statements from Commissioners

### Closing Prayers

Reverend Margaret McCauley, Deacon, The Episcopal Church

## **FedEx's Targeting of Blue Ribbon Commission Witness**

Within two weeks of testimony by FedEx employee Withbourn Hunter in front of the Blue Ribbon Commission, Hunter was subjected to harassment and discipline by FedEx managers.

Hunter, who is an aircraft mechanic at FedEx's LAX facility, received a warning letter and suspension on December 30, 2008 (he provided testimony to this Commission on December 16) for an incident that happened in October. Although FedEx's own Aircraft Maintenance Administrative Manual contains a strict 15-day timeline for the investigation and response to any accidents, more than two months passed between the October incident and the suspension given to Hunter.

On the same day (December 30, 2008), during an anti-union meeting by FedEx managers, Hunter was singled out for wearing a union pin in a blatant attempt to intimidate him from openly supporting his rights of association. Hunter has also been subjected to questioning from managers regarding his activities in a further attempt to intimidate him because of his union support.

It is the conclusion of the Commission that Hunter was targeted by FedEx managers in retaliation for his testimony in an attempt to deny his rights of freedom of association and send a message to other employees that exercising their federal rights will lead to harassment, intimidation and discipline.

The Commission sees the harassment of witnesses who provided testimony as an attack on the Commission itself and will continue to monitor the status of employees who provided insight and testimony at the invitation of this Commission.



