

Report of the National Express Monitoring Commission

Based on Testimony at Hearing held December 8, 2009, Washington, D.C.

Commission Members:

Dr. Ruth Milkman, Professor of Sociology at UCLA and CUNY (Commission Chair)

Rev. Frank Raines III, Pastor, Dexter Avenue Baptist Church, Detroit, Michigan

Rep. Rush Holt, 12th District, New Jersey

EXECUTIVE SUMMARY

Hearing: On December 8, 2009, the National Express Monitoring Commission assembled at the Rayburn Building in Washington, D.C., to hear testimony from National Express workers, labor experts and academics. The commissioners gathered at the request of the International Brotherhood of Teamsters, volunteering their time and expertise to assess workers' allegations of anti-union behavior by National Express Group's U.S. management.

National Express Group (NEX) Background: NEX's U.S. subsidiary, Durham School Services, is the second-largest privatized provider of school bus transportation in the U.S. NEX employs 21,400 workers here, approximately 18,000 to 19,000 as bus drivers, monitors or mechanics. These men and women operate local school district school bus transportation in 29 states and two Canadian provinces, running more than 16,500 buses each day to deliver more than one million students to 300 school districts.

National Express Monitoring Commissioners include:

- Ruth Milkman – Professor of Sociology at UCLA and CUNY, expertise in the sociology of work, labor history, contemporary unionism and the sociology of gender;
- The Rev. Frank Raines, III,—Director of Labor Relations for the National Baptist Convention, Pastor, Dexter Avenue Baptist Church, Detroit, Michigan;
- Rep. Rush Holt, (D-N.J.) – Represents the 12th Congressional District, serving on the Committee on Education and Labor and on the Subcommittee on Health, Employment, Labor and Pensions.

Findings:

- Workers from Rocky Hill, Connecticut; Kansas City, Missouri; Tinton Falls and Middletown, New Jersey,

testified to unfair termination of union supporters; mandatory safety meetings turned into anti-union diatribes by management; cuts in benefits for workers who were organizing, and a host of other abuses they believe were intended to frighten them from voting for union representation.

- Despite the company's assertions to the contrary, National Express has established a lengthy National Labor Relations Board record littered with complaints for its violations of federal labor law. Since 2001, more than 140 unfair labor practice charges have been filed against the company. The Board has issued 60 formal complaints and the company settled another 44 of those cases to avoid public penalty.
- National Express teaches its management union avoidance in a management manual dated November 28 that includes steps to aggressively resist union organizing.
- Cash-strapped school districts may think they are saving money by privatizing bus operations, but the dollars that might wind up in community members' pockets are instead funding anti-union activities, "apparently including illegal activities, by multinational firms and the high-priced anti-union consultants that they employ."

Recommendations:

- NEX should bring Durham School Services into compliance with U.S. labor law, International Human Rights Standards, and its own policy of respecting workers' rights.
- NEX investors should insist on a corporate policy that protects workers' rights wherever the company operates, including the right to Freedom of Association.
- School districts should reconsider the cost/benefit ratio of contracting services to companies with a poor labor relations record.
- Elected officials should consider procurement laws that require that companies' labor relations be taken into account when using taxpayer dollars to enter into contracts.
- NEX workers should inform school district officials and other community leaders if the company violates federal labor law during a union election campaign.

COMMISSION MEMBER BIOGRAPHIES

Rep. Rush Holt, D-N.J.

Rush Holt was first elected to represent New Jersey's 12th congressional district in 1998 and has gained a reputation as being a tireless advocate for his constituents. Rep. Holt serves on the Committee on Education and Labor and sits on the Subcommittee on Health, Employment, Labor and Pensions. Rep. Holt is also a member of the Congressional Human Rights Caucus. Rep. Holt is the only scientist and only Member from the New Jersey delegation to sit on the House Intelligence Committee.

Ruth Milkman

Ruth Milkman is Professor of Sociology at the CUNY Graduate Center, as well as the Academic Director of the Joseph S. Murphy Institute for Worker Education and Labor Studies. From 2001 to 2008 she served as Director of the UCLA Institute for Research on Labor and Employment. She has been a visiting professor at the University of Warwick (England); the University of Sao Paulo (Brazil); Macquarie University (Australia); and in 2004-05, was a Visiting Scholar at the Russell Sage Foundation. She did her undergraduate work at Brown University and received her M.A. and Ph.D. from the University of California, Berkeley. Prof. Milkman has written extensively about work and labor organization in the United States. Her work in progress includes a study of California's paid family leave program, as well as research on wage theft and other violations of employment and labor law.

Rev. Frank Raines III

Rev. Frank Raines III is the pastor of Dexter Avenue Church in Detroit. He is active in youth crime prevention programs and prison rehabilitation programs. Rev. Raines is the director of Labor Relations for the National Baptist Convention, and is a national board member of Interfaith Worker Justice. Rev. Raines has been the national membership Drive Coordinator of NAACP, a member of the Michigan Board of Medicine under Governor Jennifer Granholm and an Adjunct Professor in the Wayne County Community College District.

OVERVIEW

School bus drivers and their co-workers perform duties that are highly valued by the communities they serve. Their work demands careful attention to punctuality and safety, even more than that of other transportation workers. They typically need special certification because they transport children, including those with special needs. Most drivers are female, and many are from disadvantaged racial or ethnic groups. In the past most school bus workers were public employees; however, in recent decades more and more school districts have contracted the work to outside companies, part of a broader trend toward privatization of public services.

Indeed, whenever Durham School Services employees have sought to obtain union representation, they consistently have encountered stiff and unrelenting opposition from management.

Today the two largest private providers of school bus services in North America are British-owned multinational corporations: FirstGroup (the industry leader) and National Express Group, the second largest operator and the focus of this report. National Express entered the U.S. school bus transportation market in 1998, and currently has 22,000 employees in North America (most of them in the U.S., but with a significant number in Canada as well). Its U.S. subsidiary, Durham School Services, has contracts with more than 350 school districts in 29 U.S. states.

In the U.K., 94 percent of the workers employed by National Express are union-represented. Moreover, National Express' top management has explicitly stated its support for workers' rights and positive employee relations. Unfortunately, however, the experience of workers employed by the company's U.S. subsidiary contradicts such statements. Indeed, whenever Durham School Services employees have sought to obtain union representation, they consistently have encountered stiff and unrelenting opposition from management. The testimony presented before the Commission at the December 8, 2009 hearing suggests that National Express has vigorously opposed American workers' efforts to unionize, and in so doing, the company appears to have frequently violated U.S. labor law as well as widely accepted international human rights standards

regarding workers' freedom of association. Indeed, the U.S. National Labor Relations Board found cause to issue 60 formal complaints against Durham since 2001.

Allegations of National Express' anti-union behavior in the U.S. have drawn the attention of politicians in the company's home country, Great Britain. In 2009, the Joint Parliamentary Committee on Human Rights heard testimony from National Express workers during a visit to the U.S. Concerned by the workers' description of anti-union acts during organizing efforts, members of both the House of Commons and the House of Lords committed to personally address these issues with the company's executives. Members of Parliament also said they would invite National Express executives to a meeting in Parliament regarding the company's global human rights record.

In the Commission's view, when taxpayer dollars are being spent to procure services, and especially services involving children, the companies involved should be held strictly accountable through public oversight, to established labor standards.

The (U.S.-based) National Express Monitoring Commission is deeply concerned about this company's apparent violations of its workers' right to be represented by a union of their own choosing, as guaranteed by the 1935 National Labor Relations Act. Like all companies, National Express is required to strictly observe the laws of all the nations in which it does business – including the U.S. The situation merits particular concern from the public, moreover, because the vast bulk of National Express' U.S. business is procured under contract with public entities, namely local school districts. In the Commission's view, when taxpayer dollars are being spent to procure services, and especially services involving children, the companies involved should be held strictly accountable through public oversight, to established labor standards.

This report summarizes the testimony presented at the December 8, 2009 hearing at which the Commission presided, and on that basis offers a series of recommendations to stakeholders – including National Express execu-

tives and company shareholders, school boards, community leaders and elected officials.

NATIONAL EXPRESS POLICY STATEMENTS

If one were to rely on official statements for information about National Express' labor policies, there would be no reason for concern. In 2002, just a few years after it first entered the U.S. school bus market, National Express' Corporate Responsibility Report stated, "We work closely with the trade unions with over 75% of our staff being union members. We also aim to provide attractive employment through a package of remuneration and benefits which are appropriate to the market in which we operate."

More recently, at National Express' 2009 shareholder meeting, then-CEO Richard Bowker stated that he "will not tolerate, nor will the Board, trampling on workers' rights." He added, "Our policy is, any employee that wishes to be recognized by a trade union, they can." And in an official submission to the British Parliament's Joint Committee on Human Rights on June 26, 2009, National Express stated that:

National Express has adopted policies to ensure full compliance with labour laws throughout all of our operations, both in the United Kingdom and the United States and Canada. Additionally, the Company has dedicated staff to ensure compliance with these policies across all our operations. To date, National Express has never been found to have been in material or widespread violation of any provision of the National Labour Relations Act (the United States' labour laws) or Canada's labour laws, nor any of the various employment Acts in the United Kingdom.

Our employees are the most important part of our business and we are committed to treating them fairly and honestly, and to respect and recognize each as an individual. Our success as a Company is based on the skills and effort of our employees and therefore, we strive to do our best to provide an environment that develops and recognises their importance.

Still more recently, in a letter dated November 20, 2009 to C. Thomas Keegel, General Secretary-Treasurer of the International Brotherhood of Teamsters, National Express' Executive Vice-President for Operations declared: "National Express respects the rights of employees to decide whether or not they wish to be represented by a labor

union in their relationship with the company. Our management approach this matter with integrity and respect for the employee and his or her rights.”

Unfortunately, however, these positive statements seem to be contradicted by the actual behavior of the company’s management staff in its U.S. operations, as detailed below.

NATIONAL EXPRESS RESPONSES TO UNIONIZING EFFORTS

The Teamsters union currently represents about 2,200 National Express workers in the U.S., or about 14 percent of the U.S. work force. However, workers’ efforts to unionize at various locations around the nation have been met with strong resistance.

The Commission reviewed the contents of a manual, dated November 2008, that National Express’ U.S. subsidiary, Durham School Services, apparently distributes to its supervisors. This manual instructs managers in great detail as to how to aggressively resist union organizing efforts. Moreover, although the company is financially troubled, it apparently spends large sums of money – drawing at least in part on funds that originate as taxpayer dollars – on the services of legal consultants who specialize in “union avoidance.” In this fashion, taxpayer money is being used to fund efforts to deny U.S. workers their legal right to be represented by a union of their own choosing.

The manual is an all-purpose guide to anti-union activity of the sort that U.S. anti-union consultants regularly make available to their clients. It states in part that “The Company’s success in combating unionization increases exponentially with early detection. Accordingly, front-line supervisors and managers must be sensitive to the warning signs and report those warning signs to Human Resources and upper management.” The warning signs discussed include “the whispering group,” “the dispersing crowd,” “employees meeting in out-of-the-way places,” “new friendships emerging,” “employees developing a ‘we’ consciousness and beginning to use group dynamic phrases,” and “suspicious visitors.” It then goes on to instruct managers regarding basic facts about the National Labor Relations Board (NLRB) election system, outlining the types of conduct that are legally permissible on the part of supervisors and the types that are prohibited. However, the basic

thrust of the document is to urge all supervisors to be alert to “warning signs” of union activity and to act aggressively to undermine such activity.

Although the manual explicitly discourages supervisors from engaging in illegal conduct, the Commission heard evidence to the contrary. As former NLRB General Counsel Fred Feinstein testified, “According to NLRB records, extensive violations of labor law have been a part of the National Express anti-union campaign.” Since 2001, Fein-

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(Fred Feinstein, former NLRB General Counsel)

stein noted, more than 140 unfair labor practice charges have been filed against the company, and the NLRB has issued 60 formal complaints. The company settled 44 of those cases informally to avoid public penalty. Another seven cases were informally settled before the NLRB could issue a complaint. The other cases are still pending before the NLRB. The alleged violations include:

- Changing working conditions to influence the results of an NLRB union representation election;
- Discriminating against pro-union employees by disparate enforcement of work rules;
- Campaigning against the union in the final days before an election;
- Terminating employees because they are union supporters; and
- Refusing to recognize the lawful bargaining representative of the employees.

In addition to these alleged illegal activities, Durham/National Express regularly holds “captive audience” meetings in which the company presents distorted, one-sided information to its employees. For example, workers are often told that if they form a union, bargaining could be futile, strikes are inevitable, unions are corrupt, the company could be forced to close its yards, and that workers will likely lose benefits. Similar messages are conveyed in indi-

vidual one-on-one meetings between workers and supervisors. While these activities are not necessarily legal violations, they can be very effective means to discourage workers from pursuing the goal of unionization – particularly when combined with the illegal activities enumerated above. As Cornell University’s Dr. Kate Bronfenbrenner testified before the Commission, a large body of research shows that “employer opposition has impacted on the ability of workers to organize under the NLRB and the effectiveness of the Board in enabling workers to exercise their rights to organize.”

Bronfenbrenner notes that unions have filed unfair labor practice charges in about 40 percent of National Express NLRB elections, with an average of four charges per campaign, involving alleged coercive statements and threats, interrogation, surveillance, promises of benefits, onerous assignments, and discipline or discharge for union activity. Although many of these practices are explicitly highlighted as illegal violations in the manual given to National Express managers, they nevertheless appear to be standard practice.

WORKER TESTIMONY

The Commission also heard direct testimony from several Durham workers who have experienced these tactics firsthand. Excerpts are reproduced below.



Paul Santoro, a Durham school bus driver in Rocky Hill, Connecticut, told us:

A few days before the election, Durham fired one of our monitors, who was a union supporter, based on unfounded allegations by an anti-union driver. The driver told management that the monitor hit a child on the bus. There was no proof and the child never complained...No investigation was done and no witnesses were interviewed...

Durham forced us to attend regular mandatory meetings in which the company tried to intimidate us and convince us to vote against the union. In one meeting, a regional manager named Chester Jenkins came in from New York and told us our dues would be retroactive. He said it might take three to four years to get a contract and that once that contract was signed, the union would force us to pay

dues retroactive to the date of the election, and that the union would force us to pay this in one lump sum. This was a complete lie...but because this message was presented by an authority figure with control over our jobs, a lot of people believed it. Not only was it presented in the captive audience meeting, but it was repeated over and over by lower level managers and in literature...Many of our co-workers became so afraid of losing their jobs they believed anything management said...

Durham’s strategy was to make us forget that we are the lowest paid drivers in the area, that we have no sick days, no retirement, a horrible insurance plan and that favoritism runs rampant...

Perhaps most egregious was the firing of union supporter Dwayne Grondin. Dwayne was known as one of the strongest union supporters because he had previously worked in a Teamster-represented yard and his mom has been a Teamster bus driver for 10 years. Durham fired Dwayne for taking a picture of a PowerPoint slide explaining employee benefits. Durham said this violated a policy against taking pictures on company property, although several other co-workers had taken pictures with management’s knowledge... The National Labor Relations Board issued a complaint against Durham in this case, but the matter will not be resolved until a hearing in February and Dwayne is still out of work. Dwayne’s firing made many other workers fear that they also could lose their jobs if they supported the Teamsters.



Regina Melton, who has worked for Durham in Kansas City, Missouri for 16 years, testified before the Commission about the conditions which led to a series of three union organizing efforts at her location (the third of which is currently under way):

We’re organizing because this year the company froze our wages and stopped our monthly incentive bonus which a lot of us depended on. It may not seem like a lot but it’s an extra \$50 a month and with Durham cutting time off our routes that’s more from our families... We know that Durham still has their contracts with the school districts and is getting paid millions of dollars...

Our managers don’t treat us as professionals or with any respect. They talk to us like we are children on the bus and sometimes even yell at us...

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We have gone through two organizing campaigns, this being the third. We started out with strong support for the union in these campaigns but the company campaign scared and confused workers. After all, we are not experts on unions and the company acts as if it is giving workers fair and reasonable information...

Some of the anti-union activities the company has done in the past and is starting to do in this current campaign include:

- Attaches anti-union letters to our checks that include all kinds of distorted, scary information. The message is that a union could compromise our paychecks...*
- Recently management has told union supporters to take off their union pins. This has scared others into thinking something is wrong with being for the union and that they can get in trouble if they support the union.*
- Durham is bribing workers by feeding the workers cake and ice cream and offering workers breakfast and lunch. They are trying to feed us instead of listening to our concerns. They never offered us any of this before we tried to form a union.*



Steve Cofield, a Durham bus driver and union supporter at the “Wayside” yard in Tinton Falls, New Jersey, testified in regard to management’s anti-union behavior not only during the period leading up to the representation election but also its continuation after the union had been elected as the workers’ legal

representative (in an October 2009 NLRB election in which the workers voted 31-27 for the union). Cofield told the Commission:

Durham tried to create an atmosphere of information overload and bombardment. They plastered the office wall floor to ceiling with anti-union material...It was impossible to perform our daily duties without seeing this material. When we asked for a place to post pro-union literature, the company agreed to give us a bulletin board. However, the company said it wouldn’t be fair to only let pro-union workers have a bulletin board so they created a “pro” and a “con” board for employees to post things. It was obvious that the “con” postings were not coming from our co-workers but from the anti-union law firm...Pro-union information could

only be posted on the small board while anti-union literature could be on both the “con” board and from floor to ceiling on most of the walls...Durham posted rules from the boards prohibiting defacing or removing literature but allowed defacing and removal of material from the “pro” board...

Those of us actively talking to others about the union were often given extra trips and long runs to keep us away from the yard. The best place for us to talk to co-workers was our outdoor break area. When management would see us talking, they would come and stand near us or would call whoever we were talking to into the office...

Durham made veiled threats that we would lose our jobs by implying that any wage increases we would negotiate would price us out of the market and make Durham uncompetitive with other bus companies during the bidding process for school routes.

Every week, we were forced to attend anti-union meetings. Among other things, managers told us the Teamsters were part

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of the Mafia, that the only way to avoid a strike was to accept Durham’s first offer without bargaining for our needs, and that we might lose wages and benefits in a contract...

After the election, our manager tried to penalize anyone she thought voted for the union. The first working day after the election, she removed the coffee and tea from our break-room, but would secretly give coffee and tea to those who were vocally anti-union during the campaign. She penalized our election observer by hiding the keys to his work vehicle and reducing his rate of pay.



Toni Wollner, a Durham bus driver for more than nine years in Middletown, New Jersey, which has the same manager as the nearby Wayside yard, and which also had an NLRB election in October 2009. The outcome was unknown at the time of the hearing, because three

ballots were challenged in a 51-49 vote in favor of unionization. Wollner told the Commission:

At the beginning of each school year, we normally get a 50-percent raise. This year we only received 25 cents, and then Durham raised our insurance rates from \$45 to \$58 a week, wiping out our raise. I can't afford this and canceled my insurance and am currently without medical coverage...

We filed the election petition with an overwhelming percentage of support – 2/3 of the unit. I believe that because of the company's bad conduct we lost support and that is why the vote was so close....

Almost immediately once we began forming our union, the company posted a notice that prohibited any discussion about the union. This is illegal and we filed an unfair labor practice charge but the impact was to shut us up...

The company showed an anti-union video, in mandatory meetings, named "Who Is Rebecca Smith?" In the video, Smith, who purported to be a high-level Teamsters official, claims that despite her love for the union she has come to see the Teamsters as a big business controlled from the top down by union officials determined to grab power, and that the biggest obstacle to a better working life for union members is the union itself...

Durham recently fired the key witness on the union side that testified at the hearing on the challenges. This individual believes he was fired because of his union activities...

Every week leading up to the election, Durham told us we were having "Safety Meetings" which were always anti-union meetings. Local 469 represents Durham's yard in Piscataway, just 20 miles down the road. Because many workers were looking at this yard as a model of what we might be able to achieve, our regional manager used these meetings to misrepresent the Piscataway contract. He said Piscataway workers lost paid holidays and that they wanted to get rid of the union. Those of us on the organizing committee knew these were lies because we had seen the contract... The day of another captive audience meeting, the shop steward from Piscataway was with the organizers outside the gate. We asked the manager to allow him in the meeting to explain the truth and answer any questions. Durham refused to let him in the building and the next day wrote him up for being there even though he was on his own time.

THE OVERALL RECORD AND ITS IMPLICATIONS

Durham School Services appears to have a highly problematic record as an employer, with low wages, few benefits, cost-prohibitive medical care, as well as all the anti-union attitudes and practices documented here. Local communities should be concerned about the existence of such conditions for school bus employees, who provide a vital service highly valued by community members. Labor conditions for public service workers whose wages are paid for with taxpayer dollars should be exemplary, and should meet or exceed basic standards of international labor and human rights. That does not seem to be the case at National Express' U.S. operations, despite its own official statements to the contrary.

The Commission notes that while National Express appears to accept unionization among its employees in the U.K., it has gone to extreme lengths to discourage their establishment in the U.S. Apart from this apparent double standard on the two sides of the Atlantic, the fact that the

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school bus services National Express markets in the U.S. are overwhelmingly paid for with taxpayer dollars is of special concern. Public sector workers are highly unionized and rarely face the kinds of management anti-union campaigns documented above. Indeed, Dr. Bronfenbrenner's research reports that, absent employee opposition, school bus drivers employed by public entities are voting for unionization in overwhelming numbers. Financially strapped school districts may believe that they are saving money by contracting out their bus operations, but it appears that the end result is that dollars that would otherwise go into the paychecks of community members – and from there, contributing to the revenues of local businesses – are instead funding anti-union activities, apparently including illegal activities, by multinational firms and the high-priced anti-union consultants that they employ.

RECOMMENDATIONS

The Commission offers the following recommendations:

To the Company: National Express should bring the management of its U.S. subsidiary, Durham School Services, into conformity with both U.S. labor law, international human rights standards and its own often-stated policy of respecting workers' rights and allowing its employees to choose union representation freely if they so desire.

To National Express Shareholders: Insist on a corporate policy that protects workers' rights wherever the company operates, including the right to freedom of association and to bargain collectively. Further, shareholders should demand implementation of a system to monitor and enforce that policy.

To School Districts: Reconsider the costs and benefits of contracting out school bus services to companies that have a poor record in regard to labor standards and compliance with U.S. labor law. Additionally, carefully monitor contracts with school bus companies to ensure that employees' legal and human rights are not being violated.

To Legislators: Consider public procurement laws that would require that the labor relations records of contracting firms be taken into account when using taxpayer dollars to enter into contracts for services like school bus transportation.

To National Express Workers: The Commission encourages National Express workers to inform school district officials and other community leaders if the company violates labor law during a union election campaign.