

TRANSPORTATION FOCUS

UPS spokesman Malcomb Berkley gave us a call from Washington DC last week to say he didn't think that SCDigest got the story completely right about the Senate action on the Federal Aviation Administration (FAA) reauthorization bill. Specifically, the current version of that bill did not include the provision that was in the House version that would make it easier for FedEx employees to unionize (see [Has FedEx Won Battle to Keep Unions Out?](#))

In the House bill, language was included in the huge piece of FAA legislation that would change the regulatory jurisdiction of FedEx from the National Railway Act to the National Labor Relations Act, which covers UPS and other truckers. The National Railway Act, which covers railroads and airlines, puts steeper hurdles to unionization at those companies, in part to avoid broad national strikes that could paralyze transportation in the US.

Due to this and other factors, FedEx has remained largely un-unionized, while UPS is heavily unionized.



There has been fierce lobbying on both sides, and we reported last week that the failure of the Senate version of the bill was a victory for FedEx, and likely a sign that the company had dodged a

bullet for this round of the battle.

Not so fast, says UPS' Berkley.

"While we have been lobbying the Senate as part of an overall education process on these issues, we did not lobby specifically to get this provision in the Senate bill because there is not any need to do that,"

Absence of Language Affecting FedEx Union Provision in Senate FAA Bill Doesn't Mean Victory for FedEx, UPS Spokesman Says

House Language Could Make it to Final Legislation

SCDigest Editorial Staff

says Berkley. He noted that with the change provision already included in the House bill, this means that by definition that the language will be brought to the table as part of the "conference committee" process when the Senate and House each have passed a version of the FAA reauthorization bill (the Senate is expected to pass its version in early 2010).

Given that, it is impossible to predict what will emerge as the final bill or "conference report," Berkley says.

"It is too early to make the call as to whether the final bill will contain the provision," Berkley says, noting it is quite possible that the provision could be put into the joint version of the bill that then goes back to each Chamber for approval and the President to sign into law if it is passed in the Congress.

Berkley says the lack of the House provision was much less a lobbying victory for FedEx, and much more a desire by Senate leaders for a "clean

bill" to move to the Senate floor – meaning one that would not have many provisions that would be considered controversial or likely to stoke opposition from various Senators over language not key to the bill as a whole.

"The FAA reauthorization act is a huge, \$80 billion bill, of which the FedEx language would be just a small, almost insignificant part in terms of the law as a whole," says Berkley. "This way, the bill gets through the Senate, and the conference committee can work some of the details."

"No one ever knows what will come out of committee," Berkley says.

Meaning for UPS and FedEx the battle is still on.