

THE NATIONAL MEDIATION BOARD

PROPOSED CHANGES TO REPRESENTATION
ELECTION PROCEDURES

Washington, D.C.

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1 P R O C E E D I N G S
2 (9:05 a.m.)

3 MS. JOHNSON: Good morning. We are
4 here today to hear public comment upon the
5 National Mediation Board's proposed rule to
6 change its election procedures. Notice of the
7 proposed change was published in the Federal
8 Register, Volume 74, Number 211, Page 56750 on
9 November 3rd, 2009.

10 I'm Mary Johnson, General Counsel of
11 the National Mediation Board, and I will be
12 conducting this proceeding on behalf of the
13 Board. Seated to my left are the NMB board
14 members. Chairman Elizabeth Dougherty, Member
15 Linda Puchala and Member Harry Hoglander, as well
16 as Associate General Counsel Kate Dowling. At
17 this point Chairman Dougherty will make a brief
18 statement.

19 CHAIRMAN DOUGHERTY: Hello. I am NMB
20 Chairman Liz Dougherty and I want to welcome you
all here today and thank you all for being here.

1 I also would like to extend a very heartfelt
2 thanks to the members and staff of the National
3 Labor Relations Board. They have bent over
4 backwards and extended us every courtesy and
5 every convenience and without them we would not
6 be able to have this very important hearing,
7 meeting. So, we really appreciate all of their
8 help and we thank you all for being here.

9 MS. JOHNSON: We have 33 speakers
10 scheduled. Each speaker is slotted for ten
11 minutes but please bear in mind that the ten
12 minutes includes transition between speakers.

13 We will take one ten minute break
14 this morning and we'll take an hour for lunch.
15 This afternoon we will also have a ten minute
16 break. We hope to conclude today's proceeding no
17 later than 4:30 p.m.

18 During this proceeding neither the
19 NMB board members nor the NMB staff will make any
20 remarks nor will we respond to any questions. We
21 expect the participants in this proceeding to
22 conduct themselves appropriately and will not

1 take lightly any disruptive behavior. NMB
2 security will escort those engaging in disruptive
3 conduct from the room.

4 We have made arrangements for those
5 in the overflow room to transition into the main
6 hearing room and we will try to minimize any
7 potential impact of the transition. We ask that
8 each speaker respect the court reporter's
9 capabilities and that you identify yourself at
10 the onset of your presentation.

11 We will now hear from our first
12 speaker, Mr. Robert Siegel.

13 MR. ROBERT SIEGEL: Good morning,
14 board members. Thank you for having me here
15 today. I'm Robert Siegel and I'm appearing on
16 behalf of the participating members of the Air
17 Transport Association as indicated in our written
18 statement.

19 In recognition of the limited nature
20 of this meeting my remarks here today will also
be limited to three important subjects: the
legal inadequacies in the Board's process for

1 issuing the notice of proposed rule making; the
Board's significant departure from it's prior
2 past practice; and the absence of any adequate or
rational justification for abandoning the
3 majority rule that the Board has used
4 successfully for over seven decades and
5 reaffirmed just recently as last year.

6 Our more detailed comments will be
7 filed in January in response to the NPRM.

8 Our comments are as follows. First,
9 in our view the Board majority's publication of
10 the November 3rd NPRM was the result of an
11 inadequate and an improper internal process as
12 described in some detail by the Board's Chairman
13 in a November 2nd letter to various senators.

14 The events described in Chairman
15 Dougherty's letter, including her exclusion from
16 the deliberative process and the impediments
17 imposed on her ability to file a descent are
18 absolutely unprecedented for this agency. Many
19 of us have never seen anything of the sort.

20 In our view these events as described

1 have significantly undermined the bar -- the
2 Board's hard earned and long standing reputation
3 for neutrality that both Congress and the Supreme
4 Court have recognized is critical to the Board's
5 ability to effectively perform its mediation and
6 other functions.

7 Give the events described in the
8 Chairman's letter; we are, with all respect to
9 the agency and to the Board Members, deeply
10 concerned that the Board majority has reached a
11 predetermined position on the issues in this
12 case.

13 Secondly, the Board majority's
14 unexplained refusal to provide an adequate
15 hearing process for consideration of the November
16 3rd NPRM is deeply troubling to the ATA.

17 On September 10th of this year, after
18 the TTD had requested that the Board abandon it's
19 75 year old majority rule, the ATA sent a letter
20 to this Board requesting that if the Board were
21 to consider exercising jurisdiction over the
22 request, it should do so only by using the

1 briefing and hearing process employed by the
2 Board when it considered the very same issue in
3 the Chamber of Commerce hearing in the 1980's.

4 In that Chamber of Commerce
5 proceeding, the Board appointed a hearing
6 officer, conducted a full evidentiary hearing and
7 allowed for appealable rulings on procedural
8 matters prior to the hearing, as well as allowing
9 for prehearing briefs, motions to dismiss and
10 post hearing briefs. After that careful and
11 exhaustive examination, the Board reaffirmed its
12 long-standing majority rule.

13 The ATA September request for the
14 Chamber of Commerce procedures was hardly
15 excessive. Just last year in a proceeding
16 involving Delta Airlines and the AFA, the Board
17 unanimously recognized that the Chamber of
18 Commerce process is not just appropriate, it is
19 necessary for a fair and meaningful review of any
20 proposal to abandon the Board's 75 year majority
rule.

The Board stated in that opinion in

1 unequivocal terms and I quote, "that it would not
2 make such a fundamental change without utilizing
3 a process similar to the one employed in Chamber
4 of Commerce".

5 In fact the Board thought that this
6 was so important that it repeated it in the very
7 next paragraph of its decision when it stated it
8 would not make such a sweeping change without
9 first engaging in a complete and open
10 administrative process to consider the matter.

11 Despite these unequivocal past
12 statements, the Board majority has provided or
13 has failed to provide Chamber of Commerce
14 procedures for reviewing the November 3rd NPRM.
15 In stark contrast to the past, the Board is
16 failing to allow in today's meeting the type of
17 evidentiary meeting allowed in its past
18 procedures.

19 There is no testimony under oath, no
20 cross-examination of witnesses and none of the
21 other procedural safeguards so necessary to
22 considering such a fundamental change in the

1 Board's long standing practice.

2 Third the ATA is troubled by the
3 other ways in which the Board majority has
4 supported from prior Board practice. For
5 example, in the Chamber of Commerce decision, the
6 Board previously announced that it would
7 materially change its rules only when a proposed
8 change is shown to be and I'll quote, "mandated
9 by the Railway Labor Act and essential to the
10 Board's administration of representation
11 matters".

12 In its NMRM, the Board majority does
13 not even acknowledge this substantive standard
14 for changes to the NMB's rules.

15 The form of the NPRM is itself a
16 sharp departure from boards early -- from the
17 Board's earlier approach to this very same issue.
18 The last time the Board considered changing its
19 voting rules, it issued a neutral invitation for
20 participation and comment.

21 This time, the Board majority
22 included with the NPRM a full legal argument

1 attempting to justify the proposed rule and
2 rebutting preliminary objections that had been
3 filed by the ATA.

4 Finally, as noted by Chairman
5 Dougherty in her descent, the Board majority
6 further departed from the Board's prior practice
7 by insisting on considering the TTD petition in a
8 vacuum.

9 When the Board last considered the
10 same proposed voting rule change, it
11 simultaneously considered a proposal to adopt a
12 formal decertification procedure.

13 This time, the Board majority has
14 decided to consider the TTD's request for voting
15 change in isolation without even acknowledging
16 that there is a pending request for consideration
17 of a process for decertification.

18 These two issues must be considered
19 together as noted in Chairman Dougherty's
20 descent.

21 Fourth and I'll conclude there is
22 simply no basis for the proposed rule change.

1 The Board has successfully employed the existing
majority rule since President Franklin D.
2 Roosevelt's first term in office and it has
undeniably become part of the fabric of the
3 Railway Labor Act.

4 The Board has reaffirmed the majority
5 rule on at least four prior occasions. The rule
6 has twice passed scrutiny under the Supreme Court
7 and there has been no relevant material change in
8 circumstances that would warrant such a radical
9 departure from long standing practice.

10 Indeed the Board recognized as much
11 in 1978 during the Carter Administration when it
12 recognized and I'll quote, "in view of the
13 unchanged 40 year history of balloting and
14 elections held under the Railway Labor Act, the
15 Board is of the view that it does not have the
16 authority to administratively change the form of
17 the ballot used in representation disputes,
18 rather such a change, if appropriate, should be
19 made by Congress".

20 I'll conclude that this deficient

1 process may well lead to the unjustifiable
2 abandonment of the Board's 75 year old majority
3 rule. If that occurs, it is clear who the
4 principal loser will be, in our view,
5 unfortunately and with sadness, it will be the
6 Board itself which will have lost both its hard
7 earned reputation as a neutral referee and its
8 ability to ensure the labor relations stability
9 that Congress intended it to provide. Thank you,
10 members. Thank you for the time.

11 MS. JOHNSON: Thank you. Next we'll
12 hear from Mr. Edward Wytkind.

13 MR. WYTKIND: Thank you to the
14 Board, to the members, for allowing the
15 Transportation Trades Department and its 32
16 member unions to participate today.

17 I might say at the outset that you're
18 hardly reviewing this proposal in a vacuum. I
19 think this is a responsible and very transparent
20 process you've put forward and it allows all
21 parties to come forward and give their views
22 about the notice.

1 I want to thank you for the
2 opportunity to present our views and we commend
3 you for the thoughtfulness of your proposal and
4 believe the rule change that the Board has
5 proposed is long overdue and should be adopted.

6 The current voting procedures are
7 undemocratic, inherently unreliable and
8 inappropriate in discerning voter intent.
9 Nowhere else in American Democracy do voters face
10 such unfair and onerous voting procedures? That
11 probably explains why certain air carriers and
12 their lobbyists are working so hard to protect
13 the status quo.

14 The current rules also encourage
15 employer run, voter suppression campaigns and
16 deny aviation and rail workers the unfettered
17 right to chose whether they want union
18 representation despite the industries very hollow
19 rhetoric questioning the NMB's ability to change
20 its rules. The Board's authority to establish to
amend its rules and policies is unquestionable.

 The NMB's principal role in

1 representation disputes is to determine the clear
2 choice of affected employees seeking union
3 representation. Unfortunately the Boards
4 election procedures fail to even meet this basic
5 requirement.

6 Currently an absolute majority of all
7 eligible employees in a craft or class are
8 required to cast a ballot to merely certify an
9 election and all non-voters are assigned
10 automatic no-votes.

11 As a result when workers are unable
12 to meet this onerous threshold, the express will
13 of the majority of those who actually participate
14 is silenced by those who do not vote. This
15 method of discerning voter intent is inherently
16 flawed and unreliable. By automatically
17 assigning non-participating voters a no-vote in
18 opposition of a union, the current voting
19 procedures are essentially declaring intent when
20 none has been expressed.

21 There are a host of reasons why an
22 individual may not vote. They may not have a

1 history of or interest in voting. They may
2 forget to vote. They may be unable for a variety
3 of reasons to participate. Or as we've seen, in
4 nine out of ten union elections -- I'll repeat
5 that, in nine out of ten union elections --
6 recently workers face an employer run campaign to
7 block unionization. Nonetheless, it is
8 impossible for the NMB to determine the intent of
9 such non-voters and the proposed new rule
10 corrects this obvious deficiency.

11 The unreliable and unarbitrary nature
12 of the Board's election procedures place rail and
13 airline workers in a unique and unfair electoral
14 category, completely detached from the democratic
15 norms lying at the heart of any representation
16 election in America. Throughout the country from
17 school boards to the United States Congress, a
18 majority of those casting a ballot determines
19 election outcomes. In contrast, the NMB's rules
20 assign non-participating voters a role in
determining electoral outcomes.

 The Board's proposed rule correctly

1 identifies as voting standards the type of
2 "compulsory" voting that conflicts with our
3 Democratic system. This type of compulsory
4 voting not only undermines the express will of
5 the voting majority but also precludes employees
6 from exercising their individual choice.

7 To be truly democratic, workers
8 should have the decision to vote for you union
9 representation against it or not to vote at all.
10 If we subjected our political representatives to
11 this standard, it is clear that many, if not most
12 federal, state and local officials would never
13 hold public office by virtue of low voter turn
14 out.

15 I might note for the Board that since
16 1930, not a single midterm election nationwide
17 has met the 50 percent threshold, which would
18 negate all those elections for the politicians
19 that ran for office.

20 The NMB's procedures are also an
21 anomaly in the realm of American Labor Management
22 Relations. Workers in all areas of economy,

1 including those in both the private and public
2 sectors are afforded the right to definitively
3 affirm or reject representation by a majority
4 vote of those who participate.

5 There is no legitimate reason, policy
6 or otherwise for airline and rail workers to be
7 subjected to a different standard. This
8 compulsory voting standard has fostered a unique
9 culture of voter suppression, as companies
10 understand that impeding union organizing merely
11 requires preventing employees from voting.

12 During union elections companies seek to lower
13 voter turnout and thereby defeat an organizing
14 drive, not through a fair election, but through
15 an orchestrated voter suppression campaign. Many
16 major law firms, many I'm sure represented in
17 this room today, earn a handsome living deploying
18 aggressive, often illegal strategy designed to
19 defeat organizing campaigns and unfortunately the
20 NMB's own rules give them another tool in their
21 arsenal to pursue this type of conduct.

22 In both 2002 and 2008, Delta airlines

1 ran intense suppression operations against flight
2 attendants organizing campaigns. In fact, in the
3 2008 campaign they encouraged workers to give a
4 rip, in other words to destroy a
5 government-issued ballot. Although 98 percent of
6 participating voters supported the union, the
7 AFA, at each effort Delta's opposition campaign
8 circumvented this majority by keeping turnout
9 low.

10 The election procedures further
11 disadvantage employees who support unionization
12 as company's game, the official eligibility list,
13 by padding it to ensure that there are more
14 workers in the election, who may be on military
15 leave, have been removed from service for many
16 years and may be hard to reach.

17 Fortunately, the proposed rule will
18 curtail these dubious practices and conform rail
19 and aviation elections with the NMB's mandated
20 goal of clearly determining voter intent. The
21 new ballot will allow employees to vote yes, no
22 or abstain from voting and let a majority of

1 those participating prevail.

Such a standard provides each
2 employee a precise choice when voting and ensures
the equality of every vote. We believe it is
3 time to let workers in these industries choose
4 representation under the same system of democracy
5 as others and we're pleased that the NMB's
6 proposed rule does that.

7 The opponents of this reform continue
8 to advance baseless claims in an effort to derail
9 the Board's necessary rule making. However,
10 their allegations all have one thing in common,
11 to distract observers from the merits of the
12 proposed rule and maintain the status quo.

13 By dragging dubious and extraneous
14 elements into the dialogue they wish to avoid the
15 inconvenient truth that what they truly oppose
16 are democratic principles. Among the frequent
17 arguments raised against the Board's proposals is
18 the issue of timing. Critics claim that the NMB
19 should somehow never pursue and sort of policy
20 change because of potential organizing campaigns.

1 That's sort of self-defeating. If the Board was
2 precluded from updating its representation rules
3 based on this rationale, the agency could never
4 change its rules. There are always potential
5 organizing campaigns and cases or representation
6 matters before the Board and for the opponents of
7 this rule, there will never been an appropriate
8 time to implement this rule change as proposed.
9 In truth, their opposition has nothing to do with
10 timing, but everything to do with derailing the
11 proposal all together.

12
13 Meanwhile, the industry and its
14 supporters continue to suggest that the NMB's
15 anomalous threshold is a necessary, if not
16 required, mechanism for preventing economic
17 upheaval through strikes.

18
19 Yes, the RLA is designed to limit
20 disruptions to interstate commerce, but the
21 Board's election procedures have absolutely
22 nothing to do with this. The Board's rigid
23 process of bargaining and mediation accomplish
24 this goal. How workers choose representation is

1 immaterial. In other words, opponents are
2 relying on old Washington game introduced
3 completely unrelated and disingenuous arguments
4 to confuse the debate in advance of very blatant
5 agenda.

6 This is not a serious argument and
7 should be dismissed as senseless and hyperbolic
8 rhetoric. As we've clearly demonstrated, current
9 NMB's election procedures are apparently an
10 unfair means of determining voter intent. They
11 deny workers of fundamental Democratic rights
12 found throughout American society in settling
13 questions of representation, and by counting
14 non-voting employees as no-votes, they encourage
15 employers to wage suppression campaigns that
16 subvert the express will of the majority of those
17 who cast a vote.

18 It is time to permit airline and rail
19 workers to vote on the question of unionization
20 under the same Democratic standards used in all
21 other elections. From union elections conducted
22 under other labor laws to congressional

1 elections.

2 The Board has proposed sensible
3 reforms that will accomplish this goal, which is
4 why Transportation Labor enthusiastically
5 endorses the proposal of the Board. Thank you.

6 MS. JOHNSON: Thank you. Our next
7 speaker is Ms. Moorhead.

8 MS. MOORHEAD: Good morning, Chairman
9 Dougherty, Members Hoglander and Puchala. Thank
10 you for allowing me to speak today.

11 I am Joanna Moorhead and I'm General
12 Counsel of the National Railway Labor Conference
13 which represents the nations major freight
14 railroads in multi-employer collective bargaining
15 and in other matters of national significance
16 with respect to labor relations in the rail
17 industry.

18 My comments are offered on behalf of
19 the NRLC and its members, which include the
20 largest freight railroads as well as many smaller
21 class two and three rails. I appreciate the
22 opportunity to address the Board regarding the

1 proposed changes to its election procedures. We
2 will be commenting on the proposed rule and
3 therefore I will not take the time now to
4 delineate the specific concerns that we have
5 regarding the Board's proposed changes.

6
7 What I will address is our concern
8 over the process used by the Board in deciding to
9 make this proposal. This year the NMB is
10 celebrating its 75th anniversary as an
11 independent and nonpartisan agency charged with
12 vital responsibilities about major labor and
13 management relations in the railroad and airline
14 industries, including the responsibility for
15 determining the choice of a representative by the
16 majority of a craft or class of employees?
17 During its long history, the Board has
18 consistently promoted the interest of labor,
19 peace and stability. A fact for which we, both
20 management and labor, should be grateful. Unlike
21 other unionized industries, which often suffer
22 from representation disputes, inner union
23 raiding, strikes and other labor unrest, the

1 railroads have had virtually the same
2 representation for decades, allowing the
3 development of long term stable collective
4 bargaining relationships.

5 These facts beg the question, why has
6 the Board been so successful in maintaining
7 stability? Why has the rail industry experienced
8 greater labor peace than most industries subject
9 to the NLRA, notwithstanding the fact that many
10 carriers are far more heavily unionized.

11 The proposed rule making suggests
12 that stability and labor relations under the RLA
13 is a product of the Board's unique mediation
14 powers. The railroads, however, believe the
15 answer is equally attributable to three special
16 characteristics that have always defined the
17 Board's overall approach to its role under the
18 RLA.

19 First, the Board has generally had a
20 measured and deliberative style in carrying out
its statutory responsibilities. It has been
careful to assess all aspects of proposals for

1 change and examine all the political and
2 potential ramifications for labor and manage it.

3 As the Board indicated in the Chamber
4 of Commerce case, a deliberated methodology is
5 essential to assuring both sides that their
6 concerns have been heard and weighed, meaning
7 they're more likely to accept the result as fair
8 and balanced.

9 Second, the Board has always tried to
10 act on the basis of consensus, especially with
11 respect to hotly debated issues. Indeed when it
12 comes to proposals for sweeping change, the Board
13 has virtually never acted without the agreement
14 of all three Board Members. This emphasis on
15 consensus has long roots in the RLA. The statute
16 itself was the product of cooperation between
17 rail labor and rail management.

18 Third, the Board, unique among
19 federal agencies, has remained largely immune
20 from political pressures. It has been a truly
independent agency acting in the best long term

1 interest of both labor and management, but
2 beholden to neither.

3 The Board has for the most part
4 carefully avoided actions that appear politically
5 motivated or overtly biased, in favor over one
6 side or the other. In this fashion, the Board
7 has achieved a hard-won reputation for true
8 neutrality.

9 These characteristics not only define
10 the Board, they help to set the tone for labor
11 relations in the industries it serves.

12 The mediation process has been
13 successful in producing agreements, precisely
14 because the parties perceive the Board to be a
15 truly neutral and honest broker. In other words,
16 the Board's stabilizing influence is due largely
17 due to its nonpartisan, reflective and consistent
18 character.

19 The rail industry urges the Board to
20 approach the proposed rule making that is now
21 under consideration with the same sort of
22 careful, deliberative, consensus based and

1 nonpartisan approach that has defined its history
2 to this point.

3 The rule under consideration would be
4 the most dramatic change in the Board's election
5 procedures ever. It would fundamentally alter

6 the manner in which a majority of a class or

7 craft is defined for purposes of representation.

8 This proposal comes less than two years after the

9 Board rejected the same idea as lacking

10 sufficient justification; less than one year

11 after changes in the composition of the Board;

12 and in the midst of hotly contested and very

13 significant representation disputes in the

14 airline industry. Especially given these

15 circumstances, caution is warranted. That Board

16 should be wary of first - of acting without

17 having first engaged in the sort of complete

18 administrative process that it has used in past

19 cases involving proposed changes in fundamental

20 rules.

 We suggest that a full evidentiary

process is needed and it would allow the Board an

1 opportunity to consider all of potential
2 ramifications, including some possible
3 consequences that have not been discussed by the
4 rules proponents. Let me suggest three examples.

5 First, altering the voting rules to
6 allow certification of a representative by small
7 but a vocal minority of eligible voters could
8 undermine the stability of labor relations in our
9 industry, by increasing the frequency of attempts
10 to replace existing unions with rival
11 organizations. This effects stability of labor
12 management relations as well as employee moral
13 and can interfere with operational cohesiveness.

14 Second, how would the contemplating
15 change affect the rational for decertification of
16 existing representatives? The express reason for
17 promulgating the new rules to determine whether
18 the majority of employees desire representation,
19 should apply equally to weather there should be
20 new rules to determine if they no longer desire

1 such representation.

2 Third, the proposed change could very
3 well increase the frequency of election campaigns
4 and/or alter the matter in which unions and
5 management exercise their respective rights to
6 appeal to employees during such proceedings.

7 The need to obtain a majority of
8 votes cast as opposed to a majority of
9 illegitimate voters could increase the pressure on
10 employees. Examples of unwelcome pressure from
11 both sides can be found in the history of
12 election proceedings under the NLRA. It is not
13 at all clear if given a choice between the two
14 procedures, rail and airline employees would
15 choose to abandon the system they have used for
16 the last 75 years.

17 I don't mean to suggest that any of
18 these potential consequences are established fact
19 or certain to arise. Rather my real point is
20 that development of a full evidentiary record is
21 essential to a comprehensive and measured
22 evaluation of all the potential ramifications of

1 such a change. It is difficult to see how the
2 Board can make a considered analysis without such
3 a record, particularly in the timetable
4 contemplated by the Notice of Proposed Rule
5 Making.

6 The rail industry is doubtful the
7 proposed change will prove on its merits to be
8 either warranted or advisable, but leaving aside
9 the merits, the railroad industry is concerned
10 that a failure to adhere to the Board's historic
11 procedures will foster a perception that proposed
12 change is politically motivated and driven by
13 short term interest.

14 We have seen the consequences of such
15 politicalization of agency processes in other
16 contexts. It inevitably results in instability
17 and unpredictability as rules shift back and
18 forth depending on the party and power. The
19 railroads have no wish to see that sort of
20 disruptive dynamic take place here.

21 In closing, I'd like to emphasize
22 again that the parties look to the NMB as an

1 agency that strikes a balance between the needs
2 of labor and management and offers stability and
3 predictability. Precipitously changing the long
4 standing voting procedure would be a striking and
5 unwarranted departure from the Board's well
6 established practices concerning significant
7 policy changes. I urge the Board to consider not
8 just the content of the rule it selects, but how
9 it goes about making that selection.

10 In particular the railroads recommend
11 that the Board rescind the Notice of Proposed
12 Rule Making and in its place choose a path that
13 is designed to ensure a full open and considered
14 decision making process on this important matter.

15 Thank you again for allowing me to
16 participate today.

17 MS. JOHNSON: Thank you. Now we'll
18 hear from Captain Prater.

19 CAPTAIN PRATER: Chairman Dougherty,
20 Members Hoglander and Puchala, I am John Prater,
21 President of the Airline Pilots Association
22 International, and on behalf of ALPI and the more

1 then 53,000 airline pilots we represent, I thank
2 the Board for this opportunity to speak firmly in
3 support of the Board's proposal to change the
4 representational ballot to restore basic fairness
5 to the union representation election process.

6 ALPI joins and strongly agrees with the comments
7 of Ed Wytkind of the AFLCIO's Transportation
8 Trades Department and that is in support of the
9 Board's effort to remove the current significant
10 bias against union representation in the current
11 balloting rules.

12 ALPI also believes that the Board's
13 proposal is a long overdue step to level the
14 playing field in union elections by counting the
15 wishes of the majority of voters participating
16 rather than presuming as the rule does today,
17 that every worker who does not participate is
18 voting against union representation.

19 The current rule gives those who fail
20 to participate for whatever reason what amounts
21 to a veto power over those who actually vote.
22 This fundamental bias in the current balloting

1 system against union representation is unique to
2 railroad and airline employees. No other group
3 of private sector employees in the United States
4 selects their representatives with similar
5 anti-representational presumptions, nor does the
6 public when it chooses its elected
7 representatives and other leaders vote under such
8 a system. If it did, very few public elections
9 would produce an outright majority for candidates
10 and very few public elections would succeed in
11 filling the offices for which the election is
12 held.

13 In addition to the current tilted
14 ballot rules, management spends countless amounts
15 of money and uses multiple means and technologies
16 not even dreamt of in the 1930's to dissuade
17 employees from voting. This conduct exaggerates
18 the unfairness of the current balloting system.
19 These tactics buttress the need to implement a
20 system under which employees can clearly and
21 easily express a position for or against union
22 representation.

1 This is especially so in light of the
2 many forms of instantaneous communication and the
3 ease of voting that will permit employers to
4 communicate their point of view and for employees
5 to express their sentiments.

6 The current NMB balloting system is
7 not required by the statute and is the antithesis
8 of democratic free choice. The Board's proposed
9 rule change is a realistic but important update
10 that ensures basic fairness and recognizes that
11 conditions for voting have changed since the
12 1930's when employees in remote locations could
13 not quickly or easily get information,
14 communicate their sentiments or cast ballots.

15 Today's modern world obviates these
16 concerns and constraints and makes the proposed
17 new rule appropriate. Some would argue
18 unpersuasively for the continuation of a 70 year
19 Board tradition without compelling reasons to
20 support such a system, but our great country has
a tradition of writing balloting injustices even
when they have persisted over long periods of

1 time.

2 Civil Rights laws that provided
3 minorities the right to vote were not passed for
4 more than 100 years after the end of the civil
5 war.

6 Women were not given the right to
7 vote for more than 130 years after the founding
8 of this country. The century long continuation
9 of these unjust voting rules did not justify
10 their retention, nor should the existing NMB
11 balloting system that presumes to know how
12 non-voters would vote continue today even though
13 it has been used for more than 70 years.

14 The Board has good reasons to make a
15 change now and it has the authority to do so. As
16 the NMB noted in its NPRM, almost 45 years ago,
17 the Supreme Court ruled that the Board has very
18 broad discretion to establish appropriate
19 balloting procedures.

20 The Court also noted that the Railway
21 Labor Act does not require the Board to use a
22 ballot at all or to determine employee's choice

1 of a union representative.

2 The NMB proposes a modest change that
3 it has the discretion to determine is
4 appropriate. In Canada, employees at the Federal
5 level are normally not required to vote in union
6 elections if a majority submit authorization
7 cards stating that they desire union
8 representation. Although the Board here has the
9 power to adopt that kind of system, it is not
10 proposing such a dramatic change from the current
11 procedures.

12 The Board is proposing simply to
13 apply a widely accepted and fundamentally fair
14 election process that recognizes that the
15 majority rules. If a majority of participants in
16 an election votes for a union, it wins. If a
17 union is not supported by a majority of voters,
18 it loses. These modest changes to the Board's
19 balloting processes are justified and should be
20 implemented as soon as possible.

21 Contrary to the view of the parties
22 who oppose this change, the proposed Ballot

1 Modification would not undermine the Railway
2 Labor Act's goals of reducing strikes and
3 preventing disruptions to commerce.

4 The Board's proposal would not change
5 any of the Board's mediation procedures nor would
6 it impact the Railway Labor Act's status quo
7 rules.

8 These are the relevant procedures and
9 rules that determine when strikes can begin and
10 they do not have anything to do with determining
11 whether workers want to join a union. The
12 Board's representational function is purposely
13 separate from its mediation function and its
14 representational duties are simply to determine
15 whether workers want to obtain union
16 representation.

17 The current ballot system impairs the
18 accuracy of the Board's representational
19 determinations when all non-voters are treated as
20 voting no. The revised proposed ballot rules on
21 the other hand will not impact the Board's
22 mediation function at all.

1 The unstated premise of this
2 corporate argument is there will be more strikes
3 if we have more unions. They follow by arguing
4 that there should be no change that makes it
5 easier for a union to organize. Not only is that
6 argument speculative, it also undermines the
7 Railway Labor Act's foundation. Labor and
8 management together designed the Railway Labor
9 Act and jointly presented it to Congress. The
10 statute purposely sought to avoid disruptions to
11 commerce but also fostered the use of collective
12 bargaining as a problem solving device that would
13 stabilize the transportation system. This
14 foundation and the statutes' clear recognition
15 that employees could choose their representative
16 without coercion and without interference by
17 management, make clear that management's argument
18 is unsound and actually contravenes the Acts
19 purpose.

18 The Board's proposed rule change more
19 fully carries out all of the central purposes of
20 the Act to foster peaceful, collectively

1 bargained solutions, which by the way requires a
2 union, to the labor disputes in the rail and
3 airline industries.

4 ALPI stands united with the
5 Transportation Trades Department of the AFLCIO
6 and our fellow unions in the rail and airlines
7 industry who unanimously support this rule
8 change.

9 On behalf of ALPI and my members, I
10 appreciate the opportunity to speak in favor of
11 the Board's proposal, which ALPI believes is long
12 overdue and one which we strongly endorse.

13 Thank you.

14 MS. JOHNSON: Thank you. Mr.
15 DeLucia.

16 MR. DELUCIA: Good morning, Board
17 Members.

18 My name is Rob DeLucia and I am the
19 General Counsel of the Airline Industrial
20 Relation Conference, better known as Air
21 Conference.

22 The position of Air Conferences

1 member airlines on minority union proposals is
2 long established and well known to this Board,
3 requiring that unions, when the backing of a
4 majority of all the employees in the craft is (a)
5 mandated by the Railway Labor Act and (b)
6 necessary to insure stable labor relations.

7 Of course, the Board already has our
8 formal statement which was filed on November 20th
9 and you will have our full comments on the NPRM
10 by January 4th.

11 Consequently my remarks today will
12 focus on my personal observations from 27 years
13 of working with the National Mediation Board.

14 During my tenure at Air Conference,
15 I've had the unique privilege to personally know
16 all 17 women and men who have served as members
17 of the Board since 1982. While most of these 17
18 individuals had extensive prior careers working
19 on behalf of either labor or management, once
20 they were appointed to the NMB, they have
21 routinely shifted to their new role as neutrals.
22 With very few exceptions, Board members have

1 avoided being labeled as either management
2 members or labor members of the board, or as a
3 democratic or a republican member.

4 By emphasizing neutrality, the NMB
5 members have justifiably earned a reputation for
6 nonpartisan conduct. Studied actions and
7 consensus building have been the hallmarks of the
8 NMB. If there has been one consistent refrain
9 from the NMB members during my 27 years, it has
10 been the agency's repeated admonitions to the
11 parties that they must go through the process,
12 slow as it may be at times, before the agency
13 will act.

14 This adherence to a methodical and
15 thorough process is the surest way to reach the
16 right result, which is why I found the Board
17 majorities actions in expeditiously issuing
18 tentative approval of the TTD's minority union
19 proposal to be so perplexing and completely out
20 of character for the agency.

21 Personally, I can easily understand
22 the TTD's motives for requesting the change to

1 the representation process. Its unions are
2 hungry for new members, the past decade has not
3 only been financially ruinous for air carriers,
4 it has also hit unions hard.

5 Since 2000, total airline employment
6 has dropped from roughly 550,000 workers to less
7 than 400,000, a level not seen for 20 years.

8 Naturally there has been a corresponding drop in
9 union membership and union dues revenues.

10 Not surprisingly the TTD sees a
11 minority union proposal as an easy way to expand
12 union membership. In a low turnout election, the
13 votes of 200 supporters might bring in 1,000 new
14 dues paying members.

15 However, what I have found disturbing
16 and inexplicable has been the willingness of the
17 NMB to capitulate to the TTD's demands for the
18 minority union change. A brief review of the
19 recent events demonstrates that the TTD petition
20 has been given unprecedented, what I would term,
21 rocket-nocket treatment, completely different
22 from the Board's traditional method of reviewing

1 past proposals.

2 In July and August of 2009 the IM and
3 AFA filed for representation elections at Delta
4 Airlines. For both unions at stake is a
5 continued flow of millions of dollars in dues
6 income from former Northwest employees as well as
7 the prospect for picking up tens of thousands of
8 new members from former Delta. In September 2nd,
9 the TTD sends a letter to the agency asking for a
10 minority union ballot system. Without any
11 publication of either of these of this document,
12 less than two months later on October 28th, the
13 third Board member was first informed of the
14 existence of the proposed NPRM and given one day
15 to review and prepare her dissent.

16 Over the next week, the IM and AFA
17 suddenly and inexplicably withdraw their
18 applications and the NPRM is then published in
19 the Federal Register. The position of the
20 Chamber of Commerce regarding the decertification
rule is not even acknowledged.

 This disturbing sequence of events

1 stands in stark contrast to the deliberative,
2 open-minded process to which all prior proposals
3 to change Board rules and procedures have been
4 subjected. A brief review of the manner in which
5 the Board handled earlier matters paints a vivid
6 contrast to the one-sided handling of the TTD
7 request.

8 First in 1985, 1987 the Chamber of
9 Commerce requested the issuance of union
10 decertification rules followed by the
11 International Brotherhood of Teamsters petitions,
12 the list of employee home addresses and the
13 adoption of a minority union ballot.

14 Within days of receiving each
15 petition, the Board circulated out the petitions
16 for comment without disclosing the board member's
17 personal views of any of these proposals.
18 Subsequently, the NMB conducted extensive fact
19 finding hearings on both petitions stretching
20 over two years.

21 In 1992, 93 and 94 respectively, the
22 board (a) invited parties to suggest improvements

1 to the representation manual; (b) sought comments
2 on how to conduct elections of carriers that were
3 merging; and (c) circulated the steelworkers
4 petition for employee home address lists.

5 1994 to 1996 the NMB convened a task
6 force, the Airline Industry Labor Management
7 Committee, better know as Dunlop One, to review
8 possible changes to the RLA and methods for
9 improving the NMB services.

10 After over a year of proceedings, the
11 Dunlop One committee, on both the airline and the
12 railroad side, issued its consensus
13 recommendations without dissent. Clearly the
14 frantic matter in which the NMB has rapidly
15 processed the TTD Minority Union Proposal is
16 incompatible with the measured pace of handling
17 prior, even identical, representation proposals.

18 Regrettably, even at this stage, the
19 confidence of the parties in the Board's unbiased
20 application of its own well established practices
21 has been needlessly diminished.

22 Fortunately, the situation is not

1 hopeless and can easily be remedied. First, Air
2 Conference respectively proposes that all three
3 Board members remove themselves from the
4 politically charged and deeply flawed decision
5 making process that has been generated to date.

6 Second, the NMB should withdraw the
7 NPRM and turn both the TTD and the Chamber of
8 Commerce petitions over to a blue ribbon
9 committee of an experienced labor and management
10 official's a/l/a the Dunlop committee of 1994,
11 1996. This committee, which should encompass a
12 full spectrum of rail and air union, management
13 and employee participants, could thoroughly
14 review the entire representation process and make
15 consensus recommendations for improvements.

16 Referring these petitions to an
17 outside committee would be consistent with the
18 history of the RLA, a law that was jointly
19 drafted by labor and management and reinforce the
20 Board's historic role as an honest broker in
21 airline and railroad labor relations matters.

22 And I thank you both, all three of

1 you, for your time and consideration this
morning.

2 MS. JOHNSON: Thank you. We will now
hear from Mr. Robert Roach.

3 MR. ROACH: Thank you, Madam

4 Chairman, Members of the Board for the

5 opportunity to speak to you today.

6 We the people of the United States,

7 in order to form a perfect union, establish

8 justice, ensure domestic tranquility, provide for

9 the common defense, promote the general welfare

10 and secure the blessings of liberty to ourselves

11 and our posterity. Do ordain and establish this

12 constitution for the United States of America.

13 It is in the backdrop of those words that I come

14 to speak to you today. That this document that

15 was written over 300 years ago only represented

16 the power and the will of 25 percent of the

17 population.

18 In this living document, the founding

19 fathers also recognize the need to change as our

20 society changes, as things change, as technology

1 change, they provided for a way to change our
2 Constitution and provided for a way to change the
3 rules and regulations for which we are governed.
4 It is therefore, hard for me to understand how
5 anybody could become this tribunal and argue
6 against change.

7 When the Constitution was written,
8 African Americans did not have the right to vote.
9 Somebody else voted for them on the basis of
10 three-fifths of a person. It took over 200 years
11 to rectify that problem and yet today the civil
12 rights, the voting rights act of 1965 is under
13 review by the Supreme Court to see if another
14 change is necessary.

15 It took women 131 years to have the
16 right to vote because men said, "they'll just
17 mess things up. They don't know what they're
18 doing". Indeed had there not been those changes,
19 I would not be privileged to stand here today and
20 speak to you. And two-thirds, the majority of
21 this Board, would not have the opportunity to sit
22 on this board.

1 The majority of the people who argue
2 against this Board of Directors are elected by
3 the majority of those voting, and the world is
4 jubilant and overjoyed when President Barak Obama
5 became President because the majority of those
6 voting voted for a man, not because of the color
7 of the skin, because of the content of his heart.

8
9 There are people who suffered and
10 died for the right to vote and not to have others
11 vote for them, and to say something worked for 75
12 years, so let's leave it the way it is, it's not
13 broken, let's not fix it. Well I'm quite sure
14 that for a certain segment of the population,
15 that the right to vote for African Americans on
16 the basis of three-fifths of a person, it worked
17 for them and the fact that we excluded women for
18 131 years the right to vote, that worked for
19 them, for some other people.

20 That is not our argument here today.
21 Our country is great and the contributions of all
22 of its people is what makes us the country we are

1 today. This is why we have senators, women
2 senators that make a great contribution to our
3 country and again the President of the United
4 States, the most powerful person in the free
5 world, the most powerful woman in the free world
6 today, Hilary Rodham Clinton, Secretary of State.
7 Her predecessor, Condoleezza Rice, these are
8 powerful people who make a significant
9 contribution to our society.

10 Seventy-five years ago, our country
11 was in brawl in great debates and great fights
12 against discrimination. There were no
13 population, our people, all the people were not
14 involved in that discussion when these rules were
15 established and many were excluded from unions.

16 Today we live in a great society and
17 things have changed since 9/11, our industry has
18 changed since 9/11. Today the TSA is trying to
19 make rule making as a result of what happened
20 9/11. Someone stated that over 100,000 people
21 have been laid off or let go from airlines and
22 that's true and that makes another reason why

1 this change is very important, because we have
2 people who have left the industry, we have people
3 who've moved, we have people who've died. These
4 people become no votes in a representation
5 election under current Board rules. We can't
6 find these people. We don't know where these
7 people are. We don't even know if these people
8 are actually eligible anymore, to vote. They
9 could be working for other carriers.

10 It is very significant that this
11 Board look at this rule change very carefully.

12 It is very significant that very recently we have
13 lost or the people have lost the opportunity to
14 join unions because one person decided not to
15 vote when the majority of those voting, voted for
16 a union.

17 And if you exercise your right or
18 your will to vote no under current rules, that
19 ballot is voided. There is no way to exercise
20 that thought, and so we think that it is
21 important that this Board deliberate and discuss
22 and come up with a fair and equitable rule for

1 transportation workers in our country.

2 To do otherwise is a slap in the face
3 to all those who struggled for voting rights, who
4 struggled for my voting rights and you're voting
5 rights, who struggled for democracy and equality.

6 We're asking for democracy. We're asking for
7 the right to be heard. That the majority of
8 those voting rule as in every other election in
9 our country. It's just that simple. It's not
10 that difficult. It will not cause strikes. It
11 will not cause people to be in unions who don't
12 want to be in unions. People have the right to
13 exercise their right to be in a labor
14 organization.

15 We further find that what we hear and
16 what we read about challenging the integrity of
17 members of this board, no matter which side are
18 you on, we denounce that activity. The machine
19 issue has nothing but the highest regard for
20 every member of this Board and we know that you
21 will deliberate and come up with the correct
22 answer in the best of our, of the transportation

1 workers in this country.

Our remarks are on. Our remarks have
2 been submitted. And we believe that as Martin
Luther King said, "the time is always right to do
3 what's right," and now is the time to make real
4 promise of democracy. And so we say to you that
5 we the transportation workers of America, in
6 order to have a fair opportunity to form unions,
7 establish justice, provide for our common
8 defense, secure fair wages, benefits and working
9 conditions, hereby request that this Board
10 establish fair and equitable rules for the
11 transportation workers of the United States of
12 America.

13 Thank you members of the Board.

14 MS. JOHNSON: Thank you. Mr.
15 Gallagher.

16 MR. GALLAGHER: Good morning, Madam
17 Chairman, Members of the Board.

18 I am Jack Gallagher of Paul Hastings
19 Law Firm here in Washington, here today on behalf
20 of Delta Airlines.

1 As the Board is undoubtedly aware,
2 Delta and Delta's employees are in a very unique
3 position with respect to this rule making
4 proceeding. Indeed I'm tempted to apologize to
5 the other management representatives present here
6 today for were it not for the pendency of huge
7 elections at Delta, I think that the general
8 consensus is this rule would not even be before
9 the Board and we wouldn't have to burden you with
10 the issues before us today.

11 Delta employees are the only
12 employees of any carrier to date who have been
13 directly affected already by the Board's abrupt
14 decision to initiate a change to the voting
15 rules.

16 This process has already resulted in
17 a delay in affording Delta's employees the right
18 to exercise their choice on representation
19 issues. I believe, at least to my observation,
20 the only uniformed carrier employees of any
21 carrier here today are Delta flight attendants in
22 uniform.

1 I welcome them, all of them on both
2 sides of the issue and I thank them for their
3 interest and their presence. I suspect a lot of
4 reserves are flying today, as a result of their
5 presence. They deserve a vote and unfortunately
6 the 20,000 Delta flight attendants have already
7 been denied that right to vote by this Board's
8 failure to timely process AFA's application when
9 it was filed this past summer in violation of the
10 Board's statutory duty to process representation
11 matters expeditiously.

12 It has now been more than a year
13 since Delta acquired Northwest Airlines. It is
14 more than 6 months since all of the flight
15 attendants at Delta have been wearing Delta
16 uniforms, flying flights that are all sold under
17 the Delta ticket designator but yet the Delta
18 flight attendant workforce remains separate.

19 Delta has been unable to render
20 common the seniority list wages and benefits of
the flight attendant workforce, unlike the pilots
with whom Delta has an established collective

1 bargaining agreement and a fully integrated
2 seniority list already effective. We wish that
3 it were different.

4 The Board's merger procedures when
5 they were originally promulgated would have
6 permitted the Board to have resolved these issues
7 by now.

8 For its own reason's the Railway
9 Labor Executive Association challenged those
10 merger procedures and had part of them set aside.
11 And unfortunately a carrier is now no longer
12 able to present representation issues to the
13 Board. That leaves us in a quandary as to how to
14 facilitate the resolution of representation
15 issues. But Delta has done everything it can.
16 Delta as been open and above board with the
17 members of the National Mediation Board, with its
18 employee groups, with all of the unions affected
19 by the Delta- Northwest merger and all except AFA
20 and the IAM have resolved their issues in a very
21 cooperative manner with Delta, resulting in the
22 certification of two unions, ALPI and PASCA for

1 the merged Delta workforce, so we don't see this
2 as an issue of union versus non-union or
3 anti-union conduct.

4 We do see it as an issue of properly
5 determining employee free choice on
6 representation issues. AFA and IAM have actively
7 campaigned for more than a year at Delta
8 airlines. They apparently became convinced that
9 they could not win the support of a majority of
10 Delta employees in their crafts and classes under
11 the election rules which have governed everyone
12 else for the last seventy-five years.

13 Now AFA very recently won other
14 elections under those same rules. Under
15 applications filed subsequent to their
16 application at Delta but they were not willing to
17 proceed under those same rules at Delta. Why
18 not? Because they new they didn't have majority
19 support.

20 AFA has not been bashful about its
21 intentions, indeed it publicly proclaimed that
22 the change of administrations was the reason it

1 expected to succeed in changing the rules so soon
2 after the Board in 2008 unanimously rejected the
3 prior request that AFA had made.

4 Now Mr. Wytkind trots out the AFA
5 argument that it is improper for a carrier to
6 advise employees how to vote no under the Board's
7 longstanding voting practices. The Board
8 rejected AFA's allegations on that issue in the
9 Delta case. Indeed the Board for many, many
10 years, Democratic Board members and Republican
11 Board members has unanimously rejected such
12 arguments and AFA and Mr. Wytkind here today have
13 come up with verbiage like voter suppression and
14 the notion that somehow it's improper to rip up a
15 government issued ballot. Well what else is one
16 to do with it? Rip it up, throw it away. Under
17 the current board voting system, that is the way
18 to vote no and it is patent nonsense to suggest
19 that telling employees how to vote no is somehow
20 inappropriate.

21 Captain Prater complained about the
22 employer's exercises first amendment rights.

1 Now we all know that in modern union
2 election campaigns, the unions especially for
3 example, the major unions like AFA and IAM,
4 marshal tremendous resources, use all kinds of
5 media, whether it's telephone, video, television,
6 videotape, fliers, mailers, internet contacts,
7 face book, those are commonly used and no one has
8 complained about unions using those types of
9 methods, but Mr. Prater complains about the
10 carriers' exercising their first amendment
11 rights, which we think is singularly
12 inappropriate.

13 The NPRM does not state very
14 explicitly why the Board is proposing to change a
15 process which has been in place for 75 years.
16 Indeed the Board has previously said that it
17 would only make such a change if the proposed
18 change was mandated by the RLA or essential to
19 the Board's administration of representation
20 matters.

21 What is the problem this change is
22 designed to address? No where does the NPRM

1 define a problem. The history of union success
2 in RLA elections is much greater than it is under
3 NLRA elections. Now, this open meeting is not
4 that time or place for detailed discussion of our
5 legal objections. I would note that we have a
6 more extensive written statement submitted for
7 this proceeding and ask the members of the Board
8 to consider also our full legal arguments which
9 will be submitted later.

10 But to put our concerns into
11 perspective and I would note that this is a
12 notable first for me, I would like to close by
13 quoting from Member Hoglander's published opinion
14 and decision last year when the Board proposed a
15 much more minor rule change.

16 As he said at that time, "In my view
17 when the majority members of the NMB seek to
18 implement revisions in mid-stream of the merger
19 process, doubt and mistrust regarding the process
20 is a regrettable consequence."

21 Historically the NMB merger policy
22 has remained unchanged since 1987. The only

1 exception being a minor administrative
clarification in 2002 thus prompting the
2 question, why now? That same question applies to
this proceeding.

3 The majority members of the Board
4 should act honorably, withdraw the current
5 proposal and if by chance we are wrong that this
6 is not a specially designed proposal targeted at
7 the largest elections in the history of the Board
8 at Delta Airlines, then the easy remedy of course
9 is to make the rule prospective only so that it
10 would not apply to any previously announced or
11 pending mergers.

12 We would love to see that and we
13 would welcome the Board's move in that direction.
14 I wish I could say we expected it. Thank you.

15 MS. JOHNSON: Ms. Parcelli.

16 MS. PARCELLI: Good morning, Chairman
17 Dougherty and Members Hoglander and Puchala.

18 My name is Carmen Parcelli and I'm
19 with the firm Gerardi, Edmund, Claymon and Bardis
20 and I appear this morning on behalf of the

1 Transportation Trades Department of the AFLCIO.
2 And I want to extend my thanks, first of all, for
3 giving me the opportunity to speak this morning
4 and address some of the legal aspects of the
5 Board's proposed rule making.

6 Now as I was preparing for this
7 appearance, I reviewed the list of speakers that
8 the Board had distributed and as I was looking at
9 it, I saw there was basically a small army of
10 attorneys who are scheduled to speak on the side
11 against the proposal and on the other side, if
12 I'm not mistaken, I think I was the only attorney
13 designated to speak. But in reality that's not
14 quite the case because both in my written
15 statement to the Board and in my remarks today, I
16 reflect the views shared by counsel for TTD's
17 constituent unions and now that's a long list of
18 general counsels and attorneys, too long to name
19 people this morning and I believe that you know
20 who those folks are. So the opinions that I
21 express today and in my written statement are not
22 simply my own, but represent the consensus view

1 of a large group of union counsel.

2 Now, I know that my written statement
3 reads like a dry legal brief and I do apologize
4 for that. So today I just wanted to highlight a
5 couple of essential legal points.

6 First, it has been suggested and you
7 heard it again this morning that this Board may
8 actually lack statutory authority to make the
9 proposed rule change and I am here to tell you
10 that that is simply incorrect as a matter of law.
11 But now I fully understand why the other side is
12 trying to make that argument and that leads into
13 my second point.

14 They are trying to make that argument
15 because they know that as long as this Board is
16 acting within its statutory authority its
17 discretion in election matters is extremely
18 broad. And in light of some things I've heard
19 this morning, I'd also like to briefly touch upon
20 a third point and that is a suggestion that has
21 been made that this Board should adopt additional
22 and in some cases rather extraordinary procedures

1 in order to review or go about the process of
2 this proposed rule change.

3 But back to the issue of statutory
4 authority. So what are the sources of the
5 Board's authority? Of course it's Section 2/4th
6 and Section 2/9th of the RLA. And the language
7 of the statute in this respect has been flushed
8 out by two main Supreme Court cases. I know you
9 know this, it's not anything new, but that's the
10 Virginian Railway case and the ABNE case and what
11 do they teach us? Well, they teach us this that
12 2/4ths gives the majority the right to determine
13 a representative but that provision is silent as
14 to how the majority will is to be determined. So
15 then it falls under Section 2/9th that it's left
16 to this Board and as the Supreme Court says in
17 ABNE this Board alone to determine procedures to
18 find representation of affected employees. And I
19 would point out also that the statute, the RLA,
20 does not say anything about how the Board is to
go about its election procedures. The statute is
silent on that issue.

1 Now following up on the main Supreme
2 Court cases, there is a whole host of Federal
3 Court cases that affirm this Board's authority to
4 set procedures in election matters. In addition,
5 we have the 1947 Attorney General's statement,
6 addressing this specific rule change that this
7 Board is now contemplating and finding that this
8 Board has the authority to make that rule change.

9
10 And then on top of all of that, with
11 one exception that I'll discuss in a minute, this
12 Board itself has repeatedly stated that it has
13 the statutory authority to make this change, even
14 though it has declined to do so in the past. So,
15 all of these legal authorities plainly support
16 the conclusion that this Board has the authority
17 to adopt the proposed rule change.

18 So what is the other side using then
19 as the basis for its claim that this board may
20 lack statutory authority? Well, for the most
21 part and you heard it again this morning, they
22 rely on one source and that is the public notice

1 of a meeting that the Board held on June 7th,
2 1978. So, this is it. It's actually just the
3 highlighted portion on this page, okay? This is
4 it. So it appears from the public notice that
5 there was a last minute change to the meeting and
6 then this determination was made that the Board
7 in the words of the notice, does not have the
8 authority to administratively change the form of
9 the ballot used, okay.

10 So, there's no indication for the
11 public notice as to what prompted this decision.
12 There's no indication the legal or the policy
13 rationale for this decision. So all you have is
14 the bear notice that's in the public record that
15 anyone has pointed to that we are aware of
16 certainly.

17 So, as a legal matter you simply
18 cannot attach much if any significance to the
19 1978 statement. I mean, with all due respect to
20 the Board, just because the three of you were to
21 raise your hands at this meeting this morning and
22 decide upon some interpretation of the Railway

1 Labor Act, that pronouncement would not bind
predecessor boards and in fact this Board has not
2 viewed itself as bound by the 1978 statement.

For example, only three years later
3 the Board administratively changed the form of
4 its ballot when it adopted the Laker ballot. And
5 then also in 1987 during the Chamber of Commerce
6 proceedings where the Board considered the same
7 change that's proposed now, Aircon pointed to
8 this same public notice as evidence that the
9 Board lacked authority. So, basically they just
10 dusted off the same argument once again.

11 But the Board did not agree with the
12 view then and instead it actually agreed with the
13 Teamsters on this point, that it did have the
14 statutory authority to make the requested change
15 although ultimately declining to do so for policy
16 reasons at that time.

17 Nor does the 1978 statement have any
18 persuasive force, so even if you hold the three
19 Board members that are concerned in very high
20 esteem, they simply haven't indicated the basis

1 for their decision and the decision then, and I
2 think this is important in regards to the
3 commentary we've heard this morning, the decision
4 then was certainly not the product of the kind of
5 deliberative process the Board is now engaged in.

6 In fact, it appears to be quite the last minute
7 thing.

8 Now let me touch briefly on my second
9 point, and that's the breath of the Board's
10 discretion in election matters. And of course
11 this is something that all the many attorneys on
12 the other side, I believe you won't hear them
13 speak about, but the fact is that under the
14 Supreme Court's longstanding Switchmen's
15 doctrine, as long as this Board is acting within
16 the scope of it's statutory authority, it's
17 discretion in election matters is essentially
18 unreviewable.

19 In other words, a court will not
20 second guess the Board's decision making in
21 election matters. As the Supreme Court
22 explained, determining the proper procedures for

1 election matters is left to this Board alone.

2 And just lastly to respond to some of
3 the suggestion that's been made, that this Board
4 should adopt further procedures, scrap the
5 proposed rulemaking that's been made, there is
6 absolutely nothing certainly in the RLA nor in
7 the Administrative Procedures Act or any other
8 source of law of which I am aware of that would
9 require this Board to follow procedures like
10 that. Even the extent to which it has followed
11 some of these procedures that have been suggested
12 in the past, it's free to look at the
13 circumstances now and decide what measures are
14 appropriate for it to follow in regard to the
15 proposed rule change under consideration at this
16 point.

17 So in sum, the Board undoubtedly
18 possesses the authority to make the proposed rule
19 change. However, we also understand on the union
20 side in the legal community that this Board, even
when it's possesses of full authority, does not
take lightly making a change to its existing

1 rules.

2 Instead, the Board has approached
3 this matter in a thoughtful and a deliberative
4 manner. And that's fitting and that's to be
5 expected. But compelling reasons now exist for
6 the Board to make the proposed changed and you'll
7 hear this, you have already from the other
8 speakers and you will as well for those that
9 follow. Much has changed since the Board first
10 adopted the current practice. Changes in terms
11 of the rail and airline industry; changes in
12 American culture; profound changes in technology;
13 and changes in the Board's own election
14 administration.

15 The Board's election rules should
16 reflect these current realities and the Board
17 should finally abandon a practice that weighs in
18 favor of the no-union result by presuming that
19 non-participants reject representation.

20 Again, thank you very much for giving
me the opportunity to speak this morning.

MS. JOHNSON: Thank you. We are

1 going to take a break and resume at 10:40.

[OFF THE RECORD AT 10:25 A.M.]

2 [BACK ON THE RECORD AT 10:42 A.M.]

3 MS. JOHNSON: Our next speaker will
4 be Mr. Johnson.

4 MR. JOHNSON: Good morning Members of
5 the Board. My name is Randy Johnson and I'm
6 Senior Vice President for Labor, Immigration and
7 Employee Benefits at the U.S. Chamber of
8 Commerce. The Chamber's membership at least
9 there being doubt about our interest in this
10 organization includes many employers subject to
11 the Railway Labor Act including those in the
12 railroad industry, airline industry and other
13 industries that are deemed derivative carriers
14 under the RLA. Our membership also includes
15 trade associations that (inaudible) represent
16 carriers in both the railroad and the airline
17 industries.

18 Now Madam Chairman and Members of the
19 Board, we do have concerns about the underlying
20 proposal. Today we are focusing, are going to

1 focus basically on the issue of decertification,
2 which has been touched on by some prior speakers
3 but not in a real lot of detail and let me just
4 say up front that we take, certainly I take some
5 (inaudible) of some of the prior speakers who
6 have said that referring to other issues that
7 should be brought up as part of this process and
8 somehow in variously derails the underlying
9 proposal.

10 In fact, certainly if we're going to
11 talk about the way unions are represented, it's
12 legitimate to talk about the way they should be
13 decertified when employees no longer wish to be
14 represented by these unions. This is hardly an
15 unfair area to bring up. And specifically if the
16 Board is to change its procedures to rely on the
17 majority of votes cast, the Board basically as
18 day follows night, we believe should amend those
19 procedures to allow employees to vote decertified
20 representative in the same manner.
21 Decertification should be a mirror image or a
22 post mirror image of certification and should be

1 conducted using the same criteria and voting
2 procedures used by the Board in response to an
3 application to certify the union representative.

3 Beginning with an application
4 supported by a showing of interest from 35
5 percent of the affected craft or class rather
6 then the 50 percent plus one majority showing of
7 interest required today for decertification.
8 This would then be followed by election using the
9 same ballot used to elect a representative
10 rephrased, of course, to permit a vote
11 decertified rather than to elect a
12 representative.

13 I think it's it's quite clear such a
14 change is needed to ensure that the
15 representation duties of the Board are carried
16 out in a manner that is consistent with the Act
17 and that is fair and just.

18 Now in its proposal the Board has stated
19 indeed that its "primary duty in representation
20 disputes is to determine the clear, un-coerced

1 choice of the affected employees".

2 I know there has been a variety of
3 case law on this issue but certainly by now it's
4 established that the duty applies equally when
5 employees no longer wish to be represented. But
6 the Board's purport, but the Board's current
7 proposal continues this weird double standard on
8 the Railway Labor Act representation disputes,
9 frankly favoring unions at the expense of
10 employee free choice.

11 Now we recognize that the Board has
12 previously considered and rejected our proposed
13 change, indeed back in 1985 as some other
14 speakers have eluded to. But each instance that
15 rejection was under the assumption that the
16 Board's long standing majority rule voting
17 procedures would remain unchanged, i.e., that
18 majority support for union representation of the
19 entire craft or class would be required in order
20 to certify a representative.

21 If the proposal in front of the NMB is
22 adopted, which we will address in several more

1 detailed comments later but if it is adopted,
2 there is no longer obviously a determination that
3 a majority of employees of that union have ever
4 supported representation, let alone that a
5 majority continue to support representation by
6 the union certified. And these circumstances, it
7 is all the more important that the employees have
8 equal right to exercise their choice not to have
9 union representation, just as employees subject
10 to the National Labor Relations Act are able to
11 do.

12 Now the Supreme Court is controlling
13 that such freedom of choice is required by the
14 RLA. As the court stated in Russell versus
15 National Mediation Board, "Employees were given
16 the right under the Act not only to opt for
17 collective bargaining but to reject it as well."
18 Seems like a simple proposition but I'll read it
19 again. Employees were given the right under the
20 Act not only to opt for collective bargaining but
21 to reject it as well.

22 I read it twice because there is a

1 long history in front of the NMD which seems to
2 be antithetical to recognize that employees
3 actually have a right to opt out of
4 representation or to go through a decertification
5 process. It's a peculiar mystery, but it's there.

6

7 Quote back to the courts decision,
8 "The language of the Act clearly stands for this
9 proposition. Implicit message throughout the Act
10 is that the, "complete independence of the
11 employees necessarily includes the right to
12 reject collective representation".

13 Now in Teamsters versus Brack, the
14 courts expressly agreed with the boards counsel
15 position that under the Railway Labor Act "it is
16 inconceivable that the right to reject collective
17 representation banishes entirely the employees of
18 a unit once chose collective representation. On
19 its face, that is a most unlikely rule especially
20 taking into account the inevitability of
21 substantial turnover of personnel within the
22 unit".

1 As the Fifth Circuit stated in
2 Russell the Board's duty under Section 2 is to
3 find the fact in dispute and the "Board failure
4 to find the fact in dispute. Who is the true
5 representative of the employees?"

6 Now as I've mentioned already,
7 unfortunately the Board has an apparent antipathy
8 towards disfavoring employee rights when it comes
9 to decertification of a union and putting up
10 hurdle after hurdle even after that right is
11 recognized to allow a decertification petition to
12 go forward. But if the Board truly believes that
13 the existing certification rules are out of date
14 and confusing, they are a modeled clarity with
15 compare to current decertification procedures
16 that effectively require the replacement of one
17 man with a straw man that is ultimately
18 abandoned.

19 I just want to read from the Railway
20 Labor Act treatise on how the current
21 decertification process under the Railway Labor
22 Act works and I know you're all familiar with it

1 but perhaps many of the public aren't and to call
it Byzantine would be, I think, flattery.

2 The NME has no standard procedure governing
cases in which employees desire to terminate
3 their union's representative status.

4 Decertification has typically been achieved with

5 "strong-man" petition by one or more employees

6 only nominally seek to become the new

7 representative. The straw man must present the

8 majority showing of interest, majority showing,

9 not 35 percent, and similar election could result

10 in decertification in two ways.

11 If a majority of the employees do not vote

12 for any representative the incumbent union would

13 be decertified and the employees would become

14 unrepresentative. Alternatively, the straw man

15 who petitioned for election, win the election and

16 then disclaim representative status. Talk about

17 hoops and hurdles.

18 Well if the Boards going to go

19 forward with this current proposal, again we

20 believe its incumbent upon them, if they truly

1 respect employee free choice, to create a
2 decertification process that mirrors what they
3 are proposing for the certification process.
4 Seems fairly simple.

5 The second matter I wish to address
6 today is procedural as other speakers have
7 mentioned. This is not the first time the
8 Chamber has made a request such as this. On
9 September 5th, 1985 the Chamber made a similar
10 request. Records indicate that the Board
11 received this request on September 9th and on
12 September 12th. The Board announced a hearing on
13 the matter.

14 On September 30th, 1985 the IBT filed a
15 petition similar to that proposed by the FLCIO
16 earlier that year. The next day the Board filed
17 a notice consolidating the matter. To the
18 Board's credit, evidentiary hearings were held
19 and other formal proceedings and as the Board
20 knows, ultimately no changes were made. But one
21 thing that was clear when everyone thinks of that
22 result, both the Chamber and the petition labor

1 unions had the proposals before the Board and
2 stakeholders had an opportunity to evaluate them
3 and participate in the Board's process.

4 Contrast this with the processing
5 used by the current Board. At the luring of the
6 TTD's request for the Board to adopt the change
7 as proposed today, the Chamber send a letter in
8 opposition of the request making much the same
9 points I made here today and basically that if
10 the Board goes down this road, it should also
11 reexamine the decertification rules.

12 To date we have received no response and no
13 acknowledgement of our request. Nevertheless,
14 here we are debating the TTD's proposal as
15 published in the Federal Register. If we're
16 going to go forward with the process that at
17 least on its face appears fair, it would appear
18 clear that certainly many of the issues raised by
19 the regulated community should also be a part of
20 this rule making. Regardless of what the results
21 may be in the end, substance is one matter,
22 procedural fairness is another.

1 Again, Chairman Dougherty and Members of
2 the Board, thank you for this opportunity to
3 present these views. It's a nice break from the
4 healthcare debate on Capitol Hill. I'd love now
5 to share my public option or not and we'll see
6 how that comes out in the next week and a half.

7 Please do not hesitate to contact us at the
8 Chamber if we can be of further assistance.

9 Thank you.

10 MS. JOHNSON: Thank you. Ms. Gordon.

11 Oh I'm sorry, Ms. Bicksler, I apologize.

12 MS. BICKSLER:

13 Thank you, Chairman Dougherty and
14 Members Hoglander and Puchala for having this
15 hearing today. We really appreciate the
16 opportunity to speak on behalf of the flight
17 attendant group that we feel we represent.

18 My name is Maryann Bicksler and I've
19 been a Delta employee for 23 years and I'm
20 currently on my very own vacation time, not being
21 paid and there are no reserves being abused due
22 to my participation here.

1 I am here today to testify on how the
2 current National Mediation Board, your voting
3 roles are unnecessarily -- they create hostile
4 working environment during airline elections and
5 why they are contrary to the values of our
6 American democracy.

7 I would like to share with you my
8 experience as an in-flight supervisor during the
9 very first AFA Delta organizing campaign where a
10 vote was requested in August 2001 and the final
11 votes were tallied in early 2002. Even though
12 the majority of flight attendants over time had
13 signed authorization cards, our ultimate
14 percentage of voting for representation came in
15 at less than 30 percent. How can this happen?

16 Having become a supervisor for Delta
17 Airlines in 1996 and hoping to make a positive
18 difference for flight attendants, the flight
19 attendant group, I was amazed at the alarmingly
20 turn of events as the organizing drive gathered
21 steam and Delta hired the American Consulting
22 Company which is a firm specializing in so-called

1 union avoidance.

Each flight attendant base had a
2 representative on staff from this company.
Though staff members employed tactics which were
3 designed to teach us as supervisors to intimidate
4 flight attendants. As a supervisor at that time,
5 my job was to implement the tactics these
6 consultants taught us. The strategies and
7 tactics they utilized were designed around and
8 because of the current National Mediation Board
9 voting procedures. The tactics they deployed
10 were all based on voter suppression.

11 Every morning a consultant conducted a
12 briefing to update all the supervisors on the
13 latest hot topic issues that flight attendants
14 were discussing, especially issues that made
15 flight attendants vote for representation. We
16 were taught techniques to confront flight
17 attendants and confuse them without any real
18 relevance to the truth.

19 Specifically other tactics we used were
20 when AFA activists asked to set up a table in the

1 lounge to have conversations with fellow flight
2 attendants, we had to block the AFA table by
3 inviting other vendors to set up tables ahead of
4 time and we instituted a rule that only one
5 vendor could be in the lounge at any given time.

6 Delta flight attendant, AFA activists were
7 considered vendors. This frequently made it
8 impossible to have any union table in the lounge
9 area.

10 We were given anti-union fliers to ensure
11 that they were stocked and present in the
12 lounges. We collected any union information in
13 the lounges and we threw it away. We conducted
14 intimidating one on one meetings behind closed
15 doors with flight attendants to tell them not to
16 join the union. We attended union meetings and
17 we reported back about topics and issues that
18 were discussed.

19 The consultants targeted supervisors who
20 were not aggressive enough in there anti-union
21 tactics and they counseled them that if the
22 flight attendants elected a union, their job

1 security was at risk. We were promised a
2 substantial bonus if we met certain objectives
3 including the union avoidance objective. We
4 stood near the AFA activists when they were
5 speaking to flight attendants to intimidate the
6 flight attendants from talking to the AFA
7 activist.

8 Some flight attendants feared that they
9 would be put on a black list if they were seen
10 talking to a union representative. We were told
11 to be constantly visible in the lounge, in the
12 crew lounges and again an intimidation tactic.

13 Well, once the election was called, things
14 really started heating up and one of the tactics
15 deployed and what is most relevant to today's
16 hearing was flight attendants were told by the
17 company to rip up their ballots and throw them
18 away and can you think of anything more contrary
19 to our democracy?

20 An aggressive give it a rip campaign
21 was started by Delta to ensure that flight
22 attendants ripped their ballots up so they would

1 not vote. Huge six foot posters were put in the
2 crew lounges with the message, give it a rip. By
3 the way, the same strategy was used in the second
4 election when we voted electronically. It was
5 changed however, it was modified to read, give it
6 a rip, don't click, don't dial to reflect how not
7 to vote via telephone or Internet.

8 Anti-union information was everywhere
9 and as if the intimidation wasn't enough, Delta
10 had a separate and insidious plan concerning a
11 list of eligible voters. Delta management made
12 sure that flight attendant, I'm sorry. Delta
13 management made sure that flight attendants never
14 got a copy of the system wide seniority list.
15 Flight attendants could view it in the site of a
16 supervisor but could never actually obtain a
17 copy. Due to the fact that 21,000 flight
18 attendants were spread out nationwide and in some
19 cases in other countries, it was virtually
20 impossible to contact flight attendants to
21 communicate the benefits of a union. The only
22 message that many of the flight attendants heard

1 was the anti-union communication put forth by
Delta. Delta kept as many flight attendants as
2 they could on the seniority list to manipulate
the current voting system.

3 In simple terms, the more flight
4 attendants on the list, the greater amount of no
5 votes. After all, under the current rules
6 everyone begins as a no vote. Many eligible
7 flight attendants on leaves of absences had no
8 idea they were eligible to vote and so they
9 didn't. They threw their ballots away. They all
10 counted as no votes, even if they were supportive
11 of representation. Even the supervisors were put
12 on active status and counted as no votes. So it
13 was a multi-track strategy, suppress the vote of
14 active flight attendants, pad the list to create
15 more no votes and hide the list so flight
16 attendants couldn't actually have access with one
17 another to share it, it was, to share what was
18 important to have a union, why it was important
19 to have a union.

20 Having seen this side of supervision I

1 returned to the line and became an AFA activist
2 understanding that it was the only honest way to
3 make a difference for our flight attendants. We
4 had taken huge pay cuts. We were told during the
5 last vote that that was not going to happen, we
6 were not going to have to take pay cuts.

7 However, new avoidance techniques had worked and
8 the paying benefits were imposed, and again this
9 is after the 2002 vote.

10 My testimony today has given
11 perspective on why the current voting method
12 distorts the union election process, why the
13 proposed changes are so necessary. The current
14 voting method encourages employees to tell,
15 encourages employers to tell employees not to
16 vote, don't participate, tear up your ballot,
17 throw your ballot away, don't get informed and
18 just don't vote.

19 Our American government is founded on
20 democracy and voter participation. Just because a
21 rule exists, doesn't make it right, and today as
22 a women again, you've heard this but as a women I

1 can vote, which wasn't always a fundamental
2 right. Please consider the contradictory message
3 and the environment that these current voting
4 rules create in our workplace. A ballot is our
5 voice. The current NMB union rules for union
6 election erodes that voice.

7 I ask you to please restore the
8 voices of workers and implement the changes you
9 have proposed. Thank you.

10 MS. JOHNSON: Thank you. Now we'll
11 hear from Ms. Gordon.

12 MS. GORDON: Good morning and thank
13 you for the opportunity to speak at this forum.
14 I sincerely believe a change of this magnitude
15 requires dialogue from all interested parties.

16 My name is Sandy Gordon. I am Delta's Vice
17 President of Employee Services Field Operations
18 and I have responsibility for the programs and
19 policies that allow our 20,000 plus flight
20 attendants to provide safe and a memorable travel
21 experience to hundreds of thousands of customers
22 who will fly with Delta everyday.

1 During my 19 years at Delta, I have
2 led the safety, scheduling and training
3 departments within in-flight service. And most
4 importantly, I began my career as and continue as
5 a Delta flight attendant. I'm not a lawyer so I
6 will happily defer the legal argument to the many
7 legal experts in the room.

8 Instead today I am here to talk about the
9 flight attendants. The human faces and voices
10 who ultimately are being impacted by the NMB's
11 decision. For the past 14 months, more than
12 70,000 Delta employees have been working very
13 hard to integrate the Delta and Northwest
14 operations. Our employees understand that the
15 critics and maybe even history itself were
16 betting against us. But in true Delta fashion,
17 employees are making this integration smooth and
18 successful.

19 Since last October, more than 20,000
20 Delta flight attendants are wearing the same
21 uniform. Delta flight attendants are serving our
22 customers the same celebrity chef inspired

1 entrees, the same wines from our master sommelier
and offering customers the same in-flight
2 amenities. To date, more than 17,000 flight
attendants have been trained on Delta's culture,
3 service and new aircraft types. In January, they
4 will all work from the same onboard manual and
5 soon they will all be qualified to fly every
6 aircraft in the post-merger Delta operations.

7 Harmonizing our product and services
8 quickly has provided a consistent travel
9 experience for our customers and a consistent
10 work experience for our flight attendants. And
11 although we still have work to do, our progress
12 is rapid and our commitment is unwavering.

13 One area we've been unable to provide
14 consistency, despite the fact that our flight
15 attendants are asking for and deserve it is the
16 package of pay, benefits, work rules and
17 seniority. We cannot provide this consistency
18 until representation is resolved and we cannot
19 quickly resolve representation with this
20 continued gamesmanship. Delta pilots,

1 dispatchers, meteorologists, aircraft maintenance
2 technicians and technical writers and planners
3 are all benefiting from a single set of pay,
4 benefits and work rules and a single seniority
5 list.

6 Dispatchers and meteorologists were
7 able to quickly make their own choice about
8 representation under the existing voting rules.
9 And just weeks ago, flight attendants at Delta
10 subsidiary, Compass Airlines, voted for AFA
11 representation using the existing voting rules.
12 In fact, the Compass election was run in its
13 entirety in less time than it took the NMB to
14 issue a simple ruling confirming single carrier
15 status for Delta flight attendants.

16 Now for those of you who are saying
17 to yourself that NMB never issued a single
18 carrier ruling for the Delta flight attendants,
19 you're right. Our flight attendants at Delta
20 waited 14 weeks for a ruling that never came,
21 even though Delta and the AFA agreed we were a
22 single carrier and the NMB ruled as much back in

1 January.

2 In the case of Compass Airlines, it
3 would be difficult to argue that the existing
4 voting rules prevented employees from voting in
5 favor of representation. The AFA won the support
6 of the clear majority of eligible voters. There
7 have been no objections by unions or by the NMB
8 to the existing voting rules in these recent
9 elections involving other Delta workgroups - COM
10 Air, USA3000, Compass Airlines or the other cases
11 that the existing Board members have overseen.

12 So I have to ask when and what was the epiphany
13 that has allowed Delta flight attendants airport
14 customer service, cargo, reservations, logistics
15 and clerical workers to be singled out? And in
16 the absence of logic, there are only politics.

17 Politics is not a good enough reason
18 to change the rules or to single out Delta and
19 Delta people for discrimination. Gamesmanship
20 and politics are fostering anxiety and they are
21 holding our employees hostage. We rely on the
22 NMB and the Railway Labor Act to help promote

1 stability in our industry so we can do everything
2 we can to foster stability in our employee's work
3 environments. By continuing to allow this delay,
4 the gamesmanship and the politics, the NMB is
5 acting in a manner that is opposite from its
6 intended purpose. Instead of promoting
7 stability, the actions are divisive.

8 At the end of the day whether flight
9 attendants vote for or against representation,
10 they want and deserve to fly together. To be
11 able to bid on trips across our vast global
12 network and to fly these trips making the same
13 pay rates, under the same work rules and using a
14 single seniority list.

15 Before I close, I promised hundreds
16 of flight attendants that I would speak to what
17 they say is one of the greatest injustices in
18 this proposal. And that's the lack of a
19 decertification process, similar to the election
20 process being discussed today.

21 Union supporters ask, what's wrong
22 with the yes/no ballot? That's how other union

1 elections are held and that's how our government
2 officials are elected and on it's face aligning
3 the ballots used in elections guided by the
4 Railway Labor Act with those used in elections
5 guided by the National Relations Act seems fair
6 enough, but the National Labor Relations Act
7 allows employees to become non-union in the same
8 manner that they voted in a union and that is not
9 what is being proposed here.

10 The unions want to make it easy for
11 their organizations to be voted in and virtually
12 impossible for employees to change their mind.
13 There is nothing democratic about a process that
14 appears to promote free choice on the front end
15 and then stifle it on the back end.

16 I truly believe our flight attendant
17 team is most effective and successful when the
18 will of the majority is heard through a process
19 that treats them consistently with other
20 employees in our industry and when the best
21 interests of all 20,000 plus Delta flight
22 attendants is considered.

1 I thank the Board for your time and
2 for your willingness to listen to the many Delta
3 employees who are very passionate about this
4 issue on both sides. Thank you.

5 MS. JOHNSON: Thank you. Mr. Parker.

6 MR. PARKER:

7 Good morning, Chairman Dougherty, Members
8 Hoglander and Puchala.

9 I'm Joel Parker, International Vice
10 President and Special Assistant to the President
11 of the Transportation Communications Union, IAM.
12 My testimony will be a much condensed version of
13 my previously submitted written remarks which
14 were joined by the United Transportation Union,
15 the Transport Workers Union, The International
16 Brotherhood of Electrical Workers, the American
17 Train Dispatchers Association and the National
18 Fireman and Oilers District SEIU. Together we
19 represent over 120,000 employees in the railroad
20 industry alone.

21 I come before you today to testify in
22 favor of the Board's proposal to certify

1 representation elections based on the majority of
2 valid ballots cast and to support ending the
3 unjustified and unfair existing policy of
4 treating non-voters in representation elections
5 as having voted against union representation.

6 As discussed by the majority opinion
7 of this Board, there may be any number of reasons
8 why an employee does not vote in a representation
9 election. Failure to vote should not be presumed
10 to constitute a no-vote. Non-voting may reflect
11 a conscious choice not to participate, it may
12 reflect forgetfulness or apathy or it may
13 represent a decision to accept the majority
14 verdict of those who do vote in an election.

15 The current NMB rule is contrary to
16 the election procedures of the National Labor
17 Relations Board, the Federal Labor Relations
18 Authority and various state labor relations
19 boards and commissions. All certified
20 representatives based on a majority of those
21 voting. All effectively relying on a 1937
22 Supreme Court opinion that found it was

1 appropriate to presume that an employee not
2 voting is acquiescing to the will of the voting
3 majority. It is a current board policy that is
4 the outlier.

5 After initially saying it had adopted the
6 existing procedure for administrative rather than
7 legal reasons, the Board subsequently maintained
8 that the rule promoted harmonious labor relations
9 by deterring strikes. Yet the Board has never
10 provided data or even anecdotal evidence in
11 support of this assertion.

12 The illogical assumption underlying
13 this theory seems to be that a union elected only
14 by a majority of those voting would somehow be
15 more likely to strike. Yet today, virtually all
16 unions, including TCU and the other unions on
17 whose behalf I'm speaking, have some type of
18 procedure in place to have a strike vote to
19 assure majority and often more than majority
20 support for a strike.

21 The fear that an irresponsible union
22 elected by those less than a majority of those

1 eligible to vote would be more likely to strike,
2 is also belied by the NMB's own authority through
3 the mediation process to avoid such results, the
4 strongest incentive to strike without majority
5 support given the risk of the strikers being
6 permanently replaced which was not the case when
7 the rule originated, and the NMB's own statistics
8 showing a marked decrease in strikes.

9 The Board has given us the second
10 basis for the rule, the fact that it did not
11 quote, "seriously handicap" union's ability to
12 win elections and in a 1948 opinion, the Board
13 noted that between 1934 and 1948 only one-fourth
14 of one percent of employees voting for union
15 representation were denied such representation
16 because of a lack of majority participation in
17 the election.

18 Clearly the Board's experience up to
19 that time show that as a practical matter, its
20 election rule did not hamper employee's ability
21 to elect a representative. Plainly and from my
22 perspective, unfortunately, unions no longer

1 enjoy anywhere near that overwhelming success
2 rate. The right to collectively bargain is now
3 often denied by the continued application of the
4 rule.

5 TWU's experience during the last
6 decade at Continental Airlines where three
7 elections were held in response to TWU petitions
8 to the NMB for the class or craft of fleet
9 service serves as a stark example of the way in
10 which the current rule frustrates that desire of
11 thousands of employees for union representation.

12

13 In 2005, 3,122 employees out of 6,879
14 eligible to vote, voted for TW representation.
15 In 2006 it was 3,524 out of 7,641, and in 2008,
16 3,473 out of 7,660.

17 In my written statement I cite similar
18 outcomes in three elections involving the train
19 dispatchers and Union Pacific. In each of these
20 elections, nearly 100 percent of the non voters
21 have to be thought of as consciously anti-union
22 in order to argue that there was not a real

1 majority of employees that desired union
representation.

2 It more than strains credulity to
imagine such unanimity among the silent group.
3 The result has been to frustrate the desire of
4 thousands of employees for union representation
5 even though they were clearly the majority of
6 eligible employees who held active opinions on
7 the issue.

8 Nor does the longevity of the current
9 rule support its continued application. To be
10 sure, I agree that a longstanding rule should not
11 be changed without reason. But there are
12 significant reasons for change. As I previously
13 elaborated, the Board's original reasons for this
14 rule, which have been reiterated over the years
15 without analysis or evidence, are no longer
16 valid. The rule is not needed to discourage
17 strikes and well the rule did not hinder
18 unionization during the 1934 to 1948 period, it
19 clearly does so today.

20 An election procedure the favors

1 managements and denies employees their right to
2 representation can no longer be justified by the
3 theories and assumptions articulated by the Board
4 in 1948. They have not withstood the test of
5 time.

6
7 Finally, we do not agree that in
8 order for this Board to consider a change in the
9 majority of those eligible to vote rule, that the
10 Board must consider a variety of other election
11 issues, such as decertification process and the
12 change in the showing of interest necessary to
13 challenge an incumbent union.

14
15 In making a determination to consider
16 one representation issue, the Board is not
17 required to consider all such issues. While
18 there is currently a procedure for represented
19 employees to attain an election to determine
20 whether they wish to continue representation, the
21 Railway Labor Act, unlike the NLRA, provides no
22 statutory basis for a decertification procedure,
23 and while the NLRB permits an election petition
24 challenging an incumbent with only a 30 percent

1 showing of interest, such a petition may only be
2 filed during limited periods under the NLRB's
3 contract bar rule. Under the Railway Labor Act
4 contracts do not expire.

5 These differences between the statutes
6 support Chairman Dougherty's admonition that the
7 practices of the NLRB are not to be adopted
8 wholesale by the NMB.

9 This Board is well advised not to enter the
10 thicket of attempting to compare its various
11 election rules with those of the NLRB. The NMB's
12 propose rule change does not require such an
13 exercise since the only focus of the inquiry
14 should be whether the Board's prior
15 justifications for a rule that discourages
16 unionization remain valid. The earlier
17 justifications are no longer supported by
18 experience and an election rule favoring
19 management should no longer be the policy of this
20 Board.

21 In conclusion, it seems perverse that
22 the Board would continue to interpret a statute

1 whose purpose, whose very purpose, is to protect
2 employee's rights to engage in collective
3 bargaining in such a way as to make it more
4 difficult for employees to even achieve
5 bargaining rights in the first instance.

6 It is long past time to end election
7 rules that favor management and discourage
8 representation. It's time to level the playing
9 field, particularly since the reasons supporting
10 the current rule are no longer valid, if they
11 ever were.

12 Thank you so much for your time and a
13 change to speak on this important issue.

14 MS. JOHNSON: Thank you. Ms. Bruton.

15 MS. BRUTON: Good morning. My name is
16 Candy Bruton and I have been a Delta flight
17 attendant for over 38 years, a fact of which I am
18 extremely proud.

19 Throughout my career, I have had a
20 world of experiences. My flying has ranged from
21 domestic to charters to international, flying
22 both in a leader and in non-leader positions.

1 Like most of my colleagues, my career
2 has included two mergers and one acquisition,
3 resulting in a combination of distinct and varied
4 cultures. I have also been an active employee
5 advocate, serving as a member of various employee
6 forums and groups and most recently, was elected
7 as a member of the Pre-Merger Delta Flight
8 Attendant Integration Team.

9 Over the years, whether I was
10 advocating for employee issues or customer focus
11 issues, I have found Delta to be respectful,
12 supportive, and always open to dialogue and
13 debate. And while I may not have agreed with
14 every decision, I have always found Delta to be
15 fair in their decisions and more importantly,
16 fair in their decision-making process.

17 In my career, Delta flight attendants
18 have had two opportunities to unionize. The
19 concerted effort in 2002 by both AFA and TWU, and
20 more recently in May of 2008, by AFA alone.

21 In both elections, the Delta flight
22 attendants by a wide margin clearly answered no.

1 Yet those who don't agree with the decision
2 continue to attribute the last two election
3 results to apathy, padded seniority lists,
4 uneducated flight attendants, and any number of
5 other excuses that are being tossed around, to
6 which I and all Delta flight attendants take
7 great exception and we find it incredibly
8 disrespectful. We are not uneducated or unaware.
9 We knew exactly what we were doing.

10 A critical part of our integration is
11 hearing from the combined group as a whole on the
12 question of representation. Both Delta and
13 Northwest flight attendants are ready to make
14 their choice. We've been ready as we watch our
15 coworkers in other departments within the company
16 resolve this issue and work together. They are
17 now working under the same pay rates, they have
18 single seniority lists, and they are able to bid
19 on jobs throughout the company.

20 All the while, we Delta flight
21 attendants are being held back by continued
22 delays. These delays that we have had to endure

1 have been frustrating to all and are keeping the
tension alive.

2 We want to know what our place is on
the seniority list. We could have had that
3 figured out by now. That valuable information

4 lets us know if we could move to another base,

5 fly certain trips, all things that impact my

6 paycheck, my work environment, and my home life.

7 But instead there continues to be delays.

8 In the beginning, AFA said it wasn't

9 time because they needed time to further educate

10 the Delta flight attendants, though we had just

11 had the previous two years of education when they

12 tried to organize us between 2007 and 2008.

13 Next, the AFA determined they should

14 delay a vote until a more favorable board was in

15 place. And finally, after submitting a request

16 for single carrier status to the NNB, AFA has

17 withdrawn that request in the hopes of taking an

18 advantage of the change in the voting process.

19 These delays have done nothing to

20 promote the efforts to move forward as one flight

1 attendant group, have done nothing to promote the
2 combining of two proud cultures, and have done
3 nothing to settle the anxiety around the future
4 of the new Delta flight attendant population.

5 While you can probably tell I'm not a
6 proponent of having a union here at Delta, I'm
7 even less interested in having a union represent
8 me that has only support from a minority of my
9 coworkers. A union that holds only minority
10 support cannot possibly function to its
11 potential. It will cause instability within the
12 combined group and, most certainly, without the
13 support of the majority, the group will
14 experience an imbalance of power in contract
15 negotiations.

16 AFA has said as much in a
17 mobilization training document that's circulating
18 around on the internet. In this document, the AFA
19 says, "A union's power at any point in time is
20 nothing more than the total energy and support of
21 its members who can be mobilized."

22 Without a majority supporting them,

1 what kind of power can they have? Chaos is a
2 trademark of AFA's strategy. How effective would
3 it be when only a small percentage agree to it,
4 or even the right to strike. With only minority
5 support, the threat of strike is immensely
6 weakened.

7 The combined pre-merger Delta and
8 pre-merger Northwest flight attendant group is
9 the largest group in the world. The potential for
10 success with minority support is limited at best,
11 and as such, the impact on the success of other
12 unions is assured. As mentioned before, according
13 to the NNB proposed rule, the Board's primary
14 duty in representation disputes is to
15 determine the clear, uncoerced choice of the
16 affected employees. The current voting process
17 ensures that representation is the will and
18 majority of those affected employees. By changing
19 this process, you disregard your primary duty and
20 lose that guarantee of a clear choice and the
21 results will also always be open to debate and
22 criticism.

1 My thought process is not new. The
2 issue has been debated for over 70 years. Yet,
3 even as all the previous discussions, all the
4 intellect of some very thoughtful and skilled
5 individuals on both sides of the argument, all
6 the various intentions, interpretations of the
7 voting process, the majority vote was put into
8 place and upheld by the NNB several times over.

9 As others have, I would also like to
10 mention what is not addressed in this proposal.
11 The proposed voting process, while allowing a
12 minority to determine the outcome, does not
13 include a balance to the equation, a
14 decertification process. There are many flight
15 attendants at Delta who have worked at unionized
16 carriers. Some of those flight attendants came to
17 Delta to experience a new working environment.
18 They say that the driving factor in their
19 decision to give up seniority at another airline
20 and to come to work for Delta is the fact that we
21 are non-union. And while we're not perfect,
22 they've liked what they've seen.

1 If this Board is going to change the
2 rules, it is only fair to give us a choice to get
3 rid of the union if and when we choose to do so
4 and to do that with the same process, a simple
5 yes/no ballot with the majority of ballots cast
6 to determine whether a union stays or goes.

7 Ultimately, it's time to move on.
8 We've been in the process of merging for over a
9 year. Delta flight attendants need to begin the
10 work of creating the best airline in the industry
11 together. It's good for the company and it's good
12 for the Delta flight attendants themselves.

13 We need to know what our futures will
14 hold, what aircraft we'll be able to fly, what
15 destinations we'll be able to experience, where
16 we will be based. We need to fly together, learn
17 about each other, and join our two histories so
18 we can produce a great future. We are ready.
19 Please stop the delays and the politics and let
20 us make our clear and unequivocal choice.

21 I appreciate this time. Thank you.

22 MS. JOHNSON: Thank you. Mr. Conley.

1 MR. CONLEY: Good morning. For the
2 record and America's Most Wanted, my name is John
3 Conley. I'm an international Vice President and
4 Airline Director for the Transport Workers Union
5 of America.

6 I appreciate the privilege to be able
7 to address you today and share some of my
8 comments. I want to share them with you as a
9 representative, as a fellow union member, and as
10 a working person. So I'd like you to imagine with
11 me a dictatorship in which the dictator wanted to
12 create a mock democracy. He would probably
13 create an election system much like the system we
14 use for union representation elections today.

15 In such a system, no challenger would
16 have a true chance to defeat the dictator because
17 all citizens who did not cast a vote would be
18 counted as votes to retain the dictator.

19 The dictator would simply discourage
20 voting and the re-election of the dictator would
21 be reassured. Of course, real democracies would
22 be outraged that such a system existed and the

1 TWU is outraged that such spurious methods
2 continue to determine the outcomes of union
3 representation elections which are still in
4 practice as part of the law in our otherwise
5 democratic nation.

6 The TWU supports the National
7 Mediation Board's recommendation that the Railway
8 Labor Act be amended. To provide that in
9 representation disputes, the majority of valid
10 ballots cast will determine the craft or class
11 representative. The current methodology with this
12 requires 50 percent plus one of the eligible
13 members of a craft or class to vote yes
14 implicitly benefits the company in the same way
15 that it benefits the dictator. In a system that
16 automatically categorizes non-voters as no-votes
17 and motivates the company to discourage voting
18 rather than to encourage it. There are no other
19 election mechanisms in America that operate this
20 way, mechanisms that discourage participation.

21 When we hold elections for public
22 office, we not only encourage, we demand

1 participation. The American dream is based on
majority rule, but this is the majority of those
2 who choose to participate. Votes for union
officers, votes in Congress, votes for PTA
3 president, and votes for the American Idol are
4 all based on a majority of votes cast, not a
5 majority of the universe of possible votes.

6 Elections for union representation
7 should be no different, as they provide a
8 dichotomous choice as well. Like the dictator,
9 employers are currently vested in ensuring low
10 participation rates in representation elections
11 because a non-vote is counted as a no. Employers
12 should be subject to a system in which they
13 encourage, not discourage, their employees to
14 make a choice. Will the current system pass
15 muster if evaluated from a scientific
16 perspective? Imagine a survey researcher that
17 counted all unanswered questions on his survey as
18 no answers or perhaps he instead lumped all no
19 opinion responses in the disagree response. This
20 researcher would quickly be ostracized and

1 debunked as a fraud for not following the
scientific method.

2 The US Census Bureau would never
3 assume that people in a particular household fell
4 into particular categories unless they actually
5 were counted and queried. It has been empirically
6 shown, time and time again, that people who don't
7 answer, answer no opinion or don't vote, really
8 need to convey that they're not interested in the
9 outcome. They are okay with it either way.

10 The current system is un-American,
11 unscientific, intuitively unfair, and simply
12 wrong. The TWU supports the NNBS, NPRN, and
13 encourages extradited adoption.

14 Thank you for the privilege.

15 MS. JOHNSON: Thank you. Mr. Behmer.

16 MR. BEHMER: Good day, and thank
17 you for the opportunity to speak with you and
18 make my statement.

19 My name is Edward Bamer. I will
20 celebrate the completion of my 23rd year as a
flight attendant in March. I am a pre-merger

1 Northwest flight attendant and currently a member
2 in good standing with AFA. My career as a flight
3 attendant began in February of 1987 with a small
4 airline based in Orlando, Florida. Over the
5 years, I have worked for several carriers. During
6 that time, I have been represented by a multitude
7 of unions, including AFA, the International
8 Brotherhood of Teamsters, the Professional Flight
9 Attendant Association (an in-house union at
10 Northwest), and back to AFA.

11 During my twenty years' of tenure at
12 Northwest Airlines, I have been a part of the
13 changes with the Northwest flight attendant
14 group. When the group wished to change
15 representation and switch to another union, we,
16 as a group, felt could offer us a better product
17 in regards to servicing our members and
18 representation issues. This is the first time in
19 my career at Northwest that I have had the
20 opportunity to not have a union represent me.
21 Since the merger with Delta, I have been an
22 active part of the integration. I have been able

1 to participate and enjoy the benefit of our
2 satellite base in Atlanta and make many new
3 friends. I have experienced firsthand that Delta
4 offers a unique culture based in a rich history
5 and deep pride that is rarely seen in corporate
6 America today.

7 I am very encouraged about the future
8 that all employees will be able to enjoy with
9 Delta regardless of the representational action
10 before us. I have seen how Delta has taken the
11 time and made the financial investment to bring
12 the pre-merger Northwest Airlines flight
13 attendants into the fold as soon as possible so
14 we can create one great airline together and move
15 forward on the same page at record pace.

16 Having many friends working for
17 different airlines in this business, it is my
18 belief that this merger will go down in aviation
19 history books as a very well-planned and executed
20 merger. With that said, I have no interest in
21 becoming like other airline mergers currently in
22 the works when employees are waiting five years

1 or more to become integrated. All employees of
Delta deserve this issue to be resolved in a
2 timely manner as well.

As we are all aware, one of the major
3 hurdles we face as Delta employees is the deep
4 and personal choice of union representation, a
5 choice that for some runs deep into the core of
6 our being and goes against the grain of
7 everything that we have known to date.

8 As I stand here before you, I realize
9 full well what is at stake for all parties
10 involved and I respect all personal choices. I am
11 also here to ask if the new way of voting turns
12 into what's being called the minority rule yes or
13 no vote, that we have the same and fair equal
14 opportunity for decertification.

15 One basic right and benefit we all
16 enjoy as Americans is our right to choose. We all
17 know as consumers that if we don't like the
18 company we are doing business with, we can either
19 change to another company or cancel that service
20 completely.

1 Again, that choice is left up to the
2 individual. It is my opinion, and I know many
3 colleagues who share my view, that we should have
4 the same right as union members as well. If, at
5 some point, a union-represented group no longer
6 feels they are being offered a high enough level
7 of service, they should be able to cancel that
8 representation completely just as easily, or as
9 difficult, as the representation was obtained.

10 Since the merger, many have moved,
11 changed and enhanced their personal lives, and
12 are looking forward to flying new aircraft to new
13 destinations after we're all trained at the end
14 of March. I am deeply concerned as to what I and
15 others perceive as delayed tactics. I am confused
16 as to why the USA 3000 and Compass AFA votes
17 continue, under the current rules no less, with
18 victories for AFA. And ours was withdrawn. I am
19 concerned as to why the Delta vote appears to be
20 singled out as ground zero for a new way of doing
21 business.

22 Moving forward, if the Delta

1 employees choose representation and then at a
2 later date decide en masse that representation is
3 no longer what they want in the workplace, there
4 is no equal decertification process. Whatever the
5 outcome of these hearings, whatever the outcome
6 of the new voting rules, I and others ask that
7 you keep it fair and balanced for all issues in
8 this matter, that the parameters of how to gain
9 representation should be the same as how to get
10 representation or how to change that
11 representation.

12 Again, many employees have made life
13 changes that could create personal hardships if
14 this vote continues in delay. It is to my
15 understanding that unions were put in place to
16 hold the companies and employees they represent
17 accountable for their actions. I think it's fair
18 to say unions should be held accountable to the
19 people they represent and move forward in a
20 timely manner with care with as little impact as
21 possible to its member's lives.

22 It is time for us to move on. It is

1 time to vote. It is also time to be fair from all
2 directions and to ensure that the majority is
3 listened to, and most importantly, respected.
4 Please allow us to make the choices that need to
5 be made for our futures and let the voices of the
6 Delta flight attendants finally be heard.

7 Since my opportunity to speak before
8 the NNB was made public, I have heard from many
9 on both sides of this issue. The common ground
10 that I'm hearing from both sides is people are
11 ready. They know how they will vote and what
12 their stance is going to be.

13 There are more than 20,000
14 professional Delta flight attendants that deserve
15 this division among us to be resolved so that
16 when we fly together into our futures as one
17 airline and one employee group. Our customers,
18 other employee groups, and our shareholders are
19 enjoying the benefits of this merger. We, the
20 Delta flight attendants, feel we deserve nothing
21 less. We deserve equal and fair treatment and to
22 be no one's political pawn.

1 I thank you for your ears and your
time.

2 MS. JOHNSON: Thank you. That's
3 actually our last speaker this morning. Mr.
4 Bourne will not be speaking, so we will
5 adjourn until 1:00.

6 Please hold on to your badge if
7 you're planning on coming back.

8 [OFF THE RECORD AT 11:36 A.M.]

9 [BACK ON THE RECORD AT 1:03 P.M.]

10

11 MS. JOHNSON: OK, we're going to
12 start on the record. Our first speaker this
13 afternoon is Mr. Sullivan.

14 MR. SULLIVAN: Chairman Dougherty,
15 Members of the Board, my name is Claude Sullivan.
16 I am with the law firm of Ford & Harrison, and
17 thank you for allowing me to speak today.

18 I've practiced before the National
19 Mediation Board since 1968. I have known and
20 worked with all of the 24 board members who have

1 served on the Board since that date, and I have
2 represented more than 60 airlines in various
3 proceedings before this Board.

4 I am opposed to the proposal to
5 change the Board's 75 year old majority union
6 voting rule because I believe so -- I believe to
7 do so is unlawful and unwise. I will file
8 written comments by the end of the 60-day comment
9 period fully addressing my many reasons or
10 opposing the proposed change.

11 Today, I only want to address what I
12 strongly feel is wrong about the process you have
13 chosen to use. Not one of the 24 Board members I
14 have worked with has ever proposed a process like
15 the one this Board is now following, when the
16 issue is to fundamentally change one of the
17 Railway Labor Acts' long-standing voting rules.

18 As you know, this is not the first
19 time this Board has dealt with this issue. I
20 believe there have been four other occasions. On

1 each occasion, all members of the Board, without
2 dissent, have declined to change the rule. One
3 of the most respected Boards in the history of
4 the Railway Labor Act, George Ives, David Stowe,
5 and Bob Harris, who served in the Carter
6 Administration, even stated that the Board did
7 not have authority to change the rule and that
8 only Congress could do so.

9 Other boards in the past have
10 determined that when comments on suggested
11 changes in the voting rule would be helpful to
12 the Board, authorized full blown evidentiary
13 hearings with a hearing officer. The
14 participants were allowed to call and
15 cross-examine sworn witnesses, make arguments,
16 and file briefs. There were procedural
17 safeguards. We call that type of hearing now at
18 this Board a Chamber of Commerce hearing.

19 In 1985, as you know, the identical
20 issues were before the Board. A union proposal

1 for a minority union voting rule and a
2 decertification procedure proposed by the Chamber
3 of Commerce. The contrast between what the Board
4 did then and what you are now doing is striking
5 and inexplicable. Rather than use the full blown
6 evidentiary hearing process used in the past,
7 this Board simply ignored the Chamber of
8 Commerce's request for the adoption of
9 decertification and is advocating a proposal that
10 is copied almost verbatim from the TTD
11 application.

12 By adopting this new process, the
13 majority of the Board has clearly antagonized and
14 alienated one side, the carriers, and rewarded
15 the other side, the labor organizations who
16 proposed the rules change. It's a flawed
17 process.

18 That, coupled with recent events of
19 the Board, can lead to only one very, very sad
20 conclusion, that the majority of the Board has

1 predetermined the outcome of the proposed rule.
2 This conclusion is at odds with any notion that
3 the Board is being open-minded and neutral,
4 something that all prior boards worked diligently
5 for 75 years to ensure.

6 The other events of the board to
7 which I refer include the apparently intentional
8 and unjustified delay and the IAM and AFA
9 elections at Delta, while many, many other
10 elections were allowed to proceed, including
11 elections at wholly owned subsidiaries of Delta.

12 Secondly, they carefully orchestrated
13 withdrawal of the IAM and AFA applications for
14 elections at Delta just days before the
15 publication of the NPRM.

16 Thirdly, the IAM and AFA statements,
17 public statements, that the majority union voting
18 rule will be changed by the Board and that these
19 unions will re-file their applications for
20 elections at Delta under the new rule.

1 Fourth, the manner in which the NPRM
2 was prepared, basically copying, as I've said,
3 the TTD proposal without the input or knowledge
4 of the Chairman of the Board, and lastly, the
5 attempt to prevent the Chairman from publishing a
6 well-reasoned dissent to the NPRM.

7 This is not, I would submit, but the
8 Railway Labor Act requires of the National
9 Mediation Board, and it is shocking and sad to
10 see what is going on. The Board is widening the
11 gulf between carriers and labor organizations,
12 which is directly contrary to what the Board
13 members have sought to do in the past. It is
14 also directly contrary to what Board members have
15 promised Congress and the public that they would
16 do. It is contrary to what the courts have said
17 The Railway Labor Act requires of board members.

18

19 Without exception, all members of
20 this board today have said at various times that

1 before any major change would be considered in
2 The Railway Labor Act voting procedures, the
3 Board would seek a consensus among the carriers
4 and labor organizations. This Board has made no
5 attempt to achieve a consensus, and I think it is
6 obvious, from what you've heard today, and what
7 will read in the comments that will follow, by
8 the end of the 60-day comment period, that
9 consensus will never be reached on this vital
10 issue if you continue to follow the process you
11 have selected and if the result is predetermined.

12

13 It's not too late to cure the problem
14 that the majority of this Board has created, and
15 to return the reputation of this agency to one of
16 neutrality.

17 As a first step, I submit that the
18 Board should withdraw the NPRM and institute well
19 thought out and balanced procedures that will
20 allow carriers and labor organizations to reach a

1 consensus on this issue. I urge you to
2 reconsider the NPRM before you completely and
3 irrevocably undermine the trust in the board to
4 fulfill its mission of neutrality.

5 Thank you very much for allowing me
6 to speak.

7 MS. JOHNSON: Thank you. Ms. Rook.

8 MS. ROOK: Well I come here today on
9 behalf of myself as a worker and of the Northwest
10 Association Flight Attendant CWA. Madam Chairman
11 Dougherty, Members Hoglander and Puchala, thank
12 you for the opportunity to offer my comments in
13 support of the proposed National Mediation Board
14 rule change, for any other presentation elections
15 in the rail and the airline industries. I'd also
16 like to express my appreciation for all of the
17 courageous Delta flight attendants who traveled
18 here today, as well as to acknowledge our
19 executive contract employees and their team of
20 attorneys. [Unintelligible] just how many

1 billable hours my company is being charged to
2 defeat the proposed rule change.

3 I've been a flight attendant for 11
4 years at Northwest Airlines, now for Delta
5 Airlines. I also have been honored, serving
6 Northwest Airlines Flight Attendants as a Master
7 Executive Council President, Association of
8 Flight Attendants CWA. After [inaudible] the
9 rationale that supports this rule change, I
10 strongly agree with the solid, logical reasons
11 for the rule change given by Board M embers
12 Hoglander and Puchala.

13 On behalf of tens of thousands of
14 active and retired Northwest Airlines flight
15 attendants, I respectfully request that the Board
16 consider the high stakes and risk that we might
17 be subject to if current voting procedures are
18 applying to our upcoming election at Delta
19 Airlines. Thousands of workers and retirees risk
20 losing the basic rights and protections that

1 we've sacrificed and fought for decades.

2 This merger represents an
3 extraordinary challenge for us. After over 60
4 years as a legally recognized partner in our
5 airlines merger history, we are now confronted
6 with the very real possibility of losing our
7 contract, our union, and our collective bargaining
8 rights, all this in a merger designed solely by
9 Delta Airlines executives.

10 2009 marks the 62nd anniversary of
11 collective bargaining rights for Northwest
12 Airlines flight attendants. On September 19th,
13 1947, Northwest Airlines and the Airline Stewards
14 and Stewardesses Association, the predecessor to
15 AFA, signed their first legal and binding
16 contract. A tradition has been endured for over
17 half a century. Many of our visions contained in
18 that first contract have survived through
19 decades, in an often volatile airline industry.
20 [Unintelligible], the majority of flight

1 attendants have managed to join unions over the
2 past 75 years, even though the owner's atypical
3 voting rules of the NMB.

4 There are some very good reasons why
5 we had to surmount all obstacles to attain our
6 right to a legal contract. We're exempt from
7 many other rights and protections provided by
8 American Labor Laws, but most of them recite for
9 Cabin Crew, provided by the Federal Aviation
10 Administration and a very limited number in
11 federal air regulations. For example, flight
12 attendants do not enjoy the full rights provided
13 by the 1938 Fair Labor Standards Act. We have
14 very limited coverage under the Occupational
15 Safety and Health Administration. And since its
16 inception, we've been denied the access that all
17 over full-time American workers have enjoyed
18 under the Family Medical Leave Act.

19 Flight attendants still lack many of
20 the basic worker protections provided to most

1 Americans under federal laws, and that makes a
2 union contract not a luxury, but a necessity.
3 Due to a lot of hard work, guts and sacrifice,
4 Northwest flight attendants have filled those
5 gaps in labor laws for flight attendants through
6 collective bargaining and unionism.

7 Our collective bargaining agreements
8 have done what labor laws have not, for our
9 profession. They created decent standards for
10 flight attendant pay, rest, work rules and
11 provided job security. The progress we achieve
12 together has helped us to make a short-term job
13 into a career. Speaking to you today, 62 years
14 after Northwest Airlines flight attendants first
15 gained a seat at the bargaining table, I feel the
16 weight of responsibility for the future of our
17 careers.

18 As flight attendants of the world's
19 largest airline, we will set the standard for our
20 industry. As part of an unbroken line of

1 unionist at Northwest Airlines, we recognize a
2 solemn commitment to uphold our achievements made
3 by thousands of flight attendants who have come
4 before us, and to honor our promises to them in
5 retirement.

6 Our merger with Delta Airlines brings
7 exciting opportunities, but we risk losing what
8 we often consider inalienable rights. Our legal
9 contract, our legal voice at work. There's so
10 much hanging at the balance in a single vote, we
11 deserve the fairest method, voting method,
12 possible for this momentous occasion.

13 [Unintelligible] board neutrality, I would like
14 to state for the record, that in 2008 the Board
15 hardly exercised it's authority in a fair and
16 impartial, or a neutral, fashion. Delta
17 Airlines' management illegally interfered in its
18 employees' right to form a union with AFA. More
19 than 100 charges of interference were submitted
20 by flight attendants and the majority of the

1 Board not only dismissed those charges but even
2 voted two-to-one to refuse to investigate the
3 claims. This episode alone refutes any claim of
4 historic board neutrality. I would ask that
5 those who assert this historical neutrality tell
6 the thousand of Delta flight attendants how fair
7 this Board has been.

8 Flight attendants who wanted AFA to
9 represent them, workers who, not once, but twice
10 have seen the Board's lack of neutrality, a Board
11 that too many times has failed to carry out its
12 duties in a fair and impartial manner. As
13 Workers Rights Activist Mother Jones once said,
14 "Injustice boils in men's hearts as does steel in
15 its cauldron, ready to put forth white hot in the
16 fullness of time."

17 Now is that time that I proudly stand
18 with air and rail workers across the country to
19 request this change in the out-molded NMB voting
20 rules, which would right an injustice that has

1 simply been due our workers in our industries for
2 a great many years.

3 Delta Airlines, we have high hopes
4 that our election will be at the forefront of a
5 progressive step forward for the working men and
6 women of our country. I applaud the Board's
7 proposal to amend it's rules to make voting for
8 representation in the transportation industry
9 more democratic with the majority of those voting
10 deciding the outcome.

11 Thank you for taking up this
12 important matter and for the chance to share my
13 comments.

14 MS. JOHNSON: Thank you. Mr. Hall.

15 MR. HALL: Chairman Dougherty, Member
16 Puchala, Member Hoglander, good afternoon.

17 My name is Douglas Hall. I'm here
18 today on behalf of the Regional Airline
19 Association and I'm pleased to be here today to
20 speak on behalf of the RAA, it's 30 airline

1 members, 280 associate members, on the issue of
2 substantial importance to the RAA and it's
3 membership.

4 As most of this room may know, the
5 Regional Airlines play a vital role in the United
6 States airline industry. Regional Airlines
7 operate more than 50 percent of the commercial
8 passenger schedule in this country and
9 approximately 40 percent of the commercial
10 passenger fleet. Every year, Regional Airlines
11 transports some 160 million passengers to over
12 600 communities, many of which depend on Regional
13 Airlines for their only scheduled service.

14 Regional Airlines appear frequently
15 before the Board. In fact, they're probably more
16 often the -- it's more often the case that
17 they'll be subject to a union organizing drive
18 than many of the national legacy carriers and
19 that's the keen interest of how the NMB
20 promulgates and follows its election rules.

1 Like many before me, my comments
2 today will be brief and will be supplemented by
3 written comments filed by the deadline. Suffice
4 to say, the RAA strongly opposes the proposed
5 rule-making.

6 We do echo the procedural and process
7 concerns that have been expressed by others. I
8 will not repeat those concerns, other than to say
9 we do believe that it is not an appropriate
10 process that has been applied here. I would like
11 to address some of the substantive issues with
12 the proposed rule-making.

13 First of all, we believe the proposed
14 rule erodes the majority support that is so
15 critical to the balance of labor and management
16 relations under the Railway Labor Act. Now, keep
17 in mind that currently a representative can
18 already be certified without receiving a majority
19 of votes from the majority of the crafter class,
20 as long as the majority of that crafter class

1 vote for representation of some sort. That would
2 be further weakened, the majority requirement, by
3 the proposed rule-making by having a union
4 certified, even if there's no evidence that a
5 majority of the crafter class desires
6 representation.

7 As the NMB itself has had, as held
8 previously, a union without majority support
9 cannot be as effective in negotiations a union
10 selected by a process which assures that a
11 majority of employees desire representation. We
12 believe if a union cannot even get a majority of
13 employees in a crafter class to vote for it in
14 the election after spending significant time,
15 effort and money to get out the vote, it is
16 unlikely to have the majority support on an
17 ongoing basis that it needs to effectively
18 represent those employees and to ratify
19 collective bargaining agreements.

20 We believe that, in turn, will lead

1 to instability in labor-management relationships
2 and disruptions to Congress, both of which are an
3 enemata to the Railway Labor Act process.

4 Secondly, those seeking to change the
5 rule have met their burden to justify the change.

6 As has been noted by previous speakers in the
7 past, when this Board has rejected requests to
8 change its rules, it is held that those who want
9 the change bear a heavy burden and will only, in
10 that will be a long-standing policy that it will
11 amend its rules, only render acquired by statute,
12 or essential to the administration of the RLA.

13 As Mr. Sullivan recently pointed out,
14 in 1978, a democratic board consisting of George
15 Ives, Bob Harris, and David Stowe, specifically
16 felt that this type of change, not only was not a
17 good idea, but not something that the Board had
18 authority to do, and said that such a change
19 would have to come from Congress. This rule has
20 worked for 75 years, through Democratic and

1 Republican administrations, alike. It is not,
2 all of a sudden, un-democratic or un-American or
3 un-scientific, or any other terms that I've heard
4 thrown around here today.

5 So what do those who want the change,
6 argue? They argue that the current rules' a
7 hindrance to organize. Well frankly, if you look
8 at the information, that's not the case.

9 Employees covered by The Railway Labor Act are
10 much more likely to be represented than those in
11 other industries covered by the National Labor
12 Relations Act.

13 The unions had won a higher
14 percentage of elections under the RLA than the
15 NRLA, historically, and it won approximately
16 two-thirds of elections conducted since the Board
17 enacted its rules back in 1934.

18 We heard claims today from Mr. Parker
19 that the rules that are in place here at the NMB
20 have hinted organizing since 1948. Again, I

1 don't think that's born out by the numbers, and
2 frankly, if you look at the history of the NLRA,
3 you'll see that the number of employees covered
4 by that act has dropped dramatically since 1948
5 from the 30 percent realm to single digits. So
6 if there is a problem in unions being able to
7 organize, I think there's a different reason for
8 that than the rules that the NMB has enacted.

9 There was also an accusation that the
10 current rule is un-democratic and un-American,
11 and that's not true. By not voting, employees
12 are saying that they do not want to be
13 represented. We believe that forcing them to
14 vote to remain unrepresented, to maintain the
15 status quo, is not appropriate and that those who
16 wish to change the status quo should continue to
17 have the burden, to show majority support for
18 that change.

19 The analogy to political elections is
20 a false one. When we're dealing with whether or

1 not to be unionized, there's a fundamental
2 question as to whether or not employees want that
3 to begin with. It's not a situation when you're
4 voting for a mayor or governor or president or
5 congressman, whether or not you're going to be
6 represented. You are going to be represented.
7 The question is by whom?

8 Here we're dealing with a fundamental
9 threshold question of whether or not employees
10 wish to be unionized, so the comparison to the
11 political scenario does not work.

12 Moreover, the comparison of the
13 political process blatantly ignored the fact that
14 unions do not run for re-election every two
15 years, every four years, every six years. There
16 is no process by which the employees can decide
17 in two, four or six years, that they don't like
18 what's going on with the union, that they can
19 vote it out or turn back to the process that it
20 had before, of direct dealing with its employer.

1 There is no decertification process under the
2 Railway Labor Act and none has being offered is
3 part of this proposed rule-making.

4 In conclusion, the RAA believes that
5 the NMB's rules have worked and worked well.
6 They've worked well for the unions. They've been
7 able to heavily organize both the air and rail
8 industries, which are two of the most organized
9 industries in the United States. It's worked
10 well for employees, in that they've been able to
11 obtain representation if the majority of their
12 fellow employees want that, and they've been able
13 to avoid having representation voiced it upon
14 them otherwise, and it's worked for the nation by
15 fomenting stability and labor-management
16 relationships in this important industry and
17 minimizing disruptions to this -- to interstate
18 commerce, just as the RLA intended. There's no
19 compelling reason for the rule-change.

20 I appreciate your time today.

1 MS. JOHNSON: Thank you. Ms.
2 Brofenbrenner.

3 MS. BROFENBRENNER: Thank you. Thank
4 you, Chair Dougherty, Members Puchala and
5 Hoglander.

6 For the last 20 years, I've conducted
7 a series of in-depth national studies which
8 examine union behavior and public policy in the
9 public and private sectors in certification
10 election campaigns. This research is performed
11 in major role and informing discussions in labor
12 law reform. This last year, I conducted the
13 first ever in-depth comprehensive academic study
14 in organizing under the Railway Labor Act. This
15 data provides important insights into how and why
16 the rule change you're considering will have
17 significant implications for workers covered
18 under the RLA. For as our data will clearly
19 show, without this rule change, voter suppression
20 will continue to interfere with the laboratory

1 conditions, the end of the use supposed to
2 provide workers covered under the RLA. And those
3 voting under the RLA will be denied their full
4 democratic right to choose whether they want
5 union representation.

6 The current RLA certification process
7 stands alone among union and other voting
8 procedures in this country, in both the public
9 and private sectors. Unlike any other election
10 process, if you don't vote or are you unable to
11 vote, or even were not aware there was a vote,
12 you were assumed to have voted no.

13 The union must win 50 percent plus
14 one of eligible voters in the craft or class,
15 including those on furlough who may be impossible
16 to reach, rather than 50 percent plus one of
17 those who cast valid ballots.

18 The U.S. is a country where the
19 majority vote standard of 50 percent plus one has
20 a unique history, value and tradition. They have

1 a majority of vote in our legislative system,
2 rather than a Parliament of exclusive
3 representation under our labor laws, rather than
4 a minority unionism.

5 Fifty percent plus one is a concept
6 that everyone understands. It is the bar that
7 has to be reached in order to win an election or
8 win certification. It is one where every
9 individual's vote counts and matters. If just one
10 person doesn't make it to the polls or does not
11 sign a card, the outcome would be -- could be a
12 50 percent or tie, which means the union loses.
13 Every vote counts.

14 With a voting standard as the
15 majority of votes cast, the goal of both sides is
16 to get the highest turnout possible. Contrary to
17 what the opponents of this change have said
18 today, changing the standard would not mean a
19 minority unionism. We know, from both NLRB data
20 and public sector data, when you have majority of

1 votes cast, turnout is extremely high. It
2 averages 88 percent under the NLRB and between 88
3 and 90 percent in most public sector units,
4 including those spread across entire states.

5 Union work is very hard to get every
6 single yes vote out. The employer works hard --
7 very hard to get every no vote out under the NLRB
8 standard. However, the nature of RLA voting
9 rules causing something very different and
10 inherently un-democratic to occur.

11 While unions still focus their
12 efforts on getting yes votes to the polls, the
13 employer efforts just to suppressing voter
14 turnout, either by confusing voters about an
15 election procedure or by getting voters to
16 destroy their ballots. This found in a table
17 that I've submitted to you, employer suppression
18 takes many forms, including making positive
19 changes in personnel wages and working conditions
20 so as to make the union seem less necessary,

1 making it more difficult to organize by
2 transferring workers, layoffs, and threatening
3 bankruptcy, and by urging workers to tear up
4 their ballots or providing misleading information
5 about elects and procedures. This is all in
6 addition to the majority of campaigns where
7 employers intimidate, threaten, harass, coerce,
8 and retaliating against union supporters to get
9 them -- to keep them from voting for the union.

10 Well, examined in isolation, each of
11 these individual tactics may appear not to have a
12 significant impact on election turnout or
13 outcome. But these tactics are not used in
14 isolation. Close to half the RLA campaigns in
15 our samples use five or more anti-union tactics
16 and 27 percent use ten or more.

17 Although this is slightly less
18 aggressive than employer opposition under the
19 NLRB, voter suppression or coercion tactics done
20 under the NMB carry even greater weight because

1 every vote not cast can have a greater impact or
2 a bar takes to win is set so much higher. To
3 illustrate this point, we provide you charts
4 which show the correlation between unionism rates
5 and election turn-out for all employer tactics
6 that occurred in at least 10 percent of the NLRB
7 and RLA samples.

8 RLA elections have a positively,
9 statistically significant correlation between
10 turnout and win rates, with win rates increasing
11 as voter turnout increases.

12 In contrast, NLRB elections have a
13 negatively statistically significant correlation,
14 with the unionism rights decreasing as voter
15 turnout increases. The slump of employer turnout
16 employer tactics follows the same directions as
17 win rate, suggesting for RLA campaigns, increases
18 in voter suppression tactics are associated with
19 lower turnout and lower win rates, while for NLRB
20 elections, more aggressive and coercive employer

1 tactics are associated with higher turnout and
2 lower win rate. The different anti-union
3 strategies used by employers in elections
4 supervised by the NLRB and NMB are a direct
5 result of the different voter standard in the two
6 types of laws.

7 Most disturbing of all, is that the
8 single most effective strategy used by employers
9 under the RLA to suppress union votes is legal,
10 namely, urging voters to destroy their ballots or
11 not dialing in their votes. It is also
12 pervasive. We find employers use this tactic
13 with at least one or more voters in 67 percent of
14 our sample. Yes, this is not a Delta issue.
15 Sixty-seven percent of campaigns. This means
16 that it's happening in the overall majority of
17 campaigns involving the overwhelming majority of
18 employers.

19 Because that ballot has been torn up,
20 it represents a no vote, even if the voter

1 changes his or her mind, and the same thing,
2 ardent union supporters can stop their vote from
3 counting as a no vote because of misinformation,
4 they did not send in their ballot on time.

5 Opponents would have you believe that
6 nothing else changed in the system since 60 years
7 ago, and that there's no reason to change it.
8 But, our research has shown that there is
9 something new happening. There is something that
10 has happened. Employer behavior has changed
11 recently. The reason that you hear this cry for
12 a change is because workers under the RLA feel
13 the increase in employer opposition. They feel
14 the change in tactics. They feel that suddenly
15 that no votes have made the process much more
16 un-democratic. They feel the need for change.

17 Back when it was investigated under
18 the Carter Administration, it was a different
19 time. Now, the time has come where it matters
20 significantly. I believe our data conclusively

1 show that as long as the current rules remain in
2 place, voter suppression will continue to
3 interfere with the laboratory conditions that the
4 RLA is supposed maintain to give workers a chance
5 to choose what they want, whether they want union
6 representation free from interference and
7 intimidation. Current policy does not accurately
8 measure the union choices of workers under the
9 RLA.

10 Thank you for your consideration of
11 this important issue. I am happy to provide you
12 with more data if you need it.

13 Thank you.

14 MS. JOHNSON: Thank you. Mr. Borman?

15 MR. BORMAN: Good afternoon. My name
16 is Keith Borman. I'm the Vice President and
17 General Counsel of the American Short Line and
18 Regional Railroad Association.

19 Members of the American Short Line
20 and Regional Railroad Association have concerns

1 about the Board's proposed changes to the
2 long-standing procedures for recognizing a union
3 for railroad and airline workforces, and
4 accordingly, we are opposed to the proposed
5 changes, the subject of today's hearing.

6 The American Short Line and Regional
7 Railroad Association is a trade association
8 representing over 450 of America's smallest short
9 line and regional rail carriers. Short line and
10 regional railroads are important, in growing
11 part, of the rail industry. With short lines
12 operating 40 percent of the nation's total route
13 mileage, and handling one in four rail cars
14 traveling on the National Rail Network.

15 Most short line and regional
16 railroads also interact and interchange freight
17 and cargo with the larger Class One railroads
18 throughout the country, making our members and
19 integral part of The National Railway System.

20 ASLRRA understands that the current

1 disputes and proposals are driven primarily by
2 mergers and unionization efforts in industries
3 other than freight rail. These large disputes
4 involving tens of thousands of workers and the
5 mergers of Fortune 500 companies, tower over the
6 small short line and regional railroads who are
7 our members.

8 At the same time, changes made at the
9 behest of one group of workers in one industry
10 have the ability to impact the rights and
11 economic well being of workers in unrelated
12 industries, such as rail. It is in that context
13 of concern that I make the following comments.

14 Relations between the ASLRRA and the
15 numerous unions representing employees on short
16 line railroads have experienced a positive
17 renaissance over the past decade. Organized
18 labor and management will always have points of
19 contention, but the overall relationship has been
20 positive and cooperative on issues ranging from

1 the reform of the railroad retirement system to
2 federal assistance to preserve light density rail
3 lines.

4 The vast majority of small railroads
5 began business by acquiring the money-losing
6 branch lines of larger and heavily unionized
7 Class One carriers. Short lines and regional
8 railroads are very small companies with an
9 average of only 35 employees and a median of only
10 nine employees and in average, revenues are about
11 \$5 million dollars or less.

12 Until recently these railroads almost
13 universally began operations as non-union
14 companies. But today, despite the very small
15 average workforce size in these railroads, unions
16 on short line and regional railroads have
17 successfully expanded to represent 65 percent of
18 all non-management employees in the industry and
19 85 percent of railroads with more than 50
20 employees have union representation.

1 Given this remarkable level of union
2 representation achieved in the last 30 years from
3 a baseline of near zero, it's difficult to argue
4 that the election process is tilted against
5 unions by the current procedure rules. To the
6 contrary, the union election process under the
7 current rules has led to a remarkable level of
8 unionization in the short line and regional
9 railroad industry.

10 Moreover, inasmuch as there's no
11 process to decertify a union under the Railway
12 Labor Act, it is highly unlikely that unions will
13 lose any of their substantial market share in the
14 short line and regional railroad industry
15 segment.

16 Labor unions outside of the railroad
17 and airline industries are determined under
18 different rules. But the mere fact that the
19 rules are different should not be the end of the
20 analysis. Freight rail is critical to the

1 economy today, just as it was in 1934. The role
2 that railroad companies play at the cornerstone
3 of our economy, has, over time, demanded stricter
4 economic, legal and safety regulation than we see
5 in other industries, which are governed by the
6 National Labor Relations Act.

7 Likewise, the use of presidential
8 emergency boards to mitigate the broader economic
9 impact of labor disputes and the current election
10 procedures requiring majority rule in union
11 elections imposes a higher standard on labor in
12 the rail industry, precisely because rail touches
13 every segment of the economy.

14 Higher standards make sense in an
15 environment where Congress has a long history of
16 setting higher standards for common carrier in
17 order to protect the public good. In short, in
18 an industry in which the making and maintenance
19 of agreements between management and labor is a
20 crucial national concern, so should be the degree

1 of certainty of employee majority support for
2 their chosen collective bargaining
3 representative. Congress recognized and the NMB
4 has repeatedly affirmed that the work forces and
5 employers covered by the Railway Labor Act are
6 different, and that those proven differences
7 justify the higher standards for determining a
8 majority. The RLA is unambiguous in its edict
9 that the majority of any craft or class of
10 employees shall have the right to determine who
11 shall be the representative of the craft or
12 class.

13 It is our position that the right of
14 determination belongs to the majority the class
15 or craft, not simply a majority of those who
16 choose to vote. It is our view that any proposed
17 rule that results in this change is a material
18 alteration of the RLA's express language and that
19 only Congress can implement that change through
20 the legislating process.

1 The emotion surrounding this issue
2 among airlines and unions targeting airline
3 employees does not change the fact that unions
4 have met with tremendous success on small freight
5 railroads under the current rules. Despite
6 labor's organizing success, the Board has
7 determined that this issue must be revisited.
8 The ASLRRRA urges the Board to consider the
9 incorporation of continuity and related issues
10 such as a no-union-ballot option and a
11 decertification process that would mirror changes
12 in the certification process.

13 Such a decertification process would
14 be absolutely necessary if the Board goes forward
15 with its proposed course to ease the process for
16 union certification. Remember that certification
17 under the RLA is permanent, unlike certification
18 under the NLRA, which can be challenged at
19 regular intervals by the employees subject to
20 union representation.

1 In sum, the ASLRRRA and its members
2 across the nation are opposed to changing 75
3 years of election policy under the RLA. The
4 ASLRRRA's membership would no doubt be the
5 unintended casualties of a policy change that
6 appears to be aimed at one or more major air
7 carriers.

8 The Board's one-size-fits-all
9 proposal stands to have a disproportionate impact
10 on the smallest set of employers covered by the
11 RLA, America's small short line and regional
12 railroads who can least stand to risk labor
13 disruption.

14 We urge the Board to reconsider its
15 proposed rule change and to maintain the current
16 and long-standing election procedures until such
17 time as the Congress seeks to address the matter
18 through its legislative process.

19 Thank you.

20 MS. JOHNSON: Thank you. Mr. Murphy.

1 MR. MURPHY: Good afternoon. My name
2 is John Murphy. I am International Vice
3 President with the International Brotherhood of
4 Teamsters and Director of the Teamsters Rail
5 Conference in the United States of America.

6 Madame Chairman, Members of the
7 Board, on behalf of the more than 120,000 men and
8 women represented by the International
9 Brotherhood of Teamsters who work under The
10 Railway Labor Act and the air and rail
11 industries, I speak today in support of the
12 rule-making proposed by the Board.

13 As you know, IBT General President,
14 James P. Hoffa, wrote to the members of the board
15 on October 9th of this year, asking the board to
16 issue a proposed rule through its current ballot
17 procedures to enable a simple majority of voters
18 to determine the outcome of representation
19 elections conducted by the board.

20 On November 3rd, 2009, the board

1 issued a notice to proposed rule-making that, if
2 made final, would bring the Board into the
3 mainstream of election procedures used in all
4 other labor regulatory systems in our country.

5 This new rule will also conform the
6 Board's ballot rules to the democratic standard
7 used throughout our society. The Board's
8 proposed rule will fulfill the fundamental
9 purpose of the Act to facilitate the employee's
10 free choice of representative and it will ensure
11 stability in labor relations and interstate
12 commerce through collective bargaining between
13 the freely chosen representatives of employers
14 and their carriers. The Board's current ballot
15 rule originated before the adoption of Section
16 2/9th out of the predecessor Board of Mediation's
17 experience under the 1926 act with a company
18 union phenomenon in the railroad industry.

19 While the rail industry as
20 overwhelmingly organized at the time the RLA was

1 initially adopted in 1926, that representation
2 did not in fact fully reflect the free choice of
3 employees. Rather, in numerous instances,
4 carriers effectively imposed "representatives" on
5 their employees by fostering employee
6 associations on their systems that purported to
7 represent the employees and then extending
8 recognition to those associations while denying
9 recognition to the national standard rail units.

10

11 Carrier promotion of company units
12 and their refusal to deal with the standard rail
13 brotherhoods undermine the purposes of the RLA to
14 avoid the interruption of interstate commerce by
15 creating a system of collective bargaining
16 between freely designated representatives.

17 Congress responded to the evil of
18 company unionism by passing the 1934 Amendments
19 to the Act, including Section 2/4th, which
20 established the employee's right to freely

1 designate their representative, and Section
2 2/9th, which gave the Board administrative powers
3 to resolve representation disputes and establish
4 the current system of exclusive representation
5 within each craft or class.

6 To resolve the representation
7 disputes between the National Standard Rail
8 Unions and the company-promoted unions, the NMB
9 sought to adopt procedures that would ensure the
10 employee's representational choices were
11 vindicated. Drawing on the earlier experience of
12 the Board of Mediation, the NMB adopted a
13 standard that required a majority of all
14 employees to vote in favor of representation.
15 Given that the overwhelming number of
16 representation elections were contests between
17 rival representatives, this standard was easily
18 met at the time. The roles strengthened the hand
19 of the NMB and the Standard Rail Union selected
20 to represent employees by compelling carriers to

1 abandon support for company unions by the threat
2 of operational shut-down by a majority of their
3 employees if the carriers denied the employees'
4 true representational choices.

5 The early history of the 1934
6 Amendment show that they were highly effective in
7 eliminating the company-union problem. By the
8 late 1940's and the early 1950's, company unions
9 were gone.

10 The Board's ballot rule did not
11 change with the end of company unionism. In 1948,
12 the Board chose to retain its established ballot
13 rule with only a terse statement, that, in it's
14 opinion, the rule helped the Board to maintain
15 stable labor relations and avoid disruptions of
16 interstate commerce.

17 The only data cited by the Board
18 tended to show that only in a miniscule number of
19 cases had employees not achieved representation
20 due to the lack of majority participation in the

1 election and even those later achieved
2 representation. The Board then concluded that
3 its form of ballot did not negatively impact
4 employee's ability to select representatives of
5 their choice.

6 In the decade since that 1948
7 statement, the Board has not re-examined these
8 conclusions to determine whether its ballot rule
9 may not inhibit employee's ability to achieve
10 representation, nor has it provided more than a
11 cursory justification for the current ballot
12 rule. Yet, the Board could not have foreseen at
13 the time the dramatic changes that occurred 30
14 years later in the air and rail industry through
15 direct deregulation and various market events
16 made possible by that deregulation. Those
17 developments have only reinforced the need for
18 this long overdue re-evaluation of the form of
19 the ballot used by the Board. The deregulation
20 of the airline industry in 1978, for example,

1 brought massive upheaval to employee
2 representation in the industry. Long-standing
3 carriers with decades of representational
4 history, such as Branham, Eastern Airlines, Pan
5 American, and Trans World Airlines disappeared
6 through economic failure due to the competition
7 unleashed by deregulation. An increase in merger
8 activity, permitted by deregulation induced
9 changes in the business environment, led to the
10 end of other carriers such as National, PSA,
11 Western Airlines, Piedmont, and Allegheny.

12 Also, dozens of airlines started and
13 failed in the post-deregulation act era. These
14 events ended long-standing labor-management
15 relationships, many established by voluntary
16 recognition. The industry changed further
17 through the 1990's and in the first decade this
18 century with the rise of regional airlines and
19 low-cost carriers, the dramatic increase in
20 outsourcing, and the reduction in size of major

1 airline networks following 2001.

2 Legacy Airline employees crafts
3 shrank substantially, resulting in large number
4 of furloughees within those crafts that then
5 created unprecedented challenges to the Board's
6 procedures for ensuring accurate electorates.

7 The railroad industry experienced a
8 similar regulatory upheaval following passage of
9 the Staggers Act in 1980. New policies
10 established by the former Interstate Commerce
11 Commission and its successor, the Surface
12 Transportation Board, encouraged unionized trunk
13 carriers to spin off branch lines to
14 "non-carriers", which would become short line
15 operators.

16 Today, there are over 450 members of
17 the American Short Line and Regional Railroad
18 Association and most of these carriers were
19 created after 1980. The affected employees who
20 remained on the short lines after the sales found

1 their existing union representation and
2 collectively bargained rates of pay and rules
3 eliminated. Many of these employees became
4 embedded with railroad companies, even railroad
5 unions in the entire regulatory process. The
6 Board's representation process could not
7 adequately adjust to this new reality of sudden
8 de-unionization and associated loss of
9 collectively bargained working standards with the
10 present ballot rule being a primary impediment to
11 the restoration of collective bargaining.

12 The Board conducted an evidentiary
13 proceeding in 1987 upon a petition by the
14 International Brotherhood of Teamsters for a
15 change in the form of a ballot. That proceeding
16 developed an extensive record before the Board
17 that showed the current form of ballot
18 discouraged voter participation by making
19 employees susceptible to suggestion, their
20 participation would become known, encouraged

1 ballot destruction campaigns by carriers,
2 converted ballot errors into no votes, failed to
3 account for the substantial increase in
4 sophisticated anti-union carriers by carriers
5 imposed on employee to desired representation,
6 the severe obstacle of overcoming apathy and
7 non-participation among the electorate as well as
8 voters actively opposed to unionization.

9 No empirical data is present to
10 support the super-majority rule. We believe in
11 fact that the data will support the Board's or
12 poll's rule as the best instrument for
13 encouraging voter participation and vindicating
14 employee choice as well as achieving stability
15 and collective bargaining. The Board has the
16 authority under the act to implement the proposed
17 rule. Section 2/9th authorizes the Board to use
18 the methods that it deems appropriate to
19 determine the employee's choice of representative
20 free of carrier interference.

1 It is carrier interference, not some
2 abstract notion of what a majority means, that is
3 the focus of Congress' concern in Section 2/9th.
4 This broad discretion of the board to conduct its
5 investigation has long been recognized by the
6 Supreme Court and determined to include the form
7 of ballot used by the board.

8 We urge the board to adopt this rule.

9

10 Thank you for allowing me to speak
11 here today.

12 MS. JOHNSON: Thank you very much.

13 Mr. Briton?

14 MR. BRITON: Good afternoon. My name
15 is Roger Briton. I'm with the law firm of
16 Jackson Lewis. We represent and are appearing
17 here today on behalf of the Airline Services
18 Council of the National Air Transportation
19 Association.

20 The Airline Services Council counts

1 among its members many airline service companies
2 that are a critical component of the air
3 transportation system. On an outsource basis,
4 our members perform many functions, traditionally
5 and historically performed by airline employees,
6 among them a variety of ground and passenger
7 handling functions. In prior determinations of
8 the Board, several members of the Services
9 Council have been held to be derivative carriers
10 subject to the Act and, as such, this segment of
11 the aviation industry has a significant interest
12 in the rule change now being contemplated, as
13 well as perhaps principally, in maintaining
14 stability in representation and negotiation
15 arenas in which we operate.

16 We welcome the opportunity to express
17 some of our views in this forum. We encourage a
18 thoughtful and deliberate, deliberative process
19 before the Board takes any actions to disturb
20 long-standing practices and procedures under the

1 Act.

2 By way of brief overview, we note
3 that the Railway Labor Act has been a remarkably
4 resilient and effective tool in promoting the
5 Act's fundamental purposes. We note the first
6 among the general purposes identified in the Act,
7 in Section 1A is the avoidance of any
8 interruption to commerce or to the interruption
9 -- or to the operation of any carrier engaged
10 therein.

11 As the Board is repeatedly
12 recognized, its consistent policies in
13 administering and implementing the requirements
14 of the Act have proven very effective in
15 supporting this primary statutory purpose. On
16 behalf of ASC, we are concerned that the Board's
17 proposed change to the balloting and
18 vote-counting rules potentially fosters precisely
19 the instability that the Act abhors. We are also
20 concerned that what appears to be a rush to

1 judgment, which does not address many issues
2 which we believe are critical to maintaining
3 stability in this industry.

4 In that connection, we view it as
5 essential that all segments of all covered
6 industries clearly understand fully all of the
7 ground rules that will apply in future elections.
8 The Board's election rules are long established
9 and haven't changed, except incrementally, over
10 the years. The sea change, which is being
11 contemplated by this proposed NPRN, calls into
12 question the continued vitality of other Board
13 rules and procedures as well. The full scope of
14 these changes should be identified at one time
15 and opened for comment among all segments of all
16 covered industries. Changes, changes should not
17 be made without the full participation of all
18 constituencies and only in an orderly, carefully
19 considered process.

20 We are concerned that the proposal to

1 change the form of ballot is but the beginning of
2 a cascade of changes, all of which, we suspect,
3 are unnecessary and ill conceived. In any event,
4 a piecemeal approach to change will at best cause
5 uncertainty and at worst may lead to instability.

6 A great deal has been said about procedure. I
7 will pass on that issue. Nevertheless, we are
8 concerned that the proposed change will lead to
9 certification of minority representatives, which
10 will fluster instability in contract negotiations
11 and perhaps in carrier operations themselves.

12 Under the proposed rule, a small
13 number of voters may determine the results of an
14 election with low ballot box turnout, an
15 organization lacking the affirmative support of a
16 majority of the crafter class, may be charged
17 with negotiating a collective bargaining
18 agreement. On behalf of the numerous individuals
19 who do not support its representative status.
20 Experience in recent years has reflected the

1 difficulty in ratification of collective
2 bargaining agreements even where the
3 representatives were certified under traditional
4 majority rules. Those difficulties can only be
5 exacerbated when the representatives are
6 supported only by a minority. The potential for
7 disruption is obvious.

8 There are other flaws. For instance,
9 the Board hasn't considered, and I haven't heard
10 it mentioned here today, how the rule change will
11 effect multi-union elections. Consider the
12 following scenario. An incumbent union is being
13 challenged by another organization we'll call
14 them the challenger. A hundred employees cast
15 ballots, 20 vote for the incumbent, 45 vote for
16 the challenger, 35 vote no union.

17 Under the Board's existing rules, the
18 20 and 45, 65, are counted together to determine
19 whether a majority has voted for union
20 representation. Under the proposed rule,

1 however, the challenger would have 45 out of 100
2 votes, doesn't have a majority of the votes cast,
3 doesn't have the majority of the votes cast.

4 What happens then? In this situation, the NLRB
5 would run -- would conduct a rerun election. And
6 the rerun election would be conducted between the
7 challenger, the one with 45 votes, and no union,
8 the one with 35 votes. That's the way the Board
9 would run it. It is absolutely unclear as to how
10 this board would handle that situation. It is
11 clear to us that were only the ballots cast by
12 actual voters count, there would be no reason to
13 aggregate the votes, the 45 and 20 in my
14 hypothetical. At the very least, this issue
15 needs to be addressed during any rule-making on
16 the proposed change.

17 The proposed rule also creates
18 uncertainty with regards to remedies in election
19 interference cases. The ballot form that is
20 under consideration by the Board now, appears to

1 be the same to us as the Laker ballot, which has
2 been used by -- for many years, as a remedy in
3 cases of carrier election interference. If the
4 Laker ballot now becomes the new norm, then the
5 Board must carefully consider what remedies
6 they're going to -- you're going to use in other
7 situations.

8 Will the key ballot, the next level
9 up, which is now used only in egregious cases,
10 becoming SOP for interference cases? Under what
11 circumstances will bargaining orders be available
12 in interference cases? Once the door opens to
13 certification of a minority representative, the
14 possibility of election interference by unions
15 increases. The Board needs to consider rules
16 governing union election conduct and remedies in
17 the event of union interference, if it goes down
18 this path.

19 These are only some of the issues we
20 believe are spawned by the NPRN. There are

1 others and we encourage careful and deliberate
2 consideration of all of these issues before a
3 change is made. But what we are even more
4 concerned about that the Board seems to be taking
5 the first step to an overhaul of long standing
6 rules, practices and procedures and the failure
7 to do so on a global basis at one time, can only
8 serve to heighten uncertainty for all of the
9 Boards constituencies.

10 For instance, the NPRN doesn't
11 address the proposal by the Teamsters in I
12 believe a continental matter, for the provision
13 of an Excelsior list, names and addresses, voter
14 addresses. Is that proposal still on the table?
15 If so, shouldn't it be subject to comment by all
16 constituencies? The same, obviously, applies to
17 the Chamber's proposal to establish a clear and
18 simple decertification process. These are
19 significant issues which should not be left in
20 limbo.

1 If the Board is seriously considering
2 overhauling its rules, one cannot ignore the
3 impact that that will have on critical standards
4 that the Board has consistently and historically
5 applied. For instance, the Board has long
6 recognized the propriety of system-wide crafts or
7 classes. This no doubt facilitates stability and
8 the avoidance of interruptions to commerce. As
9 part of this proceeding, the Board should confirm
10 the continued vitality of system-wide
11 representation. Similarly, the Board should
12 confirm the current standards of who constitutes
13 management versus who constitutes an employee or
14 subordinate official should be, could be, subject
15 to change and we understand and we believe should
16 not be changed.

17 If alternative procedures for
18 certification, such as card checks, are even
19 being thought of, the Board owes it to all
20 constituencies to air these issues thoroughly and

1 carefully before moving in this direction. At
2 present, card check is used as a basis for
3 certification only in the absolutely, most
4 egregious employer election interference cases.
5 If there is any consideration being given to
6 expanding this process, that change deserves
7 rigorous review and analysis now.

8 These are just some of the issues
9 that we are concerned about which give rise to
10 potential instability. If other changes are
11 contemplated by the Board or by any of the
12 Board's constituencies, they should be put on the
13 table now and vented as a whole, not piecemeal or
14 seriatim.

15 Speaking on behalf of ASC, no change
16 is needed and any overhaul is unnecessary now and
17 ill considered. That having been said, what is
18 most critical is that all constituencies
19 understand the rules going forward.

20 We appreciate the opportunity to

1 present these views and we appreciate the
2 opportunity to hear the views of others. While
3 we recognize that review with a fresh eye is
4 worthwhile from time to time, a comprehensive
5 review requires that all relevant issues be open
6 to comment and that the views of all industry
7 segments be encouraged and carefully considered.
8 Ultimately, if any changes are made, they should
9 enhance, not destabilize, the fundamental
10 purposes of the Act. Thank you.

11 MS. JOHNSON: Thank you. Mr. -- I'm
12 not sure how to pronounce it -- Boehm. Boehm.

13 MR. BOEHM: My name is David Boehm.
14 I'm a pilot with SkyWest Airlines -- that's OK.
15 I'd like to thank the Board and Madame Chairman
16 for allowing me to speak. I'll go and preface my
17 comments with some other people. I'm not a
18 lawyer. I don't have any labor training
19 background. I'm simply a pilot with SkyWest
20 Airlines.

1 I'm here to express my support for
2 the NPRM as published and I'm here to tell you a
3 story today about the SkyWest pilots and an
4 organizing drive that we held two years ago.

5 So, in 2007, the SkyWest pilots
6 attempted to organize under the RLA. I'll just
7 tell you the outcome, we lost. We lost by
8 actually a large margin. Only 911 votes out of
9 2600 pilots that we had at the time at SkyWest
10 voted for representation and I want to talk a
11 little bit about the SkyWest pilot group at the
12 time and the SkyWest pilot group now.

13 I think that there's a significance
14 of size when you're talking about organizing a
15 labor group this large. SkyWest pilots today
16 remain the largest unrepresented pilot group in
17 the country. Right now, we number about 2800.
18 The second largest airline pilot group would be
19 JetBlue, and they're unrepresented still.

20 If you remember, pilots were probably

1 one of the first groups to organize under the
2 RLA. I think it's more significant for a pilot
3 to decide if they want to be represented than
4 other labor groups because there's so much
5 additional -- I'm really nervous, sorry. There
6 are so many more things that a pilot has to go
7 through when deciding that he wants to be
8 represented, than other labor groups. We are
9 very highly regulated with regards to the FAA.
10 When we're choosing a labor group, we're not only
11 choosing somebody to negotiate our pay rates and
12 work rules, but also somebody to represent us if
13 something goes wrong; somebody to be there for us
14 in our corner if something goes wrong with the
15 airplane, if we have an accident, if we get sick,
16 so many different options.

17 The union drive that the SkyWest
18 pilots held was the largest pilot union drive at
19 least in the last ten years. I went back through
20 the NMB records, as far back as you go. So, the

1 significance of size, I think, is a big deal.
2 Smaller pilot groups, probably a lot easier to
3 organize because you would probably know most of
4 -- if you're dealing with a pilot group of 50 to
5 100 pilots, you're probably going to know most of
6 the people. We have 2800 pilots at SkyWest.
7 There is no way I know maybe even 10 percent of
8 them and I've been with the company five years.
9 So, a little bit more discussion on the state of
10 the SkyWest pilots in 2007.

11 In 2007, the airline industry was
12 rapidly expanding, SkyWest was hiring large
13 number of pilots, new pilots, every month. Most
14 of those pilots or many of those pilots, it was
15 their first airline career. They had never been
16 in the airline business before. They had never
17 been in an industry as highly unionized as the
18 airline industry before.

19 In November 2007, when the vote was
20 held, over 40 percent of SkyWest pilots had been

1 with the company less than two years. And again,
2 many were fresh out of college, many were fresh
3 out of aviation trade school, many it was their
4 first professional aviation career, many before
5 that, they were flight instructors or they held
6 different odd college jobs and when you're a
7 pilot in the airline industry and you get hired
8 in an airline, it's key that you choose very well
9 which airline you're going to work for, if you're
10 associated with the union and not screwing up.
11 Not getting fired, not having anything go wrong
12 with your career. Pretty much get one shot at
13 it. So, the fact -- some of the factors
14 affecting the outcome of the vote, which directly
15 relate to how the voting rules are currently, I
16 think are important.

17 So out of the again 2600 pilots, 911
18 voted for the union. That means 1700 were not
19 heard from. They voted no, or they did not vote,
20 or we don't know what they thought. So I tried

1 to -- from our exit interviews, from some of
2 these pilots, we tried to categorize the pilots
3 that did not vote into several categories about
4 why they didn't vote. So, we put them into four
5 different categories.

6 One, obviously they did not want
7 representation. Of those 1700 pilots, there was
8 a certain percentage that did not want to have a
9 union. That's valid. We don't know what that
10 percentage is.

11 The second category was, considering
12 these pilots were new and in our company we're
13 all at-will employees, but we still had a
14 probationary process. Many of the pilots were
15 still on their first year. You're on probation
16 on your first year at SkyWest. So, there was a
17 fear of reprisal. There was a certain sense of
18 intimidation from management and this was
19 directed at the probationary pilots. Again, we
20 don't know what percentage affected them not to

1 vote, but there was that factor.

2 The third, and I think this is
3 probably the largest, was the lack of knowledge
4 and education with respect to union
5 representation. I have no union background. I
6 have no labor relations background. And I can
7 just imagine that the demographic of a pilot
8 right out of college, 23, 24, 25 years old, when
9 they're trying to learn to fly a brand new five
10 or \$10 million dollar jet with passengers in the
11 back, they're also trying to learn about the
12 Railway Labor Act and what the National Mediation
13 Board is, and they got this letter in the mail
14 from, we think it's a government agency, but it
15 says the NMB, and they want me to call a phone
16 number to v -- we don't really know how many
17 people thought that that was, maybe a company
18 that the company hired to conduct or vote or they
19 just didn't know who you guys were, what the RLA
20 was. In fact, they probably didn't even know

1 what ALPA was, what a union meant, or what it
2 truly meant to be represented as an airline
3 pilot.

4 I think that was a large percentage
5 and if they were to defer what they thought if
6 they wanted to be represented or not, to the more
7 senior pilots or senior people in the company, I
8 think that's a valid thing for them to think. I
9 don't know enough about this, I'll let the guy
10 that's been here 15, 20 years to decide if it's
11 right or not, and I think that's valid.

12 And the fourth category affecting the
13 outcome was true indifference or apathy. There
14 were pilots that just did not care. If we
15 unionized, fine. If we were not unionized, fine.
16 I don't want to be involved with it. I'll go
17 along with whatever the majority says, that's
18 fine. So, those are the four categories.

19 And again, everybody else has said
20 this today, we don't know of the 1700 pilots that

1 did not vote, what percentage fell in all those
2 categories. So, I just don't think it's valid to
3 assume that 100 percent of the pilots that did
4 not vote would not support union representation
5 and that's what we're assuming under the current
6 voting rules.

7 Okay, so if the rules changed
8 obviously it would encourage more participation
9 in a representation-election process. We've said
10 that several times today. The current -- the
11 companies current encourage employees not to
12 participate in the election process, effectively
13 taking no votes. The rule change would move
14 these efforts into an all out campaign, to
15 participate in the election from both the company
16 and the labor sides. It would effectively
17 eliminate disinterested and uninformed employees
18 from the process. Currently, there is no way to
19 abstain from voting. If you want to literally
20 take your vote out of the process, there's not

1 way to do that. At least, give the employees an
2 opportunity to say, I don't want to be involved
3 in the process; please don't make my opinion
4 count, and this rule would change that.

5 Now I have one counter-argument that
6 several people have argued today, that the rule
7 change would cause instability in airline
8 relations. You'd be able to flip-flop. You'd be
9 able to have a union or a different union by a
10 very small majority of the people. I actually
11 think that's -- the opposite will happen. One
12 thing that came out of us not winning was we
13 weren't sure what the rest of the pilots, these
14 1700 pilots that we didn't hear from, were really
15 thought, going into those four categories I just
16 talked about. If we had a decisive way for
17 people to vote yes or vote no, it would be a
18 clear indication. If 60 percent of our pilots
19 voted no, they do not want a union, that's fine.
20 And I think even some people that voted yes would

1 go along with that and stand behind them. But by
2 not hearing from them, you just simply don't
3 know. And I think that any process where you
4 actually have to choose a yes or a no or if there
5 is an abstain option you would get more support
6 rallied behind it.

7 I wanted to take just one or two
8 minutes and talk about one other topic, that
9 isn't directly related to that. The Board
10 references in the NPRM the dissolution of company
11 sponsored unions in the 1930's and 1940's, and
12 while most of them have been abolished with
13 reform labor practices, I think, I think my
14 company is one modern example of having company
15 unions or company unionism still in play.

16 Our company has established several
17 employee committees, several of which behave and
18 function like a union. These committees are
19 funded by the company and to some extent,
20 influenced by the company. Work role manuals are

1 produced and signed by the company, and
2 representative elect it into office by these
3 employee committees. Looks like, functions like,
4 acts like a union.

5 I think this rule change will serve
6 to eliminate this small round of
7 company-sponsored unions if that's, in fact, what
8 this is. There's a confusion that's been
9 created, at least in my company, with large,
10 unrepresentative employees by having these
11 company-sponsored committees in existence. And
12 that is, by itself, a deterrent for employees to
13 be involved with a full union, if they have
14 something that looks, walks and acts like a
15 union, why do you want to pay for one yourself?
16 It's a valid point.

17 I think this rule would help with
18 that and I think this rule would also help bring
19 the last round of these companies -- this company
20 unionism and end it.

1 I think that's it. Thank you for
2 your time.

3 MS. JOHNSON: Thank you. Mr.
4 Maliniak.

5 MR. MALINIAK: Good afternoon, and
6 thank you for allowing Litmer Mendelson's
7 Transportation Industry Practice Group to address
8 you today. I should add that we're here and
9 we're not billing a single person for the time of
10 our appearance today.

11 My name is Don Maliniak and I am
12 speaking on behalf of the group. We have already
13 filed some preliminary comments with the Board
14 and we are also likely to be supplementing our
15 comments further in January.

16 Like others here, we share legal
17 concerns about the exact nature of the
18 deliberative process that went into the Board's
19 announcement. However, in the end, we decided to
20 first inquire into the elements of the process

1 before we moved forward on that front. I am here
2 today to give you a more colloquial version of
3 our concerns in this area.

4 This morning, we heard a lot about
5 the need for change. And of course, every
6 example of change offered was change for the
7 good, but change isn't always good and a short
8 story about poor choice for change may provide
9 some balance here.

10 Having grown up in the Anthracite
11 Coal Fields of Pennsylvania, the son of a union
12 official, there's a story involving a mine
13 foreman and a company finance person who was sent
14 out to the mine to fine efficiencies and cost
15 savings to the operation. The finance person
16 spent the day observing a process whereby coal
17 containers were removed from the mine and after
18 the coal containers came out, heavy ropes were
19 hooked to the containers and mules pulled the
20 containers up an incline where the breaker boys

1 would separate the coal from the slate.

2 The finance person thought the ropes
3 were too heavy and cumbersome, added too much
4 weight to the pulling process, and so he
5 recommended the company use lighter ropes, which
6 he said would do just as well and save the
7 company money.

8 When the mine foreman was told of the
9 recommendation he categorically rejected it,
10 saying that while the rope being used was bulky
11 and perhaps cumbersome, the clothesline version
12 being recommended by the finance person would
13 over the long term be a disaster. A new lighter
14 rope would break more easily causing the coal
15 containers to spill, possibly damaging the
16 containers and worse yet, the containers could
17 roll back into the mine and mane or even kill the
18 miners. Whatever would have been saved by the
19 company change would've been wiped out by the
20 later disaster that accompanied it.

1 For decades now, the Board has been
2 using an election process that some now contend
3 is unnecessary, cumbersome, costly and out of
4 touch with "democratic principles".

5 Litler believes that there are
6 several reasons for rejection of these arguments
7 and the clothesline problems these arguments
8 create.

9 First, when Congress enacted the RLA,
10 it made it clear that it wanted a responsible
11 labor relations environment that protected the
12 country's vital economic transportation systems
13 from unnecessary, unmanaged workplace
14 destructions. To support that statutory goal,
15 the Board began by requiring to be represented.
16 Employees in the craft or class would have to
17 demonstrate their desire for representation by
18 having the majority of the eligible voters in the
19 craft or class affirmatively vote for third-party
20 representation. We believe the Board did this

1 knowing that only by beginning with a strong,
2 solid showing of support for the union, could the
3 employees, the unions, and the carriers be
4 expected and able to work to make and maintain
5 labor agreements together. Abandoning the
6 current election process for the NLRA's more
7 relaxed clothesline approach would undercut the
8 very foundation on which the RLA rests.

9 Second, without stronger election
10 process now in place, unions cannot be expected
11 to maintain the support necessary or hold the
12 sway required with employees or carriers to be
13 able to manage successfully the negotiations and
14 representation duties for which they are legally
15 charged. Yes, the current election standards and
16 thresholds under the RLA are more burdensome,
17 rigorous and cost unions more in their organizing
18 efforts than our experience under the NLRA. But
19 as the level of union representation in the
20 airline and railroad industries ably demonstrates

1 union organizations with this kind of foundation
2 and based on the selection model are stronger and
3 more enduring than their NLRA counterparts, and
4 that is not an accident.

5 Third, the geographic dispersion of
6 the employee population in a craft or classes
7 within the airline and railroad transportation
8 industries presents unique challenges to all the
9 parties and the Board in the bargaining that
10 follows the election. Unless unions begin with a
11 firm, strong foundation as provided by the
12 current RLA election process, they will not able
13 to avoid a long-term representation disaster.

14 Unions under the RLA are never more
15 vibrant or credible than when they are first
16 elected to represent. But as time marches on,
17 internal dissention and disappointment develop
18 naturally. People who dreamt of being union
19 leaders are not selected. Rumors begin the
20 leadership is playing favorites, and that their

1 negotiation strategies are being fashioned by
2 some in crowd. Whether these aspersions are
3 justified or not is not the point. They do
4 occur. Combining these events with the natural
5 fragmentation that comes with representation of
6 facilities across multiple geographic locations
7 with differing needs and priorities which later
8 have to harmonized into one collective bargaining
9 agreement and you can easily see why the Board
10 elected to use the stronger election rope under
11 the RLA. The RLA recognizes that the unique
12 bargaining that takes place under it requires
13 sterner stuff, and so the NMB manages
14 negotiations.

15 But let's not kid ourselves. We have
16 all witnessed disruptions to operations that
17 occur in the craft or class while the parties are
18 engaged in negotiations. Sometimes these
19 disruptions cannot be controlled by the unions,
20 the carriers or the NMB, but trading the strong

1 union in for a weak on, elected under the NLRB
2 rules does nothing to help in these
3 circumstances. Some of the NMB posted website
4 letters supporting change, argue that different
5 geographic location issues are non-issues today,
6 because today communications are now instant.
7 But this is not a problem with communications at
8 all, instant or otherwise. Instant
9 communications won't relieve the stress of trying
10 to negotiate one pay rate that suits both the LAX
11 mechanics and the mechanics who live in Indie,
12 where the cost of living is less.

13 Instant communications are not going
14 to unite a craft or class to support a TA if some
15 locations do not get as good of healthcare
16 coverage from a provider as another location.
17 And instant communications don't keep flight
18 attendants in plight and pilots from working --
19 for seeking commuter friendly work rules, while
20 those who live in domiciles want bargaining

1 benefits that speak to their needs at the same
2 time.

3 In short, negotiations in the airline
4 and railroad industries are more complex,
5 difficult, and challenging for everyone.
6 Ultimately, negotiations make some losers and
7 winners of us all, but by insisting that the
8 union supporters step up and show their strength
9 by voting, by having the majority of eligible
10 employees vote for representation, the front end
11 helps stabilize the process going forward.

12 Finally, there has been much offered
13 about the current election rule and that it is
14 not as democratic as the new one.

15 The fact is, that there are so many
16 differences between democratic public elections
17 and union representation elections, that the
18 comparison is hardly a fair one. The elections
19 of public officials are for definite terms, and
20 re-election must occur again and again. That

1 doesn't happen in union elections where
2 representatives stay in place indefinitely.

3 As a voter in a public election, I
4 can choose not to vote in one election, but
5 become actively involved in a subsequent one,
6 which is guaranteed to come along, again, at the
7 expiration of a term. That is not likely under
8 labor laws, especially the RLA where the first
9 vote can and usually is the last.

10 In closing, in our opinion, the
11 contemplation of change here was not brought
12 about by the lack of democratic principles or
13 because the Board cannot clearly discern voter
14 desires and union elections. Instead, we believe
15 this is about making it easier and less expensive
16 for unions to organize and represent employees
17 under the RLA with a massive secondary need by
18 this Board to address the possible loss of union
19 representation of flight attendants at NorthWest,
20 as a function of their merger with Delta.

1 We think it is unwise to allow those
2 two things to drive this change. What we should
3 be focused on is the need and purposes of the RLA
4 and just what it takes to protect the tenants
5 that are in law.

6 Our hope is that you keep the current
7 election process in place. Thank you.

8 MS. JOHNSON: Thank you. Our next
9 speaker was supposed to be Sandra Josephson. She
10 doesn't seem to be here, so we're going to move
11 on and hear from Mr. Livingston.

12 MR. LIVINGSTON: Madame Chairman and
13 Members of the Board, my name is David Livingston
14 and it is my pleasure to appear before you today
15 on my own behalf. I feel like I have an
16 advantage. The other speakers have had to tell
17 you how many hundreds of thousands of people they
18 represent, and I'm just here for me, so I get a
19 little extra time to talk. I suppose I could
20 tell you that I represent my mother. She told me

1 to stand up straight and keep my hands out of my
2 pockets, so I'm going to try to do that.

3 I am a pilot employed by SkyWest
4 Airlines and I am also an attorney. As of the
5 31st of December of this year, I will become
6 inactive in the Colorado Bar Association so I
7 will officially become a recovering attorney.

8 I've read the federal register where
9 the proposed rule change was published and I'm
10 familiar with the respective positions of the
11 three-member Board. As I contemplated the
12 proposed change and this hearing, I was reminded
13 of another three-member meeting. The three at
14 the particular meeting that came to mind happened
15 to be a fox, or two foxes, and a chicken, and
16 they were getting ready to vote on what's for
17 dinner. I think I have a feeling which way the
18 Board might be leaning.

19 Briefly, the Railway Labor Act is the
20 law, and if it weren't for the law, we wouldn't

1 be here. The Railway Labor Act wouldn't have
2 enacted the law, which provides for this board to
3 do what it does. The Railway Labor Act is the
4 law and this board lacks the power to change the
5 law. This proposed change will undermine the
6 effectiveness of collective bargaining agents by
7 eliminating the majority support currently
8 required to install the collective bargaining
9 agent.

10 This change will serve to destabilize
11 labor groups within the airline and railway
12 industries because collective bargaining agents
13 will lack majority support. Installation of a
14 collective bargaining agent without
15 accountability is bad for employees and the
16 employees are your primary customer.

17 In the past 10 years, the services of
18 the National Mediation Board have been utilized
19 to investigate three representational disputes
20 involving the pilots at SkyWest Airlines. In

1 each instance, the majority of SkyWest Airlines
2 pilots have determined not to certify a
3 collective bargaining agent. And I emphasize the
4 word 'majority', because that is the critical
5 requirement of the Railway Labor Act and that the
6 proposed change would eliminate majority.
7 Section 152, Fourth of the Act states the
8 majority of any craft or class of employees shall
9 have the right to determine who shall represent
10 the craft or class. That's the law. What's the
11 majority? 50% plus one, that's the law. The
12 United States Congress enacted the law that this
13 Board is required to follow. The law requires a
14 majority to determine who shall be their
15 representative. The law does not envision any
16 less than a majority being able to make that
17 decision.

18 Sixty-two years ago, in 1947, former
19 Attorney General Tom Clark wrote, "When the
20 Congress desires that an election shall be

1 determined by a majority of those eligible to
2 vote," rather than by a majority of those voting,
3 the Congress knows well how to phrase such a
4 requirement. The Congress has done a great job
5 in phrasing the requirement in the Act.

6 The Board has followed the law and
7 conducted elections in accordance with the law
8 since the law was enacted. Granted, the Board
9 has some discretion as to how the election is
10 conducted, whether it be by paper ballot, or
11 telephone electronic voting, but the Board does
12 not have the discretion to change the law and
13 allow for the certification of collective
14 bargaining agents by less than a majority of the
15 craft or class involved.

16 The proposed change is, in fact, an
17 attempt by the Board to take the law into its own
18 hands and change it. Only the United States
19 Congress has the power to change this law. We've
20 heard a little bit about Mr. Sullivan mentioned.

1 Let's withdraw this notice of proposed rule
2 making and have some evidentiary hearings. I
3 believe that was mentioned by a number of people.

4

5 Mr. Prader, Captain Prader, talked
6 about balloting procedures. This isn't a
7 procedure. Paper ballots and telephone
8 electronic voting, that's a procedure. What
9 we're talking about, what the Board is proposing,
10 what two members of the Board are proposing, is
11 changing the law. The Congress, I think -- I'm a
12 long way from Washington, I live in Colorado.
13 But the Congress, down here on the hill, changes
14 the law, not the Board. And everybody has to
15 follow the law.

16 Now the change proposed by the Board
17 may well be the desired result, but is it the
18 right method to achieve the result? And even
19 before you ask that question, the question must
20 be asked, is it really the desired result in the

1 long-run, or will elections conducted under the
2 proposed change lead to weakened and ineffective
3 collective bargaining agents, being certified to
4 represent divisively split employee groups?

5 This proposed change has great
6 potential, great potential to bring into play the
7 law of unintended consequences. Many people
8 support this change. In my opinion, the proposed
9 change will not benefit those who support it.
10 Already, the effects of the proposed change are
11 being felt, as a previously filed petition
12 seeking an election has been withdrawn in
13 anticipation of the rule change. This has
14 delayed the right of these employees to certify a
15 collective bargaining agent. Many of them are
16 here in the room. How long will this delay
17 continue? It may be a significant period of
18 time. The first employer -- and there's a lot of
19 lawyers in this room. The first employer whose
20 work force is the subject of an election after

1 this change will likely seek a temporary
2 injunction from a federal judge to halt the
3 election process. And then the declaratory
4 judgment, as proposed, is not being conducted in
5 accordance with the law. I can tell you, I don't
6 know, I haven't talked them, I just got a
7 feeling.

8 The proposed change creates, in
9 essence, the same rule under which the election
10 in Virginia Railways was conducted. The court,
11 in reviewing that case, stated the rule as
12 changed was in conflict with the Act. The court
13 recognized that the Act requires a majority of a
14 craft or class to determine who shall represent
15 it and the rule, as changed, merely required a
16 majority of those voting to make such a
17 determination. The court held that the method of
18 election was covered by an express provision of
19 the Act itself, and any attempt to change it was
20 simply without effect. Now we hear over and over

1 that elections should be decided on a basis of
2 votes cast in the election. Well, elections
3 involving certification of a collective
4 bargaining agent are unlike political elections.
5 Political elections do not involve a specific
6 craft or class. They do not seek to install the
7 collective bargaining agent. Political elections
8 place an individual in office for a defined
9 period of time and that office holder is subject
10 to recall. The voter can step back into the
11 voting booth at a period of time down the road,
12 and hold the person elected, accountable at the
13 ballot box. There is, of course, no specific
14 procedure under the Railway Labor Act for the
15 removal of an agent. The installation of a
16 collective bargaining agent is forever, under the
17 current rules.

18 Changing the rules, as proposed,
19 without a concurrent change in the act to provide
20 for a method to decertify an agent, would be a

1 disservice to the employees who turn to this
2 Board for assistance. In addition, installation
3 of the collective bargaining agent in the manner
4 proposed by the Board will inevitably lead to
5 destabilization of the labor groups within the
6 airline and railway industries because the
7 collective bargaining agent will inevitably lack
8 the support of a majority of the labor group
9 representative. No reasonable person could argue
10 with the concept that the effectiveness of a
11 group is greatest when that group has the support
12 of the majority of the group.

13 Collective bargaining agents should,
14 at the least, continue to enjoy that majority
15 support of the group they represent at the outset
16 of their representation. Changing the rule, as
17 proposed, would eliminate that majority support
18 in many, many cases.

19 This proposed change stems from a
20 request from a collective bargaining agent. Who

1 is the Board's primary customer? Is it
2 management? Is it collective bargaining agents?
3 Or is it individual employees? I believed it was
4 the individual employees. I am an individual
5 employee. If the Board is going to change the
6 rules of the game to favor collective bargaining
7 agents, the Board must at least recognize the
8 possibility of the individual employees becoming
9 dissatisfied with the efforts of the agent and
10 affording the individual employees a method to
11 decertify that agent. A formalized
12 decertification process would certainly lead to
13 great accountability of the agent.

14 In summary, I believe this Board
15 lacks the power to change the law. The law has
16 clearly been written by the Congress. If the law
17 is to be changed, Congress needs to do it.

18 This proposed change will undermine
19 the effectiveness of the agents by eliminating
20 the majority support, currently required to

1 install. And again, a change would destabilize
2 labor groups in the railway and airline industry
3 because the CBA's will lack that majority
4 support. Installation of a collective bargaining
5 agent without accountability is bad for employees
6 and employees are your primary customer. They're
7 here, a lot of them in uniform.

8 For the reasons previously stated,
9 the interests of all employees of the railway and
10 airline industries will be better served by
11 requiring the certification of a collective
12 bargaining agent in accordance with the current
13 provisions of the Railway Labor Act, as written
14 by the United States Congress, until such time,
15 as the Congress changes the law.

16 I thank you for the opportunity to
17 appear before you. I know that you have listened
18 to the same song, sung by different artists all
19 day long. I hope I struck a note. Thank you.

20 MS JOHNSON: Thank you. Mr. Barry?

1 MR. BARRY: And I'm going to be the
2 number one hit single, no. I want to thank
3 you guys for giving me the opportunity to
4 be here today and stand before you. This
5 is a great experience to be a part of the
6 making of history. My speech is short; I'm
7 not a lawyer or a pilot or whatever, I'm
8 just a flight attendant. And considering
9 that I have to be on reserve at midnight,
10 this was my only day off, yes, I'm on
11 reserve. OK, so when I ran for Student
12 Council in college, it was a completely
13 different ball game. Different from
14 running in high school. The election was
15 no longer a popularity contest; it wasn't
16 about how many people you know or how many
17 people thought you were cool. It was
18 reality, me against my opponent running for
19 Secretary of Treasury. I remember how hard
20 I worked to win. I did everything I could.

1 I was at different buildings on campus
2 each day, getting to know everyone,
3 spreading my word, handing out literature,
4 and of course, educating the masses.
5 Election day was not stressful for me at
6 all. I knew inside that I won. I was
7 certain all my hard work paid off and I was
8 excited to start serving. The decision was
9 only a couple hours away and my patience
10 was running out. This was it. The
11 envelope was handed off, and my name was
12 seconds away from being called. The
13 elected Secretary of Treasurer is Travis
14 Day. No, my name is Samuel Barry, which
15 sounds nothing like Travis Day. My heart
16 sank immediately; honestly I was crushed.
17 But at that point, I took a deep breath,
18 kept my head up and shook Travis' hand with
19 pride. Later, I had found out that I had
20 lost by only three votes. I kept a smile

1 on my face, knowing that I lost fair and
2 square. I did everything I felt I could to
3 win, but apparently, I didn't try hard
4 enough. Democracy took place right in
5 front of my face and I could have not been
6 prouder of our system. What about the
7 people who chose not to vote that day? The
8 people who were opposed both of us, who
9 forgot to vote, who had not been reached
10 to, or simply didn't feel like taking the
11 time to get out to vote. I sure wouldn't
12 have wanted those people to decide the
13 outcome of our election. Those people
14 chose not to vote and all but to abstain.
15 To me, it would definitely not have been
16 justified for them to count in the final
17 analysis. The union election process under
18 the current NMB rules that has been put in
19 place for over 75 years is not consistent
20 with democratic voting standards.

1 Forgetting to vote, procrastinating, not
2 being reached to because I'm on furlough or
3 I'm on a leave, currently result in a no
4 vote. That's unjustifiable.

5 Yes, many unions have been certified
6 with the 75-year-old voting rules, but at the
7 same time, many workers have been denied the
8 right to representation due to those same rules.
9 Just because a rule is decades old does not mean
10 it's the right way to vote. Hey, I'm 23 years
11 old, I've been working for NorthWest Airlines for
12 two years, not 38 or 40, but -- I may be young,
13 but I'm also smart enough to know what's going to
14 be the best for me, my future and my career. I
15 want the fair selection known to the people, by
16 the people, for the people. We live in a
17 democracy, the United States of America. Just
18 like voting from proposals to presidents, we have
19 a democratic ballot and we deserve that same
20 right when voting for representation. Within the

1 past 75 years, change has been continual in this
2 country; we would not be where we are without
3 change. If we are granted our request for a
4 democratic ballot and no representation results
5 in that election, then fine. Democracy has
6 spoken and the majority wins. This country would
7 not be what it is today without our first
8 amendment, without its people, and above all
9 without its reform.

10 Thank you.

11 MS. JOHNSON: OK. We're running
12 early. We'll take a break now and resume at
13 3:00.

14 [OFF THE RECORD AT 2:41 P.M.]

15 [BACK ON THE RECORD AT 3:01 P.M.]

16 MS. JOHNSON: Okay, we're going back
17 on the record and our next speaker is Beth
18 Graham.

19 MS. GRAHAM: Good afternoon. Madame
20 Chairman and Members of the National Mediation

1 Board, my name is Beth Graham. Thank you for
2 providing me with the opportunity to address the
3 Board today about a topic that is critical to my
4 career as a 24-year flight attendant of Delta
5 Airlines.

6 October 29th marked the one-year
7 anniversary of the merger of Delta and NorthWest,
8 which created the world's largest airline. Over
9 the past year, we have worked very hard to ensure
10 the success of the merger. The momentum during
11 the merger integration and the benefits of
12 gaining the new routes has exceeded my
13 expectations. It has been very exciting meeting
14 flight attendants around the world.

15 Delta employees have worked too hard
16 to have the major distraction of unresolved
17 representation keep us from reaping the benefits
18 of all of our hard work. Unresolved
19 representation keeps employees from shared
20 benefits, including pay and work rules. To now

1 have the National Mediation Board intervene and
2 attempt to turn over 75 years of labor law to
3 influence the voting rules and process is a
4 disservice to the hard-working employees of
5 Delta.

6 Delta has an 80-year history of a
7 cooperative work environment, which has been
8 evident in Delta's combinations during my career
9 with Western, Pan Am and now with NorthWest.
10 We're anxious to work side by side with our
11 fellow flight attendants. Delta employees are
12 ready to move forward with -- and work side by
13 side without barriers.

14 Until union representation is
15 resolved, we continue to work separately. Most
16 flight attendants soon will be qualified to fly
17 on all aircraft of both pre-merger airlines.
18 However, I will not be able to fly with my
19 colleagues who've joined us from NorthWest on the
20 same aircraft until we resolve representation.

1 Nor will we be able to work under the same work
2 rules and pay.

3 The delay is unfair to Delta flight
4 attendants, especially as you've heard
5 previously, since the National Mediation Board
6 has allowed union elections to occur under the
7 current voting rules, as most recently as the
8 elections with Compass Airlines flight
9 attendants. The election request occurred after
10 the request was filed with my employee work group
11 at Delta.

12 I ask the questions of you today.
13 Should Delta flight attendants be governed by a
14 different election process simply by virtue of
15 the size of our company? If so, I then
16 respectfully ask to also be granted a change in
17 the process to decertify a union. While I do not
18 expect you to answer me today, I do ask that you
19 take these matters into consideration as a
20 decision is reached in the outcome of this

1 process.

2 In closing, I believe that the right
3 to vote is a basic right, without which, all
4 others are meaningless. As part of that right, I
5 want a voting process that is fair and free from
6 influence from a political changing climate. I
7 respectfully request that Delta employees have
8 the ability to exercise that right to vote by
9 using a process that has withstood scrutiny and
10 the test of time for 75 years. I, as a flight
11 attendant of Delta Airlines, want the opportunity
12 to move forward and give each of my fellow
13 colleagues control over our own destiny. Delta
14 pilots, mechanics and dispatchers completed at
15 the representation process and have completed
16 benefits, seniority, and work rule integration.
17 I would like the opportunity to do the same with
18 my fellow flight attendants.

19 Delta founder, C.E. Woolman, stated,
20 "No one individual can create an airline. An

1 airline is a team." Members of the Delta team
2 have put the meaning in our slogan 'Service and
3 Hospitality from the Heart' through teamwork.

4 I am ready to move forward as a
5 flight attendant to work side by side with my
6 fellow flight attendants without the distraction
7 of union representation which keeps us from
8 operating as that team, which provides service
9 and hospitality from the heart through teamwork.

10 Thank you for your time.

11 MS. JOHNSON: Thank you. Mr. Rego.

12 MR. RAYGO: Good afternoon. My name
13 is Russell Rego and I am a hub operations
14 coordinator at Continental Airlines in Newark,
15 New Jersey.

16 I have worked at Continental Airlines
17 for 16 years in various jobs, including the
18 customer service agent, lead, baggage
19 performance, a load planner, and also as a gate
20 planner. I am here today on behalf of my

1 co-workers, the 2600 Continental Airlines Fleet
2 Service workers at the Newark Liberty
3 International Airport, the most challenging
4 airport in the nation. And our message to you
5 today is that we strongly support the Board's
6 proposed rule change.

7 The current election process, which
8 counts a failure to vote as a vote against
9 unionization, is fundamentally unfair. Workers
10 in the airline industry seeking to form a union,
11 like me, already face a huge disadvantage because
12 under the Railway Labor Act, we must organize at
13 a national bargaining unit.

14 It is my understanding that at the
15 NLRA, they organize at a local level where most
16 employees know each other face-to-face. In the
17 case of Continental Fleet Service workers, this
18 means we must organize a union consisting of more
19 than 7,000 workers spread out over 47 stations
20 across the entire U.S.A.

1 Above all, our company prohibits us
2 form using our travel privileges for organizing
3 when we want to visit and meet with our
4 outstation co-workers. In addition, because not
5 voting, essentially counts as a no vote, the
6 company actively engages in efforts to suppress
7 the vote. I have first-hand knowledge of this
8 voter suppression and I'd like to give you four
9 examples today.

10 The first example, I have seen
11 postings on the company career website for
12 Director of Human Resources and one of the
13 criteria for that job was to participate in union
14 avoidance.

15 The second example I'd like to give
16 you is that the company distributed a guide to
17 managers encouraging them to have workers who
18 brought in their voting instructions to work with
19 questions, to throw them into the garbage.

20 The third example, our management

1 removes our break room bulletin board material.
2 Last Friday, I posted the RLA notice to employees
3 of air carriers, highlighting the section that
4 states carriers forbidden to interfere in labor
5 organization.

6 On three different occasions that
7 day, they removed this material from the bulletin
8 board.

9 And the fourth example I'd like to
10 give you is that during a past union election at
11 Continental my manager called me into his office
12 and asked me, he said, "Russell, what is it going
13 to take for you not to vote?" The proposed rule
14 changes would take away some of the huge
15 disadvantages worker face when they try to form a
16 union under the Railway Labor Act.

17 It is time for the outdated rules to
18 be set aside so that there is a level playing
19 field for today's workers. If we want to form a
20 union, we should not have to face rules that were

1 put in place at a very different time. Although
2 this rule change will likely not be in place for
3 election, other workers deserve more fairness in
4 the future.

5 My 2600 co-workers at Newark want to
6 thank you for giving us a voice in the making of
7 history, and we'd all like to thank you for
8 flying Continental Airlines.

9 MS. JOHNSON: Thank you. Mr.
10 LaJeunesse.

11 MR. LaJEUNESSE: Thank you. Chairman
12 Dougherty and Members Hoglander and Puchala, my
13 name is Ray LaJeunesse. I'm Vice President and
14 Legal Director of the National Right to Work
15 Legal Defense Foundation.

16 The foundation opposes the Board
17 majority's proposal, the change -- the voting
18 procedure, for imposition of workers of union
19 exclusive representatives under the Railway Labor
20 Act, procedures at the Board has utilized for

1 more than 70 years.

2 In short, the Board's majority has
3 acceded to the FLCIO. Transportation Trade
4 Divisions, request that the Board discard 75 year
5 old procedures and implement new procedures
6 intended to maximize unionization of workers in
7 the railway and airline industries. The
8 Foundation is a non-profit charitable
9 organization that provides free legal assistance
10 to individual employees, who, as a consequence of
11 compulsory unionism, suffer violations of their
12 right to work, freedoms of association, speech
13 and religion, right to due process of law and
14 other fundamental rights and liberties guaranteed
15 by the Constitution and laws of the United
16 States, and of the several states.

17 Since its founding in 1968, the
18 Foundation has provided free legal assistance in
19 all of the United States Supreme Court cases
20 involving employee's right to refrain from

1 joining or supporting the labor organization as a
2 condition of employment, some of which arose
3 under the Railway Labor Act. For example,
4 Airline Pilot's Association versus Miller, 1998,
5 and Ellis versus Railway Clerks in 1984. Many
6 lower federal court cases brought, for employees
7 in the Foundation's litigation program, have
8 directly concerned the RLA. Or, the NMB's
9 procedures, including Russell versus National
10 Mediation Board, decided by the fifth circuit in
11 1983, of which I will have more to say later.

12 Because the Foundation's staff
13 attorneys regularly represent individual
14 employees in litigation, challenging the abuses
15 of compulsory unionism arrangements and advising
16 employees about their rights and proceedings
17 involving the imposition of union monopoly
18 bargaining in their workplaces. The Foundation
19 is uniquely qualified to comment on the AFLCIO's
20 proposal for an extraordinary change in the NMB's

1 long-standing election procedures.

2 No employee should be subjected to
3 the representation of union officials who they
4 have no individually chosen to represent
5 themselves. The NMB's current election rules at
6 least ensure that unions ensure receive the
7 extraordinary power of exclusive representation
8 only when a true majority of all employees in a
9 given craft or class actually desire such
10 representation. Requiring the showing of true
11 majority support is appropriate, given the
12 unbridled and often-abused privileges inherent in
13 the exclusive representation regime imposed by
14 and enforced under the Railway Labor Act, such as
15 the powers to, (a) dictate the terms and
16 conditions of employment for even unwilling
17 non-members, denying them freedom of contract,
18 and (b) force an employee's discharge for
19 nonpayment of compulsory union dues, even in the
20 22 right to work states.

1 It is particularly inappropriate for
2 exclusive representation to be imposed in the
3 railway and airline industries by a mere majority
4 of employees voting in an election for three
5 reasons.

6 First, contrary to the last speaker,
7 the nationwide nature of Railway Labor Act units
8 makes it extremely difficult for employees
9 opposed to unionization located around the
10 country in numerous different facilities in a
11 given rail or airline system, to organize against
12 the union's well-funded and professionally
13 orchestrated campaign to win the monopoly
14 bargaining provision. They're unowned. The
15 unions have full time paid organizers who are
16 trained and they have a lot of money, so the
17 proposed change would further stack the deck
18 against employees opposed to unionism.

19 Second, the burden of demonstrating
20 majority status would be unfairly and improperly

1 reduced significantly, the union hierarchy
2 seeking the new privilege. Well new burdens
3 would be placed on the targeted employees, who
4 may wish to remain union-free. Under the
5 proposed radical change, employees who are not
6 union activists who have expressed absolutely no
7 interest in unionization and whose jobs
8 frequently require traveling and/or working odd
9 hours, would be forced to take affirmative action
10 to vote against the union. Otherwise, their
11 silence would make it easier for union monopoly
12 bargaining to be imposed them against their will.

13

14 Third, it is extremely difficult for
15 employees to remove a union once it has certified
16 as their exclusive bargaining agent, particularly
17 because the Board has not established a formal
18 process for decertification. Despite the United
19 States Court of Appeal for the fifth circuits
20 holding in Russell versus NMB in 1983, that the

1 Railway Labor Act requires the Board to process
2 an application for an election to terminate a
3 union's monopoly bargaining privileges.

4 Accordingly the Board should
5 reconsider and reject the FALCI's attempt to gain
6 the system for union organizers. The Board has
7 previously, indeed as recently as 2008,
8 considered and rejected the FALCI's proposed
9 change and should do so again. Changes in the
10 partisan political climate in Washington do not
11 want radical changes in the NMB's time tested
12 election procedures, which are more consistent
13 with the Railway Labor Act and I'm going to quote
14 from the Russell decision, "statutory mandate to
15 allow employees their right to full and free
16 expression of their choice, regarding collective
17 representation, including the right to reject
18 collective representation."

19 Indeed if the Board is to make any
20 change in it's exclusive representation

1 certification rules, it should implement the
2 Railway Labor Act's mandate as explicated in the
3 Russell decision and establish procedures for
4 decertifying unions. The Board's previous
5 failure to do so should be remedied because the
6 Railway Labor Act stated policy of freedom of
7 association, includes of necessity, the freedom
8 of non-representation and the freedom to
9 decertify an unwanted union. Finally, the
10 Foundation again strongly advises the Board to
11 reject the proposed amendment of its rules as an
12 unwarranted diminution of the rights and choices
13 of individual railway and airline employees.
14 Thank you for your consideration of these views.

15 MS. JOHNSON: Thank you. Mr.
16 Robinson?

17 MR. ROBINSON: We want to thank you,
18 Madam Chairperson and to the three board members
19 for allowing us to express our issues and our
20 thoughts on this rule changing process.

1 Madame Chairperson, by my watch, it
2 is 3:20, if I get -- if I'm still up here by
3 5:00, I want you to throw something at me and
4 I'll take my seat.

5 My name is Willy Robinson. I am a
6 customer service agent at Continental Airlines in
7 Houston. I have worked for Continental for 12
8 years and I appear here on behalf of more than
9 40,000 Continental workers in Houston, the
10 airline's largest hub, so I am coming to work,
11 I'm just dressed up today, but you catch me on
12 any other day, I have my suit on and my knees may
13 be a little bit dirty, but I'm out there loading
14 bags, so I'm a communal out there who this rule
15 change will affect me and my family lives.

16 And I also want to say I'm here, I
17 had to take off of work to come here, so I'm not
18 getting paid to be here. I'm here because it is
19 important for us to be here and today is my
20 10-year-old son's birthday, and I had to explain

1 to him why I wasn't going to be there, and he
2 understood, he said, 'Daddy, break a leg', so I'm
3 here on behalf of that.

4 Continental Fleet Service Agents have
5 strived for more than a decade in five different
6 election attempts to form a union. Each time, we
7 have failed, and four of those times, we have
8 filed with majority of the court voters, not
9 because of the incredibly unfair relation rules,
10 our situation is truly classic example of why
11 fairness dictates that election rules must
12 change.

13 And that is why we are here today, to
14 voice our wholehearted support for the change.
15 The current system is unjust. Workers who desire
16 to form a union face a stacked deck. Before we
17 even begin, we start in the hole. This is
18 because those workers who come up to you and say,
19 'Man, you know, I'm not really -- I don't care if
20 we get it or if we don't.' Those are some of the

1 workers that want to remain neutral throughout
2 the whole process. Their vote counts as a no
3 vote.

4 And doesn't have the desire to vote,
5 but is willing to support the union if the union
6 is not here, willing to go back and go to work.

7 Secondly, workers who never their
8 ballot instruction counts as a no. Workers who
9 may have changed addresses or workers who never
10 received their ballot due to a misprint in the
11 addresses that the company mails out to the
12 National Mediation Board. On countless a time in
13 the past election, I've been trying to organize
14 Continental Airlines wraps free service for over
15 10 years now. We turned in over 300 and 400 on
16 each election, three to four hundred duplicate
17 ballot reforms and these agents never got a
18 duplicate ballot and never had a chance to voice
19 their opinion and in three elections, we've lost
20 by nearly 300 votes in every election and we've

1 turned in over 400, 400 duplicate ballot request
2 forms that never got answered because of the
3 previous Board, with board decisions.

4 And with us filing with majority of
5 card signers saying that with over 53 percent
6 system-wide saying that they support the union,
7 we still fell short by 300-something votes.
8 Workers don't vote -- and this is very important.

9

10 Workers don't vote because of their
11 religious beliefs counts as a no. You see
12 hundreds and hundreds of workers in Houston who
13 just won't vote due to their religion, saying
14 that it's against their religion to participate
15 in any presidential election, mayoral races, City
16 Council member elections, the just don't vote due
17 to religions purposes, and you can't hold it
18 against them, but that vote also counts as a no.

19

20 The current system is also

1 undemocratic. American democracy is based on the
2 will of citizens who vote. This is how we elect
3 our member of Congress, governor, state and
4 legislators. In some of the oppositions, it's
5 argued that this doesn't have more bearings with
6 that procedure. Yes it does. You're voting on
7 two-party. You're voting either for a union
8 election or you're going to stay un-union, stay
9 unrepresented. So, those actions account for
10 everyday life that we set out and we try to vote
11 to try to change our way of living and our way of
12 life and we feel that it is undemocratic for the
13 National Mediation Board or the governing body to
14 cast a no vote for the ones who don't want it.

15 For decades, union had provided
16 workers with a strong voice, fairness on the job,
17 and a say about work rules and standards. My
18 Continental co-workers and I want to make sure we
19 have a piece of the pie and know that we are
20 going to be treated fairly under union contract.

1 We all want -- all we want is a fair chance to
2 the union. It is fair and democratic thing to
3 do. Our livelihoods and the livelihoods of
4 American worker depend on it, and we go on and on
5 and on that all we're asking for is a chance for
6 everybody to partake in this election process.

7 If you don't support the union, just
8 pick up the -- take the time out and vote yes.
9 It's not saying that -- we're not asking the
10 National Mediation Board to give us a union,
11 we're not asking to give us a contract. All
12 we're doing is asking the board members to
13 consider letting us vote on a democratic process
14 that we vote on our everyday local governments.
15 We want to vote the same way. And so now, what
16 do we do?

17 I mean, you hear oppositions from the
18 competitors and the lawyers and the CEO's and the
19 unions and the everyday working citizens. But I
20 want you to take into account the, think about

1 the millions of American's whose lives will be
2 changed by this rule, who come home frustrated
3 because they don't know if they're going to have
4 a job tomorrow, and the children suffers in
5 result of that and we have to take into account
6 that -- how can we make this thing fair and
7 credible for the American workers to have a shot
8 at democracy and have a shot at a fair wage. And
9 you have workers out there every day who don't
10 want to make the six figures, who just want to
11 come to work and do a job and who want that job
12 to be protected; who come to work and know --
13 wants to know that they have a job when they get
14 there the next day and some CEO has not come out
15 and changed the rules in the middle of the game.
16 They just want a piece of the pie; they just want
17 their voice to be heard.

18 We have a lot of solid workers out
19 there who just want to be heard and this process
20 in their lives, and to change the lives, so --

1 when you go in your deliberation room, just
2 remember the Americans that -- lives are going to
3 be changed due to the process and we support this
4 process. You have our support behind you, all
5 Continental Fleet Service workers support this
6 change and we thank you. We hope that you
7 consider keeping this change we thank you.

8 MS. JOHNSON: Thank you. Mr.
9 Dolezal.

10 MR. DOLEZELL: Good afternoon. My
11 name is James Dolezal, and I am a Customer
12 Service Agent at Continental Airlines in
13 Cleveland, Ohio.

14 I have been with Continental for
15 about 15-1/2 years. I joined my fellow
16 Continental Fleet Service Workers here today to
17 speak in support of the proposed rule change.

18 Seventy-five years ago when the RLA
19 election rules were established times were very
20 different in the United States. The

1 super-majority rule was used in the early days by
2 the Railroad Labor Board for reasons that have
3 relevance in today's world.

4 The super-majority rule has since
5 been rejected by the U.S. Supreme Court as a
6 statutory requirement, but the updated rule is
7 still in effect, which hurts workers like me who
8 want to form a union.

9 The results of these unfair election
10 rules is that we don't have a union after five
11 attempts in recent years. The other groups of
12 workers at Continental have union representation,
13 but the Fleet Service Workers don't. When it is
14 time for contract negotiations, we have to
15 compete with these other groups of workers for
16 our living. Without union representation, we are
17 at a huge disadvantage. So, we are faced with
18 unfair election rules and the fact that we cannot
19 get a seat the table to negotiate our wages and
20 benefits like other unionized groups of workers

1 can. We cannot get that seat because we have
2 been denied a fair chance to form our union.

3 Five years ago, we give up wages and
4 benefits to help Continental get through tough
5 times. We still haven't got back what we gave up,
6 unlike the other groups of organized workers.
7 This isn't fair and it hurts the Fleet Service
8 Workers and our families. In fact, I still make
9 seventy cents less per hour than what I earned
10 five years ago, and that doesn't include the
11 effects of inflation. This puts 8000 families in
12 a bind in today's tough economy. For the sake of
13 fairness, I urge you to move ahead with the rule
14 change.

15 Now I want to present to you
16 petitions signed by nearly 2200 of my fellow
17 Continental Fleet Service workers. The petition
18 requests changes made -- to make RLA elections
19 fairer, including the rule change that the Board
20 is considering. This petition shows how strongly

1 Continental Fleet service workers feel about the
2 rule changes.

3 Thank you.

4 MS. JOHNSON: Let's got to Mr.

5 Wagner, who is standing out there. Thank you.

6 This concludes the meeting. Just as a reminder,

7 those of you who brought in beverages in

8 violation of the NLRB rules, please, if you have

9 an empty bottle that you're responsible for,

10 please take it with you. Please don't leave

11 trash in the room.

12 Thank you.

13

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