NATIONAL MEDIATION BOARD
WASHINGTON, D.C.

In the Matter of the	)	
PROPOSED RULE-MAKING	)	**Docket No. C-6964**
29 C.F.R. Parts 1202 and 1206	)	

COMMENTS OF THE ASSOCIATION OF FLIGHT ATTENDANTS-CWA IN SUPPORT OF PROPOSED RULE-MAKING - 29 C.F.R. PARTS 1202 AND 1206

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TABLE OF CONTENTS

INTRODUCTION

The Association of Fligh Attendants-CWA, AFL-CIO ("AFA-CWA" or "the Union"), which represents over 55,000 flight attendants at 22 carriers around the world, submits these comments in support of the National Mediation Board's ("NMB") proposal "to amend the Railway Labor Act rules to provide that, in representation disputes, a majority of valid ballots cast will determine the craft or class representative." 74 Fed Reg. at 56750 (Nov. 3, 2009).

For over 75 years, hundreds of thousands of employees seeking union representation under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.,* have been subjected to a uniquely un-democratic election process that has deprived them of the benefits of collective bargaining. It is time for this denial of democracy to end. The NMB's proposed rule change is the first, but most important, step in restoring fairness to the union representation election process under the RLA. By enacting this rule, the NMB will allow workers to control their own destiny through the affirmative act of voting. No longer will the issue of union representation be left to the whims of employees who choose to not participate in the democratic election process. As the NMB stated in its notice:

> Nonvoting can be conscious choice and assigning those who choose not vote a role in determining the outcome of an election is a type of compulsory voting not practiced in our democratic system. A system of compulsory voting or assigning a position to those who choose not to vote denies individuals the right to abstain from participating in an election, a right available in other democratic elections in this country. In political elections, those who do not vote acquiesce to the will of those who choose to participate. To allow a contrary policy could allow those lacking the interest or will to vote to supersede the wishes of those who do take the time and trouble to cast ballots.

74 Fed. Reg. at 56752.

As discussed below, AFA-CWA wholeheartedly endorses this long-overdue change to the NMB's voting procedures. The Board has been empowered by Congress to "establish the rules to

govern" representation elections pursuant to Section 2, Ninth, 45 U.S.C. § 152, Ninth. This new and fairer ballot is not only consistent with that authority, its implementation will directly assist the NMB in ensuring that representation elections are conducted in an atmosphere free of employer "interference, influence or coercion." 45 U.S.C. § 152, Ninth. Failure to implement this democratic ballot will condemn twenty-first century workers to the continuation of a mediaeval election process.

I. THE NMB SHOULD USE THE UNIVERSALLY ACCEPTED "YES/NO" BALLOT TO ENSURE A FREE AND FAIR REPRESENTATION ELECTIONS UNDER THE RLA.

A fundamental principle of a "democratic" election process is the universally-accepted practice that an individuals's affirmative vote should be cast in an environment free of coercion, intimidation and undue influence. Also fundamental is the principle that only those who actually vote should determine the outcome of an election. Remarkably, the NMB's standard representation ballot is the only election process in the United States that is determined, in large part, by those who *do not participate.* The NMB has, in fact, historically placed itself in the "Orwellian" position of determining the issue of employee representation under the RLA by literally divining the intent of every non-voter as reflecting opposition to collective bargaining representation. Instead of "insur[ing] the choice of representatives by employees without interference, influence or coercion exercised by the carrier," 45 U.S.C. § 152, Ninth, the NMB ballot process actually insures the opposite, as a carrier's best hope for defeating the union is to convince its employees to not vote. As a direct consequence, carrier intimidation and coercion are part and parcel of the standard voter suppression campaign at every union election under the RLA.

To fulfill its statutory duty to the RLA workers, the NMB must use its inherent authority to conduct elections using a yes/no ballot with the majority of those voting to determine the issue of

representation. The NMB's authority to establish the election procedures is unfettered and judicially non-reviewable. Most importantly, a yes/no ballot will mitigate and neutralize some of the worst types of carrier interference and will aid the NMB's duty to preserve laboratory conditions during the election process.

A. The NMB Has Unfettered Discretion to Establish Election Rules.

Under Section 2, Ninth of the Railway Labor Act, 45 U.S.C. § 152, Ninth, the Board has broad discretion in establishing the rules and procedures employed in a representation election:

> In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their daily designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board ***shall designate who may participate in the election and establish the rules to govern the election*** . . . (Emphasis added).

The NMB's nearly unlimited discretion over representation disputes gives it the power to conduct elections on the basis of a simple majority of votes cast, rather than requiring votes by a majority of all eligible voters. Section 2, Ninth, of the RLA provides that "[i]f any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board . . . to investigate such dispute" and certify the resulting representative for the relevant craft or class. 45 U.S.C. § 152, Ninth. The NMB has broad discretion and exclusive jurisdiction over such representation disputes. *Switchmen's Union v. NMB*, 320 U.S. 297 (1943). It is authorized to conduct an election at its discretion, and may hold one by secret ballot or by "any other appropriate method." 45 U.S.C. § 152, Ninth. That statutory authority affords the NMB complete discretion

over the process and rules that govern elections. *Bhd. of Ry. & S.S. Clerks v. Ass'n for Benefit of Non-Contract Employees*, 380 U.S. 650, 669 (1964) ("*ABNE*"); NMB Rules, 29 C.F.R. § 1202.5.

The RLA instructs "the Board alone to establish the rules governing elections. Thus it is clear that its decision on the matter [e.g. the form of the ballot] is not subject to judicial review where there is no showing that it has acted in excess of its statutory authority." *ABNE*, 380 U.S. at 669. There are very few directives in the statute capable of being violated, making the NMB's authority "broad and sweeping." *Id.* at 654. Consequently, "judicial review of NMB decisions is one of the narrowest known to the law," and the Board's decisions will only be disrupted where gross violations of the RLA or constitutional rights can be shown on the face of a pleading. *IAM v. TWA*, 839 F.2d 809, 811 (D.C. Cir. 1988).

Instances where the Board has departed from its standard election procedures further demonstrate that how it chooses to carry out an election "is entirely its affair, as long as it makes certain that the carrier does not interfere." *British Airways Bd. v. NMB*, 685 F.2d 52, 56 (2d Cir. 1982) (setting ballot dates); *see also, e.g., Continental Airlines, Inc. v. NMB*, 957 F.2d 911 (D.C. Cir. 1992) (per curiam) (conducting ad hoc opinion poll of employees); *ABNE*, 380 U.S. at 666 (deciding not to conduct hearing); *Prof'l Cabin Crew Ass'n v. NMB*, 872 F.2d 456, 461 (D.C. Cir. 1989) (establishing voter eligibility).

Moreover, the Board recently reiterated that it is not bound by its own *Representation Manual* when determining the appropriate procedures to employ to ensure that employees' choice of representative is made "without interference, influence, or coercion exercised by the carrier." In *Compass Airlines,* 35 NMB 14 (2008) the Board very forcefully defended its right to ignore its own well-established procedures for conducting a representation election:

> Although the Board's Manual sets forth procedural guidelines for the investigation of eligibility issues including the cut-off date, the provisions of the Manual are neither binding on the Board nor the exclusive procedures for the NMB's investigation of representation matters. The courts have recognized that the Manual is "not a compilation of regularly promulgated rules and regulations having the force and effect of law." *Hawaiian Airlines v. NMB,* 102 LRRM 3322, 3325 (D. HI. 1979) *aff'd without op.,* 659 F.2d 1088 (9th Cir.1979) *cert. denied* 456 U.S. 929 (1982). ***Thus, the NMB has the discretion under the RLA to establish rules for . . . eligibility to vote in an election and to deviate from these rules in the face of unusual or extraordinary circumstances.***
> (Emphasis added).

35 NMB at 21.

The Board's traditional balloting procedure is to require that a majority of the eligible voters cast valid votes for representation in order to certify a bargaining representative. The Board's past departures from this default policy have traditionally been in response to evidence of carrier interference. *See Laker Airways, Ltd.,* 8 N.M.B. 236 (1981) (rerun election on majority of votes cast); *Rio Airways, Inc.*, 11 N.M.B. 75 (1983) (same); *Sea Airmotive, Inc.*, 11 N.M.B. 87 (1983) (same); *Mercury Services*, 9 N.M.B. 236 (1981) (same) *Key Airlines,* 16 N.M.B. 296 (1989) (rerun election where certification would result unless majority of eligible voters voted against union).

Although the use of simple majority voting in the past has always been in response to carrier interference, there is no legal bar to such a procedure in an initial election. The NMB's discretion over the election process includes the ability to base an election on a simple majority. Section 2, Fourth of the RLA requires that a majority of employees "have the right to determine" who will represent them. 45 U.S.C. § 152, Fourth. It does not state that a majority of all of them must favor representation before the Board can issue certification. The Supreme Court has indeed "stressed the Board's broad power to control balloting, and there are other ballots that might be used to effectuate an employee right to reject collective representation." *Int'l Bhd. of Teamsters v. Bhd. of Ry. Airline*

& S.S. Clerks, 402 F.2d 196, 203 (D.C. Cir. 1968). Moreover, courts specifically recognize the Board's authority to reasonably construe the meaning of the term "majority" as used in the statute. *Zantop Int'l Airlines v. NMB*, 544 F. Supp. 504, 506 (E.D. Mich. 1982), *aff'd*, 732 F.2d 517 (6th Cir. 1984) (NMB authorized under RLA to grant certification based on majority of votes cast). That exercise of authority, like all that are in full compliance with the RLA, is not subject to judicial review. *General Committee of Adjustment v. M.K.T. Railroad*, 320 U.S. 323 (1943). In fact, a simple majority balloting procedure would be un-reviewable *even if* it could be considered a violation of the NMB's own policies, and even if it proved outcome-determinative. *See Int'l Ass'n of Machinists v. Trans World Airlines,* 839 F.2d 809 (D.C. Cir.), *modified,* 848 F.2d 232 (D.C. Cir. 1988).

In sum, there exists no legal impediment to the Board's use of the traditional yes/no ballot. The RLA does not prohibit it - rather it explicitly empowers the Board to use its discretion to employ the election procedures most likely to ensure that the laboratory conditions are maintained. And the yes/no ballot achieves that goal. As evidenced by the Board's use of the *Laker* ballot in re-run elections triggered by carrier interference, a yes/no ballot neutralizes many of the carriers' more egregious tactics used to dissuade employees from participating in the election process.

Furthermore, use of the yes/no ballot would be consistent with the procedures used by the National Labor Relations Board ("NLRB") in determining collective bargaining representation. Though the National Labor Relations Act, 29 U.S.C. § 141 *et seq.,* like Section 2, Fourth of the RLA, requires that "[r]epresentatives designated or selected for purposes of collective bargaining by the ***majority of the employees in a unit appropriate for such purposes . . .***" 29 U.S.C. § 159, the NLRB certifies a Union based on a majority of votes *actually cast.* Unlike the NMB, however, the

NLRB does not attempt to interpret a non-voter's intent when he/she chooses not to participate. In other words, the NLRB does not conclude that all on-voters are opposed to Union representation.

Nor has the Board established a compelling rationale for using the 50% + 1 ballot procedure for all initial, non re-run, elections. For the most part, the Board has relied on its long past practice of using the current balloting procedures as the reason, in and of itself, to maintain it. That was the conclusion reached in *In The Matter of Petitions of the Chamber of Commerce, & IBT,* 14 NMB 347 (1987), where the Board rejected the Teamsters' petition seeking a rule-making change that would have required it to use the yes/no ballot in all representation elections. While acknowledging its statutory discretion to establish fair election procedures, the Board relied primarily on its historical actions to justify its refusal to modify its future balloting procedures:

> The IBT cites several court decisions in support of its position that the Board has broad discretion in the manner in which it determines who should represent employees in a given craft or class. While the Board does not disagree with the IBT on the question of discretion, the IBT has not provided the Board with compelling reasons to change practices in effect for over fifty years. In the Sixteenth Annual Report of the Board (1950), the Board stated its firm ***conviction*** that its duty under Section 2, Ninth, 'can be more readily fulfilled and stable relations maintained by a requirement that a majority of eligible employees cast valid ballots . . .' p. 20. One need look no further than to the area of potential strikes to conclude that certification based upon majority participation promotes harmonious labor relations. A union without majority support cannot be as effective in negotiations as a union selected by a process which assures that a majority of employees desire representation. (Emphasis added).

14 NMB at 362.

Incredibly, the Board's stated rationale for maintaining the current ballot procedures is not premised upon the RLA, the case-law interpreting it, or even the need to guarantee employees a free and fair election. No, it is the Board's "conviction" that the current ballot is the best, since in its view, "harmonious labor relations" result when a majority of eligible voters participate. The Board

provides no empirical evidence to support that notion, and there is ample evidence to the contrary. In fact, it is commonly accepted in the airline industry, by all sides, that strong unions are more likely to strike exactly *because* they are strong, and will not buckle to a carrier's demand for contract concessions.

Moreover, as the current Board states in its November 3, 2009 notice,

> . . . this stability which is often associated with the low incidence of strikes is more directly related to the Board's mediation function than to its representation function. The Board exercises a unique power under the RLA: the ability to determine the duration of mediation and thus the timing of a release from mediation and the potential opportunity for either side to engage in self-help. Because of the mandatory nature of the mediation process under the RLA, the parties are pressured to compromise their positions even though each may believe that its original position was reasonable. The Supreme court has recognized that the Board's mediation process is designed to be 'almost interminable' so that the parties are moved to compromise and settlement without strikes or other economic disruptions.

74 Fed. Reg. at 56751-52.

Furthermore, under the RLA, negotiations for a first collective bargaining agreement usually takes two to five years from the date the union is certified. Thus, the correlation between a union's electoral support and the members' views on the status of contract negotiations is so attenuated as to be meaningless. As discussed below, however, there are "compelling reasons," 14 NMB at 362, for the Board to use a yes/no ballot to maintain the laboratory conditions the RLA seeks to promote.

B. A "YES/NO" Ballot Will Assist the NMB in Maintaining the Laboratory Conditions Necessary For a Fair Election.

The Railway Labor Act gives employees the right to organize and select a representative without interference, influence or coercion. Section 2, Third, 2, Fourth, 45 U.S.C. § 152, Third, Fourth; *Texas & N.O.R.R. Co. v. Brotherhood of Ry. & S.S.Clerks*, 281 U.S. 548 (1930); *Laker Airways*, 8 NMB 236 (1981). Section 2, Fourth expressly provides that:

> it shall be unlawful for any carrier to interfere in *any way* with the organization of its employees or to use the funds of the carrier . . . to influence or coerce employees in an effort to induce them to join or *not to join or remain members of any labor organization.*

45 U.S.C. § 152, Fourth (Emphasis added).

The terms "interference, influence and coercion" were defined by the Supreme Court in *Texas & N.O.R.R.* Co., soon after the Act became law:

> 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law . . . 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization." The phrase covers the abuse of relation or opportunity so as to corrupt or override the will . . . *Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme.*

281 U.S. at 553. (Emphasis added).

This prohibition against carrier involvement in its employees' choice of a representative is underscored in Section 2, General Purposes Clause. That section states that one of the purposes of the Act is to "provide for the complete independence of carriers and of employees in the matter of self-organization." 45 U.S.C. § 152, General Purposes Clause.

Under Section 2, Ninth of the RLA, 45 U.S.C. § 152, Ninth, the Board is charged with the duty of ensuring that employees in any craft or class are guaranteed the opportunity to designate a representative without carrier interference, influence or coercion. If allegations of carrier interference are made, the Board must investigate such claims. *Cape Air (Hyannis Air Service, Inc.)* 37 NMB 35 (2009); *Piedmont Airlines, Inc.*, 31 NMB 257 (2004); *America West Airlines, Inc.*, 30 NMB 310 (2003); *US Airways*, 24 NMB 354 (1997); *Metroflight, Inc.*, 13 NMB 284 (1986); *Key Airlines*, 13 NMB 153 (1986).

In its investigation, the Board must determine whether based on the "totality of the circumstances revealed" the laboratory conditions which it seeks to promote have been contaminated. *Frontier Airlines,* 32 NMB 57 (2004); *Mercy Air Services, Inc.,* 29 NMB 55 (2001); *Petroleum Helicopters, Inc.*, 25 NMB 197, 225 (1998); *Sky Valet, Inc.*, 23 NMB 276, 294 (1996); *America West Airlines, Inc.*, 17 NMB 79 (1990); The laboratory conditions commence when the carrier becomes aware of the union organizing campaign. *United Airlines,* 27 NMB 417 (2000); *Era Aviation,* 27 NMB 321 (2000).

If interference is found, the Board may devise a remedy to remove the taint and provide the employees with a fair election. *AeroMexico,* 28 NMB 309 (2001); *LSG Lufthansa Services, Inc.,* 27 NMB 18 (1999); *Sky Valet Inc.*, 23 NMB at 295-96; *Metroflight, Inc.*, 13 NMB 284 (1986); *Rio Airways*, 11 NMB 75 (1983); *Mercury Serv.*, 9 NMB 312 (1982); *Laker Airways*, 8 NMB 236 (1981). The Board's authority includes the investigation of carrier interference allegations and the imposition of a remedy to remove the taint of the interference. *Virgin Atlantic Airways,* 24 NMB 575, 623 (1997); *Southwest Airlines, Inc.,* 21 NMB 332, 351 (1994); *Sea Airmotive, Inc.,* 11 NMB 87, 92 (1983)(issuing a *Laker* ballot to remedy carrier interference before the ballot count); *Transkentucky Transportation R.R., Inc.,* 8 NMB 495, 502(1981)(same).

Given this essential statutory responsibility to protect employee freedom of choice from carrier interference and coercion, it would behoove the Board to implement its proposed ballot. As evidenced by its use of its use of the *Laker* ballot to remedy carrier election interference, a "yes/no" ballot will undoubtedly mitigate and minimize, if not neutralize, some of the more egregious types of unlawful carrier interference during the balloting process. It will also eliminate carrier manipulation of the Official Eligibility List, and most significantly, will restore employee trust in

the integrity of the Board's election process overall.

1. A yes/no ballot will mitigate the impact of carrier surveillance and interrogation tactics.

In its experience conducting dozens of union organizing campaigns, AFA-CWA, unfortunately, has learned that supervisor surveillance, intimidation and interrogation is highly effective in suppressing voter turnout in an NMB election. As has been well-documented by AFA-CWA during the 2008 Delta Airlines flight attendant election, supervisor surveillance and intimidation was rampant. *See Delta Airlines, Inc.,* 35 NMB 271 (2008). Board member Harry Hoglander, who dissented from the Board's refusal to investigate the Union's carrier interference charges, focused his dissent on Delta's expansive supervisory presence that had a chilling effect on the flight attendants' free choice:

> AFA alleges conduct by Delta that if true goes to the very heart of the coercive power of an employer in the workplace. Increased supervisory presence, as alleged by AFA, can and does have a chilling effect on employee free choice because the fear of surveillance leads employees not to talk to organizers, not to take union campaign literature, and not to be informed about their choices in an election. AFA not only alleges that Delta increased supervisory presence throughout its system but that these supervisors interfered with employees' organizing activities, harassed employee organizers, questioned employees about their union activity, and prevented employees who supported AFA from communication with their colleagues. AFA also alleges that this surveillance occurred throughout Delta's system in crew lounges where employees necessarily gather to talk.

Id. at 304.

Indeed, wherever AFA-CWA setup information tables in the crew lounges or other areas of the airport, Delta supervisors were sure to be found in close proximity. Whenever flight attendants approached the AFA-CWA information table, supervisors would make their presence known - by either moving closer to the AFA table, or loudly making anti-AFA comments. Since the NMB ballot

does not contain a space to vote against representation, if a Delta flight attendant was observed inquiring about the election with a Union supporter, the Company would reasonably assume that employee is a AFA supporter. Flight attendants know that, and therefore they stayed away from the AFA information tables lest a supervisor spied them showing interest in the Union.

At the NMB's Open Meeting on December 7, 2009, Marianne Bicksler, a Delta AFA activist and former Inflight supervisor, testified that during the election period preceding the 2002 AFA election at Delta, she was instructed by Delta management to approach any flight attendant who was observed speaking to an AFA activist. The purpose was to intimidate and dissuade that flight attendant from getting information from the Union activist.

A yes/no ballot would mitigate the coercive nature of such surveillance. With a choice on the ballot, an employee seeking information from a union activist can no longer be identified automatically as a union voter. That employee may simply be seeking more information before casting his/her ballot for or against representation. As a result, the entire workplace becomes less intimidating and coercive. Opponents and proponents of union representation would be operating on a more level playing field, with each having the burden of persuading its supporters to affirmatively cast a ballot. Though a yes/no ballot will not totally eliminate the coercive effect of Company surveillance or interrogation, it will unquestionably reduce its impact and encourage greater employee participation.

2. A yes/no ballot will reduce the impact of the NMB's Official Eligibility List on the election's outcome.

Another impediment to a free and fair NMB election that can be remedied, at least in part, through the use of the yes/no ballot is the "Official Eligibility List" ("List") carriers are required to

submit to identify the pool of employees eligible to vote in a particular craft of class. Because the current Board rules require Unions to receive affirmative votes from at least 50% +1 of the *eligible* voters, carriers have a perverse incentive to stack the list with as many individuals as possible, even though they may no longer be employed, or have no reasonable expectation of returning to work. Compounding this problem is the Board's historical refusal to provide the union with an accurate address list that would allow it to verify an individual's actual employment status.

This problem was acutely illustrated in the 2008 Delta/AFA election in several ways. First, Delta submitted an eligibility list containing over 244 trainees who were ultimately declared ineligible. The list contained another 932 furloughed flight attendants, of whom 31 were eventually declared ineligible, even though Delta had hired over 1,200 new flight attendants in 2007-08. Another 27 eligible flight attendants were on some kind of medical leave. Several of those had been on medical leaves for over ten (10) years; one had been on leave since 1991. The idea that these individuals somehow had a "reasonable expectation of return to work" was ludicrous on its face. Yet, because Delta submitted affidavits attesting to the fact these long-term medical leave employees still retain a right of return, the Board declared them eligible. Through its "Get-Out-The-Vote" campaign, AFA, using its own resources, actually contacted one individual on the list who told the AFA activist over the telephone that she had not worked at Delta in over thirty (30) years. The only reason Delta would deem these individuals eligible is to defeat Union representation. Not only do those on furlough and medical leave increase the 50% +1 threshold for certification, because they have little or no contact with the flight attendant workplace, they are unlikely to vote.

To further depress voter turnout, Delta announced a "60-point Retirement Program" and "Early Out Program" that induced 821 individuals on the list to take early retirements that became

effective shortly after the ballot count. Because the early out took effect after the ballot count, they remained eligible employees. The intended effect was clear: whatever their true feelings about representation, those flight attendants about to retire had a diminished stake in the election and were less likely to vote.

With a yes/no ballot, carrier manipulation of the eligibility list, endemic to almost every Board election, will lose its effectiveness. While the Board must continue to ensure that only eligible employees vote, carriers will have a disincentive to stack the list with individuals on open-ended furloughs or long-term medical leaves, who, for all intent and purposes, have essentially severed their psychological and emotional ties to the carrier and are therefore unlikely to vote. Because representation will be decided only by those who participate under a yes/no ballot, a stacked eligibility list has less of an impact on the election's outcome. The time and effort that the Board and the participants now spend battling over the eligibility list will be better spent communicating with employees about important workplace issues that ultimately will decide the issue of representation.

3. A yes/no ballot will restore employee confidence in the integrity of the NMB voting procedures.

Another benefit of the yes/no ballot will be its effect on the integrity of the NMB's voting process. Under the current system, only those who support representation will vote - a feature of the Board's election processes that has been exploited by carriers to paint the NMB as improperly on the side of unions. Though that characterization is not based in fact, that perception has been promoted by carriers like Delta, through its repeated admonitions to its flight attendants in the last two elections that they first "Give It A Rip" and "destroy" their mail ballot (2002 Delta election),

and later, (2008 Delta election) "Give a Rip - Don't Dial, Don't Click" to destroy voting instructions and avoid electronic means of voting. Implicit in those Delta directives is the idea that the NMB is not an "honest broker" on the issue of representation. In other words, since only pro-AFA flight attendants can express themselves through voting, there is no place for anti-AFA supporters in the NMB process. Consequently, Delta has promoted the notion that even the NMB voting information sent to flight attendants is tainted and should be destroyed.

A yes/no ballot would provide non-union voters an opportunity to express their sentiments through a formal voting process. Without a forum to vote their point of view, anti-union expression is too often directed at union activists through hostile comments and even violence. An AFA activist returning to Atlanta from a Union event recently found her automobile vandalized in the Delta employee parking lot. She suspects the AFA sticker on her care provoked the attack as nothing was stolen and her's was the only vehicle damaged in a parking lot containing thousands of automobiles.

If, on the other hand, the Board allowed all employees, pro- and anti-union, to vote, much of that hostility would dissipate and would be directed instead at turning out the voters for both sides of the issue. And the NMB would be viewed only as the election supervisor with no interest in the election outcome. Most significantly, the issue of representation would be decided by those employees most engaged and committed to their workplace; employee disinterest and inertia would no longer be rewarded through non-voting.

CONCLUSION

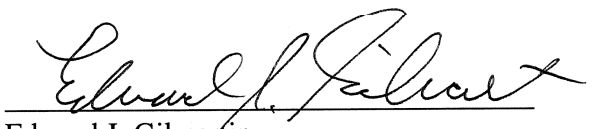
A democratic society is built on the idea that the affirmative action of individuals, usually through the voting process, forms the basis for all decision-making by their representatives, whether

it is representation at the local, state or federal level. It should be no different for employees seeking the benefits of a collective bargaining agreement. For too long, employees in the rail and air industries have faced an uphill, often futile battle to obtain the right to bargain with their employer over their conditions of employment. And for too long, that right has been denied by those employees who choose not to vote. This archaic balloting process must end.

For these reasons, AFA-CWA strongly supports the NMB's Proposed Rule-Making to amend 29 C.F.R. Parts 1202 and 1206, to require that a majority of those casting valid ballots will determine the craft or class representative.

Dated: January 4, 2009

Respectfully submitted,



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