STATEMENT OF THE AIRLINE INDUSTRIAL RELATIONS CONFERENCE TO THE NATIONAL MEDIATION BOARD

MEETING ON PROPOSED CHANGE TO THE REPRESENTATION BALLOT
December 7, 2009

My name is Robert DeLucia, and I serve as the Vice President and General Counsel of the Airline Industrial Relations Conference ("AIR Conference"). I am appearing today not only on behalf of AIR Conference, but also in support of the views expressed by the Air Transport Association. However, in addition to providing the perspective of AIR Conference, I would like to share my personal observations based on 27 years of experience with the National Mediation Board.

During my tenure at AIR Conference, I have had the unique privilege to personally know the 17 women and men who have served as Members of the National Board Member since 1982. The prudent, thoughtful, and measured manner in which Board Members have dealt with all controversial matters – both in the representation and mediation arenas – may have at times been frustrating to the parties, but it enabled the Board to establish a well-deserved reputation for even-handed administration of the Railway Labor Act (RLA). Such an approach is harmonious with the first general purpose of the RLA: avoidance of any interruption to commerce or to the operation of any air carrier engaged therein. And of course, the NMB's responsibilities cover not just carriers by air, but also rail carriers, including carriers providing rail commuter service.

The NMB has justifiably enjoyed a reputation for "non partisan" conduct that focused on the long term stability of the rail and airline industries, avoiding hasty, parochial changes to its practices to avoid even the appearance of partisanship. It did so in obvious recognition of the fact that doing so in one context would call into question its ability to act as an impartial public agency in other contexts, as well. Companies and unions that insisted on "immediate action" – be it a release from mediation or changes to representation rules - without first going through the proper steps, have never been rewarded by the agency. Studied actions and "consensus building" have been the hallmarks of the NMB, in a way harmonious with the method in which the RLA originally was enacted. Regrettably, the

manner in which two Board members have capitulated to labor organizations' public demands for the "minority union" proposal, threatens to undermine the character which an agency should have under a public law, particularly one formulated through the joint efforts of labor and management. Maintaining the parties' perception of the agency as an "honest broker" is essential to both the NMB and the industries that it governs.

The position of AIR Conference's members on the TTD's "minority union" proposal is both long-established and well-known to this Board. Minority unions are (a) barred under the Railway Labor Act, and (b) disruptive of stable labor relations. Further, the Majority Union representation requirement has been consistently and successfully applied for 75 years by the 35 women and men who have served as Members of the National Mediation Board.

Accordingly, I will not consume my time today with a recitation of AIR Conference's legal and policy analysis of the minority union ballot proposal. Those arguments will be fully set forth in our formal comments on the Notice of Proposed Rulemaking that will be filed by January 4, 2010. Instead, AIR Conference comments today will focus on the "broken process" that has led us to this NPRM.

If there has been one constant refrain of the NMB members during the past 75 years, it has been the agency's repeated admonitions to the parties that they must "go through the process" – slow as it may be at times – before the agency will act. This adherence to a methodical and thorough process, which is the surest method of avoiding interruptions to commerce and of promoting the orderly settlement of disputes, is most obvious in the mediation field, where the parties are never released into "self-help" until they have proceeded through the sequential stages of direct negotiations, mediation, and proffer of arbitration. As both management and unions have experienced, this process of moving from the filing of Section 6 openers to negotiations to mediation and onto a proffer and release often lasts years. The Board rarely "short circuits" the process by commencing mediation one month and then issuing a release, the next month.

However, in the current matter, the NMB has behaved in a fashion completely uncharacteristic of a public agency by surrendering to the unions' insistence for the equivalent of an "*instant release*" of the Minority

Union proposal. Their actions on the TTD's petition – before it was even published to the public – is completely contrary to the Board's past handling of similar administrative and representation rule matters. Further, it leads to the inescapable conclusion that two Board Members had predetermined the issue before hearing from the parties and gathering evidence. A quick recitation of the publicly disclosed events surrounding the progression of the TTD's Minority Union proposal reveals an abortive and hopelessly compromised administrative process:

a. July & August 2009. The IAM and AFA file for representation elections on Delta Air Lines. For both unions, at stake in the Delta representation elections is the continued flow of millions of dollars in dues income from former Northwest Airlines employees.

b. August 2009. In a radio interview, the President of the Association of Flight Attendants criticizes the current representation ballot form and emphasizes how important it is for AFA to have a new Board member in place before the next Delta flight attendant election occurs. She goes on to boast that her union was "able to get her [Member Puchala] nominated and confirmed and to do it in a really timely fashion."

c. September 2. The TTD sends a letter to the agency asking that the Representation Manual be altered to provide for a Minority Union ballot system. Curiously, the TTD does not issue a press release or otherwise seek to bring public attention to its demand.

d. September 30. The Chamber of Commerce files a petition requesting that if the NMB initiates proceedings on the Minority Union application, it should simultaneously consider the issuance of Union Decertification rules.

e. October 28. The third Board member is first informed of the existence of the proposed NPRM and given only one day to review and prepare her dissent.

f. October 29. The NPRM is sent to the Federal Register for publication.

g. October 30. The IAM suddenly withdraws its representation application for the Fleet Service group at Delta Air Lines.

h. November 3. The NPRM granting the TTD proposal is published in the Federal Register. The petition of the Chamber of Commerce for Decertification Rules is ignored. AFA withdraws its representation application for the Flight Attendants at Delta Air Lines.

This disturbing sequence of events, coupled with the unprecedented "rocket docket" treatment which the TTD petition has been accorded, stands in stark contrast to the deliberative, open-minded process to which all prior proposals to change Board rules and procedures have been subjected. A brief review of the thoughtful manner in which the Board handled earlier matters creates a vivid contrast to the one-sided handling of the TTD petition:

1. 1985-87. The Chamber of Commerce requested the issuance of union decertification rules, followed by the International Brotherhood of Teamsters' petition for "Excelsior" lists of employee home addresses, and the adoption of a "yes/no" ballot. Within days of receiving each petition, the Board circulated out the petitions for comment…without disclosing the Board Members' personal views of either petition. Subsequently, the NMB handled both applications simultaneously and ordered extensive evidentiary hearings, complete with transcripts and briefs. After almost two years of proceedings and thorough review by the Board Members, the NMB denied both applications.

2. 1992. The Board invites parties to suggest improvements to the Representation Manual.

3. 1993. The Board seeks comments on the issue of conducting elections at carriers that are merging under pending single transportation system proceedings.

4. 1994. United Steelworkers file a petition requesting that the Board provide Excelsior lists of home addresses in representation elections. The NMB, without indicating its position, publishes the petition and asks for public comments.

5. 1994-1996. Responding to the directive of the Commission on the Future of Worker-Management Relations (the "Dunlop Commission"), the NMB convenes a task force of air and rail labor-management practitioners to review possible changes to the Railway Labor Act and methods for improving the NMB's services. After over a year of proceedings, the Airline Industry Labor-Management Committee ("Dunlop I") issues its "consensus" recommendations in its April 1996 report.

6. 2003-04. On August 7, 2003, the NMB issued an Advanced Notice of Proposed Rulemaking seeking comments on its role in the administration of the National Railroad Adjustment Board grievance mechanisms. The ANPRM listed six questions which the parties were asked to address. After over a year of consideration, the Board published an NPRM on December 21, 2004 and schedules a public meeting to discuss the fee proposal. Ultimately, the Board never implemented the proposed fees.

Clearly, the frantic manner in which the NMB has expedited the Minority Union proposal is incompatible with its measured pace of handling prior, even identical, representation proposals. At this stage, the confidence of the parties in the Board's unbiased application of its established practices has been needlessly undermined. The agency's carefully cultivated, 75 year reputation for even-handed decision making has been seriously eroded.

Fortunately, the situation is not hopeless and can be remedied. First, the Board Members should withdraw the NPRM, and remove themselves from the politically charged and deeply flawed decision making process that has been generated. Second, the NMB should turn both the TTD and the Chamber of Commerce petitions over to a "Blue Ribbon" joint committee of experienced labor and management officials, ala the "Dunlop I" Committee of 1994-96. This committee – which should encompass a full spectrum of rail and air management, union and employee participants - could thoroughly review the entire representation process and make consensus recommendations for improvements.

AIR Conference would respectfully request that the NMB withdraw its proposed rule, and start the healing process by gathering both union and management representatives in a joint forum.