STATEMENT OF THE ASSOCIATION OF FLIGHT ATTENDANTS-CWA

BEFORE THE NATIONAL MEDIATION BOARD

ON PROPOSED RULES FOR REPRESENTATION DISPUTES

DOCKET NO. C-7034

FOR THE NATIONAL MEDIATION BOARD HEARING

June 19, 2012

Good morning, Chairman Pachula, Board Member Hoglander, I am Terry French, a Flight Attendant at Pinnacle Airlines. I am also the Association of Flight Attendants' Master Executive Council President for the former Mesaba Airlines Flight Attendants, who are currently involved in a representation election as a result of the merger of Pinnacle, Mesaba and Colgan Airlines.

I am appearing on behalf of the Association of Flight Attendants-CWA, which thanks the Board for providing this opportunity for AFA to give its views on the recently enacted amendments to the Railway Labor Act. Given its vast experience with representation elections and mergers under the Railway Labor Act, AFA believes it is uniquely positioned to provide its comments on the policies the Board should establish to implement these amendments.

Specifically, AFA would like to address the effect of newly enacted Section 2, Twelfth of the RLA, on representation disputes that arise from the merger of two or more carriers. That new provision, passed over the vehement objection of AFA and almost all other transportation Unions, now requires labor organizations to produce authorizations from at least 50% of the craft of class before the Board will authorize an election, or determine the representation desires of

those employees. Unfortunately, this provision makes it more difficult for unrepresented employees to obtain desired Union representation.

But it is also clear to AFA that Congress did not intend to apply this new showing of interest standard in mergers involving previously certified Unions. Significantly, the language of Section 2, Twelfth does not reference mergers, and the only legislative history on the issue supports the same conclusion. As Senate Majority Leader Harry Reid stated in a colloquy on the floor of the Senate on February 6, 2012: "It is our intent that the National Mediation Board's *existing* merger procedures, … shall determine the percent of the craft or class to establish a showing of interest. Otherwise, employees could lose their representation simply by merging with a slightly larger unit without even having the opportunity to vote, which is unacceptable."

In addition, neither the makers of Section 2, Twelfth, nor its supporters contradicted Senator Reid's explicit conclusion, nor did they propose an alternative one. Senator Reid's unchallenged statement reflects Congressional intent that the 50% showing of interest shall NOT apply to representation disputes arising from mergers. AFA strongly urges the Board to adopt this interpretation of 2, Twelfth.

Furthermore, Senator Reid's clear expression of Congressional intent is consistent with the Board's long-standing policy of treating representation disputes arising from mergers differently than disputes initiated by unrepresented employees in a non-merger setting. In fact, it is well-established that, 1) the Board has the legal authority to determine representation restructuring disputes arising from mergers; 2) that the Board does not apply to mergers the same showing of interest, or bar rules applied in representation disputes in non-mergers; and, 3) that representation issues arising from mergers involve the determination of whether existing

representation structures are affected by the merger – in other words, the employees have already expressed their desire for Union representation – the only unresolved issue is the identity of the representative at the post-merger carrier.

But the best illustration of the potentially devastating impact Section 2, Twelfth could have on existing representation rights is the situation now being experienced by the Pinnacle, Mesaba and Colgan Flight Attendants.

To review, Mesaba Flight Attendants have been represented by AFA since 1999. Since that time AFA has negotiated several collective bargaining agreements and has successfully navigated the Mesaba Flight Attendants through the treacherous waters of bankruptcy and 1113.

In July, 2010, Mesaba was purchased by Pinnacle Airlines, which also owns Colgan Airlines. Colgan and Pinnacle Flight Attendants are represented by another Union that far outnumbers the Mesaba Flight Attendants. After maintaining separate airlines for about a year, Pinnacle announced it was restructuring its operations, and ultimately decided, after many false starts, to merge all three airlines.

In response to this corporate re-structuring, AFA filed an application with the NMB in June, 2011, asking it to find that a single transportation system had been created through the merger of the three airlines. While the representation dispute was pending, Mesaba Flight Attendants were subjected to drastic, Company-imposed, unilateral changes in their working conditions. While AFA's certification remained in place, the Company refused to recognize it, and adamantly refused to negotiate with AFA over any contractual changes.

Once the Board found a single carrier to exist, however, AFA quickly marshaled its supporters and obtained sufficient authorizations to get on the election ballot. Though AFA represents only 30% of the entire Flight Attendant group, it managed to obtain valid authorizations from over 50% of the craft or class.

But that outcome was not guaranteed, and that significant showing or interest is a reflection of the deep anger and uncertainty experienced by the Flight Attendants affected by this merger. To be clear, the Pinnacle, Mesaba and Colgan Flight Attendants are frustrated, and they wanted to ensure that AFA remains as a choice on the election ballot.

If Section 2, Twelfth had applied to this merger, it would have jeopardized AFA's long-standing representation rights, potentially leaving AFA banished from the election ballot and its certification extinguished - only because it could not persuade almost a majority of the craft or class to sign valid authorizations. Under the current NMB merger rules, a 35% showing of interest adequately demonstrates significant support for an incumbent Union, and that Union should be on the ballot. No reading of the RLA can possibly support a policy that results in loss of certification without an election – particularly where a Union enjoys the support of almost half the craft or class.

In conclusion, AFA's experience in the Pinnacle merger confirms its view that the application of Section 2, Twelfth to representation disputes arising in mergers is contrary to Congressional intent, and inconsistent with employee free choice under the RLA. As the government agency charged with the duty of ensuring that employees can freely choose Union representation, the NMB must do everything possible to implement policies that preserve existing Union certifications, not extinguish them.

I want to again thank the Board for giving AFA this opportunity to provide its comments on a Board policy that will impact the representation rights of tens of thousands employees under the Railway Labor Act.