BEFORE THE
NATIONAL MEDIATION BOARD

Docket No. C-6964

STATEMENT OF DELTA AIR LINES, INC.

AT OPEN MEETING ON

NOTICE OF PROPOSED RULEMAKING

ISSUED BY THE

NATIONAL MEDIATION BOARD

AT 74 FED. REG. 56750 (NOVEMBER 3, 2009)

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I. DELTA'S EMPLOYEES ARE UNIQUELY IMPACTED BY THE PROPOSED RULE CHANGE

Delta Air Lines and Delta employees are in a unique position with respect to this rulemaking proceeding. Delta employees to date are the only employees who have been directly affected by the Board's sudden decision — seemingly out of nowhere — to change the voting rules. This has resulted in a significant delay in affording employees their right to exercise their choice regarding union representation. It also has prevented Delta from aligning the pay, benefits and work rules of large numbers of pre-merger Delta and Northwest employees. The result is that some groups of Delta employees are fully able to participate in the benefits of the Delta-Northwest merger while others are prevented from doing so.

It has now been more than a year since the Delta-Northwest merger took place. In view of the timing of the Board's rule change proposal and the coordinated withdrawal of the AFA's and IAM's applications to resolve representation issues for the post-merger workforces, as a practical matter an election now could not be completed for many more months at the earliest. Efforts to align pay, benefits, work rules and seniority so that the affected employees can access the full benefits of the merger now could not even begin for many more months, all as a result of the delays.

As Delta advised the Board and the unions more than a year ago, we expect to receive a single operating certificate from the FAA by the end of 2009. Our integration will proceed, and we will do what we can to allow all of our employees to access the benefits of the merger, but they are being harmed by the failure to resolve representation.

AFA and IAM have campaigned actively for more than a year, but apparently became convinced that they could not win the support of a majority of Delta under the election rules which have governed everyone else for the last 75 years, and under which the AFA recently won two elections, including an election at Compass, a Delta subsidiary.[1] As a result, the AFA and the IAM withdrew the representation applications which they had filed during the summer, and became the prime movers in support of this effort to change the Board's longstanding election rules.[2] AFA has not been bashful about its intentions. Indeed, it publicly proclaimed that the change of administration was the reason it expected to succeed in changing the rules so soon after the Board unanimously rejected its prior request.[3]

Delta and Delta employees have been singled out for discriminatory treatment. Representation cases at other carriers filed in the Summer of 2009 have proceeded to resolution under the existing rules; only those at Delta have been delayed, and then withdrawn, to await the new rules. Indeed, some of the representation issues resulting from Delta's acquisition of Northwest Airlines were resolved early in 2009 by elections under the existing Board rules, while other Delta employees are now apparently to be subjected to different rules for no reason

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[1] *USA 3000 Airlines*, 37 NMB 1 (2009); and *Compass Airlines*, 37 NMB ___ (11/18/2009). In both of these cases, AFA's application was filed subsequent to AFA's application to represent Delta's flight attendants.

[2] *Northwest Airlines, Inc./ Delta Air Lines, Inc.*, 37 NMB 19 (10/30/2009) (IAM application re Fleet Service employees; dismissal-withdrawn during investigation; filed 8/13/09); *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 21 (11/3/2009) (AFA application; dismissal-withdrawn during investigation; filed 7/27/2009).

[3] In an August 2009 radio interview, AFA's President criticized the current representation ballot form and emphasized how important it was for AFA to have a new Board member in place before the next Delta flight attendant election.

other than the wishes of the AFA and the IAM and a change in the membership of the NMB.[4] In this context, there can be no doubt that Delta was the subject of Chairman Dougherty's observation that there is a "growing perception that the majority is attempting to push through a controversial election rule change to influence the outcome of several very large and important representation cases currently pending at the Board." Letter from Chairman Dougherty to Senators, at p.2 (Nov. 2, 2009).

The unions seem quite certain of the outcome of this proceeding. AFA's letter withdrawing its application at Delta made clear that they plan to re-file after the new rules become effective. Yet, the Railway Labor Act is about the protection of *employee* rights, not the interests of unions. The Board has abandoned any semblance of neutrality on representation issues — surrendering the integrity which both the Supreme Court and the NMB have long recognized as essential to the Board's effective discharge of its responsibilities under the RLA. Such conduct by the Board has also trampled on the interests of Delta and *all* Delta employees in the prompt and fair resolution of representation issues resulting from its acquisition of Northwest Airlines. The treatment of the Chairman by the other member of the Board is unprecedented and inappropriate. The gamesmanship surrounding the withdrawal of representation applications by the AFA and IAM is transparent.

Delta has longstanding collective bargaining relationships with our pilots, represented by ALPA and with our Dispatchers, represented by the Professional Airline Flight Controllers Association ("PAFCA"). ALPA and PAFCA have each negotiated combined collective

[4] *Delta Air Lines, Inc.*, 36 NMB 88 (2009) (dismissing NAMA application re Meteorologists following election); *Delta Air Lines, Inc.*, 36 NMB 90 (2009) (certifying PAFCA as representative of Dispatchers).

bargaining agreements and integrated seniority lists with Delta — with none of the acrimony seen in other recent airline mergers. ALPA's agreement was negotiated prior to the acquisition; PAFCA's was negotiated shortly after the acquisition. Thus, we can proudly and truthfully declare that Delta handles its union relationships with respect. But ALPA and PAFCA have earned respect by their professional conduct and by clear majority support among their workgroups.

Delta is pro-employee and pro-freedom of choice for our employees on representation matters. Delta has a unique pro-employee culture, developed and nurtured over many years. It was this culture which led Delta's employees to band together in the 1980s to buy a large jet airplane for the Company, and to stand together in the 1990s and in this decade to save the Company from financial peril. It is this culture which has resulted in Delta's never experiencing a strike.

II. THIS NPRM IS DESIGNED TO ADDRESS A PROBLEM WHICH DOES NOT EXIST.

A. The Bizarre Origins Of This NPRM

Correspondence from the Chairman of the Board to certain members of the U.S. Senate, indicates that the Chairman had no role in the formulation of the proposed rule change: there was no formal meeting of the Board to discuss the actual language of the proposed change, no vote to proceed with the proposed change, no discussion of the language used as the rationale for the proposal. Rather, the Chairman was presented with the proposal and a demand that she immediately accede to its prompt publication as an NPRM. Only when she objected vigorously was she allowed time (24 hours) to review the document and prepare a dissent. Even then, however, her dissent was edited by someone within the Board prior to publication. Thus, it is

apparent that the two majority-party members of the Board intentionally excluded the third Board member from participation in any deliberative process — or any process at all — in connection with this NPRM. To state these facts is to make readily apparent the reasons there are serious concerns about the Board's good faith in initiating this proceeding. All indications are that the majority members have made up their minds to proceed with the proposed change no matter what comments may be submitted and no matter what the third Board member may think or say.

B. A Solution In Search Of A Problem

The NPRM proposes to change a practice which the Board has used from the earliest days of the Railway Labor Act and which the Board has repeatedly and unanimously affirmed over the past seventy five years — including as recently as last year.[5] It is reasonable, therefore, to ask "why" this change has been proposed; *i.e.*, what exactly is the problem this proposed change is intended to solve. The Board has held that it would materially change its rules only when a proposed change is shown to be "mandated by the [Railway Labor] Act or essential to the Board's administration of representation matters." *In re Chamber of Commerce of the United States*, 14 NMB 347, 360 (1987). Surprisingly, however, the Notice is remarkably vague as to the existence of any problem in the administration of the Act. Indeed, the only apparent statement of purpose or intent is the statement in the "Summary" that the proposed change is "part of [the Board's] ongoing efforts to further the statutory goals of the Railway Labor Act" and that the NMB "believes that this change to its election procedures will provide a more reliable measure/indicator of employee sentiment in representation disputes and provide

[5] *Delta Air Lines, Inc.*, 35 NMB 129 (2008).

employees with clear choices in representations matters." There is no suggestion that there have been problems or inadequacies in the administration of elections under the Act, or that some sort of changed circumstances have compromised the integrity of the ballot process. Indeed, the Board has successfully modernized the ballot process by adopting telephone and Internet voting procedures in recent years by seeking a consensus before the Board acted. *See Internet Voting Comment Period*, 34 NMB 200 (2007).

Implicit in the Summary of the NPRM is the proposition that the election procedures used and endorsed by every prior Board in the history of the Act have been unreliable and failed to provide clear choices. Nowhere, however, does the NPRM purport to explain or support such an astounding proposition. Indeed, Board reports reflect that the success rate of unions in NMB-sponsored elections under the RLA has been *substantially higher* than the union success rate under the form of ballot used by the National Labor Relations Board.[6] It cannot be the case, then, that the current form of ballot discourages unionization. The union success rate confirms that employees are not unaware of their choices. It is readily apparent, then, that the proposed change does not address any real "problem" at all, and most certainly does not satisfy the standard which the Board has previously decreed as applicable to such changes as are currently proposed.

This open meeting is not the proper time or place for a detailed explanation of our substantial legal objections to the proposed change, and to the process by which that change has been brought forth. We will address those issues in our written comments in response to the

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[6] Review of NMB decisions reveals that the union success rate in NMB conducted elections under the RLA has been approximately 67.5% from 1935 to date. In only four years out of 74 has the union success rate in NMB elections fallen below 50%.

NPRM. But to better put our concerns into perspective, I would like to close by quoting from Member Hoglander's statement last year when the Board proposed a much more minor rule change:

> In my view, when the Majority Members of the NMB seek to implement revisions in midstream of the merger process, doubt and mistrust regarding the process is a regrettable consequence. Historically the NMB merger policy has remained unchanged since 1987, the only exception being a minor administrative clarification in 2002, thus prompting the question — why now.

In view of the concerns expressed by Member Hoglander and others, that proposal was withdrawn. The Majority Members of the Board should act honorably and do the same with the current proposal.