HEARING BEFORE THE NATIONAL MEDIATION BOARD

DOCKET NO. C-7198

March 28, 2019

STATEMENT OF CAPTAIN JOE DEPETE, PRESIDENT

ON BEHALF OF

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

On behalf of Air Line Pilots Association, International (ALPA), I thank you for the opportunity to testify today before the National Mediation Board (NMB or Board) on the Decertification of Representatives proposed rule. ALPA is the largest pilots' union in the world, as well as the largest non-governmental safety organization in the world. Our Association represents over 61,000 pilots at 33 airlines in the U.S. and Canada. I would like to associate myself with the comments and testimony of Larry Willis and the AFL-CIO Transportation Trades Department and use my opportunity today to address the Board to build upon those remarks by highlighting a few very serious concerns ALPA has with the proposed rulemaking.

At the outset, let me be clear: ALPA strongly opposes the proposed rulemaking. The adoption of a direct decertification procedure, coupled with a two-year election bar, only serves to make it harder for employees to maintain collective bargaining rights and freely choose representation. Specifically, by making it easier for employees to decertify their representatives and remain without representation or collective bargaining rights

for a substantial period of time, this proposal undermines, rather than enhances, both the stability of commerce and the rights of employees under the Railway Labor Act (RLA). ALPA strongly urges the Board to reject the proposed rule changes; they are wholly unnecessary, undermine the stability of labor relations, and run contrary to the RLA's mandate to promote industry stability through collective bargaining.

Until now, the NMB, unlike the National Labor Relations Board, has used an "indirect" decertification process called the "strawman" procedure. Under this procedure, employees simply designate a straw man to run against the union representative with the understanding that, if elected, the straw man would disavow representation and thus decertify the union. This procedure is very well known, understood, and used. It has been followed numerous times, for decades, to decertify unions under the RLA. In fact, this well-known method was used just last year by pilots at Kalitta Air to decertify their representative and join ALPA by an unsolicited write-in vote.

In addition to the straw man decertification procedure, the Board has long permitted a rival employee representative to petition to decertify an existing representative and serve as its replacement, as occurred when my pilot group – at FedEx Express – decided to decertify ALPA in the 90's and become represented by the independent FedEx Pilots' Association, prior to our eventual return to ALPA.

The NPRM nonetheless claims that a direct decertification vote procedure needs to be adopted, and further, that if such a decertification vote is successful, the employees will be subject to a two-year election bar under which they are denied the right to seek alternative representation or collective bargaining rights. The Board majority asserts that the adoption of these new procedures is required to protect employees' freedom to choose representation and to create a level playing field for those who choose not to be represented by a union.

These arguments are all false. The adoption of these procedures will only serve to destabilize collective bargaining and existing collective bargaining relationships. This is exactly *contrary* to the Board's mandate under the RLA. The RLA was created as an agreed-upon framework for labor relations between carriers and unions – and ratified by Congress – for the express purpose of maintaining *stability* in labor relations through the adoption and maintenance of productive collective bargaining relationships in order to protect the flow of interstate commerce. ALPA believes that this statutory purpose -- of *enhancing* stability of collective bargaining -- is the first standard by which any rule change should be judged, and these unnecessary proposed changes to the Board's rules clearly fail that basic threshold test.

In fact, the Board's proposal to facilitate decertification will have the *opposite* effect and undermine the stability of collective bargaining and bargaining relationships in the air and rail industries that are so critical to our nation's economy. ALPA has

some experience which makes this more than a hypothetical concern. In the 1980s, the Frank Lorenzo management team led a lengthy campaign to decertify unions at Continental and were successful in most crafts or classes, including the pilots. Decertification did not lead to stability or improved labor relations. Indeed, the opposite was true. We know the fate of both Continental and its sister Lorenzo-controlled carrier, Eastern Airlines: both continued to lose money, and Eastern eventually went out of business, despite Lorenzo having successfully facilitated destruction of collective bargaining on each property. This lesson was not lost on employees, and during the 1990s, virtually all remaining crafts or classes reorganized at the surviving Continental operation.

Indeed, where there has been decertification in the airline industry, destabilization has inevitably followed. Facilitating decertification is facilitating destabilization, and it puts good, well-paying middle-class jobs at risk.

The NMB proposal would go further than merely facilitating decertification. It would also freeze decertifying employees out of *any* union representation and the protections of a collective bargaining agreement for two full years, even if the employees merely want a change from their *current* representative. This is a marked change from current practice, and this proposed organizational bar contradicts the contention that this initiative is merely designed to restore balance to the union election process under the RLA. It is a serious, anti-representational overreach, that further

attempts to tilt the balance of collective bargaining away from workers at a time in this country's history that can least afford it.

It is true that there is a current two-year bar for newly certified unions, and there are good reasons for applying that bar to that very different situation. The Board has wisely adopted that two-year bar to give a fledgling representative time to consolidate employee support and, crucially, to attempt to make significant progress in negotiating an initial collective bargaining agreement, without undue concern of raiding by other unions, or efforts by management to encourage employees to dislodge it. Allowing at least this amount of time for a new union is particularly important, given that a newly organized representative is subject, the same as an established one, to the elaborate and lengthy RLA bargaining process administered by the NMB.

There can be no legitimate analogy for application of the same two-year bar to circumstances of a decertification and conversion to a non-union operation. A carrier which succeeds in breaking a union does not need to negotiate agreements, nor is it subject to mediation or mediator schedules in imposing rates of pay, rules, and working conditions. This new anti-organizing bar serves none of the interests served by the present two-year bar protecting newly certified unions. Instead, it can serve to substantially restrict a worker's ability to change union representation, and leave employees with an *existing* collective bargaining agreement with neither the protections of representation nor their Collective Bargaining Agreement's protections for two years.

At the same time this proposal blocks employees' representational and contract rights, management is simultaneously gifted two years of unfettered ability to impose whatever terms and conditions of employment they choose. None of this promotes the RLA's key goal of stability through fostering collective bargaining and collective bargaining agreements.

Instead, the proposal would serve to undermine existing bargaining relationships and agreements, thereby sowing instability, confusion and uncertainty among industry stakeholders. In fact, the potential chaos sown by unraveling and undermining otherwise stable bargaining units in order to place employees outside the protections traditionally afforded by the Act, increases the likelihood of strikes and other impediments to the continued flow of passenger travel and cargo movement.

All of this is completely at odds with the RLA's spirt and letter of promoting peaceful and uninterrupted commerce through stable collective bargaining relationships. Lacking any justification consistent with the statute's purposes, we view the entirety of the proposal, and particularly the proposed two-year bar, as clearly punitive and anti-labor in nature.

ALPA is also here to express its concern that these proposed rule changes, which we do not believe are justified, could lead the way to even more negative rule changes we have heard being discussed that could interfere with future organizing efforts by

ALPA and other unions. We are troubled that the Board may be beginning to go down a path that is clearly one-sided and heading in the wrong direction. We urge a reexamination of this proposal.

In summary, ALPA speaks against the proposed changes as unnecessary, destabilizing, and inappropriate. We ask the Board to maintain the existing rules, which are well understood, time-tested and consistent with the RLA's statutory framework. Thank You.