Testimony of Mathew Palmer

Flight Attendant, Delta Air Lines

September 14, 2011

House Oversight and Government Reform Committee

"How a Broken Process Leads to Flawed Regulations"

My name is Mathew Palmer and I am a proud Delta Flight Attendant. I began my career with Delta in 2008 and have been based both in New York City and Atlanta. I have had the privilege of visiting five continents and seeing more than 20 countries. I've carried celebrities, common-folk and even shared jet-service to D.C. with President Jimmy Carter en route to President Barack Obama's Inauguration.

A number of other Delta flight attendants who support my views are here with me. Combined we have hundreds of years of experience as Delta flight attendants.

As you may be aware, my colleagues at Delta Air Lines have three times in the past decade been involved in representation elections, each time the Association of Flight Attendants seeking to bargain on their behalf. Each time, AFA has failed to secure the votes of confidence needed to step into that role.

In each of those elections, the Association of Flight Attendants petitioned the National Mediation Board to call for an election among Delta Flight Attendants. The first two elections, of course, were prior to the merger with our friends and colleagues at Northwest Airlines. In addition, these elections – held just a few years apart – were conducted according to the longstanding former rules of the National Mediation Board and the Railway Labor Act, which had been in existence for more than 75 years.

I was not qualified by the National Mediation Board to vote in the 2008 election because my training had not ended in time to have me online as the election was being held. For the record, I would not have voted in favor of the Association of Flight Attendants or any other union for that matter. First, I would have no need since the rules of voting were simple: since I did not want a union, I'd simply not cast a vote. Second, and most importantly, I believe the AFA would harm rather than help Delta flight attendants , judging by the AFA's record at airlines across the country, with flight attendants at those airlines always being very unhappy, and by the fact that one of their top priorities is to negotiate mandatory union dues.

It is my opinion – and logical if I do say so myself – that the burden of union representation should be on those that seek such. After all, a union is only as strong as those who comprise the association. It's only smart that a majority be in support of one another, especially when it comes to bargaining for pay, work rules, benefits and the like. It is also my opinion – and again logical – that only a majority should decide union representation for a work group. Only a fool would attempt negotiations with a minority.

But, that is exactly what has happened with the National Mediation Board. Following the second loss at Delta, the Association of Flight Attendants was able to cash in a found lottery ticket following the merger with Northwest Airlines. Because the Union represented their workgroup, which equaled just about 35-percent of the newly joined group, another election could be held, but only if and when the union asked. That's right - under the current rules, only the union could decide whether

and when to call for an election. Union-free Delta flight attendants have no voice in that decision.

The AFA held us hostage for more than eight months, to assure that new, union-friendly appointees were a majority of the NMB before finally filing for an election that would allow Delta flight attendants to have a voice in the representation process. But as noted below, the NMB and the AFA have now continued to hold us hostage for almost three years since our merger with Northwest. And the end of the process still is not in sight.

I have prior – albeit brief – experience at airlines represented by the Association of Flight Attendants. Besides that, I have hours of horror stories about this union from friends at practically every airline with AFA representation. Those reasons combined led me to form my opinion that the open and direct relationship Delta Air Lines has with its employees was best for my career. Thousands of my co-workers – the majority – feel the same way.

That leads to my main concern with the rule change arranged by Union insiders and pushed through by the National Mediation Board. Despite both Republican and Democratic Administrations conceding there was no need to change the voting procedures under the RLA for 75 years, this current Board drastically changed the election landscape over strong objections from carriers and, more important, from thousands of employees who do not want forced union representation. They changed the election procedures to enable unions to be certified with minority support, but there was no change to the archaic decertification process, which is convoluted at best and requires a "straw man" posing as a union to win an election. In fact, it has never been successfully used in a large group in the airline and railroad industries.

Under the NMB's rules, the only way to even attempt decertification is for a *majority* of employees to submit individual cards each naming an identical "straw man" to enter into an election to *replace* the union. If the straw man is somehow elected to become the new union, the only way for the workgroup to become union-free is for the straw man to voluntarily step down, although there is no legal obligation to do so. Under this process it has proven impossible for a group of any more than a few hundred to eliminate union representation.

One rationale advanced by the NMB and unions for not having a straightforward decertification process was stability: The NMB set a higher bar to certify a union than exists under the National Labor Relations Act and determined that there should be a higher bar to eliminate union representation as well.

Now, with two members of the NMB having chosen to abandon the traditional standard for certifying a union, the rationale advanced by the NMB and the unions for making decertification virtually impossible has lost whatever logic it ever had. It shows a bias in favor of union representation from an agency that is supposed to be neutral and honor the preferences of employees.

Thus should a union win an election with minority support and then underperform, there is no viable process to return to union-free status. Employees would certainly suffer with an inept union... the company would most likely bleed financially and the traveling public is without a doubt going to be a victim. None of this seems to matter yet it should be the priority among a truly neutral Board when deciding on election procedures.

Shortly after moving to New York City – a dream, equal to that of working for Delta Air Lines – I noticed a message board on Facebook, titled "No Way AFA." An acquaintance had posted a message to which I responded. Some time later – a few days or even a week perhaps – Ashton Therell, an Atlanta-based Flight Attendant with more than 20 years of service contacted me about being a part of the grassroots group.

Along with Ashton and others, we sought not only to seek information about the union but election procedures and the pros and cons of unionization. Behind closed doors, we had many debates and plenty that I must admit still end with people agreeing to disagree. One that we do not waiver on, however, is the farce that has become the National Mediation Board.

When Delta and Northwest were merging into the World's Largest Airline, all signs indicate that the World's Largest Flight Attendant Union – the AFA – was in backdoor dealings with Board Members Linda Puchala and Harry Hoglander. Then AFA-President Patricia Friend served as Secretary at the Transportation Trades Department of the AFL-CIO. Although her Union – the AFA – had filed for an election at our newly merged airline, the Transportation Trades Department of the AFL-CIO secretly petitioned the National Mediation Board for a change in the voting rule to organize a union. A copy of the private letter from the Transportation Trades Department to the NMB members is attached. (Attachment 1)

Not only was this contrary to a similar request that the NMB (including Member Hoglander) unanimously rejected just a year earlier, it was not even disclosed to the Delta flight attendants who it was intended to affect – including the pre-merger Northwest flight attendants who were represented by the AFA. Call me foolish, but I would believe that a President should not only know what is going on within her Union but should also effectively communicate this to her members. Patricia Friend did not.

In addition to being private, the AFL-CIO letter isn't accurate. It is important to note it is not accurate to claim that the NMB's rule change made elections under the Railway Labor Act consistent with how elections are conducted for political offices, for several reasons. First, political office holders are elected for fixed terms, typically two, four or six years, following which they must stand for re-election. Under the NMB's rules, unions are elected for indefinite terms, so that they may never need to stand for re-election and new members of the workgroup may never have a say in their representation. Second, as noted, under the Railway Labor Act the NMB has made it virtually impossible for employees to trigger a vote to return to

union-free status. In contrast, under the National Labor Relations Act employees who become dissatisfied can use an equal process to trigger a decertification election as they used to elect the union. And of course it is as easy to vote political office holders out of office as it is to elect them. Third, elections under NMB rules typically last from four to six weeks, and employees are able to vote from home or any other location by a toll-free telephone number or the internet. These differences, in addition to the need for labor stability, have been cited by the NMB in the past as reasons why a union should demonstrate majority support in order to be elected.

Over the past 75 years, the NMB also has said it is important to demonstrate majority support for a union under the Railway Labor Act because of the need to assure support for negotiated solutions and to avoid shutdowns in the vital air and rail transportation industries.

Even though the AFA had finally filed for an election eight months after our merger, the AFA mysteriously rescinded their application for a Delta-Northwest Representation Election four months later, at exactly the same time the National Mediation Board announced they intended to make the rule change. This also coincided with the International Association of Machinists rescinding their application for a Delta-Northwest Election among Airport Customer Service representatives. This was a mockery of not only our government which supposedly was impartial in union elections but also to each and every employee affected by these elections, whether pro or anti-union.

So, to be clear, both AFA and the IAM had filed with the NMB for elections in July and August 2010, just after the two appointments to the NMB by the new administration were confirmed by the Senate. AFA had made it clear they would not file for elections until both Members Hoglander and Puchala were confirmed. Then suddenly, on September 2nd, 2010, the AFL-CIO requests a voting rule change making it easier to unionize and within days, if not hours of the formal rule change proposal being made public on November 3rd, 2010, both unions withdraw their requests to the NMB for elections. AFA even went so far as to tell their members why they were withdrawing their request for an election – because they wanted to vote under the changed rules. A copy of the AFA's explanation of the withdrawal of their election application is attached. (Attachment 2)

As you may be aware, two of the members of the National Mediation Board are former union officials themselves: Linda Puchala once served with the Association of Flight Attendants and Harry Hoglander with the Air Line Pilots Association. It was their decision, as a two-person majority of the three-member board, to completely alter the landscape of union elections at railroads and airlines across the country; as then-Chairman Elizabeth Dougherty wrote in objection to their decision, she was excluded from their shenanigans. (A copy of Ms. Dougherty's letter setting out what occurred is attached, Attachment 3.) But, Congressmen and women, she

wasn't the only one. We, as employees and those affected the most, were also excluded.

In what must have been one of the biggest wastes of time and taxpayer money, the Board – and by Board I mean now-Chairman Puchala and Member Hoglander – pushed through what they called an "open meeting" – not a hearing – on the proposed rule change. This was another charade as people at the AFA and the IAM were whispering that the rule change was a done deal: The two both intended to support the unions' political agenda and change forever the balanced process that had worked well for 75 years. By the way, under the old rules unions were already winning about two-thirds of all elections.

Nonetheless, a limited amount of railroad and airline employees packed a small room to hear pre-screened statements. Perhaps Mr. Hoglander was bored because during this meeting he appeared to be sleeping.

At Delta Air Lines, we have not slept, Congressmen and women. In fact, there have been many sleepless nights not knowing how our careers will be shaped. Personally, I once had bright, wide eyes for an airline and career I'd always wanted but along with others, I've been quickly made to feel like a pawn in a political fight that seems to never end.

Because even with the rules tilted in favor of the unions – and even though the NMB never publicized the new rules to employees until immediately before the voting started – the unions were stunned to learn that 94% of Delta flight attendants turned out to vote and that the majority voted to reject AFA representation once again. The AFA had the gall to say that the high turnout rate indicated Delta interfered in the election. And now the same two NMB Members who orchestrated the rule change are considering requests from the AFA and the IAM to disregard how the employees voted and to re-do the elections under rules even more favorable to the unions. It's as if we've simply been taking off then circling... basically being held hostage by union posturing while a Board with no oversight returns favors to the unions.

Speaking of no oversight, under current law the courts have virtually no authority to review representation decisions by the NMB, even if the NMB is biased or inconsistent. The NMB has many ways to put its thumb on the scale in order to help achieve outcomes that two of its three appointed members favor. For example, it can overturn elections in which employees rejected union representation and re-run the elections under "remedies" designed to favor a decision to have union representation.

This means that the NMB is not subject to a system of checks and balances. It is a situation unique among regulatory agencies, particularly in an area such as labor relations where politically oriented decisions can cause harm to employees and can cost jobs. In addition, the NMB typically does not allow open hearings and the evidence on which the NMB bases its decisions usually is not made public.

It should be agreed by all that no federal agency ought to be beyond the system of checks and balances that applies to all other agencies.

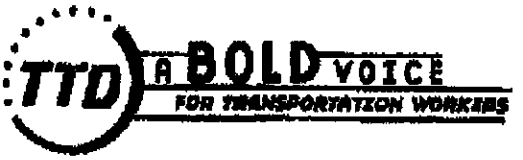
I want the NMB to respect the votes of the majority of Delta flight attendants and Delta employees in other workgroups who prefer not to have AFA or IAM representation. From everything I have observed, two of the three current NMB members believe that Delta employees should have AFA or IAM representation and they are doing all they can to achieve that result. They believe that employees are not smart enough to make up their own mind.

I believe the majority of my co-workers agree with me that a government agency such as the NMB should not impose its judgment on employees. Rather, they should be a neutral referee of elections and restore the balance that has existed for 75 years – until they came into power.

It is simply tragic that while we have been held hostage by the NMB and the unions for three years since our merger in 2008, our pre-merger employee groups are forced to be kept separate so we are not able to get the full benefits of our merger.

I cannot speak for Delta Air Lines and will not pretend to. In fact, despite my testimony echoing that of many of my colleagues at Delta, what I have said is only my reality. Frankly, I don't care whether one is pro union or not. What I am concerned about, is the fact that my pay... my work rules... my stock... my livelihood... my friends... my family... my co-workers and our system of government are all being affected by the partisanship of this Board working to do the bidding of the Unions for whose elections they're supposed to be a neutral referee. They're biased... and they should not be. It is beyond time that they are reigned in and the Unions they've served instead of regulated be warned: no more.

This is a government of the people, for the people, not the unions.



September 2, 2009

VIA FAX AND COURIER

The Honorable Elizabeth Dougherty
Chairman
National Mediation Board
1301 K Street, NW
Suite 250
Washington, DC 20005

The Honorable Harry Hoglander
Member
National Mediation Board
1301 K Street, NW
Suite 250
Washington, DC 20005

The Honorable Linda Puchala
Member
National Mediation Board
1301 K Street, NW
Suite 250
Washington, DC 20005

Re: Revisions to Representation Manual

Dear Chairman Dougherty and Members Hoglander and Puchala:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), and its 32 affiliated unions[1], we are writing to request that the National Mediation Board ("Board" or NMB) amend its Representation Manual to allow employees to more effectively exercise their statutory right to designate bargaining representatives under the Railway Labor Act ("the Act" or RLA). Specifically, we are asking the Board to change its election procedures to allow employees to choose union representation when a majority of those voting express support for a union as opposed to treating all workers who did not vote as "no" votes for purposes of representation. For reasons stated below, this requested change is consistent with the statute and is urgently needed to ensure that the representation duties of the Board are carried out in a fair and just manner.

[1] Attached is a complete list of TTD affiliated unions.

Transportation Trades Department, AFL-CIO
888 16th Street, NW • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
Edward Wytkind, President • Patricia Friend, Secretary-Treasurer

The unions that belong to the TTD represent hundreds of thousands of employees working in all segments of transportation, including the airline and railroad industries. In theory, these workers all enjoy the right to bargain collectively through freely chosen representatives, whether they are covered by the RLA, the National Labor Relations Act (NLRA), or other labor relations laws. In practice, however, those workers subject to the RLA are uniquely and substantially disadvantaged whenever they attempt to choose union representation in an NMB-conducted election.

Specifically, when secret ballot elections are conducted under the NLRA, the affected employees win collective bargaining representation based on a majority of valid votes cast. This is the fundamental principle followed in fair and democratic elections for political office throughout this country. By contrast, workers seeking union representation in NMB elections are denied the representative they want if a majority of the unit does not vote in the election. Even when 100 percent of the voters choose a union, workers are denied their bargaining representative unless an *absolute majority* of eligible voters cast votes for representation. No where in American democracy – other than during a union election in the airline and railroad industry – does an eligible voter wishing to sit out an election have his or her silence tabulated as a *NO* vote by virtue of non-participation. Permitting such a veto-by-silence or inaction obviously sabotages the expressed will of the voting majority and creates a perverse incentive for vote-suppression efforts by employers.

This peculiar NMB practice is not required by the RLA (indeed, the relevant provisions of the RLA and the NLRA use substantially the same language). And the NMB's policy is clearly inconsistent with the longstanding, widely accepted understanding of a democratic election process in the public arena. Accordingly, we respectfully ask the NMB to revise its Representation Manual to provide for certification of the representative designated by a majority of valid votes cast in an NMB election, in conformity with the accepted standard for fair and democratic elections.

Although the procedural guidance and policies set forth in the NMB Representation Manual are not subject to the Administrative Procedure Act, we recognize that the Board has followed a practice of inviting and considering written comments from the public regarding proposed changes. We believe such an approach is appropriate in this matter and would therefore urge the Board to expeditiously release a proposal consistent with our recommendations and seek the views of interested parties and stakeholders.

We look forward to the opportunity to provide further input in support of these proposed changes. Thank you for your consideration of our views.

Sincerely,

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation - Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)
United Transportation Union (UTU)

April 2009

For Immediate Release:November 3, 2009
Contact: Corey Caldwell 202-434-0586

AFA-CWA Applauds National Mediation Board For Proposed Voting Procedure Change

Single Certification Application Withdrawn for Delta/Northwest Flight Attendant Election

Washington, DC - The Association of Flight Attendants-CWA (AFA-CWA) today withdrew the single transportation certification application it filed with the National Mediation Board (NMB) in July on behalf of flight attendants at Northwest Airlines and Delta Air Lines. The withdrawal is in response to the NMB's recent proposed voting procedures announcement that would permit a majority of workers who actually vote in union elections to decide the election and stop assigning "no" votes to workers who do not participate.

"Now that the NMB has announced that, for the first time in recent years, airline employees seeking union representation will have a chance for truly fair elections, flight attendants at Northwest and Delta are excited for that opportunity," said Patricia Friend, AFA-CWA International President. "As the largest private sector union election this year, we want this election at Delta Air Lines to occur under the new democratic procedures and therefore are withdrawing our single transportation application."

If AFA-CWA did not withdraw the petition, it is likely that the Delta flight attendants would be voting during the NMB's 60-day comment period with the ballot count taking place just weeks, if not days, before the final balloting rule is implemented. Since the NMB had yet to respond to AFA-CWA's initial application, an election for the flight attendants had not been scheduled.

"Employees seeking union representation will now have the opportunity to have their voice heard and their votes counted. We have a responsibility to withdraw our application to not only protect the Northwest flight attendant contract, but also to ensure that Delta flight attendants have the opportunity to vote for AFA-CWA representation in the most democratic of ways," added Friend.

For over 60 years, the Association of Flight Attendants has been serving as the voice for flight attendants in the workplace, in the aviation industry, in the media and on Capitol Hill. More than 50,000 flight attendants at 20 airlines come together to form AFA-CWA, the world's largest flight attendant union. AFA is part of the 700,000-member strong Communications Workers of America (CWA), AFL-CIO. Visit us at www.afanet.org.

Attachment 3

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

OFFICE OF THE CHAIRMAN
(202)692-5000

November 2, 2009

The Honorable Mitch McConnell
United States Senate
Washington, D.C. 20510

The Honorable Michael Enzi
United States Senate
Washington, D.C. 20510

The Honorable Johnny Isakson
United States Senate
Washington, D.C. 20510

The Honorable Orin Hatch
United States Senate
Washington, D.C. 20510

The Honorable Pat Roberts
United States Senate
Washington, D.C. 20510

The Honorable Lamar Alexander
United States Senate
Washington, D.C. 20510

The Honorable Tom Coburn
United States Senate
Washington, D.C. 20510

The Honorable Richard Burr
United States Senate
Washington, D.C. 20510

The Honorable Judd Gregg
United States Senate
Washington, D.C. 20510

Dear Senators:

Thank you for your letter of October 8, 2009 regarding a request from the Transportation Trades Department of the AFL-CIO (TTD) that the National Mediation Board (NMB or Board) alter its voting procedures. I share your concern about the TTD request, and I believe the only proper course of action should have been for the Board to have full comment on the TTD request – together with related issues such as decertification procedures, Excelsior list, and others – before making any proposals. A majority of the Board has chosen instead to propose to change our election rules in the manner requested by the TTD. The proposed rule is available for public inspection today at the Federal Register. I have dissented from this proposal, and the substantive reasons for my disagreement are discussed in my dissent.

In addition to my substantive concerns, I dissented because I believe the process by which the proposed rule was drafted and issued was flawed. The proposal was completed without my input or participation, and I was excluded from any discussions regarding the timing of the proposed rule. As I do not believe the Board should be making this proposal without first hearing comment on all related issues (including decertification), it was not a surprise that I was not included in the initial crafting of the proposed rule. However, I should have, at a minimum, (1) been given drafts along the way for consideration and comment; (2) been included in discussions regarding the timing of the proposal; and (3) been given ample time to review a draft and prepare a dissent if necessary. Instead, on Wednesday, October 28 at 11 am, my colleagues informed me that they had prepared a "final" version of the proposed rule and

intended to send it to the Federal Register that day. They initially told me I had one and a half hours to consider their proposed rule. They also told me that I would not be permitted to publish a dissent in the Federal Register and would have to air any disagreement some other way. Publication of my dissent is not prohibited by any agency policy, and their decision to forbid it in this particular case was arbitrary and ad hoc. After several requests from me, they agreed to give me an additional twenty-four hours – until noon on Thursday, October 29 -- to review and determine my position on the rule. They continued to insist that I would not be permitted to publish my dissent. The next day, an hour and a half before my "deadline," I informed my colleagues that I intended to dissent and again asked for more time to digest the rule and draft my dissent. My request for more time was rejected. I was then told I would be permitted to publish my dissent, but only if I could have it completed by the noon deadline – an hour and a half from the time of the conversation. The dissent I originally submitted included a discussion of these process flaws as one of the reasons for my dissent. I was told by my colleagues that if I did not remove the discussion of the process flaws from my dissent, they would not consent to its publication in the Federal Register. I have attached to this letter the full dissent I originally submitted.

Under normal circumstances, I would have preferred not to discuss Board process so publicly. However, in light of the complete absence of any principled process or consideration of my role as an equal Member of the Board, I feel compelled to bring these issues to your attention. I am also troubled by my colleagues' attempt to prevent me from raising these concerns as a part of my published dissent.

This sort of exclusionary behavior is not the way the Board has conducted itself previously during my tenure. In my past experience, Board Members who wished to dissent from a proposed decision have been given a role in the substantive and procedural discussions related to the decision and ample time to prepare their dissent. I believe this is the better way to conduct agency business.

I also query – why the rush to publish the proposed rule? The election rule in question has been in place for 75 years; why not wait one more day in the interest of ensuring a fair rulemaking process and accommodating the reasonable request of a colleague. Such an obvious rush to put out a proposed rule gives the impression that the Board has prejudged this issue, and it will contribute to the 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.

Thank you for your interest in this matter.

Sincerely

Elizabeth Dougherty

Elizabeth Dougherty