

Statement of the Association of Flight Attendants-CWA

Good morning/afternoon. I am Sara Nelson, International President for the 50,000 Flight Attendants represented by the Association of Flight Attendants-CWA.

AFA is here today to express its vehement opposition to this proposed rule to establish a decertification process on equal footing with the certification of a representative.

As the Board admits in its Notice of Proposed Rulemaking, "the RLA has no statutory provision for decertification of a bargaining representative." 84 FR 613. In fact, while the National Labor Relations Act contains an explicit decertification process, no similar provisions were included with the implementation of the RLA in 1926 or in any subsequent amendments. Clearly, a decertification process was never even contemplated by the framers of the RLA.

And the most recent amendment to the text of the RLA affirms that position. In February, 2012, Congress amended the RLA by creating a statutory limit on the Board's authority to make a representation determination. Under the new Section 2, Twelfth, the Board "shall not direct an election or use any method to determine who shall be the representative" unless it has first received "an application requesting that an organization or individual be certified as the representative" and such "application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class." In enacting this amendment, Congress clarified for the first time that *only* a union or individual requesting to be certified as the employees' representative can submit a valid election petition.

Congress made no allowance for decertification applications. As a consequence, decertification applications are now prohibited by Section 2, Twelfth of the RLA.

In addition, this proposed rulemaking process is a radical departure from the Board's own practice and standards in deciding whether a rule change is warranted. On at least two occasions in the last 40 years the Board has been asked by management groups to establish a decertification process. In rejecting both requests the Board cited to its long-standing policy of limiting rulemaking activities, "only to those matters required by statute or essential for the well-ordered management of agency programs." *In the Matter of the Chamber of Commerce, et al.*, 14 NMB 347, 355 (1987). And those seeking rule changes "bear a heavy burden." *Id.* at 356.

Here, the Board has made no showing that a decertification process is justified by administrative necessity. It only states that the current Board process for decertifying a bargaining representative is too "indirect" – hardly a compelling reason for making such an historic change to the Board's election process. Nor has the Board cited to any objective evidence establishing that employees in the rail or air industries are clamoring for such a change because no such evidence exists. AFA submits that this proposed rule is a solution in search of a problem.

In contrast, the Board in 2010 used the rulemaking process to implement changes to the representation election process after concluding that the archaic and Orwellian practice of assigning "no" votes to non-voting employees allowed non-participants to affect the outcome of an election – a voting system "not practiced in our democratic system." 74 FR 56752. As the Board stated:

The Board's primary duty in representation disputes is to determine the clear, un-coerced choice of the affected employees and the Board believes that this duty can better fulfilled by modifying its election procedures to rely on the choice of the majority of valid ballots cast in the election. This process will ensure that each employee vote, whether for or against representation, will be regarded with equal weight. The Board will no longer substitute its opinion for that of the employee and register the lack of a vote as a "no" vote.

Id.

This Board, on the other hand, has failed to articulate any reason why the proposed rule will in any way improve or enhance its primary duty of determining whether employees desire representation.

As AFA President I literally meet and talk with thousands of workers in the airline industry, both workers represented by unions and those who are not. For those union workers I meet I hear the same refrain: I appreciate having a contract that guarantees me good wages and benefits and I want my union to be even more aggressive in representing its members. From non-union workers I hear a burning desire for union representation and a contract that forces management to keep its promises and provide the middle-class life that is disappearing from America. But I have never once been told by an airline worker, or from any worker in any industry, that he/she wants a more "direct" decertification process. For anyone to believe that to be true is engaging in wishful thinking based on their unspoken desire to see unions disappear.

Yet despite terrorist attacks, bankruptcies and economic downturns, the airline industry continues to provide good jobs and benefits and a middle-class life to millions of workers and their families precisely because the unions were there protecting their members' interests through the worst of times. In an age of soaring

income inequality where millions of young millennial workers are forced to take low-paying jobs with no health insurance, paid vacation or pensions, the unionized airline industry acts a wall against this ongoing economic attack on working Americans. Which is why this proposed rule is so insidious. It is a “Trojan Horse” designed to break down that wall of economic stability and extract more profits on the backs of labor through the pretense of “protecting” employees’ free choice to elect or not elect a representative.

But the current so-called “straw man” decertification process already protects those rights, particularly since the Board changed the representation election ballot to a “yes/no” choice in 2010. Now *every* Board representation election allows employees to vote against representation. And by requiring a new union or individual to collect sufficient cards to trigger an election to challenge the incumbent union, it discourages an employer from unlawfully interfering in the election process. As long as the straw man exists, the employer risks backing a union or individual who, while publicly declaiming interest in representing a group of workers, may decide to accept certification if elected and become an even more effective union representative.

This proposed ruled eliminates that risk to employers. Instead it will actually embolden an employer to inject itself into the decertification process. If this proposed change is implemented, employers will treat it as an open invitation to use their considerable resources to relieve themselves of their legal duty to bargain with their employees over rates of pay, rules and working conditions. That the Board’s rules purport to protect employees from carrier election interference is cold

comfort to unions, like AFA, who have watched as employers repeatedly interfere during the election period while the Board refuses to investigate until after the election is over and the damage is too great to undo - a Board practice which apparently does not apply to employer claims of union election interference.

This fear of employer interference is not mere speculation or fear-mongering. Airline management have privately told me on many occasions that despite record profits in recent years, Wall Street is relentless in its pressure on CEOs to "take on" their unions. Even those companies with decades-long collective bargaining relationships are under intense pressure to reduce costs and increase shareholder value by cutting wages and benefits. That is not a recipe for ensuring labor stability in the rail and air industries.

AFA also disagrees that the current two-year bar for new representation applications following a union's certification should be extended to a successful decertification vote. The 2-year bar following certification promotes labor stability by allowing the newly elected representative time to negotiate a new contract without the distraction of never-ending organizing campaigns. If anything, the 2-year bar for newly certified representatives should be increased in light of the Board's own statistics showing that the average contract negotiations lasts almost 4 years before a tentative agreement is reached. The Board has provided absolutely no justification for a 2-year bar following decertification since no negotiations will occur at a union-free carrier. Instead, it undermines the RLA's fundamental guarantee of providing employees with the right to select their own bargaining representative by erecting a new barrier to representation for two additional years.

As proposed, the 2-year bar is simply punitive and contrary to the employee rights guaranteed by the RLA.

Finally, I would like to end my remarks with a reference to a Supreme Court decision that directly supports AFA's opposition to this misguided proposed rule. In *Brotherhood of Railway & Steam Ship Clerks v. Association for the Benefit of Non-Contract Employees*, 380 U.S. 650, 668-669 (1965), the Supreme Court noted that "not only does the RLA fail to spell out the form of any ballot that might be used but it does not even require selection by ballot. It leaves the details to the broad discretion of the Board with *only* the caveat that it 'insure' freedom from carrier interference." This proposed rule does the opposite. It will invite carrier interference. For these reasons, AFA urges the Board to withdraw this unwarranted proposed rule that will undermine the representation rights of rail and air employees, and lead to labor instability.