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NATIONAL MEDIATION BOARD
PUBLIC HEARING

Thursday, March 28, 2019
10:00 a.m.

Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, D.C. 20005

Reported by: KeVon Congo

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1 A P P E A R A N C E S

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10 Also present:

11 MARY JOHNSON

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14

15 KYLE FORTSON

16 Chairman

17 National Mediation Board

18

19 LINDA PUCHALA

20 Member

21 National Mediation Board

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A P P E A R A N C E S

(Continued)

GERALD FAUTH

Member

National Mediation Board

DUSTIN CALL

Allegiant Air

JOE DePETE

ALPA

RUSS BROWN

Center for Independent Employees

CARMEN PARCELLI

TTD

GLENN TAUBMAN

National Right to Work Legal Defense Fund

SARA NELSON

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A P P E A R A N C E S

(Continued)

AFA

LARRY WILLIS

TTD

MIKE WOLLY

Rail Conference & Airline Division of IBT

JEFF BARTOS

IAM

1 P R O C E E D I N G S

2 MS. JOHNSON: Okay, everybody, we're going to
3 get started. Good morning. I want to welcome you all
4 here today. Thank you for being here. We're here
5 today to hear public comment on the National Mediation
6 Board's proposed rule change. This change is proposed
7 to providing straightforward procedure for the
8 decertification of representatives. Notice of the
9 proposed change was published in the Federal Register
10 at 84 FR 612 on January 31, 2019.

11 I'm Mary Johnson, General Counsel of the
12 National Mediation Board, and I'll be conducting this
13 hearing on behalf of the Board. Seated to my left are
14 Chairman Kyle Fortson, Member Linda Puchala and Member
15 Gerald Fauth.

16 I have some administrative announcements. The
17 restrooms are out to the left and then you'll see some
18 blue signs to the right. There are many trash
19 receptacles, so there shouldn't be any trash left on
20 any seat or any table. And in case of a fire or other
21 emergency, go left out those doors and head back in
22 that direction and there should be a backdoor exit.

1 Chairman Fortson, would you like to say
2 something?

3 CHAIRMAN FORTSON: Sure. Absolutely. Good
4 morning. I'm NMB Chairman, Kyle Fortson. I want to
5 welcome you all here today and thank you for coming
6 this morning. The Board looks forward to hearing all
7 of your remarks. I would also like to thank the
8 Pension Benefit Guaranty Corporation for providing us
9 with this space to hold this hearing. Again, thank you
10 all for being here.

11 MS. JOHNSON: We have nine speakers scheduled.
12 Each speaker is slotted for 10 minutes. During this
13 proceeding, neither the NMB board members or staff will
14 respond to any questions. We expect the participants
15 to conduct themselves appropriately and we'll not take
16 lightly any disruptive behavior.

17 We ask that each speaker respect the court
18 reporter's capabilities and identify yourself at the
19 onset of the presentation. The speakers will be
20 standing at this podium, and in order for your
21 presentation to be recorded, you have to press the
22 bottom of the microphone and wait for the green light

1 to come on. I think I just got cut off.

2 (Laughter)

3 MS. JOHNSON: Okay, so our first speaker is
4 Dustin Hall -- Dustin Call.

5 MR. CALL: All right. Looks like it's on.
6 I'm Dustin Call from Allegiant Air. Thank you,
7 Chairman Fortson and Members of the Board. My name is
8 Dustin Call, manager of Airport Affairs and Legal for
9 Allegiant.

10 Allegiant focuses on linking travelers in
11 small cities to world-class leisure destinations. We
12 started in 1999 with one aircraft and one route, Fresno
13 to Vegas, and now we have over 75 mainline aircraft and
14 over 400 routes.

15 So we appreciate the opportunity to come and
16 give our comments on the proposed rule change. We're
17 very much in favor of the Board's proposal for a direct
18 and straightforward decertification process. At
19 Allegiant, we've seen some of the confusion that's come
20 from the current straw man procedure, so we're in
21 support of the proposed change.

22 Allegiant -- at Allegiant, we respect our

1 employees' rights to unionize. We have four unionized
2 workgroups. Our pilots, our flight attendants, our
3 mechanic group and our dispatchers are all represented
4 and we have productive relationships with them.

5 We also respect our employees ability to be
6 unrepresented if they so choose and we respect them if
7 they pursue that process. And the right to be
8 unrepresented is expressly guaranteed under the RLA and
9 should be given equal treatment by the Board.

10 And unfortunately, in the past, we've seen at
11 Allegiant that the equal treatment has not been there
12 with the straw man procedure, that the straw man
13 procedure presents some hurdles that are unnecessary
14 and kind of a complicated and convoluted process.

15 The first is -- you've received some comments
16 -- or you'll receive a statement from Ron Doig, who is
17 our straw man for the dispatchers. And one hurdle that
18 he faced was that he was -- he kind of describes it as
19 a burden that he had to bear to be the straw man, that
20 he faced some threats and some retaliation from pro-
21 union groups. And so forcing an employee to carry that
22 straw man mantle can be viewed as a hurdle to the

1 employees who wish to be unrepresented to their
2 pursuit.

3 Another hurdle that Ronald explained was the
4 confusion over the straw man having to go collect
5 signatures on these authorization cards where they're
6 selecting him to be the representative when in reality
7 their wishes are to be unrepresented. And so that also
8 can be a complex or a confusing process.

9 And finally, the election after the straw man
10 procedure for straw man election can also be confusing.
11 We've seen that at Allegiant as well, where some
12 employees who wish to be unrepresented, they can be
13 unsure or they might have to guess whether to vote for
14 the straw man or vote for the no representative during
15 that election process.

16 And so for some examples, in 2015, our flight
17 attendants, they went through a decertification effort.
18 The union -- the pro-union flight attendants defeated
19 the decertification efforts, but it was a very close
20 election. It was decided by only 16 votes. There were
21 289 votes for the union and 273 votes against the
22 union. So a very close election.

1 But there was also one vote that kind of went
2 unaccounted for, because one of the votes was for the
3 straw man and this flight attendant was trying to vote
4 to be unrepresented. But they voted for the straw man
5 instead of for the no representative, and so that vote
6 didn't get counted. And although it wouldn't have
7 turned the election in that case, we have seen very
8 close elections at Allegiant.

9 In 2015 as well our dispatchers, they also had
10 a vote to decertify and that was decided by -- or a
11 single vote would have turned that election. That vote
12 came down to 7 for the union and 7 for decertification.
13 And so if one of those dispatchers would have voted for
14 a straw man on the election ballot instead of for the
15 no representative, then the election would have been
16 different.

17 And so that confusing process is something
18 that Allegiant is in support of eliminating, those
19 hurdles, so. Obviously, there's going to be opposition
20 to simplifying this process, but we believe that this
21 is just kind of bringing the Board's rules in line with
22 what was done in 2010. At that time, the rules were

1 changed to mirror a little bit -- to mirror more
2 closely the NLRA. And we fully support the NLRA's
3 decertification rules, which are almost identical to
4 what the Board is proposing. And those rules have been
5 in place for decades and have -- and in our opinion
6 there hasn't been the confusion that we've seen.

7 And as a side note, we also -- at Allegiant,
8 we're also supportive of the 2 year bar for
9 certification after a decertification effort. Ron
10 Doig, who's statement you have, he also explained that
11 he with the -- when the dispatchers deunionized in
12 2015, that there -- only having one year didn't really
13 give a fair opportunity for the company and the
14 dispatchers to have a productive relationship as they
15 would have liked. And so in his opinion and in ours, a
16 2 year bar would have been preferable in giving a
17 better chance of success.

18 In closing, I like to emphasize again that we
19 are fully in support of the Board's proposal. We've
20 seen it firsthand how confusing and convoluted the
21 straw man process can be and that the unnecessary
22 hurdles in place with the straw man procedure don't

1 need to be there and that they are -- they're not going
2 to the heart of the RLA, which is to allow employees
3 and give them the best opportunity they can to decide
4 for themselves whether to be represented or not. So
5 thank you for your time and I'm done.

6 MS. JOHNSON: Thank you. Our next speaker is
7 Captain DePete from ALPA.

8 MR. DePETE: Thank you, thank you. If I speak
9 -- can you hear me like that? I'll have the mic down
10 here.

11 MS. JOHNSON: You need to have the mic on.

12 MR. DePETE: Uh?

13 MS. JOHNSON: The mic has to be on.

14 MR. DePETE: Oh, yeah. Yeah, I have it on.

15 MS. JOHNSON: Okay.

16 MR. DePETE: Okay. So thank you very much.

17 On behalf of the Air Line Pilots Association
18 International, I thank you for the opportunity to
19 testify today before the National Mediation Board on
20 the decertification of representatives proposed rule.

21 ALPA is the largest pilot union in the world,
22 as well as the largest non-governmental safety

1 organization in the world. Our association represents
2 over 61,000 pilots at 33 airlines in the United States
3 and Canada. And I'd like to associate myself with the
4 comments soon to be made by Larry Willis and the AFL-
5 CIO Transportation Trades Department and use my
6 opportunity today to address the Board to build upon
7 those remarks by highlighting a few very serious
8 concerns ALPA has with this proposed rulemaking.

9 Now, at the outset, let me be clear: ALPA
10 strongly opposes this proposed rulemaking. The
11 adoption of a direct decertification procedure coupled
12 with a 2 year election bar only serves to make it
13 harder for employees to maintain collective bargaining
14 rights and freely choose representation.

15 Specifically, by making it easier for
16 employees to decertify their representatives and remain
17 without representation or collective bargaining rights
18 for a substantial period of time, this proposal
19 undermines rather than enhances both the stability of
20 commerce and the rights of employees under the Railway
21 Labor Act.

22 ALPA strongly urges the Board to reject the

1 proposed rule changes. They are wholly unnecessary,
2 undermine the stability of labor relations and run
3 contrary to RLA's mandate to promote industry stability
4 through collective bargaining.

5 Until now, the NMB, unlike the National Labor
6 Relations Board, has used an indirect decertification
7 process called the straw man procedure. Under this
8 procedure, employees simply designate a straw man to
9 run against the union representative with the
10 understanding that if elected, the straw man would
11 disavow representation and thus decertify the union.

12 This procedure is very well known, understood
13 and used. It has been for numerous years, for decades
14 to decertify unions under the RLA. In fact, this well
15 known method was used just last year by the Kalitta Air
16 pilots to decertify their representatives and join ALPA
17 with an unsolicited write-in vote I might add.

18 In addition to the straw man decertification
19 procedure, the Board has long permitted a rival
20 employee representative to petition to decertify an
21 existing representative and serve as its replacement,
22 as occurred when my pilot group at FedEx decided to

1 decertify ALPA in the '90s and become represented by
2 the independent FedEx Pilots Association prior to their
3 eventual return back to ALPA.

4 The NPRM nonetheless claims that a direct
5 decertification vote procedure needs to be adopted, and
6 further, that if such a decertification vote is
7 successful, the employees will be subject to a 2 year
8 election bar, under which they are denied the right to
9 seek alternative representation or collective
10 bargaining rights.

11 The Board majority asserts that the adoption
12 of these new procedures is required to protect
13 employees' freedom to choose representation and to
14 create a level playing field for those who choose not
15 to be represented by a union.

16 I honestly think that this is a solution in
17 search of a problem, because these arguments in my
18 experience of 32 years are patently false. The
19 adoption of these procedures will only serve to
20 destabilize collective bargaining and existing
21 collective bargaining relationships.

22 This is exactly contrary to the Board's

1 mandate under the RLA. The RLA was created as an
2 agreed upon framework for labor relations between
3 carriers and unions and ratified by Congress for the
4 express purpose of maintaining stability and labor
5 relations, to the adoption and maintenance of
6 productive, collective bargaining relationships in
7 order to protect the flow of interstate commerce.

8 ALPA believes that this statutory purpose of
9 enhancing stability of collective bargaining is the
10 first standard by which any rule change should be
11 judged and these unnecessary proposed changes to the
12 Board's rules clearly fail that basic threshold test.

13 In fact, the Board's proposal to facilitate
14 decertification will have the opposite effect in our
15 view and undermine the stability of collective
16 bargaining and bargaining relationships in the air and
17 rail industries that are so critical to our nation's
18 economy.

19 ALPA has some experience, which makes this
20 more than just a hypothetical concern. I'm sure you
21 all remember in the 1980's the Frank Lorenzo management
22 team led a lengthy campaign to decertify unions at

1 Continental and were successful in most crafts and
2 classes, including pilots. Decertification did not
3 lead to stability by any means or improve labor
4 relations. Indeed, the opposite was true.

5 We know the fate of both Continental and its
6 sister, Lorenzo-controlled carrier Eastern Airlines.
7 Both continued to lose money and Eastern eventually
8 went out of business despite Lorenzo having
9 successfully facilitated the destruction of collective
10 bargaining on each of those properties.

11 This lesson was not lost on employees, and
12 during the 1990s, virtually all remaining crafts and
13 classes reorganized at the surviving Continental
14 operation.

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

20 The NMB proposal would go further than merely
21 facilitating decertification. It would also
22 decertifying employees out of any union representation

1 and the protections of a collective bargaining
2 agreement for 2 full years, even if the employees
3 merely want a change from their current representative.

4 This is a marked change from current practice
5 and this proposed organizational bar contradicts the
6 contention that this initiative is merely designed to
7 restore balance to the union election process under the
8 RLA. It is a serious, in our view, anti-
9 representational overreach that further attempts to
10 tilt the balance of collective bargaining away from
11 workers at a time in this country's history when we can
12 least afford it.

13 It is true that there is a current 2 year bar
14 for newly certified unions, and there's good reason for
15 it -- I lived through it. For applying that bar to
16 that very -- it's a very different situation. The
17 Board has wisely adopted the 2 year bar to give a
18 fledgling representative time to consolidate employee
19 support, and crucially, to attempt to make significant
20 progress in negotiating an initial collective
21 bargaining agreement without undue concern of raiding
22 by other unions or efforts by management to encourage

1 employees to dislodge it.

2 Allowing at least this amount of time for a
3 new union is particularly important, given that a newly
4 organized representative is subject to the same, as an
5 established one -- to the elaborate and lengthy RLA
6 bargaining process administered by the NMB.

7 There can be no legitimate analogy for
8 application of the same 2 year bar to circumstances of
9 decertification and conversion to a non-union
10 operation. A carrier which succeeds in breaking a
11 union does not need to negotiate agreements, nor is it
12 subject to mediation or mediator schedules in opposing
13 rates of pay, rules and working conditions.

14 This new anti-organizing bar serves none of
15 the interests served by the present 2 year bar
16 protecting newly certified unions. Instead, it can
17 serve to substantially restrict workers' ability to
18 change union representation and leave employees with an
19 existing collective bargaining agreement with neither
20 the protections of representation nor their collective
21 bargaining agreements protection for 2 long years.

22 At the same time, this proposal blocks

1 employees' representational and contractual rights.
2 Management is simultaneously gifted 2 years of
3 unfettered ability to impose whatever terms and
4 conditions of employment they choose.

5 None of this promotes the RLA's key goal of
6 stability through fostering collective bargaining and
7 collective bargaining agreements. Instead, the
8 proposal would serve to undermine existing bargaining
9 relationships and agreements, thereby sowing
10 instability, confusion and uncertainty among industry
11 stakeholders.

12 In fact, the potential chaos sown by
13 unraveling and undermining otherwise stable bargaining
14 unions in order to place employees outside the
15 protections traditionally affected by this Act
16 increases the likelihood of strikes and other
17 impediments to the continued flow of passenger travel
18 and cargo movement.

19 And after hearing the last speaker -- we are
20 the largest non-governmental safety organization and
21 much of what we've achieved in this country today is
22 due to the union's involvement in that area. All of

1 this is completely at odds with the RLA spirit and
2 letter of promoting peaceful and uninterrupted commerce
3 through stable collective bargaining relationships.

4 Lacking any justification consistent with the
5 statutes purposes, we view the entirety of the proposal
6 and particularly the proposed 2 year bar as clearly
7 punitive and anti-labor in nature.

8 ALPA is also here to express its concern that
9 those proposed rule changes, which we do not believe
10 are justified, could lead the way even to more negative
11 rule changes that we've heard being discussed that
12 could interfere with the future organizing efforts by
13 ALPA and other unions.

14 We're troubled that the Board may be beginning
15 to go down a path that is clearly one-sided and heading
16 in the wrong direction. We urge a reexamination of
17 this proposal.

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

1 Thank you for allowing me to speak with you today.

2 Thanks.

3 MS. JOHNSON: Thanks. Our next speaker is
4 Russ Brown.

5 MR. BROWN: Is it on?

6 MS. JOHNSON: Is there a green light?

7 MR. BROWN: Yes. May 21, 2018 in Lewisville,
8 a suburb of Dallas, Texas, the bomb squad was
9 dispatched to the home of straw man Frank Woelke. At
10 that time, Flexjet pilots were in the middle of a
11 decertification with the Teamsters. Frank was singled
12 out for no other reason than he was the straw man.
13 More on that later.

14 Madam Chairwoman, Member Puchala and Member
15 Fauth and General Counsel Johnson, thank you for having
16 us here. And let me take a moment to commend the
17 National Mediation Board for the service that you
18 provide to the American people. A small agency that
19 you are, the NMB has a big task, and all of the NMB
20 people that I have dealt with at the agency have served
21 honorably and remarkably efficient.

22 My name is Russ brown. I'm the President of

1 the Center for Independent Employees, a legal defense
2 foundation that represents employees who are oppressed
3 by their unions and want to decertify. We work in all
4 jurisdictions: the government sector, the National
5 Labor Relations Act and course the Railway Labor Act.

6 CIE has done several of these straw man
7 campaigns and we are uniquely qualified to talk about
8 the real mechanics of the process and how it works.
9 Unlike other jurisdictions, we work with -- the
10 employees of railroads and airlines have an extra
11 hurdle they must go through just to rid themselves of
12 an unwanted union. Meaning instead of working to gain
13 support to decertify their union, they have to create a
14 straw man and get fellow employees in their class or
15 craft to sign an authorization card saying they want to
16 be represented by a straw man.

17 That support must be by more than 50% of the
18 class or craft across the entire domestic network. The
19 50% plus is a very tall hurdle.

20 If the employees gain enough support, they can
21 apply to the NMB for an election, where the ballot will
22 have four choices: the incumbent union; the straw man;

1 the write-in choice, which by the way I believe that
2 should be eliminated as well; and finally, no
3 representation.

4 Here's the catch. After no less the
5 monumental effort it took to get more than 50% of their
6 class or craft to sign an authorization card for a
7 straw man, they now have to tell their supporters in
8 order to decertify "don't vote for me, don't vote for
9 the straw man, you have to choose the no representation
10 choice."

11 I can tell you from our experience at CIE, no
12 matter how much education you do, there will be people
13 that will still vote for the straw man. This system is
14 confusing and disenfranchises the class or craft. It
15 also makes a target of the straw man.

16 The following is an excerpt from straw man
17 Frank Woelke's comments, which were submitted last
18 night. I'm going to begin this excerpt from the last
19 sentence of the second paragraph and I'll end somewhere
20 around the middle of the fourth paragraph. "The worst
21 has yet to come. In the spring of 2018, I began
22 receiving vulgar postcards at my home. These were

1 professionally printed cards and professionally printed
2 envelopes. Every one of them referred to me
3 specifically by name. One of my teenage daughters
4 opened one of these we received and was brought to
5 tears when her father was referred to as a bitch who
6 sold himself.

7 The number of cards delivered each day
8 steadily increased. Sometimes hundreds of postcards a
9 day would arrive. My kids were no longer allowed to
10 check the mail.

11 A private armed security firm was hired to
12 watch my house. The security firm installed triple
13 lock locks on all the doors and my children had to
14 learn to double dabble doors every time they went in or
15 out.

16 Our local police were contacted and informed
17 of the situation. My wife was so concerned that she
18 purchased a pistol. She trained to use it for home
19 defense. We had never had a pistol in our home.

20 Our entire family was constantly on alert for
21 strange cars or people in our neighborhood. My
22 children, away at college, were taught to be extra

1 vigilant. I agonized every time I left to work to fly
2 a trip.

3 All of this concern was not unfounded. On May
4 21, 2018, while I was on an extended trip to Sardinia,
5 I received a call from a friend of the family who was
6 living with us while she attended college. A box with
7 no return address had been delivered to our house and
8 she was frightened.

9 I told her to place the box outside. I
10 immediately called our local police department long
11 distance from Sardinia. They immediately dispatched
12 officers to our home. Once they had seen the package,
13 they considered it a bomb threat.

14 The police cordoned off the entire end of the
15 block and the fire department dispatched both fire
16 trucks and an empty rig. A bomb squad was called from
17 a neighboring jurisdiction.

18 Our local school bus is on the same corner as
19 our house and the buses had to be diverted. My
20 neighbors were blocked from returning to their homes at
21 the end of their work day." That's the end of the
22 excerpt. And to say the least, conduct rule

1 (inaudible).

2 Consider Rob Wilson, a straw man with a travel
3 management company also decertifying the Teamsters,
4 where the Teamsters made libelous statement stating
5 that while with Continental Airlines, he was labeled as
6 a scab when he crossed the picket line in 1983.

7 What they left out was it was not a legal
8 strike for self-help. And because it was not a legal
9 self-help situation, he and the majority of the
10 Continental pilots were all returned to the union as
11 members in good standing. Yes, you can cross a picket
12 line if it doesn't officially exist.

13 Steve Stecker, a flight attendant for
14 Allegiant, was a straw man who was constantly being
15 disparaged as doing his employer's bidding.

16 Ron Doig, an Allegiant dispatcher and straw
17 man, was successful in a campaign to decertify the
18 Teamsters. Yet when the election ended, the campaign
19 never stopped, because there's inequity in the election
20 bar. As a result, there was another election a year
21 later, where Ron and his company and co-workers never
22 had a chance to experience a direct relationship. As

1 for the election bar, when unions win, there can be no
2 other election for a 2 year period.

3 To be clear, we support that timeframe for
4 various reasons unique to the RLA. However, if no
5 representation is chosen and the employees are
6 successful in decertifying their union, the election
7 bar is only one year. This is not fair and it causes
8 instability and disruption in the workplace. We
9 support the election bar change of 2 year threshold for
10 successful decertifications.

11 In a year where values are emphasized on
12 freedom of association on the heels of the Janus
13 decision and new right to work states, the proposed
14 rulemaking is appropriate and overdue. American
15 employees deserve a straightforward process to act on
16 their rights.

17 Trust me, as a practitioner, even with the
18 straightforward process for employees to decertify, to
19 decertify a union under the RLA will never be on a
20 whim. The process under the proposed rule is such that
21 when decertification rights are exercised, it will be
22 for reasons that can and should only be answered at the

1 ballot box. Finalizing the rule change is the right
2 thing to do and on the right side of history.

3 MS. JOHNSON: Thank you. Our next speaker is
4 Carmen Parcelli.

5 MS. PARCELLI: It's still on? Yes. Good
6 morning, Chairman Fortson, Board Members Fauth and
7 Puchala, General Counsel Johnson. For the record, my
8 name is Carmen Parcelli. I'm of counsel with the law
9 firm Guerrieri, Bartos & Roma that's located here in
10 Washington, D.C. And this morning, I'm here on behalf
11 of the Transportation Trades Department of the AFL-CIO.

12 Now, TTD consists of 32 affiliated unions
13 which represent employees in all modes of
14 transportation, but also many organizations that
15 include railroad and airline employees who are covered
16 by the Railway Labor Act. I'm not going to list all of
17 the organizations, but if you refer to the first page
18 of my written testimony, you'll see all of them there.

19 So while the Board may be less familiar with
20 TTD because it doesn't directly represent employees in
21 matters before the Board, the unions that are
22 constituents of TTD are very familiar to the Board and

1 several of them will also separately address the Board
2 this morning.

3 So TTD welcomes the opportunity to address the
4 National Mediation Board regarding its recent notice of
5 proposed rulemaking related to decertification
6 procedures. TTD opposes the proposed rulemaking. In
7 our view, the NPRM is simply not consistent with the
8 Railway Labor Act, particularly the proposed rule
9 exceeds the scope of the Board's narrow jurisdiction
10 under Section 2, Ninth of the Act, and it also
11 unreasonably seeks to restrict employees exercise of
12 the right to choose representation under the statute.

13 Now, TTD has requested that I address some of
14 the legal issues that are raised by the notice of
15 proposed rulemaking. Larry Willis, the President of
16 TTD, will also give remarks this morning and he'll
17 speak a little bit more from a policy perspective.

18 But basically, I intend to address the
19 following five topics, briefly each one. First, I want
20 to talk a bit about how the straw man process is rooted
21 in the language of the Railway Labor Act itself,
22 particularly Section 2, Ninth. But now it's also

1 reflected in the language of Section 2, Twelfth of the
2 statute.

3 Second topic I want to address is why the
4 Board has rejected past requests to add explicit
5 decertification procedures through its rule making and
6 the lack of any new justification for doing so now.

7 Next, I want to turn to the fact that the
8 straw man process will continue to exist even if the
9 Board adopts its new rule. Therefore, the stated goal
10 of simplifying procedures under the Act will simply not
11 be achieved.

12 Next, I want to take a look at how the NPRM's
13 provision that an individual seeking decertification
14 may file an application is in violation of the plain
15 language of the RLA itself.

16 And lastly, take a look at the Board's
17 proposal for a 2 year election bar following a
18 decertification. This proposal simply lacks any
19 rational basis. It unnecessarily restricts employees
20 in their freedom of choice as guaranteed under the
21 statute.

22 Now, turning to my first point. The Board's

1 NPRM makes it sound as if the straw man procedure were
2 devised as some kind of malicious impediment that's
3 intended to thwart employees from riding themselves of
4 unwanted union representation. But really, if you look
5 at the history of the topic, you can see that nothing
6 is further from the truth.

7 In fact, through the straw man procedure what
8 the Board has sought to do is actually to enable
9 employees to exercise their full freedom to reject
10 representation while doing so in a manner that's
11 consistent with the language of the RLA. So the straw
12 man procedure is simply what the language of the
13 statute requires.

14 Now, as the Board notes in its NPRM, "unlike
15 the National Labor Relations Act, the Wagner Act, the
16 RLA contains no provision that sets forth a
17 decertification process." Now, in 1947, Congress added
18 language to the NRLA that specifically provides for a
19 decertification process. But Congress has never chosen
20 to amend the Railway Labor Act in a similar fashion
21 despite making numerous other changes to the statute
22 over the years.

1 So instead, Section 2, Ninth of the RLA only
2 addresses disputes that "arise among a carrier's
3 employees as to who are the representatives of such
4 employees." And then also the statutory language
5 limits the Board's power to certifying, and again I
6 quote, "the name or names of the individuals or
7 organizations that have been designated as authorized
8 to represent employees." Okay? So this is just the
9 language out of Section 2, Ninth.

10 And in the plainest language, the statute
11 requires that an organization or an individual come
12 forward as a would-be representative of the employees
13 in order to trigger a representation dispute in order
14 to trigger the Board's jurisdiction.

15 So as the Supreme Court has explained, the
16 Board's only ultimate finding of fact is the
17 certificate. That's Switchmen's, a very famous RLA
18 case. And it's because of the language of the statute,
19 especially in contrast with the decertification
20 language which Congress added to the NRLA, that the
21 Board has used the straw man process, and thereby
22 they're permitting an application from a would be

1 representative even where it's known that the
2 representatives ultimate intent is to disavow
3 representation if elected.

4 Now, Congress most recently amended the
5 Railway Labor Act in 2012 and those amendments shed
6 further light on the straw man procedure. So first one
7 thing to understand and keep in mind is that Congress
8 legislated in 2012 against the backdrop of the Board's
9 yes/no ballot rulemaking. So during that rulemaking
10 process, employer groups urged the Board, as they had
11 done previously, to adopt explicit decertification
12 process.

13 So the Board back in 2010 declined to do so
14 and they made findings that the straw man process is
15 consistent with the Railway Labor Act and provides a
16 fully adequate opportunity for employees to alter their
17 representation status.

18 So Congress was aware of all of this that
19 occurred in the Board's rulemaking process. And yet
20 again, in 2012, they decided not to add a
21 decertification provision to the Railway Labor Act.
22 Instead what Congress did was it tasked the Comptroller

1 General to make a review within 180 days of "the
2 processes applied by the Mediation Board to certify or
3 decertify representation of employees by a labor
4 organization."

5 And again, it tasked the Comptroller General
6 to make recommendations to the Board and appropriate
7 congressional committees regarding actions that may be
8 taken by Congress or the Board to ensure that processes
9 are fair, reasonable for all parties. Okay? So this
10 they write into the statute in 2012.

11 Now, ultimately, no recommendations were made
12 with respect to decertification and Congress took no
13 further action on the matter.

14 Now, again also in the 2012 amendments,
15 Congress added to the statute Section 2, Twelfth. Now,
16 the language in this section also confirms the Board's
17 long established reading of Section 2, Ninth as
18 requiring an application to invoke its services that is
19 filed by a would be representative. Okay?

20 So in setting forth a statutory showing of
21 interest requirement, Section 2, Twelfth states -- and
22 I will read in a little bit of length here -- "The

1 Mediation Board upon receipt of an application
2 requesting that an organization or individual be
3 certified as the representative of any craft or class
4 of employees," okay. And that's key language. And
5 then it goes on to state "shall not direct an election
6 or use any other method to determine who shall be the
7 representative of such craft or class unless the
8 Mediation Board determines the application is supported
9 by a showing of interest from not less than 50% of the
10 employees in the craft or class." So the 50% showing
11 of interest now is also in the statute.

12 So Congress clearly understood in enacting
13 this language in Section 2, Twelfth that applications
14 filed with the NMB under Section 2, Ninth are those
15 "requesting that an organization or individual be
16 certified as a representative of any craft or class of
17 employees." That is what the application is and must
18 be under the statute.

19 Now, the NPRM that was issued by the Board
20 proclaims that there is "no statutory basis for the
21 additional requirement of a straw man." That's at page
22 613. This is simply incorrect. It's very telling that

1 the NPRM does not discuss the language in sections 2,
2 Ninth and 2, Twelfth. Doesn't discuss them, much less
3 explain how the proposed rule can be reconciled with
4 that language. Obviously, the Board cannot disregard
5 plain statutory language in its rulemaking.

6 Now, the second point I would like to make --
7 it's really closely related to the first point, but a
8 little different emphasis. So employer groups have
9 asked the Board previously to adopt an explicit
10 decertification procedure and the Board has
11 consistently declined to do so. And in the past, the
12 Board has explained that its current procedures are
13 both consistent with the statute and also emphasized
14 that employees have an ample opportunity to alter their
15 representation under existing rules.

16 So in the NPRM, the Board does not claim that
17 any changed circumstances have led the agency to
18 reevaluate what its held in the past, that its
19 longstanding process is entirely adequate.

20 In fact, what the NPRM does is simply label
21 the current procedures as "unnecessarily complex and
22 convoluted" and then also as "an unjustifiable hurdle

1 for employees." But the Board has not provided in the
2 NPRM even a single piece of evidence that supports
3 these characterizations, much less evidence that shows
4 that the procedures that they previously deemed were
5 adequate are now for some reason no longer sufficient.

6 Instead, the Board seems contend to proceed
7 without any real empirical showing whatsoever that
8 employees are thwarted in their desires by the current
9 process. And we suspect that no evidence is presented
10 because it simply doesn't exist.

11 And in fact, our own analysis of the NMB's
12 representation cases -- and we took it back really over
13 the last 20 years and we're going to submit that
14 analysis with our written comments on Monday -- what it
15 shows when you look at the cases is that employees
16 freely and frequently alter their representation status
17 under the Board's current rules. So there's simply no
18 need to change those rules. There's ample precedent
19 that employees avail themselves of the current process.

20 My third point relates to the supposed aim of
21 the NPRM to simplify the Board's procedures. Now, I've
22 heard some of my RLA colleagues on the management side

1 say that the Board's new rule will get rid of the straw
2 man procedure. But that's simply incorrect.

3 The straw man procedure, as I said earlier,
4 comes out of the language of the RLA itself and it's
5 going to continue to exist as an option for employees
6 even if the Board's proposed rule is ultimately
7 adopted.

8 And why is this? Well, if you look at Section
9 1, Sixth of the Railway Labor Act, that section defines
10 a representative under the statute. And a
11 representative can be "any person or persons, labor
12 union, organization, or corporation designated either
13 by a carrier or group of carriers or by its employees
14 or their employees to act for them." Okay?

15 So the statutory definition says any person or
16 persons. So an individual is plainly entitled under
17 the language of the Act to act as a representative
18 under the Railway Labor Act.

19 So therefore, the NMB will still be obligated
20 to continue to accept representation applications that
21 are made by individuals even if the new rule is
22 adopted. And maybe such an individual would continue

1 to act as a representative at least for some period of
2 time or he or she may act as a straw man and disavow
3 representation. But in any event the point is, the
4 Board is not simplifying its procedures overall, you're
5 just adding an additional process.

6 Now, my next point concerns the proposed
7 language to be included in the new rule under Section
8 1203.2. So as amended by the NPRM, the rule would
9 allow an application for an investigation to be filed
10 by "an individual seeking decertification." Okay?
11 That's the language that's in the new proposed rule.

12 The rule doesn't give any further definition
13 of the term "individual seeking decertification." So
14 as it's written, any person could file an application
15 seeking decertification with the Board. So this would
16 be regardless of whether the individual has any kind of
17 preexisting connection with the work group that's
18 covered by the decertification request. Okay?

19 So just the way it's phrased, the way it's
20 written now, really anyone no matter what connection or
21 lack of connection they might have with the work group
22 could file as an individual seeking decertification.

1 So as such, the language of the proposed rule simply is
2 not consistent with Section 2, Ninth of the RLA. Under
3 Section 2, Ninth only a party is permitted to file a
4 representation application with the Board.

5 Under a case decided by the District of
6 Columbia Circuit back in 1994, Railway Labor
7 Executives' Association versus the NMB, the court
8 addressed at length this issue of who is a party under
9 the statute, under Section 2, Ninth. And
10 interestingly, that case grew out of a rulemaking
11 process that was conducted by the NMB back in 1987.

12 So at that time, the Board had proposed new
13 merger procedures and the Board recognized that
14 corporate mergers and consolidations can lead to
15 changes in the composition of an existing craft or
16 class, and you could even have a result where you had
17 multiple certifications covering a single craft or
18 class.

19 And so the Board proposed to allow carriers to
20 petition to investigate representation matters
21 following a merger, or alternatively, that the Board
22 just initiate an investigation of its own, sua sponte.

1 And the DC Circuit found that such a procedure
2 would violate the plain language of Section 2, Ninth.
3 And the court explained to the agency that the Board
4 "has no freewheeling authority to act as it sees fit
5 with respect to anything denoted as a representation
6 dispute." Okay? Instead, the Board's jurisdiction is
7 narrowly circumscribed by Section 2, Ninth.

8 And then the court went on to find that the
9 term "party" in Section 2, Ninth is limited to
10 employees or their representatives.

11 They also noted that, and again I quote, "for
12 more than 50 years following its creation the Board
13 variably conducted representation elections only at the
14 behest of employees or their representatives." So the
15 rules adopted in '87 were a stark departure from what
16 the Board had done consistently for 50 years, much as
17 the rule today is.

18 The term party plainly does not include
19 carriers or the Board itself, and therefore, the merger
20 procedures exceeded the Board's authority under Section
21 2, Ninth and the court deemed that they were void.

22 So similarly, in the current NPRM, the Board

1 is proposing to allow any individual seeking
2 decertification to invoke its jurisdiction, seemingly
3 without regard to whether the individual is a party
4 under Section 2, Ninth. So this aspect of the proposed
5 rule plainly violates the statute. And if the Board
6 were to proceed, it should expressly provide that only
7 employees or their representatives can submit an
8 application under Section 1203.2.

9 Now finally, I want to turn to the Board's
10 proposal to apply its current 2 year certification bar
11 to cases in which a decertification occurs under its
12 new rules if adopted.

13 This aspect of the proposed rulemaking simply
14 lacks any rational basis. It's just an unwarranted
15 restriction on employees' right to organize and bargain
16 collectively as guaranteed under Section 2, Fourth of
17 the Railway Labor Act.

18 Now, the Board has long applied a 2 year bar
19 on representation applications following the issuance
20 of a certification covering the same craft or class.
21 And the rationale for the 2 year bar is simply to give
22 a newly certified representative 2 years in which to

1 negotiate a new collective bargaining agreement, and so
2 it would be 2 years where you're free from the
3 distraction and uncertainty of a challenge to the new
4 representative certification.

5 Now, the Board's selection of a 2 year period
6 for this purpose is really informed by its own
7 experience in its mediation capacity. So the Board
8 through that has recognized that collective bargaining
9 under the Railway Labor Act is often a lengthy process.
10 Particularly, it can be the case with a first contract,
11 where the parties don't start out with any preexisting
12 terms of agreement. And then the 2 year bar also aids
13 the Board in its mediation function, because it ensures
14 this period of stability in which it can assist the
15 parties in reaching a first contract.

16 So under these circumstances, there's a solid
17 rationale for imposing a bar that limits employees in
18 the exercise of their rights. But no similar rationale
19 exists with respect to decertification. Obviously, no
20 contract negotiations follow once an employee
21 representative is removed and there is simply no need
22 to provide a kind of breathing room for negotiations --

1 there are none. Instead, employees simply return to a
2 state of at-will employment and the employer then is
3 free to impose terms and conditions.

4 So, you know, the Board is unable to apply its
5 current rationale for the 2 year certification bar and
6 so it has asserted instead that successful
7 decertification, like certification, is challenging and
8 a significant undertaking by employees with a
9 substantial impact on the workplace for both employees
10 and their employer.

11 So in the Board's view the changes in the
12 employer-employee relationship that occur when the
13 employees become represented, change representative or
14 become unrepresentative require similar treatment.

15 MS. JOHNSON: Carmen, you're running out of
16 time.

17 MS. PARCELLI: Thank you. I'm almost done.
18 So the Board offers this view, but without benefit of
19 any factual support. Indeed, the Board itself has no
20 experience working with groups of employees following
21 decertification since that would not trigger its
22 mediation function.

1 So it's unclear how the Board can form any
2 opinion regarding the challenges for employees or
3 employers after decertification.

4 So in conclusion, the NPRM suffers from
5 substantial legal defects. Even under the deferential
6 standard that federal courts generally apply in
7 reviewing agency rulemaking, we do not believe that the
8 proposed rule would survive judicial scrutiny. And for
9 this reason, we urge the Board not to adopt the NPRM in
10 a final rulemaking. Thank you.

11 MS. JOHNSON: Our next speaker is Glenn
12 Taubman.

13 MR. TAUBMAN: Good morning. I am Glenn
14 Taubman on behalf of the National Right to Work Legal
15 Defense Foundation. The Foundation is a nonprofit
16 charitable organization providing free legal assistance
17 to individual employees only.

18 The Foundation staff attorneys represent
19 individual employees in litigation challenging the
20 abuses of compulsory unionism arrangements and advise
21 employees about their rights concerning the imposition
22 of union monopoly bargaining in their workplaces.

1 Since its founding in 1968, the Foundation has
2 provided free legal assistance in virtually all of the
3 United States Supreme Court cases involving employees
4 right to refrain from joining or supporting a labor
5 organization as a condition of employment, cases such
6 as Communications Workers versus Beck, Chicago Teachers
7 Union versus Hudson, Harris v. Quinn, most recently
8 Janus v. AFSCME, and cases under the Railway Labor Act,
9 including Airline Pilots versus Miller and Ellis versus
10 Railway Clerks.

11 Of most importance to this rulemaking
12 proceeding, Foundation staff attorneys represented the
13 employees who attempted to decertify in Russell versus
14 National Mediation Board, the groundbreaking case that
15 recognized the right of employees to decertify under
16 the Railway Labor Act and that is cited in the notice
17 of proposed rulemaking in this proceeding as one of the
18 main reasons to simplify the decertification process.

19 The Foundation fully supports the proposed
20 rules and the Foundation is uniquely qualified to
21 comment on the proposed rules. I wish to make three
22 points this morning. The Foundation supports the

1 proposed rules because the RLA mandates employee free
2 choice, not perpetual forced unionization.

3 RLA Section 2, Fourth provides that a majority
4 of any class or craft of employees shall have the right
5 to determine who shall be the representative of the
6 craft or class for purposes of this chapter. Applying
7 this statute, the federal courts are unanimous in
8 holding that the RLA gives employees the right, but not
9 the obligation to choose a representative and the
10 corresponding right to have no representative at all.

11 The famous ABNE case states "the legislative
12 history supports the view that employees are to have
13 the option of rejecting collective representation."
14 The Fifth Circuit in Russell said "employees were given
15 the right under the Act not only to opt for collective
16 bargaining, but to reject it as well."

17 The bottom line is that the RLA's undisputed
18 and primary policy is employee free choice and the
19 selection or non-selection of the representative. In
20 fact, you can't get to collective bargaining and so-
21 called labor stability unless and until employees first
22 exercise that feature as a right.

1 My second point is that the proposed rules are
2 desperately needed and long overdue. Currently, and
3 for too many decades, the Board has employed a
4 "confusing and obfuscatory process" for employees
5 seeking to unseat an unpopular incumbent union, and
6 that's a quote from Former Member Dougherty of the NMB.

7 Under the current rules, employees cannot
8 simply request a decertification election. They must
9 designate the straw man to run ostensibly as employees
10 new representative, with the straw man expected,
11 although not legally bound, to disclaim that
12 representative status if he or she gets elected.

13 The employee straw man, moreover, must conduct
14 this campaign using his or her own time and financial
15 resources, while the incumbent labor union can use its
16 "often considerable economic, political and
17 informational resources" to try to defeat the
18 decertification effort and cling to power. And that
19 was a quote from the Lehnert versus Ferris Faculty
20 Association.

21 Given this convoluted process in the large
22 nationwide bargaining units common in the air and rail

1 industries, the Foundation does not believe that the
2 Board's current procedures have ever resulted in
3 decertification of a representative of a craft or class
4 of more than a few hundred employees.

5 And it's here that I want to tell you a bit
6 about my day to day practice of law in representing
7 employees. I've been a staff attorney with the
8 National Right to Work for 37 years. I take calls
9 every day from employees seeking information about
10 their right to disassociate from a union, whether by
11 resignation from union membership or revoking a dues
12 check-off authorization or declaring dues subject their
13 status under *Ellis v Brock*, or by decertifying the
14 incumbent union.

15 I can tell you that most RLA covered employees
16 I speak with are left confused and disheartened when I
17 explain the straw man rule. The decertification
18 process under the National Labor Relations Act is
19 complicated and there's all sorts of technical rules
20 regarding election blocks and bars. A decertification
21 under the National Labor Relations Act is a piece of
22 cake compared to the straw man rules under the RLA.

1 Most employees I talk to under the RLA give up
2 and are never heard from again when these obstacles are
3 explained to them. This is a true fact, but it is
4 unfair and bad public policy for this Board to allow
5 such an asymmetrical regime of easy to get in,
6 difficult to get out.

7 This is especially true given the geographic
8 spread of employees in so many of the RLA's large
9 nationwide bargaining units. It's not wrong to say
10 that a union that gains power under the RLA will almost
11 never have to give it back and this is not fair if the
12 RLA actually favors employee free choice and not
13 permanent incumbency.

14 Labor unions in America do not have to stand
15 for periodic decertification and it is been estimated
16 that 94% of unionized workers in America have never
17 voted for the union representing their workplace.
18 Perpetually encrusting a labor union on to a workplace
19 with no showing of current employee support does not
20 lead to workplace stability.

21 In fact, past NMBs have invoked the rationale
22 of labor stability to support the straw man rule,

1 claiming that the rule imposes headwinds against
2 decertification precisely to discourage unions from
3 raiding an already represented workplace. But that
4 should be more properly called labor union stability,
5 not labor stability.

6 The NMBs past reliance on stability for unions
7 to impede decertifications was wrong and highlights the
8 way in which the agency lost its way in the past. In
9 fact, continued representation by an unpopular minority
10 union is itself a grave threat to stable operations of
11 interstate commerce that the RLA is supposed to foster.

12 The Supreme Court said in the famous garment
13 workers case there could be no clear abridgment of the
14 labor law than for a union and employer to enter into a
15 collective bargaining relationship when a majority of
16 employees do not support union representation.

17 Russell was decided 36 years ago. Almost two
18 generations of workers have come and gone in that time
19 yet employees under the RLA are still saddled with
20 unions voted in many decades ago with no easy means to
21 express their representational preference.

22 Even with the proposed rules being adopted,

1 these employees wishing to end or change the union
2 representation will still face enormous hurdles. The
3 time has come to change the rules to place
4 certification and decertification elections on an equal
5 footing and get rid of a policy that everyone agrees is
6 confusing and obfuscatory.

7 My final point is: the Board has statutory
8 authority to enact the proposed rules. Any argument
9 that the NMB has no statutory power to change and must
10 retain the current unbalanced and discriminatory regime
11 is false. The courts have long recognized and the
12 Board agrees that employees have the right to reject
13 representation. Implicit in the right to reject
14 representation is the Board's power to issue a
15 certification order when employees so choose.

16 It is true that the RLA spells out no specific
17 procedures for either representation or decertification
18 and for that matter does not mention the idea of a
19 straw man.

20 However, in Russell, the U.S. Court of Appeals
21 for the Fifth Circuit rejected the Board's argument
22 that it could not process a plaintiff's application for

1 an election to terminate elective representation
2 because no procedure for decertification is contained
3 in the Act. Russell and many other court cases
4 implicitly recognize that the NMB has authority to
5 specify procedures for decertification.

6 And finally, the case that was referenced
7 previously, Railway Labor Executives versus NMB, a D.C.
8 Circuit en banc decision from 1994, does not stand for
9 the proposition that the Board cannot adopt the
10 proposed rules, as many will surely argue. The issues
11 in that case were completely different and that was a
12 divided D.C. Circuit en banc opinion, a closely divided
13 D.C. Circuit en banc opinion. And the issue in this
14 proceeding is much different than the issue in that
15 case.

16 So in conclusion, the proposed rules are long
17 overdue. Employee free choice is the RLA's most
18 significant policy and the proposed rules are needed to
19 ensure that all employees have an equal and fair choice
20 regarding union representation.

21 The Board has statutory authority to adopt the
22 proposed rules and should do so as soon as possible.

1 Thank you.

2 MS. JOHNSON: Thank you. Our next speaker is
3 Sara Nelson.

4 MS. NELSON: Good morning. Chairman Fortson,
5 Board members Puchala and Fauth, thank you for the
6 opportunity to testify here today.

7 My name is Sara Nelson. I'm the President of
8 the Association of Flight Attendants, representing
9 50,000 flight attendants at 20 different airlines. I
10 am also a 23 year United Airlines' flight attendant
11 from the rank and file. And with me here today is also
12 an American Airlines flight attendant, Ivy Milles (ph),
13 who is a representative from the Association of
14 Professional Flight Attendance.

15 So I -- we did submit our written testimony
16 from AFA that offers AFA's position that this rule
17 change is really counter to the mission and an
18 historical mandate to the Board. And the Board doesn't
19 really have the authority to make this change either.

20 But I can't help but note where we are today,
21 at the Pension Benefit Guaranty Corporation, where the
22 United Airlines pension plans sit. And when 100,000

1 workers -- or retirees have their pension plans on the
2 line, we didn't hear a word from the Right to Work
3 Legal Defense Fund, we didn't hear any concern for the
4 employees who were using that certainty in their
5 retirement.

6 And we take at issue those who are pressing an
7 ideological anti-union animus here. We find it frankly
8 pretty outrageous and offensive that this proposed rule
9 is being championed by an outsider's agenda "trade
10 labor-management relations is adversarial in the
11 airline and railroad industries." And that's simply
12 false. This law, the Railway Labor Act, was built on
13 historical labor-management cooperation and in a
14 bipartisan fashion.

15 And it's been through collaboration that we've
16 built the safest transportation system in the world.
17 We have championed, as unions, the public good and the
18 safety and health in air travel. And most recently, we
19 were unanimous in standing together to stop the
20 government shutdown. And now unanimous in our work to
21 promote legislation that will stop a shutdown from ever
22 happening again or ever affecting the government

1 functions that are so necessary for us to continue as
2 the safest transportation system in the world.

3 Unions have done a lot of good. Our union in
4 coordination with other flight attendant unions ended
5 smoking on planes. We are addressing sexual harassment
6 in the workplace and we have fought to end
7 discrimination, to provide opportunities for both men
8 and women.

9 Our pilots are among the best trained in the
10 world, as we've come to learn the importance of that in
11 recent days. And that has been by the promotion of the
12 pilot unions in demanding those standards. We are
13 working in collaboration to fight for a level playing
14 field in open skies agreements and other trade deals to
15 ensure that the American workers and American companies
16 can compete with everyone around the world.

17 Nonunion groups also benefit from our unions
18 as many of the work rules that are formed at those
19 nonunion carriers really mirror what's in the union
20 contracts, because unions negotiate what works at the
21 airlines and for the workers that we represent.

22 And our unions have also provided an

1 incredible training ground for some of the most
2 effective mediators at this agency.

3 Now, as AFA President, I literally meet with
4 and talk with thousands of workers in the airline
5 industry, both workers represented by unions and those
6 who are not. For those union workers I meet and hear
7 from is the same refrain, "I appreciate having a
8 contract that guarantees me good wages and benefits and
9 I want my union to be even more aggressive in
10 representing our members. From nonunion workers, I
11 hear a burning desire for union representation, for due
12 process at work, for a contract that forces management
13 to keep its promises and provide the middle-class
14 lifestyle that's disappearing from America.

15 I have never once been told by an airline
16 worker nor in the elections that we have been involved
17 in that they want a more direct decertification
18 process. For anyone to believe that that is true is
19 engaging in wishful thinking based on a desire to see
20 unions disappear and to not see the very good that
21 unions do in this country.

22 And despite terrorist attacks, bankruptcies

1 and economic downturns, the airline industry continues
2 to provide good jobs and benefits and a middle-class
3 life to millions of workers and their families
4 precisely because the unions were there protecting
5 their members interests throughout the worst of times.

6 In an age of soaring inequality, where
7 millions of young millennial workers are forced to take
8 low paying jobs with no health insurance, paid
9 vacations or pensions, the unionized airline industry
10 acts as a wall against this ongoing economic attack on
11 working Americans.

12 This proposed rule will embolden an employer
13 to inject itself into the decertification process.
14 That the Board's rule purports to protect employees
15 from carrier election interference is cold comfort to
16 unions like AFA, who have watched as employers
17 repeatedly interfered during the election period while
18 the Board refuses to investigate until after the
19 election is over and the damage done is too great to
20 undo, a Board practice which has applied until recently
21 where the employer claims have called for an election
22 interference investigation.

1 The fear of employer interference is not mere
2 speculation or fear mongering. Airline management have
3 privately told me on many occasions that despite record
4 profits in recent years, Wall Street is relentless in
5 its pressure on CEOs to take on their unions, to just
6 get rid of them.

7 Even those companies with decades long
8 collective bargaining relationships are under intense
9 pressure to reduce costs and increase shareholder value
10 by cutting wages and benefits. They want more in stock
11 buybacks and less to the employees. And that's not a
12 recipe for ensuring labor stability in rail and air
13 industries. And as we're seeing across the country,
14 when workers are stretched to the limit, they will
15 strike back.

16 A 2 year bar following decertification since
17 no negotiations will occur at a union carrier -- I'm
18 sorry, a 2 year bar undermines the Railway Labor Act's
19 fundamental guarantee of providing employees with the
20 right to select their own bargaining representative by
21 erecting a new barrier to representation for the
22 additional 2 years.

1 This is simply not going to create the
2 collaborative environment that maintains labor peace,
3 the environment that continues to promote interstate
4 commerce.

5 And I like to know who's not here today?
6 There's no airline or railroad management with any
7 significant contribution to interstate commerce who is
8 here today in support of this rule change. That is
9 because they know the value of having this
10 collaborative relationship and they also know that it's
11 necessary that the unions are there to put a check on
12 their boards and on Wall Street that continue the
13 pressure to try to force them to impose unrealistic
14 wages, benefits and work rules on the employees of the
15 airlines -- unrealistic, and dare we say, unsafe
16 conditions of these airlines.

17 So for these reasons, we encourage the Board
18 to dismiss this proposed rule change and we will be
19 happy to work with you on any additional questions you
20 may have.

21 MS. JOHNSON: Thank you. And I just want to
22 say to the remaining speakers we need to be out of this

1 room by noon, so please bear that in mind. Our next
2 speaker is Larry Willis.

3 MR. WILLIS: Good morning. Good morning. Do
4 I turn this on or it's good?

5 MS. JOHNSON: Is the green light on?

6 MR. WILLIS: No. Sorry.

7 MS. JOHNSON: Okay.

8 MR. WILLIS: Good morning. My name is Larry
9 Willis. I'm the President of the Transportation Trades
10 Department at the AFL-CIO. I appreciate the
11 opportunity to testify this morning.

12 As earlier mentioned, Carmen gave a good
13 overview of the legal arguments of why we believe that
14 this rule should be rejected. I want to touch on a
15 couple of arguments that she made, but focus on some
16 broader policy issues.

17 We are a coalition of 32 unions that represent
18 workers in almost all areas of transportation. Our TTD
19 includes several unions that represent workers under
20 the Railway Labor Act and thus have a vested interest
21 in this rulemaking, including a number of unions that
22 have already testified today or will testify, ALPA, the

1 Machinists and AFA.

2 In short, I'm here to express our strong
3 opposition to this proposed rule and urge the Board to
4 reconsider moving forward with this measure. The
5 proposed rule is unnecessary, it limits the rights of
6 working people to seek union representation, and
7 undermine stability and labor-management relations.

8 In fact, after carefully reviewing the Board's
9 proposal, our executive committee, which met earlier
10 this month, unanimously adopted a policy statement
11 opposing this rule.

12 We're not alone in this position. We
13 understand that Transportation Committee Chairman Peter
14 DeFazio, Rail Subcommittee Chair Dan Lipinski and
15 Aviation Subcommittee Chair Rick Larsen sent a letter
16 to this Board expressing their opposition to the
17 rulemaking and specifically noted that it would
18 unnecessarily limit the rights of workers to choose
19 union representation after a decertification vote.
20 Senator Patty Murray, the Ranking Democrat on the
21 Health Committee, sent a similar letter and urged the
22 Board to reverse course.

1 Quite frankly, it's easy to see why. The
2 proposed rule needlessly undermines the rights of
3 aviation, rail workers and does so at a time when
4 working people are turning to collective action at a
5 level not seen in years. Stagnating wages, the
6 skyrocketing cost of healthcare, advances in technology
7 and a lack of jobs that pay livable wage have all
8 contributed to an economy that is tilted against
9 working families.

10 Given this reality, it makes no sense to adopt
11 policies that would limit the rights of working people
12 to form and join unions. Yet that is precisely what
13 two members of this Board have proposed.

14 More often than not, the job in the aviation
15 or rail industry is a job someone can raise a family
16 on, buy a house on, send their kids to college on and
17 save for retirement. This is not an accident. It is
18 because of high union density and strong collective
19 bargaining agreements in these sectors.

20 We know that those with a union contract earn
21 on average \$200 or more a week, have safer work
22 environments and are more likely to have employer paid

1 healthcare than their nonunion counterparts.

2 A rule that makes it easier to remove union
3 representation from people who already enjoy the
4 protections of a collective bargaining agreement is ill
5 timed and tone-deaf to the needs of workers in these
6 sectors. More to the point, the proposed rule is
7 simply not necessary. There are already procedures in
8 place that allow workers to remove unions completely or
9 to change the representative.

10 Despite claims to the contrary, these
11 procedures are not overly complex and they are not part
12 of some nefarious plot by the labor movement to force
13 working people to stay within an incumbent union. We
14 know this because there is a record and it's been
15 discussed already of workers in both the aviation and
16 rail sectors using those mechanisms for their intended
17 purpose.

18 To the degree that unions are not removed from
19 rail and aviation properties at a rate sufficient to
20 satisfy the right to work community, look, let me offer
21 an alternative perspective. Working people, they
22 actually want a union voice. In fact, the majority of

1 working people not only understand the benefits of
2 collective bargaining, but see a strong union contract
3 as the most efficient tool they have to make life
4 better for themselves and their families.

5 Look, these concepts may be difficult for some
6 to understand, but I would suggest a desire for fair
7 pay, fair treatment, safety of work and the freedom to
8 care for one's family is what drives the union support
9 that we see from frontline rail and aviation employees.

10 The fact that the proposed rule would mandate
11 a 2 year bar for union elections after decertification
12 vote and deny workers in that unit any union benefits
13 for a 2 year period goes against the clear wishes and
14 needs of working people in America today and the very
15 purposes behind the Railway Labor Act.

16 The Board in its federation notice attempts to
17 justify this ban by noting that once a union is
18 certified there is a 2 year moratorium on union
19 elections. This comparison and the asserted need for
20 similar treatment however has no merit and ignores the
21 policy goals of a 2 year bar for a new union, which
22 simply do not exist after a decertification vote.

1 We must ask ourselves: Is limiting the ability
2 of workers to secure strong union representation for 2
3 full years really about fairness or is it about denying
4 workers the freedom to join together to secure wages,
5 benefit and work rules that they deserve?

6 It's also troubling that this rule has the
7 potential to undermine stability in labor-management
8 relations. The increased threat of union
9 decertifications can make contract negotiations,
10 especially during economic downturns, more difficult,
11 more contentious. And barring people from even voting
12 for a union for 2 years could postpone the resolution
13 of labor-management disagreements and allow issues that
14 could be addressed through collective bargaining to
15 needlessly fester.

16 Finally, we would be remiss if we ignored all
17 the ways that unions benefit employers and the
18 industries in which they operate. It's true that some
19 in the industry are going to push back on unions at
20 every opportunity they get. But I am struck on how
21 often labor and management in the aviation and rail
22 sectors can agree on the federal policy issues that we

1 focus on at TTD.

2 Just by way of example, recently
3 transportation unions and the freight rail industry, we
4 testified together before the Senate on the need for
5 Congress to invest in our nation's infrastructure and
6 to support specific measures for the freight rail
7 industry.

8 During the longest government shutdown in our
9 nation's history, as airlines and other aviation
10 companies saw their commercial interests threatened, it
11 was working people backed by their unions who gave a
12 strong voice and clear focus to what was happening in
13 our national aviation system. At a time when some
14 dared not to discuss potential safety hazards brought
15 on by tens of thousands of government employees
16 furloughed or working without pay, workers and their
17 unions rose to the occasion.

18 One has to wonder how much longer the shutdown
19 would have continued had it not been for the rallies,
20 new stories and, yes, the agitation brought to you by
21 the labor movement.

22 We don't agree with industry on every issue of

1 course and collective bargaining can be difficult,
2 where you have to divide up wages and benefits and the
3 economic pie, but it would be a mistake to ignore all
4 the ways that strong unions and stable labor-management
5 relations not only help frontline workers, but also
6 employers in the aviation and rail sectors.

7 Yet here we sit debating a proposal designed
8 to remove us, the labor movement, from the equation.
9 The Board should reject this proposal and instead focus
10 its time and energy on policies that will support the
11 rights of working families and improve labor-management
12 relations in these sectors. Thank you.

13 MS. JOHNSON: Thank you. Our next speaker is
14 Mike Wolly.

15 MR. WOLLY: Good morning. I am Michael Wolly,
16 a principal in the firm of Zwerdling, Paul, Kahn &
17 Wolly in Washington, D.C. I appear before you today on
18 behalf of the Rail Conference & the Airline Division of
19 the International Brotherhood of Teamsters.

20 The Teamsters' Rail Conference is comprised of
21 the Brotherhood of Locomotive Engineers and Trainmen
22 and the Brotherhood of Maintenance and Way Employees.

1 The BLEET represents over 36,000 locomotive engineers,
2 conductors and trainmen working in what is commonly
3 known as the operating crafts for the nation's class I,
4 II and III rail carriers. The BMWED represents
5 approximately 35,000 employees in the maintenance of
6 way, craft or class at most of those same carriers.

7 On the airline side, the Teamsters Airline
8 Division represents about 80,000 workers in every major
9 craft or class, including pilots, flight attendants,
10 mechanics and related stock clerks, maintenance
11 controllers, aircraft appearance, passenger service
12 employees on carriers across the airline industry.

13 I come before you today to express the
14 opposition of the Teamsters and their affiliates to the
15 agency's proposal. Usually, when a federal agency
16 proposes to amend its rules, it does so because of an
17 intervening change in the statute it administers, a
18 court decision requiring that it do so, a significant
19 change in circumstances in the industry it regulates,
20 or to address a condition that has been exacerbated by
21 an existing rule or that is here to (inaudible) or not.

22 None of these circumstances have precipitated

1 the change that the Board has proposed to implement.
2 Rather we find ourselves faced with a proposal to fix a
3 system that is not broken. In the proverbial sense,
4 the Board has found a hammer and now is looking for a
5 help.

6 Prior to 2010, an employee or employees
7 dissatisfied with their representative could petition
8 the Board by filing an application for an election to
9 replace the incumbent union with another union, or to
10 become the representative and then either negotiate new
11 terms and conditions with the employer or carrier, or
12 disavow the representation, leaving his or her fellow
13 employees without representation.

14 To gain that authority, the employee had to
15 garner votes from a majority of the craft or class, the
16 entire craft or class. To do that, the employee would
17 explain to the other employees exactly what he or she
18 intended to accomplish if chosen and how that could be
19 done.

20 That employee was said to be acting in the
21 role of a straw man, a person put up in name only to
22 accomplish something that could otherwise not be

1 accomplished by the Board's rules. The person was in
2 essence a front. That's because the ballot the Board
3 used in such elections only contained the name of the
4 incumbent representative and the applicant. There was
5 no box to check that said "no representative."

6 Because to prevail in an election during those
7 times, at least half the craft or class plus one had to
8 vote. The straw man would advocate that his or her
9 followers not vote. And the union would then lose
10 because it couldn't demonstrate the necessary support.

11 That changed in 2010. The Board amended its
12 rules so that no one -- so that -- excuse me, the Board
13 amended its rules so that one only had to gain votes
14 from a majority of those who voted, not the entire
15 craft or class to prevail, and the Board added a no
16 representative box to the ballot. That meant that
17 employees desiring to vote out their existing
18 representatives had to cast ballots to accomplish that
19 outcome.

20 Since then, the ballots have contained the
21 names of the incumbent representative, the straw man
22 and no representative. There's also a line for write-

1 ins and a provision for a run-off if no option gets a
2 majority when more than one union and no representative
3 is on the ballot.

4 So now in every board election, whomever is
5 the applicant, employees faced with the choice of
6 becoming or remaining represented by a union have a
7 clearly identified opportunity to vote no
8 representative.

9 There is no evidence or data set out in the
10 Board's notice exhibiting that this process is
11 intimidating, confusing or otherwise isn't working. In
12 fact, the evidence is quite to the contrary as
13 exhibited by the numerous representation proceedings in
14 which it has been tested.

15 The Board's notice, however, would have the
16 public believe otherwise. It implies that airline and
17 railroad workers are somehow locked into existing
18 representation even if they no longer desire to retain
19 that representation. Moreover, that such employees, in
20 the Board's words, are unjustifiably impeded in the
21 efforts to remove a representative by what the Board's
22 notice calls an unnecessarily complex and convoluted

1 process.

2 But the facts simply don't back that up. To
3 the extent that there ever was a problem with respect
4 to the ability of employees to decertify a
5 representative, that putative problem was solved when
6 the Board put the option "no representative" on all
7 ballots in all representation disputes.

8 By labeling the existing procedures
9 unnecessarily complex and convoluted, the Board infers
10 that those procedures are the cause underlying the low
11 number of decertification attempts. We suggest that
12 the procedures have nothing to do with that.

13 It's far more likely that the reason the Board
14 sees few attempts to supplant existing representatives
15 is that unions do a good job representing their members
16 in these highly unionized industries and that the vast
17 majority of employees they represent are satisfied with
18 the representation they receive. That's why
19 decertification campaigns are few and far between, not
20 some NMB rule.

21 Those who are dissatisfied have had no problem
22 understanding how to secure a vote to remove a union.

1 For one thing, all they need to do is look at the
2 Board's website. It explicitly clears up any confusion
3 an employee who wants to get rid of his or her union
4 might have. The Board includes frequently asked
5 questions about representation, one of which is "How
6 can employees decertify their current representative
7 without getting another one?" And the Board says: "A
8 majority of valid votes must be cast for no
9 representation."

10 The same page describes how the winner of an
11 election is determined. The question: "How is the
12 winner of an election determined? The answer: "If an
13 organization or individual receives a majority of the
14 valid votes cast, it will be certified as the
15 representative. But if the majority of votes cast are
16 for no representation, no representative will be
17 certified."

18 The Board's proposed change also ignores the
19 fact that in every representation campaign, whether for
20 or against representation, there are employees at the
21 forefront who support the purpose of the authorization
22 cards being circulated. They are the advocates for or

1 against representation. When representation is sought,
2 the organization for which they advocate files the
3 application. When removing a representative is the
4 objective, one of the employees files the application.

5 That's what the straw man does. Without the
6 straw man, there will be no one for the Board to
7 communicate with. And because he or she is the
8 proponent for the application, it's fully appropriate
9 that he or she be identified on the ballot.

10 The Board's reports of decertification
11 elections reveal no reason to suspect that the current
12 scheme has interfered with the employees' free
13 expression of choice vis-a-vis representation. Those
14 who want decertification know what to do, and if they
15 don't, the Board's website and the straw man tell them.

16 Furthermore, under the existing process, an
17 employee wishing to decertify an incumbent union no
18 longer has to vote for a straw man in order to become
19 represented. All he or she has to do is check the no
20 representative box. It's that simple. And as I said
21 before, employees on numerous occasions have done just
22 that and succeeded in becoming unrepresented.

1 The proposition that having a new formal
2 decertification procedure will remove an impediment for
3 employees who desire to become unrepresented because no
4 one will be required to lead the effort by being the
5 person to initiate the process and whose name would be
6 on the ballot is a shallow one at best.

7 Again, experience under the existing rules
8 shows that there is no impediment. But beyond that,
9 the new rule would not and could not eliminate the
10 requirement for an employee or employees to collect and
11 submit the required authorization cards because that
12 requirement is found in the statute itself. Under
13 Section 2, Ninth, the Board is authorized to determine
14 representation of a carrier's employees only upon
15 request by an employee or a group of employees. It
16 says that in a representation dispute, the Board may
17 act "upon request of either party to the dispute to
18 investigate" and to "certify" to both the parties and
19 to the carrier who would if anyone has been designated
20 to authorize -- who has been designated and authorized
21 to represent the employees involved.

22 And we know, as other speakers have

1 pointed out, from the DC Circuit's decision and the
2 RLEA v. NMB case that means the Board can't get
3 involved on its own or at the request of a carrier or
4 anyone else for that matter. Only an employee or a
5 group of employees or a union can initiate the process.
6 If that's an impediment, the proposition with which we
7 do not agree, it takes legislation, not NMB rulemaking
8 to remove it.

9 This is buttressed by Section 2, Twelfth. It
10 describes the procedure the Board must follow "upon
11 receipt of an application requesting that an
12 organization or individual be certified as the
13 representative of any craft or class of employees."
14 The Board's regulations and the representation manual
15 follow suit.

16 Unless some employee or employees come forward
17 and initiate the card collection drive, sign the
18 application and appear as representatives, no one could
19 be held responsible for the decertification effort.
20 There would be no accountable party to receive notices
21 from the Board and respond to matters raised during the
22 representation proceeding.

1 To reiterate, the Teamsters' rail and airline
2 members submit there's no need for the Board to adopt
3 its proposed decertification rule. It's a proposal
4 seeking to fix a system that needs no repair.

5 Even if the Board does adopt the proposed new
6 procedure, imposing a 2 year bar on subsequent
7 representation applications is unwarranted. The
8 reasoning behind that aspect of the Board's proposal
9 was flawed.

10 Under Section 1206.4 of the Board's
11 regulations "when an applicant for representation loses
12 an election, the Board won't accept another
13 representation application for a year." The Board now
14 proposes to impose a 2 year bar if the incumbent loses
15 its representative status in an election it didn't
16 seek.

17 So if a union submits sufficient cards to get
18 an election but loses, it or another union only has to
19 wait a year to try again. However, if a union is on
20 the ballot in a decertification election and loses, it
21 or another union under the proposed rule won't be
22 allowed to try again for 2 years. Why? Because the

1 Board thinks there's some parallel between
2 decertification and certification that demands that
3 employees forego representation for 2 years in both
4 situations.

5 It's true that the Board won't accept a
6 representation application till 2 years pass after a
7 union is certified, but there is a well-founded
8 justification for that. The reason for the longer bar
9 after a certification is that the bargaining process
10 under the Act, which the Supreme Court has described as
11 purposely long and drawn out, must be fulfilled.

12 A newly certified representative is expected
13 to negotiate a collective bargaining agreement. To do
14 that, it needs sufficient time to establish a
15 bargaining committee; prepare proposals; engage in
16 negotiations; if necessary, participate in mediation
17 before it status become subject to challenge.

18 Were the bar shorter, the representative could
19 find itself criticized in short order because of its
20 failure to arrive at an agreement within a year.
21 Management intransigence could hamstring the
22 organization.

1 The reason that employees choose unions is to
2 deal with management intransigence. This intransigence
3 would put the union status in jeopardy and distracted
4 from its bargaining obligations by having to defend
5 itself under premature representation proceeding.

6 The 2 year insulation period recognizes that
7 possibility and serves the statutory goal of labor-
8 management stability so each side can exert every
9 reasonable effort to make an agreement and settle the
10 dispute without interruption to interstate commerce.
11 And that of course is the goal of the Act.

12 A successful decertification effort, on the
13 other hand, simply ends representation. If there's no
14 representative, there's no collective bargaining
15 agreement. It's automatic. The agreement is gone with
16 the Board's announcement of the results. The employees
17 become at-will and return to working under rules
18 unilaterally imposed by the carrier. It's as if there
19 had never been a representative.

20 No one has to exert any effort to make an
21 agreement, because without a representative, there
22 isn't one and won't be one.

1 There is simply no parallel between that
2 situation and when a representative is elected.
3 There's simply no convincing justification for a 2 year
4 bar when employees are unrepresented.

5 I'm finishing up. Thank you. Just as one
6 year is sufficient when a union fails to achieve
7 representative status in an election, it's also
8 sufficient when a union loses that status in a
9 subsequent action. This is not to say that the
10 employees are required to select a new or even an old
11 representative a year later, but they certainly should
12 have the opportunity to do so if that's what the
13 majority wants.

14 The employees get nothing from an extended
15 bar. The only party who benefits from doubling the
16 length of the application bar after a decertification
17 is the carrier. It gets to operate unchallenged for an
18 additional year.

19 For these reasons, if the Board does adopt a
20 new decertification procedure, it should not adopt a
21 longer bar on accepting subsequent applications. Thank
22 you.

1 MS. JOHNSON: Thank you. And our final
2 speaker is Jeff Bartos.

3 MR. BARTOS: I'm just checking if that's on.

4 MS. JOHNSON: Is the green light on?

5 MR. BARTOS: That's going to be on? I can't
6 tell.

7 MS. JOHNSON: I think you press the bottom
8 here and then look at the -- is there a green light?

9 MR. BARTOS: Now it's on. Yes. I was looking
10 at the wrong place. Sorry. Good morning, Chairman
11 Fortson, Board Member Puchala, Board Member Fauth,
12 General Counsel Johnson. My name is Jeffrey Bartos
13 from the firm Guerrieri, Bartos & Roma and I'm here
14 with a statement on behalf of International Association
15 of Machinists and Aerospace Workers.

16 With me from the IAM is James Carlson,
17 Assistant Airline Coordinator; Carla Siegel, Deputy
18 General Counsel; and Emily Pantoja, Assistant Director,
19 Industry Relations of TCU.

20 The IAM has a vital interest in the
21 enforcement of the Railway Labor Act and the proper
22 administration of the NMB's role within the statutory

1 framework. In fact, the IAM has been representing rail
2 employees since before the Act was adopted and today
3 represents approximately 150,000 workers in the airline
4 and railroad sectors and is the United States largest
5 transportation industry union.

6 The IAM unequivocally opposes the Board's
7 proposed rule. As a fundamental matter, the Board
8 lacks statutory authority to issue this rule. Congress
9 has expressly forbidden the action, now proposed in
10 Section 2, Twelfth. And were the Board to proceed with
11 this proposal, this regulation would surely be struck
12 down as the Board's merger procedures were found to
13 have been a gross violation of the Act. And we urge
14 the Board not to take such an unlawful action.

15 Even if the Board had authority and
16 jurisdiction to adopt this rule, there's plainly no
17 basis for doing so and many reasons not to do so.
18 There is no need, because employees have always had and
19 continue to have the ability to change representation
20 or end representation. In fact, just last month the
21 Board issued a termination at Endeavor Air under the
22 Board's current procedure.

1 Adoption of the rule would also have many
2 pernicious consequences for employees, for carriers and
3 the public. It would incentivize and empower employers
4 and outside forces to support anti-union
5 decertification efforts and it would unfairly prohibit
6 employees from expressing their right to seek union
7 representation.

8 And I think an institutional concern for this
9 Board would be that, in particular, the adoption of a 2
10 year bar on seeking representation would undermine the
11 Board's traditional historical role as a neutral
12 stabilizing force in the transportation sector.

13 And I will give some condensed version of my
14 written comments. Many of these points have been
15 touched on. I want to just highlight a few things.

16 Fundamentally, is this rule within the Board's
17 jurisdiction? No. Federal courts have repeatedly
18 admonished that the Board has limited statutory
19 authority confined to matters expressly authorized by
20 the Act. And I will just refer to the RLEA versus NMB
21 language as a -- which others have done.

22 In the Russell case in 1983, the Fifth Circuit

1 observed correctly that the Board has stated time and
2 time again that the direct decertification vote process
3 under the NLRA is not allowed by the Railway Labor Act.

4 Russell went on to mandate the straw man
5 process as a process consistent with the Act. And
6 there's some discussion in the Russell case that maybe
7 there's some question whether the Act allowed for
8 direct decertification. And the Board's position was,
9 "no, it does not."

10 If there ever was such a question, Congress
11 expressly answered that question in the negative in
12 2012 after the Board declined to create direct
13 decertification, after the DC Circuit held that no such
14 procedures were required. Congress amended the Act,
15 and in doing so, adopted language that specifically
16 precludes the rule here.

17 2, Twelfth of the Act provides not only the
18 50% threshold mandate, but also provides that before
19 the Board may use any procedure to determine who shall
20 be the representative, there must be an application
21 requesting that an organization or individual be
22 certified as the representative. The Board may not use

1 a different process, the Board may not go under 50%,
2 and the Board may not recognize an application that
3 does not seek a certification.

4 The proposed rule is flatly contrary to the
5 statute, and I think as expressed by the TDD comments,
6 it's contrary to the statutory purpose as reflected by
7 the guidance directive given to the GAO.

8 And we submit that in light of the clear
9 controlling statutory language and the indications of
10 congressional intent, moving forward with the proposed
11 rule will be a grave mistake.

12 And of equal importance, as a practical
13 matter, adopting the rule would undermine the purposes
14 of the Act. And even if the Board had jurisdiction,
15 adopting the rule would be counter to the statutory
16 purposes of protecting the right of employees to
17 organize and prohibiting carriers from interfering with
18 the organization of their employees.

19 And I want to touch on two of the truly most
20 negative aspects of the proposed rule. First, the
21 rule, even if lawful, would open additional avenues for
22 rail and air carriers and by outside groups supported

1 by employers in this and other industries to seek to
2 influence and interfere with employees choice of
3 representatives.

4 The Board is aware that even under the current
5 procedures, carriers have been caught in the act of
6 illegally supporting and directing efforts to oust
7 there to be elected representatives.

8 I'm personally familiar with that situation
9 several years ago at Great Lakes Aviation. I think
10 there's other examples cited in some of the other
11 comments. And whether intentional or not, I heard this
12 morning a troubling phrase from -- in some of the
13 testimony referring -- a carrier referring to "our
14 straw man."

15 That's a concern that labor organizations and
16 employees have of employers utilizing the existing
17 straw man procedure as well as the Board's proposed
18 procedures to unlawfully interfere with the
19 representative of the employees.

20 And we submit that the proposed rule and the
21 expansion of the process for decertification will
22 incentivize and empower employers to push the envelope

1 further to multiply the opportunities for illegal
2 conduct and make it more difficult to enforce the legal
3 prohibition.

4 Under the current roles, an individual who
5 seeks to invoke the Board's jurisdiction has a
6 responsibility to go amongst his or her coworkers and
7 affirmatively seek to act as their representative.
8 That's what Mr. Russell did in the Russell case.

9 The current proposed rule would allow any
10 organization or any individual seeking decertification
11 to invoke the Board's jurisdiction through the filing
12 of cards seeking no representative. This rule would
13 eliminate even the minimum threshold of accountability
14 and responsibility or indeed any connection with the
15 actual workforce, which the current procedures require.

16 We have seen in recent years and decades that
17 the removal of individual and institutional
18 transparency, accountability and responsibility from
19 the public sphere creates a danger of improper
20 influence, interference that's difficult to even
21 uncover or prevent. We submit that the proposal would
22 import that problem into the Railway Labor Act and into

1 the labor relations process that has been a stable and
2 functioning process for the past 8 decades.

3 A second negative consequence that is of great
4 concern to the IAM is the utterly unjustifiable
5 prohibition on employee self organization following
6 direct decertification. The proposal to double the
7 length of time after an effective decertification that
8 employees must wait is absolutely contrary to the
9 statute and in fact contrary to the Board's stated
10 purpose of expanding and protecting employees' freedom
11 to choose a representative.

12 There is absolutely no statutory or practical
13 purpose in a 2 year bar. And in fact that is flatly
14 contrary to the purposes of the Act and would at best
15 be an arbitrary and capricious step for this Board to
16 take.

17 The IAM appreciates the opportunity to present
18 its views to the Board. We thank the Board for
19 listening to the concerns of organizations which
20 collectively represent hundreds and hundreds of
21 thousands of employees who have elected them to speak
22 to you.

1 We submit the proposed action is unlawful,
2 it's unneeded, it would undermine the purposes of the
3 Act. And we hope the Board will reconsider this ill-
4 advised approach. Thank you.

5 MS. JOHNSON: Thank you. This concludes the
6 hearing.

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CERTIFICATE OF NOTARY PUBLIC

I, KEVON CONGO, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of



KeVON CONGO

Notary Public in and for the
DISTRICT OF COLUMBIA

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CERTIFICATE OF TRANSCRIBER

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