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May 15, 2019

*Via E-File (OLA-efile@nmb.gov)*

Mary Johnson, General Counsel  
National Mediation Board  
1301 K Street, NW, Suite 250 East  
Washington, DC 20005-7011

RE: Delta Air Lines Flight Attendant and Ramp Employees  
**ELECTION INTERFERENCE CHARGES**

Dear Ms. Johnson:

The International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM” or “Union”) submits that there is ample evidence of Delta Air Lines’ interference with Flight Attendant and Ramp employees’ statutory right to choose union representation free from “interference, influence, or coercion exercised by the carrier” requiring the Board’s intervention. 45 U.S.C. § 152, Ninth. Delta has executed a vigorous anti-union campaign named “DON’T RISK IT. DON’T SIGN IT” in an attempt to intimidate union supporters and thwart efforts to seek a free and fair representation election. Delta’s unlawful campaign has included disciplining and firing union activists, destroying union campaign materials, changing Company policies to further frustrate unionization, and cornering employees in one-on-one meetings to interrogate them and attempt to influence their actions.<sup>1</sup> Although a representation application has not yet been filed in this matter, the IAM submits that Delta’s egregious conduct constitutes “extraordinary circumstances” warranting immediate Board action under Section 17.0 of the NMB’s Representation Manual.

In support of these interference charges, we are attaching sworn declarations from both Ramp and Flight Attendant employees as well as IAM organizers, based on their personal

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<sup>1</sup> Indeed, Delta has dedicated an entire website to providing misleading information about the IAM which can be accessed at: <https://dontriskitdontsignit.com/understand-labor-unions/>.

knowledge of Delta's misconduct. These declarations unequivocally demonstrate a clear pattern of interference with employees' rights throughout the Delta nationwide network.<sup>2</sup>

At this juncture, the Board's intervention is necessary to preserve Flight Attendant and Ramp employees' rights under the RLA and the integrity of the NMB's processes.

### **Retaliatory Terminations and Discipline**

In 2010, the IAM challenged Delta's inappropriate interference with employees' freedom of choice of a collective bargaining representative in three separate elections. The Board ordered a re-run election in one case. *See In the Matter of the Application of the Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 37 NMB 281, 317 (Aug. 10, 2010). In the other two cases, Board investigators found substantial circumstances of interference, including that Delta misrepresented voting procedures and employees reported being inappropriately surveilled by management due to their support of an election. Nonetheless, the Board concluded that given the totality of the circumstances, the laboratory conditions had not been tainted. *See In the Matter of the Application of the Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 39 NMB 182, 197 (Dec. 9, 2011); *In the Matter of the Application of the Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 39 NMB 130, 141 (Dec. 7, 2011). Further emboldened, since the IAM's organizing campaign was revamped in 2017, Delta has intensified its efforts and targeted internal leaders in an effort to decapitate the union movement and to strike fear among IAM supporters, disciplining and even terminating union activists. Although the Company claims that these union supporting employees violated Company rules, the timing and circumstances surrounding these terminations reveal that these claims are pretextual. *See* Decls. 2, 4, and 5. For example, one prominent union activist in Atlanta was recently singled out and terminated. Despite having an unblemished employment record for approximately seven years, this activist was abruptly given an ultimatum to either quit her part-time job working at the United Parcel Service ("UPS") or be terminated by Delta. The Company claimed that her position with UPS constituted a conflict of interest, but this explanation can only be explained as pretext since she had fully disclosed her position with UPS when she was initially hired and was only presented with Delta's demand *after* she became a pivotal voice in the organizing campaign. Additionally, there are numerous other similarly situated individuals who hold positions at both UPS and Delta and have not been given this same ultimatum. *See* Decl. 2.

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<sup>2</sup> These supporting declarations are provided in the attached Appendix. In an effort to protect employees from retaliation for providing information to the NMB regarding the Company's unlawful conduct, we have redacted identifying information from many of the declarations. We will provide further information to the Board upon request. Citations to the accompanying declarations are therefore by number rather than name.

In another instance, a Flight Attendant posted information on an employee web portal comparing Delta's healthcare plan to that of another airline. After doing so, the employee was disciplined and banned from accessing the portal for thirty days. However, multiple other employees have posted anti-union comments and misinformation on this same employee forum unmolested by Delta's discipline or interference. *See* Decl. 1 ¶ 3.

It is undisputable that retaliatory discipline taints the laboratory conditions and sends an improper chilling message to the entire work-group. *See Pinnacle Airline*, 30 NMB 186, 219-220 (2003); *Washington Cent. R.R.*, 20 NMB 191, 233-34 (1993); *Key Airlines*, 16 NMB 296, 309 (1989); *Sea Automotive*, 11 NMB 87, 90 (1983). Delta's violation of the law and interference with Flight Attendant and Ramp employees' rights must be stopped.

### **Carrier Threats, Promises, and Misinformation**

Since becoming aware of Flight Attendant and Ramp employees' organizing efforts, Delta has orchestrated an elaborate plan to prevent employees from organizing. The Company has conveyed threats and provided misinformation through postings and electronic messages in the workplace. *See* Decl. 1, 3, and 6. For example, employees throughout the country have been told that they will lose flight benefits and profit sharing, and that Ready Reserve Agents will be fired if Delta employees are unionized. *See* Decl. 1 ¶ 3, and 6 ¶ 4. Delta has also sent anti-union flyers to employees' homes, Decl. 3 ¶ 10, and workers report being falsely told by managers that the union will sell their personal contact information. Decl. 1 ¶ 4.

In breakrooms throughout the country, Delta has forced employees to watch anti-union videos on breakroom televisions played in a continuous loop. *See* Decl. 1 ¶ 8. Additionally, Flight Attendants and Ramp employees have been bombarded with anti-union flyers which Delta has posted on employee breakroom walls and placed on flyer stands, which caution employees "not to trust" the IAM. *See* Decl. 3 ¶ 9. However, particularly in the case of Flight Attendant breakrooms, employees have been denied an equal opportunity to also provide information concerning the union. Additionally, in 2015 Delta changed its advocacy policy, further restraining employees' abilities to provide information regarding the union. Flight Attendants are now prevented from placing signs on breakroom tables to inform employees how to receive information about the union. This is particularly egregious since breakroom tables are non-work areas and Flight Attendants have been prevented from doing so during non-work hours. *See* Decl. 1 ¶ 5, and 4 ¶ 4. During new hire trainings, Delta management has also included a nearly hour-long segments during which managers have attempted to dissuade employees from supporting the union and have told employees: "If you are approached by someone with a union card, just walk away." *See* Decl. 6 ¶ 5. Delta has attempted to monopolize the discussion and prevent employees from hearing union supporters' side of the issues.

Delta has also solicited employees to engage in coercive daily "briefings" in which employees are presented with negative information about union representation and the effects of collective bargaining. Employees who ask questions during these briefings are singled out and

required to meet with managers individually in the manager's office. During one such briefing in Michigan, employees were told "if you have a card, you should rip it up" and "you don't need the union." Decl. 7 ¶ 2. In another particularly troubling display of anti-union conduct, a manager in Seattle summoned an employee to engage in a private conversation premised on an alleged uniform violation; however, once the employee and the manager were alone, the manager berated the employee concerning his union involvement. The manager questioned him on whether he wanted to "give [his] money away," and attempted to dissuade the employee from engaging in union activity. The manager vigorously tried to persuade the employee to reject his union affiliation and, as the manager put it, "get [him] over to the dark side." See Decl. 1 ¶ 6. This interrogation and pressure is unlawful. *America West Airlines, Inc.*, 25 NMB 127, 140 (1997) (interrogating employees as to their representation choices constitutes improper interference).

The NMB has consistently found that such one-on-one meetings with members of the craft or class, where anti-union opinions are expressed by management officials during the laboratory period, are inherently coercive. *Stillwater Cent. R.R.*, 33 NMB 100, 142-143 (2006); see also *Aeromexico*, 28 NMB 309, 326, 339-340 (2001) (interference found where carrier held one-on-one meetings with employees to discuss the election); *Key Airlines*, 13 NMB 153, 160-161, 163 (1986) (interference where carrier called individual meetings of employees and tried to determine their union sentiments and influence them to vote against the union). Small group meetings are similarly offensive. *Allegheny Airlines*, 4 NMB 7, 13 (1962); see also *Delta Air Lines*, 27 NMB 484, 493, 504 (2000) (laboratory conditions tainted by mandatory small group meetings where the carrier discussed the union); *Petroleum Helicopters*, 25 NMB 197, 233-234 (1998) (small group meetings, conducted by management officials supported a finding of interference).

Delta also maintains another employee web portal called DeltaNet where employees have historically accessed training videos and manuals. The website now contains numerous inflammatory anti-union videos. See Decl. 3.

Delta's conduct clearly violates the RLA. Although "[a]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union," communications containing a "threat of reprisal or force or promise of benefit" are strictly forbidden. *US Airways v. NMB*, 177 F.3d 985, 991 (D.C. Cir. 1999), quoting *NLRB v. Gissel Packing*, 395 U.S. 575, 618 (1969); see also *Virgin Atl. Airways*, 24 NMB 575, 615 (1997); *Key Airlines*, 16 NMB 296, 311 (1989); *Florida E. Coast Ry.*, 17 NMB 177, 181, 187 (1990). Even communications that "contain a subtle, if not direct, effort to influence said employees in their choice of representative" violate the RLA. *Brotherhood of R.R. Trainmen v. Richmond, Fredericksburg & Potomac R.R.*, 69 LRRM 2884 (E.D. Va. 1968). Delta's inaccurate and misleading statements about the consequences of unionization constitute election interference under NMB precedent. *USAir*, 17 NMB 377, 421 (1990) (misleading statements about union dues found objectionable); *Washington Cent. R.R.*, 20 NMB 191, 221-222, 232 (1993) (interference found where carrier polled employees by approaching them or calling them at home and asking their opinion of the union and how they felt about the election).

### Surveillance

The Company has continuously engaged in surveillance of employees. Managers have photographed employees participating in union rallies or engaging in other union activity. *See* Decl. 8. Delta is prohibited from engaging in surveillance of union organizing activities. *Konop v. Hawaiian Airlines*, 302 F.3d 868, 884 (9th Cir. 2002). In past cases, the Board has viewed surveillance as a *per se* violation of the laboratory conditions, *Aeromexico*, 28 NMB 309, 336 (2001), and has held that even the “appearance or impression of surveillance has a chilling effect on employee behavior and is a sufficient basis for a finding of interference.” *Pinnacle Airlines*, 30 NMB 186, 223 (2003).

### Suppression of Union Activity

Delta managers have repeatedly engaged in outright suppression of Flight Attendant and Ramp employees’ lawful expression supportive of representation. Employees have been disciplined for wearing union pins and required to remove union tags from their personal bags. Employees sitting in non-work areas have also been told to remove their union pins. Decl. 4 ¶ 5 and 5 ¶ 4. These actions violate the RLA. *See Hurley v. Horizon Air Indus., Inc.*, 613 F. Supp. 2d 1229, 1232 (W.D. Wash. 2009); *Skywest Pilots ALPA Organizing Committee v. Skywest Airlines, Inc.*, 2007 WL 1848678, at \*12; *Scott v. American Airlines, Inc.*, 488 F. Supp. 415, 419 (E.D.N.Y. 1980); *Adams v. Federal Express Corp.*, 470 F. Supp. 1356, 1363 (W.D. Tenn. 1979).<sup>3</sup>

Delta managers have unlawfully destroyed and disposed of union organizing materials, including authorization cards, union flyers and publications located above employee lockers, while leaving behind other non-union loose papers and items which were similarly situated atop employee lockers. *See* Decl. 2 ¶ 7 and 3 ¶ 4. In doing so, managers have made a conscious decision to distinguish union informational materials from materials on other topics. Such discrimination is unlawful and cannot be tolerated. Discriminatory application of solicitation policies and prohibitions on union speech violate the RLA. *See Held v. American Airlines*, 13 F. Supp. 2d 20, 26-27 (D.D.C. 1998) (selective enforcement of ban against solicitations “provided sufficient proof to raise the inference that anti-union animus was a substantial or motivating factor behind the challenged decision”); *USAir*, 17 NMB 377, 423 (1990) (no-solicitation policy was only applied to union campaign materials and thus “interfered with employee free choice”).

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<sup>3</sup> Federal labor law guarantees employees the right to wear union insignia while working absent “some exceptional reason for curtailing such expressions” is present. *Adams*, 470 F. Supp. at 1363; *Scott*, 488 F. Supp. at 419 (an “effect on employee efficiency, safety or personnel friction or ... a consistent policy with respect to wearing jewelry of any kind on a uniform for public and/or customer relations purposes” are examples of such exceptional reasons under the RLA).

Despite the clear mandate that “[e]mployers may not prohibit employees from distributing union literature on non-work time and in non-work areas,” Delta has continued to engage in such unlawful activity. *See* Decls. 2 and 3; *see also Skywest Pilots ALPA Org. Comm. v. Skywest Airlines, Inc.*, 2007 WL 1848678, at \*13 (N.D. Cal. June 27, 2007) (citing *Consolidated Diesel Co. v. NLRB*, 263 F.3d 345, 354 (4th Cir. 2001) and *NLRB v. Lummus Indus.*, 679 F.2d 229, 233 (11th Cir.1982)).

Moreover, in New York City and Atlanta, peaceful union rallies and informational meetings have been disrupted by Delta’s harassing conduct of both threatening and calling the police on the Company’s own employees. *See* Decl. 8. Such threats to call the police and summoning to the police in response to employees’ lawful union activities, are severe violations of employee rights. *See e.g. Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006).

### **Threats of Litigation**

In addition to the unlawful interference tactics employed by Delta which have been directed toward Flight Attendant and Ramp employees, the Company has threatened the IAM with baseless litigation directed at lawful organizing activity. On April 23, 2019, the IAM’s General Counsel received a demand letter from Paul F. Wellborn III, an attorney representing Delta. Mr. Wellborn’s letter threatens the IAM with baseless claims of fraud, misrepresentation, and trademark violations for the use of Delta’s name in connection with organizing. *See* Decl. 1. Such claims have long been rejected by federal courts, *see Marriott Corp. v. Great Am. Serv. Trades Council, AFL-CIO*, 552 F.2d 176, 180 (7th Cir. 1977), but this threat is yet another example of Delta’s efforts to deter the free exercise of employee rights protected by the RLA.

### **The NMB Must Act To Remedy Delta’s Interference**

Delta is engaging in systematic, widespread and egregious forms of interference with employee choice of representation. While the Board traditionally waits until after an election to investigate carrier interference, we submit that given Delta’s present and past conduct, this case presents exceptional circumstances under the NMB’s Representation Manual. Delta’s threats, intimidation, surveillance, disparate treatment and barrage of misleading information presented in a coercive atmosphere are systematic and ongoing and have so tainted the laboratory conditions required by the Board that they must be addressed now. A full investigation should be conducted, and all appropriate sanctions imposed once the investigation is completed.

If we can provide further information or assist the Board in its investigation of Delta’s interference with Flight Attendant and Ramp employees’ rights, please do not hesitate to contact us.

Mary Johnson, General Counsel

May 15, 2019

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Respectfully submitted,

Handwritten signature of Jeffrey A. Bartos in black ink.

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*Attorneys for the IAM*

cc: Sito Pantoja, IAM General Vice President, Transportation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of May 2019, a copy of the foregoing Delta Air Lines Flight Attendant and Ramp Employees Election Interference Charges and Appendix was served electronically upon the following:

Peter Carter  
Executive Vice President, Chief Legal Officer & Corporate Secretary  
Delta Air Lines  
[Peter.carter@delta.com](mailto:Peter.carter@delta.com)

/s/ Jeffrey A. Bartos  
Jeffrey A. Bartos