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BY E-MAIL ONLY – OLA-efile@nmb.gov

Josie G. M. Bautista, Investigator
Maria-Kate Dowling, Acting General Counsel
National Mediation Board
1301 K Street, N.W.
Suite 250 East
Washington, D.C. 20572

Re: NMB Case No. R-7557
Mechanics and Related Employees at American Airlines
AMFA's Initial Position Statement

Dear Ms. Bautista and Ms. Dowling:

Pursuant to the National Mediation Board's ("NMB") letter, dated November 16, 2020 to the participants in the above referenced case number, the Aircraft Mechanics Fraternal Association ("AMFA") submits herein its Initial Position Statement.

We write to request that the NMB direct American Airlines ("American Airlines" or "the Carrier") to take corrective action to undo and remedy its prior and continuing interference with the "laboratory conditions" required under the Railway Labor Act ("RLA") in violation of Section 2 Third, Section 2 Fourth, and Section 2 Ninth of the RLA. American Airlines is a carrier by air and therefore is covered by Section 2 of the RLA as provided in 45 U.S.C. § 181. Alternatively, it is acceptable to AMFA that the Carrier may take corrective action on its own initiative to undo and remedy its prior and continuing interference with the "laboratory conditions" required under the RLA by affirmatively stating in writing to the NMB that it now intends to remain neutral in this representation dispute and therefore will not enforce any language in the Collective Bargaining Agreement ("CBA") for its Mechanics and Related Employees to the detriment or loss of benefits of any employee in this craft or class resulting from any change in representation in this NMB case.

Since November 2019, AMFA supporters have been conducting an authorization card collection campaign with the full awareness of the Carrier. The laboratory conditions commence when the

carrier becomes aware of the union organizing campaign. *United Airlines*, 27 NMB 417 (2000); *Era Aviation*, 27 NMB 321 (2000); *American Airlines*, 26 NMB 412 (1999).

As of the date that the organization campaign began, American Airlines came under a legal obligation to stay neutral and abstain from any coercion that would upset the "laboratory conditions" which are required by the RLA during an election process. Unfortunately, the Carrier flagrantly violated the Carrier's legal obligation by agreeing with the incumbent union to specific language in the CBA for the Mechanics and Related Employees at American Airlines in response to the drive at American Airlines to collect authorization cards for AMFA representation. It is worth noting that the previous CBA had no such provision in violation of the RLA. The new CBA language adopted and later ratified in March 2020 in Article 29 – Benefits, Section K *per se* violates the Carrier's legal obligation of neutrality in expressly stating the following:

K. In the event the TWU/IAM Association or the IAM should lose representation rights for a specific employee group through a representation election conducted by the National Mediation Board ("NMB"), the Company shall immediately have the right to eliminate, alter, modify, or merge with an existing plan, the Legacy US Airways Medical Plan provided under this Agreement for the specific employee group whose representation has changed.

It is beyond cavil that this CBA provision was and is intended to impede AMFA both in its efforts to collect authorization cards but also to adversely affect AMFA's chances in an NMB election with certain employees who stand to lose certain health benefits should the TWU/IAM Association lose its representation rights to AMFA for the Mechanics and Related Employees at American Airlines.

Section 2, Fourth of the Railway Labor Act provides, in pertinent part:

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and **it shall be unlawful for any carrier to interfere in any way with the organization of its employees**, **or to use the funds of the carrier in maintaining** or assisting or contributing to **any labor organization**, **labor representative, or other agency of collective bargaining,** or in performing any work therefor, **or to influence or coerce employees in an effort to induce them to** join or **remain** or not to join **or remain members of any labor organization** . . . . (Emphasis supplied).

"Under *International Association of Machinists v. Street*, 367 U.S. 740, 759, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961), construing 45 U.S.C. § 152, Fourth, it is unlawful for carriers to interfere

with an organization of employees or to influence or coerce them in an effort to induce them to join or not to join a labor organization or otherwise to interfere with employees' rights." American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 865 (2d Cir. 1978).

Federal courts have confirmed the unlawfulness of the kind of Carrier conduct described above.

> As we have already noted, it is sometimes considered coercive for an employer to confer benefits on employees during an organization campaign. See *Exchange Parts, supra*. Nevertheless, **it is also considered coercive if an employer threatens to withhold benefits already agreed upon in the face of an organization effort.** (Emphasis supplied). See *Sta-Hi Division, Sun Chemical Corporation v. NLRB*, 560 F.2d 470, 473-475 (1st Cir. 1977); *NRLB v. Juniata Packing Company*, 464 F.2d 153, 154 (3d Cir. 1972); *NLRB v. Dothan Eagle, Inc.*, 434 F.2d 93, 97-98 (5th Cir. 1970). Courts have noted that this is a fine line which can cause problems for an employer. However, the guiding principle is that the employer must act as he would in the absence of a union campaign. *Sta-Hi, supra*, at 474. As the U. S. Court of Appeals for the Fifth Circuit has stated:
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> The cases make it crystal clear that the vice involved in both the unlawful increase situation and the unlawful refusal to increase situation is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited . . ..

Adams v. Federal Express Corp., 470 F.Supp. 1356, 1371-1372 (W.D. Tenn. 1979) (Emphasis supplied).

> ". . . [A] definite statutory prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded. The intent of Congress is clear with respect to the sort of conduct that is prohibited. "Interference" with freedom of action and "coercion" refer to well understood concepts of the law. The meaning of the word "influence" in this clause may be gathered from the context. *Noscitur a sociis.* *Virginia* v. *Tennessee*, 148 U.S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. **"Influence" in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls "self-organization."** The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-

> known applications of the law with respect to fraud, duress and undue influence. (Emphasis supplied).

Texas & N.O.R.R. v. Brotherhood of Ry. and S.S. Clerks, 281 U.S. 548, 568 (1930).

Even if the above-referenced RLA violation of the Carrier was unauthorized, which in this instance it clearly was not because American Airlines agreed to the Article 29 provision, the Carrier is fully responsible unless it takes immediate action to prevent its recurring effect. We respectfully request that the Carrier take immediate curative action, or to do so at the direction of the NMB to cure this violation of the RLA. Specifically, AMFA requests an explicit Carrier affirmation in writing to the NMB that the Carrier will not take away or reduce any benefits from any employee if there is a change in representation as set forth in Article 29 – Benefits, Section K of the CBA.

In addition to the injunctive relief available from the federal courts, the National Mediation Board will exercise its authority under Section 2, Ninth to order a re-run election where the Carrier has interfered with the "laboratory conditions" required under the Railway Labor Act. See, e.g., America West Airlines, 25 NMB 127 (1997); America West Airlines, 21 NMB 293 (1994); Federal Express Corp., 20 NMB 7 (1992).

Thank you for your consideration of this critically important issue created by Article 29 – Benefits, Section K of the CBA for the Mechanics and Related Employees at American Airlines.

Respectfully yours,

/s/George Diamantopoulos
George Diamantopoulos

cc: Bret Oestreich, AMFA National Director
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