Transport Workers Union of America
Air Transport Local 591

September 2, 2014

Mary Johnson, General Counsel
National Mediation Board
1301 K Street, NW, Ste. 250E
Washington, DC 20005

Re: Single Carrier Filing by the TWU-IAM Alliance
NMB File No. CR-7131

Dear Ms. Johnson:

We read the IAM submission, dated August 28, 2014, with great disappointment.

Local 591's **only objective** is to protect our members' freedom to vote in a non-coercive environment. Pursuant to the NMB Representation Manual, these workers have the right to have only those unions that have demonstrated support from at least 50% of the employees listed on the ballot. As required by law, any other union candidate should be relegated to the write-in column, not forced upon our members with the complicity of the United States government.

These two incumbent unions should not be given the right to waltz in and name a new union – be it the "TWU/IAM Association" or the Bakers Union had those chosen to list them instead – as the inheritor of TWU or IAM members through a "perceived or perverse showing of interest." And that is precisely what the IAM proposes.

The IAM submission consists of three basic arguments. The first is that our demands for fairness on behalf of American Airlines employees can safely be ignored because "the TWU International Union is the certified represented [sic] under the Railway Labor Act" -- a curious argument given the IAM's goal of stripping our members of the right to vote for the TWU.

The NMB need not yield to this technicality, nor should it ignore the submission on behalf of over 4,000 Local 591 members, that they be allowed to vote for their "incumbent" union. NMB precedent establishes that, once a representation election has been initiated, the Board exercises "broad discretion … concerning the manner in which it conducts investigations in representation disputes …." *Arkansas Midland Railroad Co.* 23 NMB 260, 271 (1996). *See also Air Logistics*, 27 NMB 570, 577 (2000)("with respect to those matters subject to the Board's authority, the determination of the particular investigative approach is wholly within the Board's discretion."). It is both shameful, and legally incorrect, to argue that the NMB should turn a blind eye to TWU members' rights to choose TWU or the "Association" independent of IAM; and the IAM

membership should independently enjoy the same right to choose IAM over the "Association." If the "Association" is so good for members, both Unions should easily be able to garner support for and receive over 50% + 1 of their members' votes for the "Association."

The IAM's second argument is that the NMB should install on the ballot a new union,[1] which has not satisfied any of the legal criteria satisfying a showing of interest, because the Board has done so in the past. The IAM chiefly relies on *Dobbs Int'l Servs. Inc. d/b/a Gate Gourmet*, which it both incorrectly cites[2] and mischaracterizes. In *Dobbs*, which involved a union coalition referred to as "the Council," the NMB ultimately proceeded on the basis that Dobbs and *the Council* had entered into a voluntary recognition agreement and collective bargaining agreement covering all employees in the craft or class formerly represented by the coalition partners separately. *Dobbs Int'l Servs. Inc. d/b/a Gate Gourmet*, 28 NMB 7, 10 (2000). In short, it was *the Council itself* that demonstrated its *own* showing of interest based on its prior actions as a labor organization. By contrast, in the instant case, the IAM seeks to allow the "Association" a place on the ballot to oust the incumbent TWU, without any showing of interest whatsoever. The TWU-IAM Association has never obtained a voluntary recognition agreement, never negotiated a joint collective bargaining agreement, and never collected a single authorization card.

The IAM's reliance on *US Airways/America West Airlines*, 33 NMB 151 (2006) can only be described as perversely ironic. In that case, the Board recognized the merged CWA-IBT entity based on a prior membership voting process conducted by both predecessor unions. Specifically, the NMB premised its recognition of the new entity on its finding that:

> There is no evidence of fraud or gross abuse in the affiliation or election process conducted by the IBT and CWA. Each organization conducted a secret ballot of its members. In each election a substantial majority of those who voted, voted in support of the formation of the Association and the request to transfer individual certifications to the Association. Based on its investigation, the Board finds that the IBT and CWA have affiliated for the purpose of representing Passenger Service Employees at the combined carrier.

Id. at 168. It is a measure of the IAM's desperation that it relies on the *US Airways/America West Airlines* decision as precedent. In that case, the members' democratic rights were respected; in this case, they are being brazenly trampled underfoot.

Finally, the IAM concedes that "the RLA prohibits two or more unions from bargaining separately for employees in the same craft or class …." IAM Submission at 3. The IAM seeks

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[1] As discussed in detail in our prior submission, the TWU/IAM Association is bound by prior representations in federal court that the objective of the current application is to "oust" the TWU and "replace" it with a "new" union – the Association itself.

[2] The IAM cites the case as *Dobbs Int'l Servs. Inc. d/b/a Gate Gourmet*, 27 NMB 537, 545-46 (2000). The correct cite is 27 NMB 1, 5 (2000).

to circumvent this statutory prohibition by creating a false distinction between "bargaining" (which the IAM claims the TWU and IAM will do jointly) and contract "enforcement" (which will be performed by the unmerged predecessor unions, with segregated grievance and arbitration processes, within their pre-merger spheres of influence).[3]

That this distinction is a false one is manifest to anyone with even a modicum of labor relations experience. As the Supreme Court has recognized, collective bargaining "involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract." *Conley v. Gibson*, 355 U.S. 41 (1957). *See also*, *NLRB v. Acme Industrial Co*., 385 U.S. 432, 436 (1967) ("the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement") (citations omitted); *International Ass'n of Machinists v. Street*, 367 U.S. 740, 760 (1961) ("The assumption as well as the aim of [the Railway Labor Act] is a process of permanent conference and negotiation between the carriers on the one hand and the employees through their unions on the other"), *quoting Elgin, Joliet & Eastern Railway Co. v. Burley*, 325 U.S. 711, 753 (1945) (Frankfurter, J., dissenting).

Even assuming that the self-styled TWU-IAM Association were to obtain the necessary showing of interest to be awarded a position on the ballot, to permit that Association, as currently structured, to represent the employees of the post-merger American Airlines would be to allow the destructive division of union representation that, as the IAM concedes, the RLA has prohibited.

Local 591 once again respectfully requests that the NMB honor the employees' right to an honest and lawful single carrier election process pursuant to which – barring the requisite showing of interest by either the IAM or another union intervenor – the TWU appear as the only specifically listed union candidate on the ballot, or, alternatively, that the TWU's certification be extended to cover the combined crafts or classes of Mechanics and Related Employees and Stock Clerks.

Respectfully submitted,
Gary Peterson
President
Local 591

[3] Even if the NMB resolves this "singleness of agency" issue in the IAM's favor, the TWU-IAM Association would still have no right to be placed on the ballot without the required showing of interest.