A bold voice for transportation workers

WRITTEN STATEMENT OF
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BEFORE THE
NATIONAL MEDIATION BOARD

ON
REPRESENTATION DISPUTES PROPOSED RULES
DOCKET NO. C-7034
FOR THE NATIONAL MEDIATION BOARD'S PUBLIC HEARING

June 19, 2012

On behalf of the Transportation Trades Department, AFL-CIO ("TTD"), I want to thank the National Mediation Board ("NMB" or "Board") for the opportunity to present our views on the Board's recently proposed rules regarding representation procedures. TTD consists of 32 affiliated unions representing workers in all modes of transportation, including those covered under the Railway Labor Act ("RLA").[1] The Board's proposed rulemaking amends the current rules to incorporate statutory changes to the RLA contained in the Federal Aviation Administration Modernization and Reform Act of 2012. The Board also requests comments on the impact, if any, of the amended statutory language on the Board's merger procedures.

At the outset, I want to make clear that TTD intends to submit full written comments addressing the legal issues raised in the Board's notice of proposed rulemaking. Accordingly, my comments today will focus on broader policy issues. Overall, however, TTD is in agreement that the changes contained in the Board's rulemaking proposal appropriately reflect the recent amendments to the RLA.

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[1] Attached is a complete list of TTD affiliated unions.

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TTD also recognizes that this is not the proper forum in which to analyze the wisdom – or the lack of it – in Congress' recent amendments to the RLA. Nor is this the time or place to address the flawed process through which those changes were enacted. Suffice it to say that insofar as some of the legislative changes appear designed primarily to divert the Board's resources from its primary mission, these amendments are unwise. And those changes that are designed to increase the burden on employees seeking a voice within the workplace are unjust.

The recent changes to the RLA enacted by Congress are no small matter, as evidenced by this rulemaking process. However, it is equally true that the most important and vital elements of the Act and the Board's mission remain unchanged. The primary goal of the RLA remains the prompt and orderly settlement of all workplace disputes. Both management and labor are still bound by the duty to settle all disputes and make and maintain agreements – what the Supreme Court has called the "heart" of the RLA. The major dispute and minor dispute processes are unaffected by the recent legislation. The Board's vital role in mediating collective bargaining negotiations continues without change.

Critically, the RLA still safeguards the right of employees to organize and bargain collectively free from any carrier influence or coercion. Of course this standard is being tested as of late by certain airline executives who are devoting significant resources to undermining or avoiding outright union representation. Carriers are bound to recognize and negotiate with the duly certified representative of employees. The Board's policy to resolve representation disputes as expeditiously as possible remains in full force. The NMB still exercises broad discretion to conduct an election or utilize any other appropriate means to determine employee choice.

As part of the recent effort to amend the RLA, some in Congress initially sought to roll back the important voting reforms adopted by the Board in 2010. They sought to return us to an undemocratic system that counted non-participation as a vote against unionization and required more than 50 percent participation in order for elections to be valid. Most significantly, that effort was unsuccessful.

Because the core policies embodied in the RLA remain unchanged – essentially reaffirmed – the specific changes enacted by Congress must be interpreted and implemented consistent with those bedrock values. TTD believes that this is precisely what the Board has done thus far in this rulemaking process.

In this context, I would also like to address the question of the NMB's merger procedures. The Board has requested comments directed at whether the new statutory showing of interest requirement applies to representation disputes raised under the Board's merger procedures. As a threshold matter, TTD is pleased that the Board has sought comment on this issue and apparently intends to resolve the merger question in the rulemaking process, rather than on a case-by-case basis. Employees and unions, as well as carriers, need clear guidance on the merger question in advance of any particular single carrier proceeding. As the Board knows well, when carriers

merge employees are often faced with substantial uncertainty regarding key aspects of their working lives. Employees are confronted with the possibility of changes to existing terms of employment and faced with difficult seniority issues. In these circumstances, we submit that employees should not be faced with additional uncertainty regarding the Board's procedures for determining their representation in a merger setting.

In addition, the Board's current merger procedures and practices are well known and understood by unions and carriers alike. The current rules serve to guide the conduct of both labor and management in the merger context. If the Board were to defer a decision on the merger issue until raised in a particular case, the involved unions and carriers would be forced to proceed with substantial uncertainty. We would also ask that the current merger rules be included in the Board's formal regulations to provide consistency and predictability in this process.

As to whether the new RLA showing of interest requirement applies to the Board's merger procedures, TTD firmly believes that it does not. This conclusion is rooted primarily in the language and structure of the RLA and the recent amendments. We will set forth these legal arguments fully in our written comments. At their core, however, merger cases concern the impact of a corporate restructuring on existing patterns of representation. As such, these cases are fundamentally different from representation cases in which a union seeks an entirely new certification. The legislative history of the new amendments also makes clear that that Congress did not intend for the new showing of interest requirement to apply in merger cases.

From a policy perspective as well, application of the new showing of interest requirement in the merger setting would be inappropriate and contrary to fundamental goals of the RLA. Under the Board's current practice, an incumbent union needs only represent 35 percent of the combined work group in order to make a single carrier application or appear on the ballot in an election triggered by a merger. This is a fair rule. In most cases, the incumbent unions involved in a merger transaction have been certified for decades. Employees who comprise a substantial minority of the combining workforce should have an equal opportunity to vote in favor of continued representation by their current union. The employees of the smaller group should not be put to the additional task of collecting authorization cards in order to have the option to vote for their current bargaining representative. In some cases, an additional requirement to present authorizations might delay the initiation of a single carrier proceeding, a result at odds with the RLA's aim to settle disputes promptly.

I would like to address one additional matter related to the new showing of interest requirement under the RLA amendments. One of the unfortunate effects of the Board's old voting rule was the incentive for carriers to try to manipulate Official Eligibility Lists. Under the old rule, carriers sought to increase the odds of defeating unionization by padding voting lists with hard-to-reach workers or individuals no longer employed at the company. One of the many compelling reasons for the voting rule change was to curtail this tactic.

Unfortunately, as the recent case involving passenger service employees at American Airlines amply demonstrates, carrier attempts to game the eligible voter list live on. Regrettably, the new RLA showing of interest requirement may exacerbate this problem. TTD is concerned that carriers will now have even greater incentive to include individuals with no or questionable ties to the craft or class on the voter lists provided to the NMB. In essence, carriers may manipulate the lists in an effort to prevent employees from even having an opportunity to trigger a vote on representation. In addition, under the new law, disputes over eligibility, which in the past generally occurred only after the Board authorized an election, are now likely to occur at an earlier stage in the process.

The Board should act to counter abuses of its election process. It possesses the authority and the means to do so. For example, through its Representation Manual, the Board could implement procedures to expeditiously address eligible voter disputes arising during the showing of interest phase in the election process. The NMB could also require greater disclosure by carriers of the basis for including individuals on the list of eligible voters. In addition, remedies could be imposed for the submission of lists in bad faith or without proper foundation.

In closing, the recent amendments to the law obviously require some changes to the Board's procedures and may present some new challenges in terms of administering the Act. However, the basic principles to guide the Board in resolving the issues before it are the same as in the past. We again thank the Board for the opportunity to weigh in on the rule changes under consideration.

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)
United Transportation Union (UTU)

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