International Association of Machinists and Aerospace Workers

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OFFICE OF THE GENERAL VICE PRESIDENT

GOV – National Mediation Board

August 6, 2012

Via Electronic Mail at Legal@nmb.gov

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

Re: IAM Comments on Notice of Proposed Rule
Change for 2012 Railway Labor Act Amendments
Docket No. C-7034

Dear Ms. Johnson:

The International Association of Machinists and Aerospace Workers and the Transportation Communications Union/IAM (together "IAM") submit these comments in accordance with the National Mediation Board's ("NMB" or "Board") Notice of Proposed Rulemaking concerning the amendments to the Railway Labor Act contained in the Federal Aviation Administration Modernization and Reform Act of 2012 ("RLA amendments"). The International Association of Machinists represents more than 100,000 workers in the air, rail and related industries in the United States. Our members work in nearly all classes and crafts at the nation's largest airlines, railroads and freight carriers covered by more than 200 collective bargaining agreements. In addition, TCU/IAM represents over 50,000 railroad members in freight, passenger rail and various commuter lines throughout the country. The IAM is the largest single stakeholder in National Mediation Board policy.

As the Board is aware, the IAM made an oral presentation at the June 19, 2012 hearing on this matter. Rather than restate those comments, the IAM incorporates that presentation into this submission. Similarly, the IAM is a member of the Transportation Trades Department ("TTD") of the AFL-CIO. The IAM has reviewed the TTD's comments and whole heartedly joins the TTD.

While the IAM is greatly disappointed in how the RLA amendments were enacted, now that they are law, the IAM does not significantly disagree with the Board's proposed rule changes. We do agree with the rule changes recommended in the TTD's written submission. Specifically, as the TTD pointed out, the Board's proposed change to 1206.2 seems to go beyond what is required by the RLA amendments. Prior to the amendments, section 1206.2 had two

subsections: one to address represented groups and one to address unrepresented groups. The Board's proposed change removes the distinction between represented and unrepresented groups and lumps them all into one scenario. Yet, that is not what the amendments did. The more prudent course would be for the Board to make the change that is necessitated by the amendments which would be to change subsection (b) from thirty-five percent (35%) to fifty percent (50%). Subsection (a) is already consistent with the amendments and therefore no further change is necessary.

The IAM also agrees with the NMB's proposal to revise the intervenor rules to require a 50% showing of interest. This is consistent with both the amendments and with the NMB's practice. Nothing in the amendments justify changing the Board policy of requiring an intervenor to have the same threshold showing of interest as the applicant.

Indeed, a careful review of 2, Twelfth reveals both why an intervenor must have a 50% showing of interest and why the 50% showing of interest threshold should **not** apply in the merger context. The clear thrust of §2, Twelfth is that anytime an individual or organization seeks to become a newly certified representative, they need to have a 50% showing of interest. As a result, an intervenor, who holds no certification on the property, must have at least a 50% showing to seek to be certified. On the other hand, in the context of a merger or other change of corporate structure, organizations already have a certification, at least with regard to one of the merger partners. Therefore, the incumbent organization is not seeking to become a newly certified representative; rather, they are merely seeking to have their *existing* certification **extended**.

As we explained in our oral comments, the fact that the carrier decided to change its corporate structure should not penalize the employees in their choice of a representative. If §2, Twelfth were interpreted to apply in the merger context, carriers could have the ability to unilaterally remove the employees' chosen representative simply by changing its corporate structure. In this way, Carriers would have a direct influence over the employees' choice of a representative, contrary to the mandate of the RLA.

Adhering to the Board's long standing policy of allowing comparable incumbent unions on the ballot (along with "no union") brings more labor peace and stability to the workplace. In short, the goals of the RLA to promote labor stability and peace are best served by continuing the Board's long-standing policy on mergers and acquisitions. As a result, the IAM joins TTD in urging the NMB to adopt its existing merger procedures (as attached to TTD's submission) as part of its formal regulations.

It is no secret that the IAM was a vociferous opponent to the RLA amendments. We were concerned not only with how one-sided changes to the RLA were slid into the FAA reauthorization bill without our participation or involvement, but also with the clear impact of the changes. By including a showing of interest threshold in the law for the first time, and by making that threshold 50%, the IAM is greatly concerned about the potential for carriers to engineer Potential Eligible Voter lists with the intent of thwarting an election from even taking place. Even with the best intentions, this change to the law is likely to cause greater scrutiny of the lists and thereby delay even routine elections with challenges to eligibility.

As a result, it is vital that the Board take affirmative action to discourage such potential manipulation. In order to fulfill its statutory duty to ensure that the resolution of representation disputes take place promptly, the NMB should revise its Representation Manual to ensure that carriers provide sufficient, verifiable information at the same time that they submit eligibility lists so that the NMB can meet its statutory duty to determine eligibility and resolve representation disputes in a prompt manner. For these reasons, the IAM strongly supports the TTD's recommendations that the NMB revise §2.4 of the Representation Manual to require carriers to provide supporting documentation establishing eligibility as shown in TTD's attachments.

Respectfully Submitted,

Sito Pantoja
IAM General Vice President

Robert A. Scardelletti
TCU National President

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