STATEMENT OF JOHN F. MURPHY

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DIRECTOR, TEAMSTERS RAIL CONFERENCE

Members of the Board, I am John Murphy, an International Vice-President of the International Brotherhood of Teamsters and Director of the Teamsters Rail Conference, which includes the Brotherhood of Locomotive Engineers and Trainmen and the Brotherhood of Maintenance of Way Employes Division. I speak today on behalf of the more than 150,000 Teamsters who work under the Railway Labor Act in both the rail and aviation industries, represented by the BLET, the BMWED and the IBT Airline Division, in response to the Board's Notice of Proposed Rulemaking.

I will direct my most of my comments to the question asked by the Board whether the 50 percent showing of interest requirement mandated by Congress under the FAA Reauthorization Bill for applications for representation elections ought to be applied also under the Board's "Merger Policy" set forth in Section 19 of its Representation Manual. The IBT believes that the Board is not required by the recent statute to impose the increased showing of interest requirement in the merger context. We also do not believe that it is appropriate to apply that showing of interest requirement in the merger context.

I wish to first state the IBT's position concerning the NMB's proposed amendments to its rules set forth in the NPRM. Concerning the Board's proposed modification to § 1206.1 of its Rules, governing runoff elections, the Board's proposal appears generally to implement Congress' directive concerning runoff elections. The Board's proposed modification to §

1206.2, establishing the percentage of valid authorizations required to support an application requesting certification as representative, also accurately implements Congress's directive. We reserve further comment for our August 6, 2012 submission.

Concerning the Board's proposed amendment to § 1206.5 of its Rules, the IBT agrees that the Board should apply the increased showing of interest requirement to applications of intervenors in representation elections. This change is consistent with Congress' mandate that a party applying to be certified as representative must submit valid authorizations from at least 50 percent of the craft or class. Requiring an intervenor to make a similar showing is consistent with the statutory goal of maintaining stability in labor relations, as well as being consistent with Congress' directive. The Board has long required intervenors to make the same showing of interest among unorganized employees as that made by the applicant. To permit another party to intervene on a reduced showing of interest would conflict with long-established Board practice on this subject. It would also enable another organization or individual to "ride the coattails" of the real party in interest in the representation election. This would complicate the election, and potentially create confusion among employees, without the intervenor's having made the same rigorous showing of support among interested employees.

From an administrative standpoint, permitting intervention under a lesser standard would necessarily generate more multiple-party elections that, in turn, would potentially increase the number of runoff elections held by the Board. Moreover, adding parties to an election increases the likelihood of post-election protests that both introduce uncertainty to the final resolution of the dispute and affect the speed by which that resolution occurs.

Additional demands on the Board's resources are inevitable. The Board's representation election rules are designed to permit the Board to promptly, accurately and finally resolve representation disputes. Maintaining the Board's uniform application of the showing of interest requirement among the parties to disputes, including intervenors, is necessary to achieve that goal.

As I stated in my introduction, the IBT does not believe it is either necessary or appropriate for the Board to apply a 50 percent showing of interest requirement to a representation election occurring under its merger procedures. The FAA Reauthorization Bill does not by its terms mandate such a result. The statute only amends the RLA to require that the NMB apply a showing of interest of not less than 50 percent of valid authorizations when an organization or individual files "an application requesting that it be certified as the representative of any craft or class of employees." This does not occur under the Board's merger procedures. Rather, a representative files under Section 19.3 of the Representation Manual a request for the Board to investigate whether a single transportation system exists among two or more carriers.

This investigation unquestionably occurs under Section 2, Ninth of the RLA, as the District of Columbia Circuit Court concluded in RLEA v. NMB. But this application does not request that the Board certify the applicant as representative of a craft or class. For example, any existing certifications issued by the Board on the pretransaction carriers continue in existence until acted upon by the Board. Instead, the Board investigates to determine whether, due to a corporate transaction, the systems of formerly separate carriers have been integrated

in such a manner to create a "single carrier" and a combined craft or class of employees. The mere filing of an application does not require the Board to conclude that a single transportation system exists—and the Board has concluded in some cases in response to such an application that a single system does not exist. It is only after the Board first determines that a single transportation system exists that it will proceed to consider representation issues. So the express language contained in Section 1003 of the FAA Reauthorization Bill does not cover an application for investigation of the existence of a single transportation system.

It also does not make practical sense to impose a 50 percent showing of interest requirement under the Board's merger procedures. The NMB establishes two points under its Merger Procedures where a showing of interest applies. It first requires that an application asking the Board to investigate whether a single carrier exists come only from a representative with at least a 35 percent showing of interest. This threshold is not mandated by Section 2, Ninth, although the requirement that the application come from a representative is required by the Act. The Board imposes such a requirement in the interest of stability in labor relations—so that existing certifications will not be prematurely affected—and to efficiently use the Board's resources. At the same time, this 35 percent showing is not so high as to effectively give the power to invoke the Board's investigation procedures to a single representative. Raising that application threshold to 50 percent, however, would in every case, limit the ability to invoke the Board's procedures to just one representative, the representative of the larger carrier's employees. Further, if a multi-carrier transaction occurred, and no one carrier was substantially larger than the other carriers, there is the potential that *no* representative could exceed 50 percent of a putative combined craft or class under Section 19.3, and so no one could invoke

the Board's merger procedures. This could enable affected carriers to withdraw recognition from all organizations with impunity because the Board could not act without first receiving an application supported by the requisite showing of interest.

Only if it determines that a single transportation system exists does the Board then address representation issues surrounding the single system. But no further application is submitted by any existing representative. Because existing certifications continue in effect at the involved carriers, and the Board already possesses jurisdiction over the case, it is not necessary for the Board to have yet another application from a representative to turn to representation questions in considering the scope of the consolidated craft or class and its designated representative. Rather, the Board reviews the relative size of the pretransaction crafts or classes represented by the certified representatives to determine if an election is required. Only if the represented groups of the involved representatives are disproportionate will the Board extend the certification of one existing representative to the entire single system without election. Otherwise, the Board requires a necessary showing of interest of 35 percent for an existing representative, or an intervenor, to appear on a ballot in an election arising from the single carrier determination.

Increasing this showing of interest requirement at the subsequent representation phase of a single carrier proceeding would be just as impractical as at the initial application stage. Currently, the Board will conduct an election among employees unless the relative size of the involved premerger employee groups is so disproportionate that the Board believes an election is not required. That determination is made upon the 35 percent showing of interest. But

increasing that threshold to 50 percent would mean that the Board could not measure the relative size of the involved premerger crafts or classes—only one representative could have more than a 50 percent showing of interest—except in the highly unlikely event that another representative is able to obtain a substantial number of valid authorizations from among the employees at the larger carrier. The Board would therefore extend a certification if a representative had more than a 50 percent showing. That would result in *fewer* elections in merger situations—a result that Congress surely did not intend to create through its recent amendment to the RLA. Or, alternatively, the Board would have to conduct an election in every proceeding regardless of how disproportionate are the relative sizes of the involved employee groups. That would be contrary to the Act by permitting the mere occurrence of a transaction to raise a representation dispute. It would also effectively repudiate the Board's long-standing policy that existing certifications remain in effect until acted upon by the Board and undermine the stability of labor relations by permitting even the smallest transaction to result in a representation election. And finally it would increase demand for the Board's investigative resources. We do not believe Congress intended any of these results by its amendment of the Act to address a different question of representation.

In summary, the IBT believes the Board's proposed amendments to its rules are in general properly drafted, consistent with the Congressional mandate in the FAA Reauthorization bill, and otherwise consistent with the RLA. We believe that the Board need not, and should not, increase the showing of interest standard established under its merger procedures. That permissible policy judgment should be reflected in the regulations under consideration.