



*Association of Professional
Flight Attendants*
Representing the Flight Attendants of American Airlines

December 28, 2009

Elizabeth Dougherty, Chairman
Harry Hoglander, Member
Linda Puchala, Member
National Mediation Board
1301 K Street, NW., Ste. 250E
Washington, DC 20005

**RE: Docket No. C-6964
NMB-2009-0007/9
Representation Election Procedure
Notice of Proposed Rulemaking; Published Nov. 3, 2009**

Dear Chairman Dougherty and Members Hoglander and Puchala:

The Association of Professional Flight Attendants (“APFA”) is the exclusive collective bargaining representative for American Airlines’ nearly 18,000 U.S.-based flight attendants, making it the largest independent flight attendant union in the world. Serving in that capacity since 1977, APFA has consistently sought to promote stable labor-management relations and ensure fair wages and working conditions in the industry through coalition-building with sister unions and actively collaborating with stakeholders in the policymaking and legislative arenas. While the APFA has not sought to expand its membership base beyond flight attendants employed by American Airlines and American Eagle, it remains committed to strengthening the air and rail industries through strong, democratically-sound labor organizing.

On November 3, 2009, the National Mediation Board (“NMB” or “the Board”) published a Notice of Proposed Rulemaking (“NPRM”) that would change certain features of the Board’s representation election procedures. Under current practices, the NMB will certify a bargaining representative only if a majority of all employees eligible to vote cast ballots for a labor organization. The current ballot is such that employees cannot vote “no union.” Instead, every eligible employee who does not vote, for whatever reason, is counted as a “no union” vote. Under the proposed rule, certification would issue to a union receiving a majority of valid votes cast, with the proposed ballot allowing an employee to vote “no union.”

The Board sought comments to its November 3, 2009 NPRM within 60 days, with a resulting deadline of January 4, 2010. Because the APFA firmly believes that its industry is stronger when workers are able to efficiently unionize, it strongly endorses the proposed rule and is pleased to offer the following additional comments for the Board's consideration:

1. The Proposed Rule Renders the Board's Investigative Process More Revealing of True Employee Choice In Accordance with Democratic Principles

The APFA strongly agrees with the NMB that the proposed change is both warranted and desirable. The current rule distorts the democratic process and injects an unjustified bias against union representation. Even more, the historic rationales and assumptions informing the current rule have become obsolete.

The current rule effectively lumps together three theoretically distinct groups of eligible non-voters, counting all of them similarly as votes against representation: (1) those actively voting against union representation; (2) those lacking knowledge of the vote; and (3) those apathetic to the election. Treating these three groups the same defeats the investigative purpose of the Railway Labor Act. The statute requires that these non-voter categories be accounted for differently. In elections garnering less than 50% participation, the current rule makes it impossible to ascertain how many non-votes were attributable to each. This muddies both the pursuit and the assessment of the Board's statutorily mandated duty to investigate representational disputes in order to simply identify who represents the employees of a given craft or class. 45 U.S.C. 152, Ninth.

As the Board points out, eligible non-voters apathetic to the election should not be aggregated with "no votes." Non-voters in this category no less properly acquiesce to the expressed will of the *actual* voting majority. *Virginian Railway*, 300 U.S. at 560. Simply put, individuals should be entitled to abstain without skewing the election results. In addition, assigning non-votes to any given side contravenes democratic principles because it dilutes the value of individual participation. As the Board concludes, the proposed rule will "ensur[e] that each employee vote, whether for or against representation, will be regarded with equal weight." F.R. 56752.

The APFA agrees with the NMB that the current election procedures – which are skewed against representation – can and should be replaced with the traditional democratic model provided by the proposed rule.

2. The Proposed Rule Responsibly Responds to and Harnesses the Revolutionary Technological Innovations of the Past Decade

A critical assumption underlying the Board's historic rejection of simple majority voting is that a substantial portion of a given craft or class could be inadequately informed about organizing efforts and thus a minority faction could in theory force its representational choice on an entire craft or class. That assumption, however, should not inform the election procedures any longer. Technological innovations that simply did not exist a decade ago have effectively depleted the ranks of employees in category 2 – those who do not vote because they are unaware of the election or lack sufficient information.

Communication technologies make it possible for workers to have ready access to up-to-the minute information from a variety of sources including web sites, e-mail, Twitter, Facebook, blogs, mobile text messaging and browsing.¹ The APFA, for example, keeps an updated public web site as well as its own Facebook and Twitter groups. The recent laptop revolution, in particular, means that employees whose travel schedules would in the past have kept them away from such available information now have it at their immediate disposal. Those without laptops now have the same information available to them through mobile smartphone browsing. Nearly ubiquitous WiFi coverage in airports and hotels ensures that air and rail workers are indeed uniquely equipped to access all possible information about organizing efforts in their respective crafts and classes.

Jobs in the airline and railroad industries require high proficiency in computers and other electronic interfaces. Flight attendants, for example, must operate the computerized scheduling software and utilize the carrier's online block bidding system for their work schedules. Thus a key rationale for the current election procedures, that an informed minority will overwhelm an oblivious majority, is rendered obsolete by the technological revolution in communications that have been made over the past decade which are particularly available to and used by workforces in the rail and airline industries. Indeed, the only plausible reason that people do not vote today is apathy, not lack of information.

¹ U.S. Census Bureau, *Internet Use Triples in Decade, Census Bureau Reports* (June 3, 2009)

The proposed rule will thus accomplish the investigative purpose of the act far better than the current election procedures. The intent of the eligible voters will no longer be obscured by an inability to distinguish the actual opponents of representation from other non-participants. Technology has eliminated the category of the uninformed leaving the apathetic as the only other group. By having the majority of those voting determine the outcome of an election, the Board can conclude each investigation knowing with certainty that the apathetic had no more say in the results than they wanted and that the opponents and supporters of unionization alone decided the representational status of their craft or class.

3. The NPRM Reaches the Correct Conclusion Regarding the NMB's Full Discretion Over Election Procedures

APFA also agrees with the NMB's legal conclusion that its proposed rule is well within the Board's broad statutory authority over representation election procedures. The Railway Labor Act ("RLA") charges the Board with complete oversight over elections, allowing the Board to carry out a secret ballot election or "utilize any other appropriate method of ascertaining the names of [the] duly designated and authorized representatives." 45 U.S.C. § 152, Ninth.

The APFA commends the NMB for its thorough analysis and explanation of the applicable legal precedent and its reasoned interpretation of the RLA. The APFA therefore strongly disagrees with Chairman Dougherty's puzzling suggestion that "a serious question exists as to whether the NMB even has the statutory authority to make this reversal." 74 F.R. 56753. The NMB majority has correctly concluded that the proposed rulemaking is well within its broad discretion.

The APFA values the opportunity to provide comments to the NMB regarding its proposed rulemaking and fully endorses the rule's implementation. Should you have any questions or require additional clarification, please contact me by telephone at (800) 395-2732, Ext. 8201 or by e-mail apfa-president@apfa.org.

Respectfully Submitted,



Laura Glading
President
APFA