December 3, 2009

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

RE: RLA Rulemaking Docket No. C-6964

Dear Ms. Johnson:

American Rights at Work is an independent non-profit organization dedicated to promoting the freedom of workers to organize and bargain collectively. The organization engages in research, analysis and public advocacy concerning the rights of workers throughout the United States. In particular, ARAW studies the development and implementation of federal law governing labor relations and workers' organizing rights under the National Labor Relations Act, and publicizes the practical impact of labor policy on workers and employers. For several years we have documented and highlighted the experiences of companies and workplaces committed to positive labor and management relations, including those companies that support the ability of their workers to exercise freedom of association rights without fear of reprisal.

As an organization devoted to labor and employment policy, and ensuring the rights of American workers in the workplace, ARAW has an interest in the National Mediation Board's Request for Comments on the rule titled Representation Election Procedure (Docket Number C-6964), and wishes to share its perspective.

American Rights at Work supports the Board's proposal to amend its Railway Labor Act rules to provide that, in representation disputes, a majority of valid ballots cast will determine the craft or class representative. Based on our knowledge of labor law, current labor relations and workplace conditions, we agree that this change will provide a more reliable measure of employee sentiment in representation disputes and provide employees with clear choices in representation matters.

Current procedures create perverse incentives where employers work to *discourage* turnout. The majority opinion of participating voters is often vetoed by those who do not vote. In a 2008 union election for flight attendants at Delta Airlines, management created what they called a "Give a Rip" campaign instructing employees to destroy government-issued balloting instructions. Because current election procedures count all non-voters as "no" votes, this type of employer misconduct can be very effective and is essentially rewarded.

The data are overwhelming showing the often insurmountable hurdles, both legal and illegal, faced by American workers who try to exercise their rights in the workplace. The current labor law system allows employers to violate the spirit as well as the letter of the

law as documented in the series of comprehensive national studies conducted by Professor Bronfenbrenner of Cornell University[1] as well as other well-respected scholars across the nation. Our own recent research indicates that in 46% of NLRB-supervised union elections, workers report employer lawlessness both before and during the election.[2]

Specifically, Professor Bronfenbrenner's recent research[3] shows that the voter suppression and coercion tactics carried out by employers in the context of the NMB eligible voter election standard carry even greater weight because every vote not cast can have a much greater impact where the bar it takes to win is set based on requiring everyone to vote.

The Railway Labor Act gives the Board discretion on how it conducts elections and does not require the current procedure. When the data are so clear demonstrating the barriers faced by American workers to exercising their rights, American Rights at Work urges this simple update to the rules for the sake of the rights of all Americans.

Thank you for your consideration of these comments,

David Bonior, Chair
American Rights at Work

[1] Most recently, see Bronfenbrenner. "No Holds Barred: The Intensification of Employer Opposition to Organizing," Economic Policy Institute Working Paper no. 235, 2009.

[2] American Rights at Work obtained data on all unfair labor practice cases and all election petitions that the National Labor Relations Board (NLRB) closed between 1999 and 2007 under a Freedom of Information Act request. In order to determine how many unfair labor practice charges (ULPs) were associated with each election petition, we selected one year, 2003, and manually matched all representation petitions filed in 2003 with corresponding ULPs. We did this for all ULPs that were filed at any point between three months before each petition through eighteen months after the filing. The following criteria were used to determine whether there was a match: NLRB Region, various forms of the employer's name, union, and location. In addition, where a petition had been "blocked" by a ULP, those election petitions were automatically assigned to the ULP that caused the block to be placed on the petition. On some occasions, an NLRB agent specifically identified the election petition that corresponded to the ULP, and these were categorized accordingly.

[3] See letter dated November 19, 2009 Re: Docket number 6964 from Professor Bronfenbrenner that includes data analysis of RLA elections.