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COMMENTS ON BEHALF OF NATIONAL AIR TRANSPORTATION ASSOCIATION'S AIRLINE SERVICES COUNCIL

RE: DOCKET NO. C-6964

These comments are submitted on behalf of the National Air Transportation Association's Airline Services Council ("ASC") pursuant to the National Mediation Board's Notice of Proposed Rule Making (NPRM) dated November 3, 2009.

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air taxi, frActional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

The ASC counts among its members many airline services companies that are a critical component of the national air transportation system. On an outsource basis, ASC members perform many functions traditionally and historically performed by airline employees, among them a variety of ground and passenger handling services. In prior determinations of the Board, several ASC members have been held to be "derivative" carriers subject to the Railway Labor Act (RLA). As such, this segment of the aviation industry has a significant interest in the rule change now being contemplated by the Board as well as in maintaining stability in the representation and negotiation arenas in which they operate.

We are hopeful that the Board will carefully evaluate all views before taking any Actions to disturb longstanding prActices and procedures that have fairly and effectively served the interests of employees, labor organizations and carriers throughout the RLA's history.

OVERVIEW

By way of brief overview, we note that the RLA has been a remarkably resilient and effective tool in promoting the Act's fundamental purposes. In that connection, we note that the first among the general purposes identified in Section 1a of the Act is "to avoid any interruption to commerce or to the operation of any carrier engaged therein." As the Board has repeatedly recognized, its consistent policies in administering and implementing the requirements of the RLA have proven very effective in supporting this primary statutory purpose. The ASC is concerned that the Board's proposed change to the balloting and vote counting rules potentially fosters precisely the instability that the RLA abhors. The ASC is concerned that what

appears to be a "rush to judgment" will not address many issues that we believe are critical to maintaining stability in these industries. In that connection, we view it as essential that all segments of all covered industries clearly understand fully all the ground rules that will apply in future representation disputes.

The Board's election rules are long established and have not changed, except incrementally, for many years. The "sea change" proposed in the NPRM calls into question the continued vitality of other Board rules and procedures, as well. The full scope of these changes should be identified at one time and opened for comment followed by hearing among all segments of all covered industries. Changes should not be made without the full participation of all constituencies and only in an orderly, carefully considered process. The ASC is concerned that the proposal to change the form of ballot and method of ballot counting is but the beginning of a cascade of changes, all of which we submit are unnecessary and ill-conceived. In any event, a piecemeal approach to change at best will cause uncertainty, and at worst may lead to instability.

CONCERNS OVER THE PROPOSED RULE CHANGE

The Board has consistently held that its procedures should not be changed unless "mandated by law," or required by "essential ... administrative necessity." There has been no showing whatever of this type of necessity. Moreover, the means by which this has been undertaken—at the very least giving the appearance of pre-judgment—calls into question the integrity of the process.

The ASC adopts the statements submitted on behalf of other carrier representatives, among them the Air Transport Association, the Regional Airline Association, the Airline Industrial Relations Conference and the National Railway Labor Conference, and Delta Airlines, addressing the procedural infirmities in the process for rule change being utilized by the Board. The appearance that the Board is abandoning its carefully cultivated neutrality is, at the least, troubling.

Procedure aside, the ASC is concerned that the proposed change will lead to certification of minority representatives. This will foster instability in contract negotiations and may adversely affect the stability of carrier operations, resulting in a potential increase in interruptions to commerce. Under the proposed rule, a small number of voters may determine the result of an election. With low "ballot box turnout," an organization lacking the affirmative support of a majority of the craft or class (as, we note is required by the RLA) may be charged with negotiating a collective bargaining agreement on behalf of numerous individuals who do not support its representative status. Experience in recent years has reflected the difficulty in getting collective bargaining agreements ratified, even where airline employee representatives are certified under traditional majority rules. Those difficulties can only be exacerbated where representatives are supported only by a minority. The potential for more disruption is obvious.

There are other flaws. For instance, the Board has not addressed how the rule change will affect multi-union elections. Consider the following scenario: An incumbent union (A) is being challenged by another organization (B). Of the 100 employees casting ballots, 20 vote for union A, 45 vote for union B, and 35 vote for no union. Under the Board's existing rules, if the 65 votes for union representation constitute a majority of eligible voters, union B

would be certified. Under the proposed rule, however, union B does not have a majority of votes cast. What then? In this situation, the National Labor Relations Board would conduct a rerun election with the two highest vote-getters (here, union B and no union), but it is entirely unclear how this Board would deal with it. One thing is clear: where only the ballots cast by actual voters count, there would be no reason to aggregate the votes gathered by the unions A and B. At the very least, this issue should be addressed during any rulemaking on the proposed change. It is, simply, insufficient to leave uncertain the handling of such a situation.

The proposed rule change also creates uncertainty with regard to remedies in the event of election interference. The ballot form and vote counting methodology under consideration by the Board appears to be the same as the ballot form and procedure long known as the "Laker ballot," which has been used, for many years, as a remedy in cases of carrier election interference. If the "Laker ballot" now becomes the "new norm," then the Board must carefully consider the range of potential remedies available in the event of election interference. Will the "Key ballot," now used only in egregious cases, become the standard remedy for interference cases? Under what circumstances will bargaining orders be available in interference cases? Once the door opens to certification of a minority representative, the possibility of election interference by unions increases. The Board needs to consider rules governing union election conduct and remedies in the event of union interference if it goes down this path.

The Board should invite comment and/or conduct omnibus hearings to allow it to identify and address other potential issues spawned by the NPRM. The Board should carefully and deliberately identify, evaluate and respond to all related issues before changing an election procedure so fundamental.

OTHER ISSUES TO BE CONSIDERED

If the Board is committed to undertaking an overhaul of long-standing rules, procedures and practices, its failure to do so on a global basis can only serve to heighten uncertainty for all of the Board's constituencies. For instance, the NPRM does not address an International Brotherhood of Teamsters proposal for the provision of lists of eligible voters' names and addresses ("Excelsior" lists). Is this proposal still "on the table?" If so, it as well should be subject to comment and/or hearing by and among all constituencies. The same applies to the proposal by the Chamber of Commerce to establish a clear and simple decertification process, which the ASC strongly supports. These are significant issues that the Board should not simply leave in limbo.

If the Board is seriously considering overhauling its rules, it should not simply ignore the impact it will have on critical standards that the Board has consistently and historically applied. For instance, the Board has long recognized the propriety of system-wide crafts or classes, a matter of considerable consequence for derivative carriers. See, e.g. Delta Air Lines Global Servs., 28 NMB 456 (2001). This no doubt facilitates stability and the avoidance of interruptions to commerce. As part of this proceeding, the Board should confirm the continued vitality of system-wide representation. Similarly, the Board should address showing of interest requirements and should consider reducing the showing of interest needed to support a change in representative or decertification. If alternative procedures for certification, such as "card checks," are even being given thought, the Board owes it to all constituencies to air the issue thoroughly and carefully before moving in this direction. At present, card check as a basis for certification has been applied only in the most egregious employer election interference

cases. Sky Valet, 23 NMB 276 (1996). In light of congressional abandonment of card checks in the Employee Free Choice Act debate, the Board should not—indeed, we submit, may not—adopt such a change without rigorous review and analysis of the scope of its authority and the necessity, let alone wisdom, of following a path that Congress has declined to follow.

These are just some of the issues raising concerns over instability. If other changes are contemplated by the Board or any of its constituencies, they should be laid on the table and vetted as a whole, not piecemeal or seriatim. Parties to future representation disputes should not be blind-sided by rulings that may reflect the current thinking of a majority of the Board but are inconsistent with reasonable expectations based on many years of experience. The ASC believes that no change is needed and any overhaul is unnecessary and ill-considered. That having been said, what is most critical is that all constituencies understand all of the rules going forward.

CONCLUSION

The ASC strongly believes that the Board's system of administering the representation features of the RLA have been consistently, carefully and properly applied for the last 75 years. While the ASC recognizes that review with a fresh eye is worthwhile, from time to time, a comprehensive review requires that all relevant issues be open to comment and that the views of all industry segments be encouraged and carefully considered. Ultimately, if any changes are made, they should enhance—not destabilize—the fundamental purposes of the RLA.

Roger H. Briton

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