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The Honorable Elizabeth Dougherty
Chairman
National Mediation Board
1301 K Street, NW, Suite 2050
Washington, DC 20005

The Honorable Harry Hoglander
Member
National Mediation Board
1301 K Street, NW, Suite 2050
Washington, DC 20005

The Honorable Linda Puchala
Member
National Mediation Board
1301 K Street, NW, Suite 2050
Washington, DC 20005

VIA Electronic Mail to legal@nmb.gov

RE: Docket No. C-6964

Dear Chairman Dougherty, Board Member Hoglander, and Board Member Puchala:

The purpose of this letter is to respond initially to the National Mediation Board's (the "Board") proposed rule change published in the Federal Register, Vol. 74, No. 211, on Tuesday, November 3, 2009. The members of the American Short Line and Regional Railroad Association (ASLRRA) have concerns about the Board's proposed changes to the long-standing procedure for recognizing a union for railroad and airline workforces within the jurisdiction of the Board as governed by the Railway Labor Act and, accordingly, are opposed to the proposed rule change.

The American Short Line and Regional Railroad Association is a trade association representing the interests of its more than 400 short line and regional

railroad members in legislative and regulatory matters. The Association's members are located throughout the United States. Short line and regional railroads are an important and growing part of the railroad industry, with short lines operating 30 percent of the nation's total route mileage and handling one in four rail cars traveling on the national railroad network. Most short line and regional railroads also interact and interchange freight and cargo with the larger Class I railroads throughout the country, making our members an integral part of the national railway system.

The ASLRRA believes that the current disputes and proposals are driven primarily by mergers and unionization efforts in industries other than freight rail transportation. These large disputes involving tens of thousands of workers and the mergers of Fortune 500 companies tower over the comparatively small short line and regional freight railroads. At the same time, changes made at the behest of one group of workers in one industry have the ability to impact the rights and economic well-being of workers in unrelated industries such as rail. It is in that context of concern that the following comments are framed.

Relations between the ASLRRA and the numerous unions representing employees on short line railroads have experienced a positive renaissance over the past decade. Organized labor and management will always have points of contention. However, the overall relationship has been positive and cooperative on issues ranging from the reform of the railroad retirement system to federal assistance to preserve light density rail lines, and several issues in between.

The vast majority of small railroads began business by acquiring the money losing branch lines of larger and very heavily unionized Class I railroads. Short line and regional railroads are very small companies with an average of 35 employees (and a median of 9 employees), and annual average revenues below $5 million. Until recently, these railroads almost universally began operations as non-union companies.

Despite the very small average workforce size of these railroads, unions on short line and regional railroads have successfully expanded to represent over 65% of all non-management employees in the industry and 85% of railroads with more than 50 employees have union representation. Given this remarkable level of union representation achieved in 30 years from a baseline near zero, it is difficult to argue that the election process is tilted against unions by the current election procedure rules. To the contrary, the union election process under the current rules has led to a remarkable level of unionization in the short line and regional railroad industry. Moreover, inasmuch as there is no process to decertify a union under the RLA, either under the current regime or under the NMB majority's proposed rule, it is highly unlikely that unions will lose any of their substantial market share in the short line and regional railroad industry segment.

There is merit to the factual contention that labor elections outside of the railroad and airline industries are determined under different rules. But the mere fact that the rules are different should not be the end of the analysis. Deeper analysis must ask *why* the rules are different. Freight rail transportation is critical to supplying the food we eat, the timber that builds our roofs, the power that lights our homes, and the chemicals that treat our water. Freight rail is critical to the economy today, just as it was in 1934. The role that railroad companies play at the cornerstone of our economy has, over time, demanded stricter economic, legal, and safety regulation than other industries, which are governed by the NLRA. Likewise, the use of Presidential Emergency Boards to mitigate the broader economic impact of labor disputes and the current election procedures requiring majority rule in union elections imposes a higher standard on labor in the rail industry precisely because rail touches every segment of the economy. Higher standards make sense in an environment where Congress has a long history of setting higher standards for common carriers in order to protect the public good. In short, in an industry in which the making and maintenance of agreements between management and labor is a crucial national concern, so should be the degree of certainty of employee majority support for their chosen collective bargaining representative.

Congress recognized, and the NMB has repeatedly affirmed, that the workforces and employers covered by the Railway Labor Act are different, and that those critical differences justify the higher standards for determining a majority. The RLA is unambiguous in its edict that "[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class..." 45 U.S.C. 152, Fourth. It is our position that the right of determination belongs to the majority of the class or craft, not simply a majority of those who choose to vote. It is our view that any proposed rule that results in this change is a material alteration of the RLA's express language and that only Congress can implement that change through the legislative process.

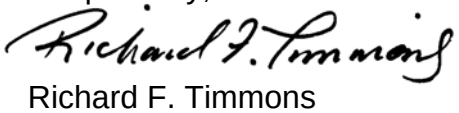
The emotion surrounding this issue among airlines and unions targeting airline employees for membership does not change the fact that unions have met with tremendous success on small freight railroads under the current rules. Despite labor's organizing success, the Board has determined that this issue must be revisited. The ASLRRA urges the Board to consider in the instant rulemaking process the incorporation of complimentary and related issues such as a "no union" ballot option, and a de-certification process that would mirror changes in the certification process.

Such a decertification process would be absolutely necessary if the Board goes forward with its proposed course to ease the process for union certification. Remember that certification under the RLA is permanent, unlike certification under the NLRA, which can be challenged at regular intervals by the employees subject to union representation.

To be clear, the ASLRRA does not believe that any change to the existing union election procedures is warranted or necessary; however, in the event that the Board determines to go forward in the absence of necessity, there must be additional changes to the process to minimize the likelihood of tilting the union certification process unfairly in favor of organized labor – at the expense of carriers and many of their employees.

In summary, the ASLRRA and its members across the nation are opposed to changing 75 years of election policy under the RLA The ASLRRA's membership would no doubt be the unintended casualties of a policy change that appears to be aimed at one or more major air carriers. The Board's one-size-fits-all proposal stands to have a disproportionate impact on the smallest set of employers covered by the RLA, America's smallest railroads who can least stand to risk labor disruption. We urge the Board to reconsider its proposed rule change and to maintain the current and long-standing election procedures until such time as the Congress seeks to address the matter through its legislative processes.

Respectfully,



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