

Prepared Statement for the National Mediation Board Open Meeting
Re: RLA Rulemaking Docket No. C 6964
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December 7, 2009

I would like to thank the National Mediation Board for this opportunity to submit my comments regarding the proposed amendment to the Railway Labor Act (RLA) to allow the majority of valid ballots cast in RLA elections to determine the craft or class representative.

For the last twenty years, I have conducted a series of in-depth national studies which examine union and employer behavior and public policy in public and private-sector certification election campaigns. This research has served a major role in informing discussions on labor law reform and the impact of trade and investment policy on wages and employment.¹ This last year I completed the first and only comprehensive study of organizing under the Railway Labor Act, NLRB, and the public sector. Because we collected in-depth data on employer and union tactics, election background, and company and unit characteristics, these data provide important insight into how and why the rule change you are considering will have such significant implications for workers covered under the RLA.² For, as our data will clearly show, without this rule

¹See Kate Bronfenbrenner. "No Holds Barred: The Intensification of Employer Opposition to Organizing," Economic Policy Institute Working Paper no. 235, 2009; "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing" Commissioned Research Paper and Supplement to *The U.S. Trade Deficit: Causes, Consequences and Recommendations for Action*, Washington, D.C.: U.S. Trade Deficit Review Commission, November, 2000; "The Effect of Plant Closings and the Threat of Plant Closings on Worker Rights to Organize" Supplement to *Plant Closings and Workers Rights: A Report to the Council of Ministers by the Secretariat of the Commission for Labor Cooperation*, Dallas, TX, Bernan Press: June, 1997; *Organizing to Win: New Research on Union Strategies*, Editor (with Sheldon Friedman, Richard Hurd, Rudy Oswald, and Ron Seeber), Ithaca, N.Y.: ILR Press, January, 1998; "Employer Behavior in Certification Elections and First Contracts: Implications for Labor Law Reform" in Sheldon Friedman, Richard Hurd, Rudy Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law*. Ithaca NY: ILR Press, 1994, pp. 75-89; Kate Bronfenbrenner and Tom Juravich. "The Impact of Employer Opposition on Union Certification Win Rates: A Private/Public Comparison," Economic Policy Institute Working Paper No. 113, 1995; and (with Tom Juravich) *Union Organizing in the Public Sector: An Analysis of State and Local Elections*, Ithaca, New York: ILR Press, 1995.

² Data for this study was collected from a sample of all 94 certification elections and card check campaigns supervised by the NMB which occurred in units with fifty or more eligible voters between January 1, 1999 and

change, voter suppression will continue to interfere with the laboratory conditions the NMB is supposed to provide workers voting under the RLA, and those voting under RLA will be denied their full democratic right to choose whether they want union representation.

Current RLA certification process is contrary to US democratic traditions

The current RLA certification process stands alone among all union and other voting procedures in this country in both the public and private sectors. Unlike any other election process, if you don't vote, or are unable to vote, or even were not aware there was a vote, you are assumed to have voted no. The union must win 50 percent plus one of eligible voters in the craft or class (including those on furlough who may be impossible to reach) rather than 50 percent plus one of those who cast valid ballots.

The US is a country where the majority vote standard of 50 percent plus one has a unique history, value, and tradition. We have majority vote in our legislative system rather than a parliament, and we have exclusive representation under our labor laws rather than minority unionism. Fifty-percent plus one is a concept that everyone understands whether it be for elections or card check it is the bar that has to be reached in order to win an election or win certification. It is one where every individual's vote matters because if just one person doesn't make it to the polls or does not sign a card the outcome could be just 50 percent or a tie, which in most cases means the union loses. Every vote counts.

In elections where the voting standard is 50 percent plus one of votes cast the goal of both sides is to get the highest turnout possible. Thus under the NLRB, turnout averages quite high, at 88 percent, with the union working hard to get every single union supporter to the polls or to remember to mail their ballot in, while the employer does the same with no votes.

However, the nature of RLA voting rules causes something very different and inherently undemocratic to occur. While unions still focus their efforts on getting yes votes to the polls, the employer efforts shift to suppressing voter turnout – either by confusing voters about the election procedure or by getting voters to destroy their ballots.

December 31, 2003. Using a combination of in-depth surveys with lead organizers; personal interviews; on-line research, and the collection of primary documents such as union and employer campaign documents, election interference charges and NMB and court determinations, and copies of first contracts, we compiled detailed information on the election background, company characteristics, employer and union tactics, unit background, and election outcome for these cases. The surveys were conducted via phone, mail, on-line, and email with a response rate of 59 percent. For a more in-depth discussion of our method see "No Holds Barred," Bronfenbrenner 2009. My primary research assistants for the RLA study were Austin Zwick and Troy Pasulka.

Employer voter suppression under the RLA

As described in Table 1 in the Appendix, employer suppression takes many forms under the RLA, including making positive changes in personnel, wages and working conditions so as to make a union seem less necessary; making it more difficult to organize or vote through transferring workers, initiating layoffs, and threatening bankruptcy; and suppressing the vote either through urging workers to tear up their ballots or providing misleading information about election procedures. This is all separate and beyond the majority of campaigns where the employer intimidates, threatens, harasses, coerces, and retaliates against union supporters to try to dissuade them from voting for the union.

When examined in isolation each of these individual tactics may appear to not have a significant impact on election turnout or outcome. But these tactics are not used in isolation. Close to half of the RLA campaigns in our sample used five or more anti-union tactics and 27 percent used ten or more. Although this is slightly less aggressive than employer opposition under the NLRB, voter suppression and coercion tactics done under the NMB voting 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 so much higher.

To illustrate this point further, the charts on the following page offer a comparison, with results from our RLA sample on the bottom and our NLRB sample on the top. The findings show the correlation between between union win rates and election turnout for all employer tactics that occurred in at least 10 percent of elections in the sample.³ RLA elections have a positive statistically significant correlation between turnout and win rates, with win rates increasing as voter turnout increases. In contrast, NLRB elections have a negative statistically significant correlation, with union win rates decreasing as voter turnout increases. The slope of employer tactics follows the same direction as win rates suggesting that for RLA campaigns, increases in voter suppression tactics are associated with lower turnout and lower win rates, while for NLRB elections, more aggressive and coercive employer tactics are associated with higher turnout and and lower win rates.

³ Each different tactic used is represented by a circle. R2 was .0294 for NLRB and .227 for RLA. Both were significant at a .01 level in a two tailed test. For details on NLRB tactics see “No Holds Barred” Bronfenbrenner 2009

The different anti-union strategies utilized by employers in elections supervised by the NLRB and the NMB are a direct result of the requirement to have a minimum of 50 percent plus one of votes cast in RLA elections versus 50 percent of eligible voters in NLRB elections. Perhaps most disturbing of all is that the single most effective strategy being used by employers to suppress union votes is legal – namely campaigns urging voters to destroy their ballots. It is also pervasive. We found that employers used this tactic with at least one or more voters in 67 percent of our sample. Ripping up ballots is a perfect example of just how undemocratic the current RLA process is. Because once that ballot has been torn up it represents a no vote even if the voter changes his or her mind. In the same vein ardent union supporters cannot stop their vote from counting as a no vote if because of misinformation they do not send in their ballot on time.

I believe our data conclusively show that as long as the current rules remain in place voter suppression will continue to interfere with the laboratory conditions that the RLA is supposed to maintain to give workers a chance to choose whether they want union representation free from interference and intimidation. Current policy does not accurately measure the union choices of workers under the RLA.

Thank you for your consideration of this important issue. I am happy to provide you more information and data if you have any further questions or concerns.

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Appendix

Table 1: Summary of findings on employer behavior under the RLA

	Percent or mean of elections	Win rate when tactic used	Turnout
All Campaigns	1.00	.44	.49
Employer mounted a campaign against the union	.85	.37	.48
Hired management consultant	.66	.36	.49
Positive Changes			
Granted unscheduled raises	.13	.29	.43
Made positive personnel changes	.16	.44	.45
Made promises of improvement	.26	.29	.46
Used bribes and special favors	.11	.50	.43
Established employee involvement program	.11	.50	.52
Impeding organizing			
Discharged union activists	.15	.38	.46
Laid off bargaining unit members	.11	.67	.48
Assisted anti-union committee	.22	.42	.49
Attempted to infiltrate organizing committee	.16	.44	.53
Distributed union promise coupon books	.09	.20	.41
Distributed pay stubs with dues deducted	.26	.36	.50
Voter Suppression			
Urged workers to tear up ballots or misled workers on voting procedures	.67	.43	.41
Coercion, Intimidation, Harassment, and Retaliation			
Held captive audience meetings	.51	.43	.48
Threatened to file for bankruptcy	.07	.67	.54
Threats of plant closing	.33	.50	.52
Alteration in benefits or working conditions	.16	.56	.50
Other harassment and discipline of activists	.18	.60	.53
Brought police into the workplace	.11	.33	.41