



3400 WATERVIEW PARKWAY, SUITE 400
RICHARDSON, TX 75080
Flexjet.com
T 972.720.2647
F 972.720.2643

December 16, 2009

SENT VIA E-MAIL [LEGAL@NMB.GOV] AND U.S. MAIL

National Mediation Board
1301 K Street, NW
Suite 250 East
Washington, DC 20005

RE: Docket # C-6964 Notice of Proposed Rulemaking (Representation Election Procedure)

Dear NMB Board Members:

We at Bombardier Aerospace/Flexjet ("Flexjet") write to express our opposition to the Notice of Proposed Rulemaking ("NPRM") published on November 3, 2009. The NPRM would change the way in which elections have been conducted under the Railway Labor Act ("RLA") for the past 75 years, and the NPRM further undermines the stability of labor relations in the airline industry. Moreover, the process under which the NPRM was drafted was flawed and gives the impression that two members of the Board were attempting to push the NPRM through without giving due respect to the input of the third member of the Board.

First, with respect to our Company, Flexjet is headquartered in Dallas, Texas. Since 1995 Flexjet has been offering fractional ownership in business jets. We provide dedicated flight operations and related services to our customers and currently employ approximately 820 dedicated professional aviation employees. As safety is our number one priority, our standards for hiring, training, and aircraft maintenance are among the highest in the industry. As such, Flexjet has a vital interest in this proposed rule change and the possible adverse effect it may have on the stability of airline labor.

Second, with respect to the merits of the proposed rule change, since its inception in 1934, the National Mediation Board has consistently held that a majority of eligible voters must vote for representation in order for a union to be certified as the bargaining representative of a craft or class. This "majority rule" has been challenged on four separate occasions, and the Board upheld the majority rule in each of those cases. In a 1948 challenge to the majority rule, the Board recognized that the majority rule promoted stable labor relations.¹ The Board reiterated this sentiment in its Sixteenth Annual Report of the National Mediation Board, noting that the Board's duty under Section 2, Ninth "can be more readily fulfilled and stable relations maintained by a requirement that a majority of eligible employees cast valid ballots..." When the International Brotherhood of Teamsters challenged the majority rule in 1987, the Board denied the IBT's request, holding, "One need look no further than to the area of potential strikes to conclude that certification based upon majority participation promotes harmonious labor relations. A union without majority support cannot be as effective in negotiations as a union selected by a process which assures that a majority of employees desire representation."²

The Board's NPRM does not provide any persuasive reason for changing a rule that has been in place for 75 years, nor does the Board's NPRM satisfactorily address the impact of the proposed rule on the stability of labor relations. Instead, the Board claims that it is unaware of any democratic elections conducted in the manner of the majority rule election. While it is true that politician elections are

¹ Pan American Airways, 1 NMB 454, 455 (1948).

² Chamber of Commerce of the U.S. and the International Bhd. of Teamsters, 14 NMB 347, 362 (1987).

conducted based on the number of voters who cast votes, that situation is completely inapposite. Politicians serve for terms that are both limited and specified. If the voters are displeased with a politician, or if the politician loses the support of the constituency, the constituents have the opportunity to vote the politician out of office. No such right exists under the RLA.

It is also true that, under the National Labor Relations Act ("NLRA"), the National Labor Relations Board ("NLRB") will certify a union as a group's bargaining representative if that union receives a majority of the votes cast. However, the Board has recognized that its voting rules and election procedures are different from those used by the NLRB.³ One of the most fundamental differences between election procedure under the NLRA and election procedure under the RLA is that there is no formal decertification procedure under the RLA. If the Board is going to change the election rules to allow a minority of employees to vote in a union, the Board must also change the rules to allow a majority of employees to vote the union out if they are displeased with the union.

Finally, the process that the Board used to prepare the NPRM is also flawed. The Board failed to consult Chairman Elizabeth Dougherty during the drafting of the NPRM. The Board also failed to ask Chairman Dougherty for her input prior to finalizing the NPRM. Instead, Chairman Dougherty was presented a "final" version of the NPRM and told that it would be published on that same day. Chairman Dougherty was also told that she could not publish a dissent in the Federal Register. After continued requests, Chairman Dougherty was told that she could publish a dissent, but that she had only one and one-half hours to complete it. Chairman Dougherty's dissent was then edited by the other two members of the Board, and she was informed that she could not include any discussion of the procedure flaws in the preparation of the NPRM in her dissent. The Board's rushed and exclusionary behavior gives the impression that the Board is biased towards the change.

We appreciate the opportunity to comment on this important and unprecedented change to the RLA voting procedure. We also want to add that we have reviewed the comments made during the NMB's December 7, 2009 hearing and urge the Board to adopt the positions opposing the rule change and the process in which the NPRM was prepared including those presented by the Air Transport Association of America, The Airline Industrial Relations Conference, the US Chamber of Commerce, and the Regional Airline Association. Thank you for your consideration of our views.

Respectfully submitted,



David W. Gross
Vice-President, Flexjet Operations

DWG:mj

cc: Mary Johnson, General Counsel (via U.S. mail)

³ See e.g. Zantop Int'l Airlines, 9 NMB 70, 79 (1981).