



**WRITTEN STATEMENT OF
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**BEFORE THE
NATIONAL MEDIATION BOARD
ON
THE REPRESENTATION ELECTION PROCEDURE; PROPOSED RULE;
DOCKET NO. C-6964
FOR
THE NATIONAL MEDIATION BOARD'S PUBLIC MEETING**

December 7, 2009

On behalf of the Transportation Trades Department, AFL-CIO (TTD) I want to thank the National Mediation Board ("NMB or Board") for the opportunity to present our views on the proposed rule amending the procedures that govern representational elections. TTD consists of 32 affiliated unions representing workers in all modes of transportation, including those covered under the Railway Labor Act (RLA).¹ We commend the Board for the thoughtfulness of its proposal and believe the rule change is long overdue and should be adopted.

The current voting procedures are un-democratic, inherently unreliable and outdated in determining voter intent. The current rules also encourage employer-run voter suppression campaigns and deny aviation and rail workers the unfettered right to choose whether they want union representation. Moreover, despite the industry's hollow rhetoric questioning the NMB's right to change these rules, it is clear that the agency has the well-established authority to set its rules and policies.

Let me state at the outset that Carmen Parcelli, a principal at Guerrieri, Edmond, Clayman & Bartos, P.C. will specifically address on TTD's behalf the Board's legal authority to implement the proposed rulemaking. My comments today will generally focus on the policy issues, the reasons why current Board procedures are unfair and unnecessary, and why the NMB's proposal should be adopted.

¹ Attached is a complete list of TTD affiliated unions

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The NMB's principal role in representation disputes is to determine the clear choice of affected employees seeking union representation. Unfortunately, the Board's election procedures fail to even meet this basic requirement. Currently, an absolute majority of all eligible employees in a craft or class are required to cast a ballot to merely certify an election and all non-voters are assigned automatic "no" votes. As a result, when workers are unable to meet this onerous threshold, the expressed will of the majority of those who vote is silenced by those who do not vote.

This method of discerning voter intent is inherently flawed and unreliable. By automatically assigning non-participating voters a "no" vote in opposition of a union, the current voting procedures are essentially declaring intent when none is expressed. There are a host of reasons why individuals do not vote: they may have no history of or interest in voting; forget to vote; may be unable, for a variety of reasons, to participate; or, as we've seen in 9 out of 10 union elections in recent history workers face an employer-run campaign to block unionization. Nonetheless, it is impossible for the NMB to determine the intent of such non-voters. Clearly, discerning a "no" vote in the absence of an affirmative vote is an inherently arbitrary method for surveying intent and has no place in our system of democracy.

The unreliable and arbitrary nature of the Board's election procedures place rail and aviation workers in a unique and unfair electoral category, completely detached from the democratic norms lying at the heart of any representational election. Throughout this country, from school boards to the United States Congress, a majority of those casting a ballot determines election outcomes. In contrast, the NMB's election procedures assign non-participating voters a role in determining electoral outcomes. The Board's proposed rule correctly identifies this voting standard as a type of "compulsory" voting that conflicts with our democratic system. This type of compulsory voting not only undermines the expressed will of a voting majority but also precludes employees from exercising their individual choice. To be truly democratic, workers must have the decision to vote for union representation, against union representation, or not to vote at all. If we subjected our political representatives to this standard, it is clear that many, if not most, federal, state and local officials would never hold public office by virtue of low voter turnout. In fact, in every mid-term election since 1930 the national turnout fell below 50 percent.

The NMB's election procedures are also an anomaly in the realm of American labor-management relations. Workers in all other areas of the economy, including those in both the private and public sectors, are afforded the right to definitively affirm or reject representation by a majority vote of those who participate. There is no legitimate reason, policy related or otherwise, for aviation and rail workers to be subject to an exceptional and undemocratic standard.

This compulsory voting standard has, in turn, fostered a unique culture of voter suppression as companies understand that impeding union organizing merely requires preventing employees from voting. During union elections, companies seek to decrease voter turnout and thereby defeat an organizing drive not by winning an actual vote on the merits, but rather through carefully managing a low turnout. In effect, the NMB's existing procedures reward this type of

underhanded employer conduct. If anything, effective federal labor relations policy should encourage employee participation in representational elections, not supply employers with the tools to block attempts at unionization.

In both 2002 and 2008, Delta Airlines ran intense suppression operations against flight attendant organizing campaigns, encouraging employees to destroy government-issued ballots – or as Delta named its 2008 campaign, “Give a Rip”. Although over 98 percent of participating voters supported the union (the Association of Flight Attendants) in each effort, Delta’s opposition campaign circumvented this majority by keeping turnout below 50 percent.

The election procedures further disadvantage employees who support unionization as companies seek to manipulate the Official Eligibility Lists. The NMB includes as eligible voters employees on lay off, military leave, extended medical leave of absence and other employees who may be hard-to-reach. As a result, the companies have an incentive to pad the eligibility lists with hard to reach workers or individuals no longer employed at the company, further increasing the certification threshold for union organizing and disabling a worker’s right to choose a union.

Fortunately, the proposed rule will curtail these dubious practices and conform rail and aviation elections with the NMB’s mandated goal of clearly determining voter intent. The new ballot will allow employees to vote “yes”, “no” or abstain from voting and let a majority of those participating prevail. Such a standard provides each employee a precise choice when voting and ensures the equality of every vote. We believe it is time to let workers in these industries choose representation under the same system of democracy as others, and we are pleased that the proposed rule provides workers this opportunity.

The opponents of this reform continue to advance baseless claims in an effort to derail the Board’s necessary and constructive rulemaking. However, their allegations all have one thing in common: to distract observers from the merits of the proposed rule and maintain the status quo. By dragging dubious and extraneous elements into the dialogue, they wish to avoid the uncomfortable reality that what they truly oppose is democracy.

Among the frequent arguments raised against the Board’s proposal is the issue of timing. Critics claim the NMB should not change its procedures because potential organizing campaigns will benefit. This is a self-defeating proposition. If the Board was precluded from updating its representation rules based on this rationale, the agency would never be able to change its rules. There are always potential organizing drives or representations cases on the horizon. For the opponents of this rule there will never be an appropriate time to implement the proposal. In truth, their opposition has nothing to do with timing, but everything to do with derailing the proposal altogether.

Meanwhile, industry apologists continue to suggest that the NMB’s anomalous threshold is a necessary, if not required, mechanism for preventing economic upheaval created by strikes. Although it is certainly true that the RLA is designed to limit disruptions to interstate commerce, the Board’s election procedures have absolutely no bearing on this matter. Rather, the agency’s

election procedures merely ascertain voter intent during representation disputes. In contrast, the issues and disagreements that lead to difficult labor-management disputes are dealt with by the Board's comprehensive bargaining and mediation process and status quo requirements. Opponents are thus relying on an old Washington tradition to advance their agenda: introduce completely unrelated red herring issues – in this case, “strikes” – to sow confusion over the true nature of the policy issues being debated. Let's be clear: the proposed rule in no way changes the NMB's mediation procedures and has no material effect on the Board's mechanisms used to drive the negotiating and mediation process toward consensual collective bargaining agreements and to avoid potentially disruptive disputes.

As we have clearly demonstrated, current NMB election procedures are a patently unfair means of determining voter intent. They deny workers the fundamental democratic rights found throughout American society in settling questions of representation. And by counting non-voting employees as “no” votes, they encourage employers to wage voter suppression campaigns that subvert the expressed will of the majority of those who cast a vote.

It is time to permit airline and rail workers to vote on the question of unionization under the same democratic standards used in all other elections – from union elections conducted under other labor laws to Congressional elections. The Board has proposed sensible reforms that will accomplish this goal.

Transportation labor enthusiastically endorses the NMB's proposed rule change and urges its adoption.

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)