

Comments of Union Pacific Railroad Company
Related to the National Mediation Board's Proposed Changes to
Representation Election Procedures

Docket No. C-6964
74 Fed. Reg. 56750, RIN 3140-ZA00

January 4, 2010

Union Pacific Railroad Company ("Union Pacific") respectfully submits the following comment in response to the National Mediation Boards' Notice of Proposed Rulemaking and Request for Comments ("NPRM") related to the proposed changes to representation election procedures under the Railway Labor Act, 45 U.S.C. 151 et seq. Union Pacific is a Class 1 freight railroad consisting of approximately 32,012 route miles that link the Pacific Coast and Gulf Coast ports with the Midwest and eastern United States gateways, in addition to providing key Mexican gateways. Union Pacific employs more than 45,000 full-time equivalent employees, 85 percent of whom are represented by 13 major rail unions.

Union Pacific fully joins in the separate comments submitted by the National Railway Labor Conference. Union Pacific writes separately in favor of retaining the long-standing procedures for representation elections, including the rule that a majority of eligible voters must cast valid votes in favor of representation in order to certify a representative.

Union Pacific's modern experience with representation elections prompted this separate comment. The NPRM makes the broad and unsupported statement that the proposed changes will "discourage employee non-participation by giving every employee a chance to affirmatively express their preference for or against representation." 74 Fed. Reg. 56752. This statement assumes without any factual foundation that there is a need to address employee non-participation, and it completely ignores that employees already have the right to express their preferences, and do so, under the current procedures.

Over the past 25 years, there have been at least six representation elections involving Union Pacific employees. Union Pacific has provided information about voting procedures, including the manner in which votes for unionization are cast and how to cast a vote against

unionization by not voting. Educational information was provided to the employees who were eligible to vote in each representation election. Such affirmative educational outreach, which is entirely consistent with the Board's rulings that unions and carriers have the right to explain the voting system to the electorate, obliterates the argument -- advanced by some who favor a change in the rules -- that choosing not to vote is the same as not participating in the election. Given Union Pacific's experience, it is pure speculation to assert that not voting is equal to not participating in the election.

Even if the fact of an educated electorate is put to one side, for a union to be effective, it must have the support of a majority of the employees it is certified to represent. This is particularly true in a system-wide context. If the proposed rules are enacted, then the basic and necessary premise of majority support for the union will be extinguished. Under the proposed rules, a union could become certified with the support of only a small fraction of the affected employees. The proposed rules allow for a union to be certified without genuine and widespread support by its members, which in turn may put the union's legitimacy at risk, rendering it ineffective in its dealings with management.

Finally, the Railway Labor Act is unique. Proponents of the rule change state that the elections procedures under the National Labor Relations Act determine the outcome of an election based on the majority of votes cast, and they argue that the NMB should do the same for representation elections under the Railway Labor Act. However, the NLRA has a process for decertifying a union by a vote of its members; no such process is included in the Railway Labor Act. There has been no significant push for a decertification process under the NMB's current representation election rules. However, if the new rules are enacted, then there will certainly be a push for rules to decertify unions that no longer have the support of a majority of the employees by the same, proposed voting procedures. The endless opportunities for representation elections and decertification elections under such scenarios would surely jeopardize the stability enjoyed by labor and management under the Railway Labor Act and its long-standing processes.

The current rules have served the railroad industry well. For this reason, Union Pacific asks the NMB decline to progress the proposed rules.

Respectfully submitted,



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