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The Honorable Elizabeth Dougherty
Chairman
National Mediation Board
1301 K. Street, N.W., Suite 250
Washington, DC 20005

The Honorable Harry Hoglander
Member
National Mediation Board
1301 K. Street, N.W., Suite 250
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The Honorable Linda Puchala
Member
National Mediation Board
1301 K. Street, N.W., Suite 250
Washington, DC 20005

Re: Proposed Representation Election Procedure Rule Change
Docket No.: C-6964

Dear Chairman Dougherty and Members Hoglander and Puchala:

These comments are submitted by WestJet, an Alberta Partnership (WestJet) in response to the November 3, 2009 Federal Register Notice regarding the National Mediation Board's (NMB or Board) Representation Election Procedure in the above-referenced docket number. For the reasons set forth herein, WestJet opposes this proposed rule change, which if implemented, would negatively affect any future decision by WestJet to invest itself in the U.S. market including the potential employment of a U.S. workforce.

The Honorable Elizabeth Dougherty
The Honorable Harry Hoglander
The Honorable Linda Puchala
January 4, 2010

WestJet is Canada's leading high-value low-fare airline operating an average of 383 daily flights to sixty-seven destinations in Canada, the United States, Mexico and the Caribbean. WestJet employs over 7,500 individuals, and approximately 82 percent of eligible employees own shares in the parent company through WestJet's employee share purchase plan. WestJet prides itself on the positive relationship it maintains with its employees, and has been named one of Canada's Most Admired Corporate Cultures four years in a row.

WestJet currently serves seventeen United States destinations, and has continued to explore expansion possibilities within the United States including the potential of employing a U.S. workforce. Given this continued expansion in the U.S. market, WestJet has been actively monitoring applicable U.S. laws and regulations as related to all facets of the airline industry, including labor relations. WestJet was recently made aware of the NMB's notice that proposes to change the manner in which airline employee groups vote to unionize in the United States.

On November 3, 2009, the NMB published a proposed rule that, if implemented, would provide that, "in representation disputes, a majority of valid ballots *cast* will determine the craft or class representative." 74 FR 5670. The NMB's current voting procedure has been utilized for 75 years and was affirmed by the Board as recently as last year. *See Delta Air Lines, Inc.*, 35 NMB 129 (2008). Under the current process, employees do not surrender their right to treat directly with their employer unless a majority of the co-workers in their craft or class choose collective representation. If a majority of eligible voters express their desire for union representation, the bargaining agent receiving the largest number of votes is certified as their legal representative.

The requirement that a majority of eligible employees vote in favor of unionization is the only certain means of ensuring that a majority prefers collective representation. This demonstrable majority support legitimizes the efforts of the union going forward, and the company can be assured that the union is, in fact, speaking as the collective voice of the represented employees. This guarantee that the union represents a true majority of employees serves to foster amenable and constructive labor-management negotiations and relations. On this point we agree with the Chairman's dissenting opinion that "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." 74 F.R. 56753 (*citing Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987)).

The NMB's proposed change would allow certification on the basis of a union receiving the votes of only a majority of employees who choose to participate in the election. This would enable a small minority of voters to determine the long-term future of an entire employee group, regardless of whether the union enjoyed support by a true majority of the workers it is certified to represent. This manner of certification will dilute the legitimacy of the newly certified union

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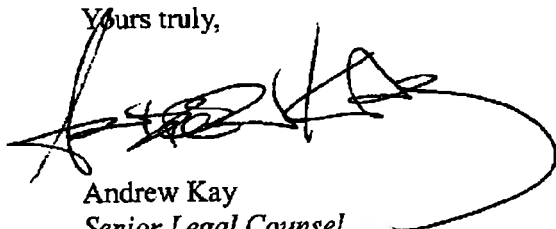
as the election process will no longer confirm that the union truly speaks for its membership. As noted in the Chairman's dissent, assuring that a union "enjoys true majority support is even more important given that union certifications under the RLA must cover an entire transportation system - often over enormously wide geographic areas with large numbers of people." 74 FR 56753.

From a practical standpoint, the implementation of this proposed rule will certainly affect any decision by WestJet to expand its operations to include U.S. based employees. As previously discussed, WestJet takes great pride in the positive relationship that it has created and currently maintains directly with its employees. WestJet would bring this same corporate culture to any potential U.S. workforce. The implementation of the proposed rule would, however, allow a small voting minority to immediately choose to unionize before the true majority of employees had been afforded an opportunity to experience the WestJet corporate culture and decide for themselves whether unionization was in their best interest.

From a financial standpoint, the likelihood of immediate unionization without support from a true majority of employees represents a substantial cost increase that WestJet could not ignore when making a decision to employ U.S. workers. This is not because of an increase in wages and benefits, which WestJet sets at competitive levels. Rather, it would be the immediate costs associated with union elections, negotiations and grievances/arbitrations that would dissuade WestJet from expanding and creating jobs for U.S. citizens.

Given all of these complications, the current NMB election process at least provides assurance that a true majority of employees have decided to seek third party representation and that the elected union does, in fact, speak for the entire employee group. Under the proposed rule, by contrast, that assurance may be lost.

Yours truly,



Andrew Kay
Senior Legal Counsel
WestJet