



A bold voice for transportation workers

February 15, 2011

Support the Costello Amendment to Protect the Rights of Aviation and Rail Workers

Dear Representative:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I urge you to vote for an amendment expected to be offered by Rep. Costello (D-IL) to the FAA reauthorization bill (H.R. 658) to strike Section 903, preserving the National Mediation Board's (NMB or Board) election rules that allow a majority of those voting in aviation and rail union elections to decide the outcome. The NMB's new rule is consistent with statute, was considered in an open and transparent process, and makes union election procedures for aviation and rail workers fairer and more consistent with democratic norms.

The Air Transport Association (ATA) challenged the NMB's rule in federal court claiming the rule was "arbitrary, capricious and not in accordance with the law under the Administrative Procedures Act (APA)" and violated the Railway Labor Act (RLA). The U.S. District Court for the District of Columbia rejected these claims and issued a strong opinion upholding the Board's rulemaking. The Board is now operating under its new rules and has moved forward with several representation elections.

Previously, the NMB counted all workers who did not vote in a representation election as a vote against the union. There are, of course, several reasons why a person may not vote in an election, and it makes no sense to automatically and arbitrarily assign a "no" vote to all non-voters. As a result, the old process was structurally tilted against workers seeking representation, despite the Board's clear mandate to promote collective bargaining.

The current NMB rule provides workers with a precise choice to vote either for a union, against a union, or abstain from voting and have a voting majority decide the outcome. Despite claims from opponents of the rule, this is not "card-check" or "minority rule." Rather, it is the same procedure that we use to elect Senators, Members of Congress and is found throughout our democratic society.

Opponents have stated that the NMB does not have the authority to make the change and that the governing statute requires a majority of a work group to vote in order to certify an election. The RLA does not require the old procedure and gives the Board broad discretion on how it conducts elections. Specifically, Section 2, Fourth of the RLA states that "the majority of any craft or

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class of employees shall have the right to determine who shall be the representative of the craft or class" This section is silent on how a majority should be determined, and the District Court correctly determined that the NMB is given the authority to conduct elections using any appropriate method for ascertaining voter intent. In fact, the Board has, in the past, applied different union election procedures including rules similar to those currently employed.

The process the Board used to adopt this rule was fair, open and allowed all parties an opportunity to comment. The NMB published a Notice of Proposed Rulemaking in the Federal Register on November 3, 2009 that included a detailed explanation of why the Board was considering this change, allowed interested parties 60 days to comment, and provided detailed rationale for offering the proposal. As part of this comment period, the NMB held a public meeting where it heard from 34 members of the public. The final rule included a detailed response to the substantive comments offered and provided a thorough and well-reasoned explanation for the Board's final rule. In the opinion of the District Court judge, the Board "provided a neutral and rational basis" for its rulemaking in a manner "adequate under the APA" and was not "arbitrary and capricious."

Supporters of Section 903 also claim that it is "nearly impossible" to remove a union under the RLA and that the existing rule will result in more strikes. Both of these claims are false. The NMB's procedures have long afforded a process for workers to change or remove a union. In fact, the rules adopted by the Board not only continue this process but also provide workers with the specific ability to vote "no union" on a ballot to remove representation. Finally, any suggestion that if a majority of all eligible employees do not vote makes strikes more likely is a complete red herring. The RLA is designed to limit disruptions in interstate commerce, but the NMB's election procedures have absolutely nothing to do with this. The Board's rigid process of bargaining and mediation accomplish this goal; how workers choose a union is entirely immaterial to this issue.

For these reasons, please support the Costello amendment to protect the rights of rail and aviation workers. Please contact me directly or TTD Legislative Representative Jeff Pavlak at 202/628-9262 if you have any questions or need additional information.

Sincerely,



Edward Wytkind
President