



September 3, 2008

The Honorable Read Van de Water
Chairman
National Mediation Board
1301 K Street, NW
Suite 250
Washington, D.C. 20005

The Honorable Elizabeth Dougherty
Member
National Mediation Board
1301 K Street, NW
Suite 250
Washington, D.C. 20005

The Honorable Harry Hoglander
Member
National Mediation Board
1301 K Street, NW
Suite 250
Washington, D.C. 20005

ATTN: Mary L. Johnson, General Counsel

Re: Comments on 35 NMB No. 61 and 35 NMB No. 62

Dear Chairman Van de Water and Members Dougherty and Hoglander:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), we appreciate the opportunity to submit comments on the National Mediation Board's (Board) proposed changes to its Representation Manual described in its Notice dated July 15, 2008 and further modified in its Notice dated July 31, 2008. TTD represents 32 affiliated unions in all modes of transportation and many of our member unions represent workers covered by the Railway Labor Act and thus are directly affected by this proposal.¹ We will focus our comments on proposed Section 19.701 but will also comment on some of the other changes the Board is proposing and note that affected TTD affiliated unions will submit additional comments.

¹ Attached is a list of TTD's affiliated unions.

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President • Patricia Friend, Secretary-Treasurer

We are opposed to the Board's proposal to add a new provision, Section 19.701, which will govern when the Board will extend union certification in a merger when workers at one carrier are represented and workers at the other carrier are not represented. Specifically, the Board's proposal to require that "more than a substantial majority, as determined by the Board" of workers are currently represented before certification is extended creates a new, ambiguous, and artificially high burden on workers who simply want to be represented by a union and enjoy the benefits of collective bargaining.

We also remain opposed to the language in proposed Section 19.701 that will bar the use of authorization cards, even with employer consent, from being used to extend the union certification. While we understand that the Board has modified its original proposal on this point, the clarified language still appears to bar the use of authorization cards for purposes of extending certification. It appears that the Board would allow authorization cards for new representation, but that cards could not be used to combine with existing union membership to demonstrate sufficient support to extend certification. If this is the Board's intent, it would put unions in the possible position of having to collect authorization cards from existing members simply to extend a certification in a merger with a non-represented workforce.

The Board is charged with administering labor-management relations in a fair and balanced manner and ensuring that the right of workers to freely choose union representation is protected. Yet the proposed rule would instead make it harder for workers to retain and achieve collective bargaining rights and there is simply no policy justification for the Board to implement this change.

The Board's current practice, based on case precedent, is to extend a union certification in a merger when the workers represented by a union are not comparable in numbers to the workers that are either not represented or represented by another union. When employee groups are comparable the Board will order an election to determine union representation.

We would note that the standard being reformed already places a burden on workers who seek to retain union representation in a merger especially when workers are represented at one carrier and no representation exists at the other carrier. The Railway Labor Act expressly provides that "[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the class for purposes of this chapter." 45 U.S.C. Section 152, Fourth. At least in the context of a merger where there is a union present at one carrier and no representation at the other, a simple majority standard would be consistent with the Act and serve to better protect the collective bargaining rights of the majority of workers at a merged carrier.

The Board's proposal goes in the exact opposite direction by creating a new standard – "more than a substantial majority, as determined by the Board." We are aware of no precedent for this standard either in statute, regulation or precedent. The Board, at least in any formal explanation, has failed to articulate what exactly constitutes more than substantial majority. To complicate

matters, the Board expressly gives itself the power to determine on a case-by-case basis, what this term could mean. While we may not agree with the current standard (comparable versus non-comparable) at least that standard has been developed by case precedent and is generally understood by the parties.

We understand that two Members of the Board, in a letter to Capitol Hill, have stated that proposed Section 19.701 is simply a codification of current policy.² If this is indeed the Board's intent, we do not understand why the Board is introducing a new term of art ("more than a substantial majority") and not relying on language from prior Board decisions. Furthermore, we note that while the Board's letter to Capitol Hill claims that "the Board has consistently required elections to determine employee choice of representative in mergers where one union does not represent a substantial majority ..." the proposed change would require "**more** than a substantial majority, as determined by the Board." Because the Board has offered no additional public explanation for this change, it is impossible to know if this word choice is relevant and if the Board is embarking on a new standard while claiming otherwise.

While we would be opposed to Section 19.701 whenever it is introduced, the timing of the Board's actions, coming as the merger between Northwest Airlines and Delta Air Lines is pending before federal regulators, makes this proposal suspect and especially egregious. Proposed Section 19.701, by its own terms, applies "[w]hen there is a certified representative on one of the affected carriers but no certified representative on the other(s) ..." That is exactly the situation in the merger between Northwest and Delta.

As the Board is aware, virtually all non-pilot workers at Northwest are represented and all non-pilot workers at Delta are not represented. On its face, this change appears to provide Delta Airlines with yet another tool at its disposal to prevent workers from securing or maintaining union representation. Moreover, this revision puts at risk existing bargaining rights at Northwest that in some cases have existed for decades. Delta Air Lines just recently embarked on an illegal anti-union campaign denying its flight attendants the right to seek collective bargaining through the Association of Flight Attendants-CWA (AFA-CWA). Putting aside for a moment the legality of Delta's conduct in the AFA-CWA election, the Board should not be perceived as a partner in Delta's strategy to remain as union-free as possible as it seeks to merge with Northwest. While Chairman Van de Water and Member Dougherty have denied this is their intent, it is exactly the impression that our unions and their members are left with as the Board attempts to quickly change its rules to benefit a specific, pending transaction.

It must be remembered that collective bargaining rights in both the aviation and rail industries have provided job stability, good wages, retirement security and a meaningful voice on the job for millions of American workers. As companies seek to merge in these industries, especially in difficult economic times, it makes no sense to actually make it harder for workers to enjoy the

² Letter from Read Van de Water, Chairman and Elizabeth Dougherty, Member to the Honorable James L. Oberstar, the Honorable Edward M. Kennedy and the Honorable George Miller (August 12, 2008).

benefits of collective bargaining and the protections a union contract can provide. And given how difficult it is under current NMB rules and precedent for workers to form a union through an election, the Board's effort to deny certification of an existing union is a poorly veiled attempt to weaken a worker's ability to choose union representation.

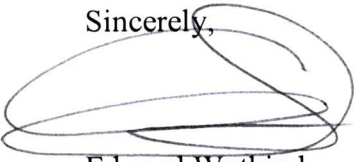
We are also opposed to the Board's proposal to add language at Section 13.304-2(5) that would create a new category of votes in a representation election that would be considered void and thus not counted by the Board to determine if 50 percent plus one had voted for representation. Specifically, the Board is seeking to void "votes for a current political candidate or other widely known individual, where it is clear that the voter does not intend for that individual to represent the craft or class for purposes of collective bargaining under the RLA." The Board, apparently for the first time, is seeking to glean the intent of the voter when that individual has actually voted for a specific person. The statute is clear that employees may vote for any "individuals or organizations," 45 U.S.C. Section 152, Ninth of their choice so long as the person is not in the employ of the carrier. Despite this specific statutory definition, the Board is putting itself in the position of attempting to determine when the voter really does or does not want representation based on the type of individual that the person voted for. This could create ambiguities and confusion in the voting process and grants the Board with discretion that it is simply not entitled to under the statute. A political candidate could, for example, be interpreted to include an elected union official. And we don't see why a vote for a "widely know individual" should be used as a trigger to allow the Board to review the intent of the voter. This is simply not the proper role for the Board and we ask that the addition to Section 13.304-2 not be finalized.

We are also opposed to the proposed additions to Section 3.3 that would provide a mechanism for employers to influence the selection of a union representative – a practice that would violate both the spirit and intent of the RLA. Specifically, proposed Section 3.3 would codify the practice of allowing employers to determine, by delivering to the Board "an applicable list and signature samples," when applications will no longer be accepted. It is possible that an employer could use this to manipulate an election to favor or to hinder a particular union intervener. For example, if an employer wants to enhance the possibility that an intervener is placed on the ballot, it may wait until the last possible moment to submit the list to the Board so that additional cards can be collected. Conversely, the employer could diminish the chances of an intervener by quickly submitting a list and thus cutting off the time a union can collect additional cards. Clearly, employers should not be allowed to manipulate the election process in this manner yet this is exactly what will occur under Section 3.3. Instead, the Board should determine a date and time for the carrier to submit its list of eligible voters to the Investigator and allow interested parties to submit cards by that date. This provides an intervening union notice and an opportunity to have its name included on the ballot and will help ensure that employers do not exercise improper influence in the election of a union representative.

For these reasons, we urge the Board to withdraw Section 19.701, and the additions to Section 13.304-2 and 3.3 and ensure that the other proposed changes to the Representation Manual strike the correct balance and provide workers with a fair opportunity to exercise their collective bargaining rights. If the Board does intent to proceed with changes to its Representation Manual

over our objections, we renew our call, previously made to the Board on two separate occasions, to hold a public hearing on these changes. Workers and their unions must be provided with a full and fair opportunity to voice their concerns with this proposal and a public hearing would allow Board Members to hear first-hand the problems these changes will create. Thank you for the opportunity to share our view.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edward Wytkind', written over a horizontal line.

Edward Wytkind
President

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)