



BEFORE THE NATIONAL MEDIATION BOARD

Representation Election Procedure

Docket No. C-6964

COMMENTS OF THE TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

On behalf of the Transportation Trades Department, AFL-CIO (TTD) and our 32 affiliated unions¹, we want to express our support for the National Mediation Board's (NMB or the Board) proposed revisions in 29 CFR Parts 1202 and 1206 to reflect contemplated changes in the Board's representation election procedure. 74 Fed. Reg. 56750, 56754 (Nov. 3, 2009).

Specifically, the Board proposes that in secret ballot representation elections conducted by the NMB, the choice of collective bargaining representation will be determined by the majority of valid ballots cast by the eligible employee voters. 74 Fed. Reg. at 56750, 56751-2, 56754. Instead of presuming that all employees who fail to cast a ballot oppose representation, the Board will now allow all eligible voters a fair and equal opportunity to cast a deliberate vote that *registers their own choice* for ("yes") or against ("no") collective bargaining representation. 74 Fed. Reg. at 56751-2. As the notice explains:

¹ TTD is the transportation umbrella organization of the AFL-CIO and our member unions represent thousands of workers covered under the RLA. Attached at 1 is a complete list of TTD's affiliated unions.

Transportation Trades Department, AFL-CIO

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The Board's primary duty in representation disputes is to determine the clear, un-coerced choice of the affected employees and the Board believes that this duty can be better fulfilled by modifying its election procedures to rely on the choice of the majority of valid ballots cast in the election. *This process will ensure that each employee vote, whether for or against representation, will be regarded with equal weight. The Board will no longer substitute its opinion for that of the employee and register the lack of a vote as a "no" vote.*

74 Fed. Reg. at 56752 (emphasis added). This proposed change would afford employees voting in NMB representation elections the same ballot choices that are available in secret ballot representation elections conducted by other labor agencies, such as the National Labor Relations Board ("NLRB"), and would align the NMB's standard with the familiar democratic majority-vote standard prevailing in federal, state and local political elections throughout the nation. 74 Fed. Reg. at 56751, 56752.

As the Board has noted, the Supreme Court and other federal courts have consistently emphasized that the Railway Labor Act ("RLA" or "Act") gives the NMB clear authority and broad discretion to decide the procedures it will follow and the form of ballot to use in resolving representation questions – including discretion to use the majority-vote standard and "yes"/ "no" ballot now proposed by the Board. The Board's original use of a different standard admittedly relied on no legal analysis or precedents and instead was justified as an administrative convenience. The Board's subsequent explanations for retaining that standard do not withstand scrutiny. In any event, whatever administrative and logistical considerations may have prompted the Board's choice seventy years ago no longer pertain. Under current circumstances, there is no legitimate justification for biasing NMB elections against those workers who desire union representation by counting all non-participants as "no" votes, and there is no arguable injury or

