TTD

A bold voice for transportation workers

PROTECTING A UNION VOICE FOR RAIL AND AVIATION WORKERS

At a time when working people are turning to collective action to amplify their voice at a level not seen in years, and as our economy remains plagued by seemingly immovable wage inequality, federal officials should pursue policies to protect the rights of employees to come together and bargain collectively. Instead, two of the three members of the National Mediation Board (NMB) are taking the exact opposite approach at the expense of aviation and rail workers covered by the Railway Labor Act (RLA). In early 2019, the NMB proposed a rule intended to make it easier to remove unions from worksites already represented and covered by a collective bargaining agreement. While board members in favor of the rule talk about the need to ensure "freedom of association among employees," we know this is just another attempt at union busting and has no place in any serious discussion about how to grow and support good middle-class jobs.

First, this rule is unnecessary. Procedures for rail and aviation workers to change or remove unions have been in place for decades and routinely used for their intended purposes. More importantly, this proposal is a significant and ill-timed overreach of the Board's authority that would undermine the election process and deny workers in the aviation and rail sectors the higher wages, better benefits, and dignity that comes with a strong union contract.

The Railway Labor Act, unlike the National Labor Relations Act, does not expressly provide for a procedure for workers to decertify a union. Recognizing that workers must have an ability to exercise this right, the Board — based on federal litigation interpreting the RLA — has long provided a mechanism where workers who have union representation can choose to no longer be represented. Despite claims by the current Board majority, this procedure is not overly complex or difficult to utilize. Any employee or group of employees wishing to remove a union can trigger an election with a 50% showing of interest with the Board (the same 50% applies to new union elections under the RLA). During the election, workers can choose between the entity filing the application who will disavow representation (the so-called strawman), "no representation," or the incumbent union. A majority of those voting will decide the outcome and the NMB's run-off rules apply.

Employees can and do invoke these procedures to become unrepresented – by way of example in May of 2018, pilots at Flight Options/Flexjet voted to become non-union in an election involving 551 employees. In fact, since 1998, there have been at least 42 occasions where workers have filed a "strawman" application with the Board designed to remove a union and 55 times applications have been filed to change unions.

In addition to not being necessary, the NMB is seeking to impose arbitrary limits on the ability of workers to choose a new union after a decertification vote. The proposed rule would mandate a two-year bar for representation elections after a decertification vote. This means that workers who decide to decertify a union would have to wait two years before they could choose to seek union representation again and would lose existing contract protections during that period.

Current NMB procedures allow for a one-year bar and the Board attempts to justify an extension by noting that there is a two-year bar on elections after a union is first certified. This comparison and the so-called need for "similar treatment" simply has no merit and ignores that the legitimate policy goals behind a two-year bar for a new union do not apply after a decertification vote. As the Board is well aware, a two-year bar on elections after a union is first elected is warranted to provide the new union time to negotiate a first contract before having to respond to representational challenges. A two-year bar after a decertification vote has no similar justification and only serves to deny workers a fair opportunity to vote for union representation.

There are several other flaws with the proposed rule. We are concerned that under the proposed rule non-employees would be able to seek a decertification vote — an allowance that runs counter to the RLA and would invite outside forces not covered by the contract to interfere in labor/management issues. The Board attempts to sell the rule by claiming that the current process is unnecessarily "complex and convoluted" while ignoring that under the RLA a "strawman" would still be available for employees to use, further drawing into question the need for this rulemaking. Finally, the Board's elimination of the strawman requirement could increase the risk of employer interference in a decertification election. A strawman candidate at least must attest to the bona fides of an application and without that requirement, unscrupulous employers could support card collection and efforts to remove unions.

Finally, employer groups and right-to-work organizations have repeatedly asked the Board to adopt different decertification rules. The NMB has consistently rejected those efforts, including as recently as 2010, explaining that the current procedures are consistent with the RLA and sufficient to insure employee choice in representation matters.

The NMB's proposed rule to change decertification elections is nothing more than an unnecessary attempt by government officials to hand more power to corporations at the expense of aviation and rail workers. Instead of developing crafty ways to stifle working voices, the Board should be focusing its time, resources, and credibility on contract mediation and arbitration services that are central to labor stability in the aviation and rail sectors.

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