

Airline Unions Seek Representation Right By Vote of Minority of Employees

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On September 2, 2009, at the request of the IAM and AFA, the Transportation Trades Department, AFL-CIO (“TTD”) petitioned the National Mediation Board (“NMB” or “the Board”) to amend its Representation Manual so as to permit a minority of eligible employees to determine union representation.

Under the Board’s current Representation Manual and long standing election procedures, a union is certified as the bargaining representative of a craft or class only if a majority of eligible voters cast votes for representation. For example, if there are 100 eligible voters in an election, 51 voters must cast votes for representation for a union to be certified as the bargaining representative. In its petition to the Board, the unions have argued that this procedure is at odds with the concept of democracy and that a union should be certified if it receives a majority of the votes cast in an election.

The unions’ petition to the Board is contrary to Section 2, Fourth of the Railway Labor Act (“RLA”), which provides, “The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter.” Since its inception in 1934, the NMB has consistently interpreted this language as requiring that a majority of eligible voters must cast votes for representation in order for a union to be certified as the bargaining representative of a craft or class. In elections where a majority of eligible voters do not cast votes for representation, the Board has consistently dismissed the union’s application for representation. In 1948 the Board explained its rationale behind the majority rule:

Under the Railway Labor Act, it is the primary duty of carriers and employees to “exert every reasonable effort to make and maintain

agreements concerning rates of pay, rules, and working conditions, and to settle all disputes * * * in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.” The Board is of the opinion that this duty can more readily be fulfilled and stable relations maintained by carriers’ and employees’ representatives by a requirement that a majority of eligible employees cast valid ballots in elections conducted under the Act before certifications of employee representatives are issued.¹

This position was reiterated in the Sixteen Annual Report of the National Mediation Board, in which the Board noted that its duty under Section 2, Ninth “can be more readily fulfilled and stable relations maintained by a requirement that a majority of eligible employees cast valid ballots...” In a 1987 decision, the Board further opined, “One need look no further than to the area of potential strikes to conclude that certification based upon majority participation promotes harmonious labor relations. 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.”²

Additionally, the Board has recognized that it has limited authority to make changes to its election procedures. In an executive session held by the Board in 1978, the Board adopted a motion stating:

In view of the unchanged forty-year history of balloting in elections held under the Railway Labor Act, the Board is of the view that it does not have the authority to administratively change the form of the ballot used in representation disputes. Rather, such a change if appropriate should be made by the Congress. If such legislation were to be introduced, the Board would be willing to appear before appropriate legislative Committees of Congress in order to present its views with respect to such legislation.³

Under the union proposed procedure, a minority of eligible voters would be able to dictate the representation choices of the majority. For example, under the proposed procedure, if

¹ Pan American Airways, 1 NMB 454, 455 (1948).

² Chamber of Commerce of the U.S. and the International Bhd. of Teamsters, 14 NMB 347, 362 (1987).

³ Minutes of Session of the National Mediation Board (June 7, 1978).

there are 100 eligible voters in an election and only 25 voters cast votes for representation, the union receiving a majority of those 25 votes would be certified as the bargaining representative, even though only 25% of the eligible voters cast votes in the election and 75% of the craft or class did not vote for representation. Such an outcome is clearly at odds with the RLA's mandate that the majority of the craft or class has the right to determine representation.

RAA, Air Transport Association ("ATA"), AirCon, American Eagle and several other airlines and industry associations have written to the Board members expressing their grave concerns about the union suggestion that the Board's vital voting rule be changed.