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Via Facsimile (202-692-5085) and U.S. Mail

Mary L. Johnson, General Counsel
National Mediation Board
1301 K Street NW, Suite 250 East
Washington, DC 20005-7011

Re: Comments of ATDA, IBEW and NCFO on Proposed Changes to NMB
Representation Manual

Dear Ms. Johnson:

Pursuant to the Board's request for comments about its July 15, 2008 Notice of its intent to revise various sections of the Board's Representation Manual, these are the Comments of the American Train Dispatchers Association, National Conference of Firemen and Oilers District of Local 32BJ, SEIU, and the International Brotherhood of Electrical Workers. As you are aware, all of these unions represent employees of the nation's rail carriers under the Railway Labor Act and are often engaged in representation matters before the NMB. These Comments are in addition to those filed by the AFL-CIO's Transportation Trades Department, with which we concur.

Proposed Rule 3.3

Rule 3.3 currently states "An applicant or intervenor may present the investigator with additional authorizations up until 4 p.m., Eastern Time, on the day the Investigator receives the applicable list and signature samples." In recent practice, the Board has been notifying carriers that the list must be submitted by 10 a.m. ET on a designated date and applicants that they may file additional authorizations up until the time the carrier submits the applicable list of eligible voters and signature samples, even if that submission occurs *before* the deadline the Board sets for the submission of those materials. The effect of the recent practice has been to eliminate the applicant's filing window that the current rule provides between the Investigator's receipt of the list from the carrier and 4 p.m. on that day. It now has proposed to change Rule 3.3 to formally change the time for applicants to submit additional authorizations from 4 p.m. on the day the Investigator receives the list to the instant the carrier submits the list.

Because the applicant cannot know when in the allowable time frame the carrier will submit the list, this change will enable the carrier, rather than the Board, to control the deadline for submission of additional authorizations by the unions. This can lead to manipulation of the process by a carrier. If that is the Board's intent, it shouldn't be. If that is not the Board's intent, then it should recognize the problems a change (and indeed the recent practice that differs from the existing rule) could engender and leave the current rule in place and apply it as written; the recent practice to the contrary should not be codified. If the Board believes it is important to amend the current rule, establishing a fixed, rather than a floating, deadline applicable to all parties for completing all of these filings (the list, the signature samples, the additional authorizations) is the better and fairer way to go.

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Proposed Rule 13.304-2(5)

The Board has proposed to change its longstanding Representation Manual provisions dealing with Void Ballots. Under proposed Section 13-304-2(5), the Board will presume that ballots cast for "a current political candidate or other widely known individual" will automatically be declared void and will not be counted. This would happen because the Board will hold on a *per se* basis that "it is clear" from such a ballot "that the voter does not intend for that individual to represent the craft or class for purposes of collective bargaining under the RLA." The problem with this approach is that it presumes the voter does not want to be represented at all. The result will be that the voter will be counted in the total number of eligibles but the vote cast will be held against representation, just as if no vote were cast at all.

In today's representation election climate, with the detailed notices that the Board requires be posted and provided to eligible employees, and the frequent management propaganda trumpeting the significance of not mailing in a ballot or casting a vote electronically, no employee can reasonably misunderstand the significance of casting a vote. When an employee writes in the name of a "current political candidate or other widely known individual," the Board should not presume the employee wants no representation. The vote could just as easily be deemed an expression by the employee that representation is necessary. A subjective *per se* rule disqualifying the vote eliminates that possibility and frustrates the desires of the employee who cast it. Section 2, Ninth of the RLA specifically allows for employees to vote for *any* "individuals or organizations" of their choice, 45 U.S.C. § 152, Ninth, including any "person not in the employ of the carrier," 45 U.S.C. § 152, Third. The Board's proposal should not be adopted because it deprives employees of their clear statutory right to freedom of choice to select any representative of their choosing.

Proposed Rule 19.701

The Board has proposed to change the way it addresses representation issues in the context of carrier mergers that also concerns these unions. The new Section 19.701 that it would add to the Manual limits the circumstances under which the Board would extend an existing certification where the employees of one of the pre-merger carriers is unrepresented to those "where there is more than a substantial majority, as determined by the Board." The statute requires that a representative be certified when a majority of the employees in a craft or class indicate a desire for representation. 45 U.S.C. § 152, Fourth. In a case where there is only one labor union seeking certification, that means a simple majority of the overall craft or class. The Board's proposed change raises that standard considerably.

Furthermore, the change offers no guidance as to not only what the Board might consider "more than a substantial majority," but what constitutes even "a *substantial* majority." Parties in merger situations are disserved by the adoption of such a vague rule that is subject to wavering interpretation on a case-by-case basis. It will only lead to confusion in situations where clarity is most desirable. It should not be implemented.

General Comment

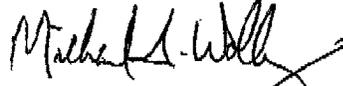
The Board's proposals have generated considerable concern that the agency is embarking on changes that are far-reaching without an adequate opportunity for gathering and discussing all relevant information and considerations from interested parties whose future relations will be

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governed by these changes. The best way to get that information and allow a give-and-take between the parties and the Board is to conduct a public hearing where all views can be aired. We understand the Board believes it is not bound legally to conduct such a hearing before promulgating changes to the Manual. But that doesn't mean holding a hearing isn't a good idea and a valuable resource for information gathering. We urge the Board to convene such a hearing before acting further on any of the changes it is proposing.

Respectfully submitted,



Michael S. Wolly
Counsel for ATDA, NCFO, and IBEW

