

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N.W., WASHINGTON, D.C. 20036 / AREA CODE: 202-862-7200 FAX: 202-467-5892

ROBERT F. ALLEN
Chairman

A. KENNETH GRADIA
Vice Chairman

JOANNA L. MOORHEAD
General Counsel

JOHN F. HENNECKE
Director of Labor Relations

September 3, 2008

SEP03'08 PM 2:20 NMB

Mary L. Johnson, Esq.
General Counsel
National Mediation Board
1301 K Street, NW – Suite 250 East
Washington, D.C. 20005

RE: Revisions to the NMB Representation Manual – Comments of the National Railway Labor Conference

Dear Ms. Johnson:

This letter is submitted on behalf of the National Railway Labor Conference (“NRLC”) in response to your July 15th request for comments on the Board’s proposed revisions to certain sections of the Board’s Representation Manual.

The NRLC appreciates the opportunity to provide the following comments:

Section 2.4 List of Potential Eligible Voters and Signature Samples

The Board has proposed revising Section 2.4 to include a new provision:

“The carrier’s failure to provide a substantially accurate list of potential eligible voters may be considered interference with the NMB’s election process and therefore grounds for setting aside the election.” (emphasis added)

The Board’s proposal does not address what the phrase “substantially accurate” means. There have certainly been representation proceedings where the carrier has omitted or included individuals by mistake. Given the large number of employees eligible to vote in some recent representation cases – upwards of 10,000 – errors on an eligibility list are inevitable and unavoidable. Sometimes these mistakes involve multiple individuals and take multiple iterations to correct. In addition, the carrier may be unable to provide a “signature exemplar” within the time deadline due to technological mishaps and/or inability to capture, store, and reproduce signatures accurately.

Accordingly, we would urge that the NMB clarify that this revision is meant to address only circumstances where there is an intentional effort to mislead the Board and the union about the content or size of the carrier's eligibility list. We suggest that the Board revise the proposed paragraph as follows:

“The carrier's failure to provide a substantially accurate list of potential voters, **in circumstances evidencing intent to mislead the Investigator**, may be considered interference with the NMB's election process and therefore grounds for setting aside the election.”

Section 9.2 Eligibility - Trainees

In its proposal concerning Section 9.2, the Board has included a new paragraph containing extensive criteria regarding the eligibility of trainees to vote. Our concern with this paragraph focuses on the last sentence which states:

“Carriers should identify any trainees upon submission of the List of Potential Eligible Voters.”

The Board should elaborate on exactly how a carrier is to identify or segregate trainees. Historically, the Board investigators have been quite strict about the format of the Eligible Voters list that the carrier must submit. The mandated list must be prepared in Excel with only certain specified fields: Number, Last Name, First Name, Job Title, and Duty Station.

If the proposed rule is adopted, the Board will need to specify how the carrier is to identify trainees on the eligibility list. For example, should the carrier create an extra field on the Excel list? Alternatively, should the carrier identify trainees in a separate document, such as a cover letter accompanying the list, or does the Board require another method for the carrier to identify trainees?

Section 9.205 Leave of Absence

The Board proposes changing the eligibility standards for employees on leave of absence. Under the current Section 9.205, employees on authorized leaves of absence, including military leave, leave for labor organization activities, or authorized sick leave **are eligible** to vote.

The current standard of automatic eligibility for employees on authorized leave distinguishes them from employees on disability, who are only eligible if “they retain an employee-employer relationship and have a reasonable expectation of

Mary L. Johnson, Esq.
September 3, 2008
Page Three

returning to work.” The proposed revision would apply the two-part “relationship” and “reasonable expectation” test to all employees on authorized leave.

NRLC’s members are opposed to this change. Employees on authorized leaves of absence should be given every benefit of the doubt and not required to pass any test for eligibility to vote. Unlike employees who are on medical disability because they are physically incapable of performing their jobs, many employees on authorized leaves of absence are fully capable of performing their jobs – but excused from doing so because of other commitments, such as to the military.

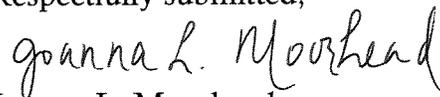
Moreover, it appears redundant to require an employee on “authorized leave of absence” to “retain an employee-employer relationship,” given that an authorized leave presupposes that such a relationship still exists and the employee will be returning to work at the end of the leave.

Section 13.304-2 Void Votes

The Board’s proposed changes to Section 13.304-2 offer a practical approach to the problem of “joke” votes in an election (*i.e.* votes for George Bush, Brad Pitt, Mickey Mouse, Superman, etc.). The NRLC suggests, however, that the wording of the Board’s proposal could be modified slightly to depict more accurately the types of “joke” votes that are encompassed in the new rule:

(5) votes for a current political candidate **or office-holder**, or other widely known individual **or fictitious character**, 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.

Respectfully submitted,



Joanna L. Moorhead

General Counsel

National Railway Labor Conference