

UNITED STATES OF AMERICA
BEFORE THE NATIONAL MEDIATION BOARD
WASHINGTON, D.C.

In the Matter of Notice of Proposed Rulemaking)	
)	
Amending Board Rules)	Docket No:
29 C.F.R. § 1202 and 1206)	No. C-6964
)	

**DECLARATION OF KIMBERLEE KELLER IN SUPPORT OF THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS' COMMENT**

I, Kimberlee Keller, of 25 Louisiana Ave., N.W., Washington, D.C. 20001, do hereby declare and state:

1. Your declarant is the Deputy Director of Field Operations, Department of Organizing, International Brotherhood of Teamsters. I have been involved in union representation election work for nearly thirty (30) years for a number of different unions. During this time period I have been involved in and led numerous union election campaigns under the Railway Labor Act, the National Labor Relations Act and public employee relations laws. I am providing this declaration to support the joint comments of the International Union's Rail Conference and Airline Division, in response to the National Mediation Board's Request for Comments in its Notice of Proposed Rulemaking of November 3, 2009.

2. Over the past thirty (30) years, competition unleashed by deregulation of both the rail and air industries caused enormous structural changes in the industries subject to the Railway Labor Act. Today, the IBT's rail and air affiliates routinely encounter determined, sometimes fierce carrier opposition to efforts by employees to organize themselves for collective bargaining. Carrier anti-union campaigns are especially intense where affected employees are not represented and have no previous experience with collective bargaining, or where they have lost representation due to a sale or other transaction affecting the identity of their carrier.

3. Increasingly sophisticated techniques have been developed by consultants to influence employees in the exercise of their selection rights under the RLA. Those techniques include specialized training in union avoidance for supervisory personnel, who then become the carrier's front-line barrier against unionization. Supervisory personnel engage in one-on-one sessions with employees, identify union adherents, create the impression of employee surveillance, often compile detailed reports about union activity by employees in their workplaces and spread rumors consisting of vague hints of what could occur if employees become unionized. Motivational surveys and, in some cases, psychological testing enables carriers to focus anti-union campaigns on the explicit fears and concerns of targeted employee groups.

4. Carriers exploit their control over the workplace. They frequently hold captive audience meetings to communicate an anti-union message to employees. Employees are bombarded with anti-union literature at work and at home, with the object of drowning out the union's message and hammering on employee fears identified through supervisory interrogation or employee surveys. Videotapes with effective anti-union themes are produced by management consultants and are freely available. Carriers may produce videos featuring their own employees, supervisors and managers to maximize the impact of the targeted anti-union message. Those videos are often shown at captive-audience meetings and then may be posted on a web-site sponsored by the carrier.

5. At the same time that carriers strive to influence their employees' representational choices through on-the-job communications, they sharply restrict employee organizational activities at the workplace. Known union adherents are isolated in particular geographic locations, in which it is difficult to interact with other craft employees. Overly broad no-distribution, no-solicitation rules have been adopted by air and rail carriers, restricting the ability of employees to discuss the pros and cons of unionization and collective bargaining during non-work time in non-work areas. The use of carrier facilities, such as employee bulletin boards, fax machines and internal mail systems, for organizational purposes is strictly forbidden, even if these internal communications devices are used for other non-business purposes.

6. Non-voting and ballot destruction propaganda form the principal theme of all modern, anti-union campaigns conducted by carriers. This is because each "non-vote" counts as a vote against representation. Carriers attempt to influence their employees' representation choices by building on deficiencies in the Board's election procedure, which are directly attributable to the standard form of ballot currently in use. The carrier need only induce fear and uncertainty, or mitigate enthusiasm for unionism, in order to cause employees not to vote. Today, this object is much more easily accomplished due to the sophisticated anti-union tools available to carriers. Organizations are not able to respond effectively because their access to the electorate has been severed by organizational constraints at work, as well as by handicaps imposed on their ability to communicate with employees outside the workplace.

7. Every election conducted with the Board's standard ballot begins with a default percentage of "no union" votes. That non-voting bloc, consisting of eligible voters who do not participate for reasons other than opposition to self-organization, is often determinative of the election's outcome. It is difficult to quantify the handicap imposed by the Board's standard ballot because in the typical election it is not possible to distinguish the apathetic non-participant from an opponent of unionization. Yet the Board has conducted a number of elections using a "Yes or No" ballot in cases involving carrier interference. In those 25 elections, employees could affirmatively cast ballots for or against representation. Presumably, then, the non-participation rate in those elections provides a rough indication of how many employees, on average, fail to vote for reasons

other than opposition to the union. The non-participation rate in those elections was 12 percent (212 not voting out of 1765 eligible employees.)

8. Many of the elections rerun with a “Yes or No” ballot due to carrier interference were conducted by ballot box. Because voter participation is higher in ballot-box elections than in those conducted by mail, especially where carriers have incentive to get out the vote, it is likely that the non-participation rate of 12 percent in these elections is lower than the norm.

9. Election reporting by the National Labor Relations Board over the last ten years supports a conclusion that nonparticipation in a conventional NMB ballot election is higher than 12 percent. NLRB election data from 2000 to 2009 reports an average 17.37 percent non-participation rate.

10. Even taking the 12 percent figure, however, it is possible to illustrate the severe handicap imposed on employee organizational efforts by the NMB’s standard form of ballot. In an election involving 1000 employees, for example, only 880 will definitely support or oppose unionization; the remaining 120 will not participate because of apathy, indolence, non-receipt of balloting materials, religious objections and similar factors. The organization must win the valid votes of 501, or 56.9 percent, of the 880 employees who actually favor or oppose unionization in order to succeed. The carrier, however, has to convince only 380 or 43.1 percent, of the decisive group to defeat employee self-organization.

11. In the Board’s 1987 rulemaking proceeding, the IBT showed that deregulation had dramatically changed the representational environment under the RLA. It presented data showing a 39 percent decrease in newly-organized employees per year for the five-year period 1981-1986 compared to the period 1971-80.

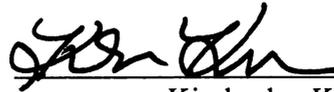
12. That trend in declining representation has continued up to the current time. Indeed, the Board’s own election data shows that negative trend accelerating with the most recent ten-year period of NMB elections having a substantially lower rate of elections and fewer employees gaining representation than even the first ten years of the post-deregulation period. From 1978 to 1987, the Board averaged 100 representation cases filed per year with 1,421 employees gaining representation. For the period 2000 to 2009, however, the Board has seen a 48 percent drop in case filings to an average of 52 per year, with a 29 percent drop in employees gaining representation to 1,013 per year, compared to the ten-year period immediately following deregulation.

13. These data show that the Board’s “super-majority” ballot now operates in a dramatically different representational environment even from the period immediately following deregulation and contributes to frustrating efforts by unrepresented employees to organize themselves for purposes of collective bargaining and grievance adjustment.

14. In the modern, post-deregulation era, carriers have the economic incentive and powerful weapons to influence their employees' representation choices. Employee organizational efforts cannot be handicapped by the Board's standard ballot and still succeed against the sophisticated anti-union campaigns now being waged by carriers.

I have read this Declaration consisting of fourteen (14) paragraphs and I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that it is true and correct to the best of my knowledge, information and belief.

Executed this 30th day of December, 2009 in Washington, D.C.

A handwritten signature in black ink, appearing to read 'Kimberlee Keller', is written over a horizontal line.

Kimberlee Keller