



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
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January 15, 2010

The Honorable Elizabeth Dougherty
Chairman, National Mediation Board
1301 K Street, NW, Ste. 250
Washington, DC 20005

The Honorable Harry Hoglander
Member, National Mediation Board
1301 K Street, NW, Ste. 250
Washington, DC 20005

The Honorable Linda Puchala
Member, National Mediation Board
1301 K Street, NW, Ste. 250
Washington, DC 20005

Re: Motion for Recusal or Disqualification of Members Hoglander and Puchala
Docket No. C-6964

Dear Chairman Dougherty and Members Hoglander and Puchala:

As you know, the National Right to Work Legal Defense Foundation, Inc., has opposed the hastily advanced and fatally flawed rule change, published at 74 Federal Register 56,750 (Nov. 3, 2009), that a two-member majority of your Board has proposed at the behest of the AFL-CIO Transportation Trades Division ("TDD") to change the way that workers under the Railway Labor Act choose or reject union monopoly representation.

The Foundation filed formal comments objecting to the proposal on December 29, 2009, and I presented an oral statement for the Foundation at the NMB's public meeting on December 7, 2009.

The Foundation has since learned that the Air Transport Association of America ("ATA") filed a formal Motion for Disqualification of Members Hoglander and Puchala on January 8, 2010. For the Foundation, I hereby make the same motion, requesting the recusal or disqualification of Members Hoglander and Puchala.

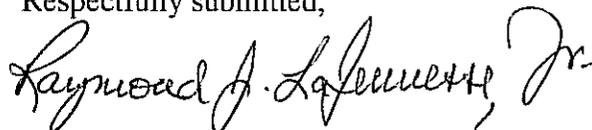
In support of this Motion, the Foundation relies upon the facts and evidence cited in the ATA's Motion, particularly the letter of Chairman Dougherty dated Nov. 2, 2009, describing the shoddy and hasty manner in which the two Members are attempting to push through their pre-ordained and ill-conceived reversal of seventy-five (75) years of labor law. ATA's Motion and its attachments are hereby incorporated by reference.

In addition to that evidence, the Foundation submits the attached official biographies of Members Puchala and Hoglander, and September 2, 2009, letter to the NMB from the TTD. The Association of Flight Attendants and the Air Line Pilots Association are major members of the TDD. The leadership positions that Members Puchala and Hoglander formerly held with these organizations can lead a reasonable person to only one conclusion: that they have a pre-conceived agenda in this matter, and have reached a pre-ordained result based upon their longstanding ties to labor unions that would benefit from the proposed rule change.

Indeed, their unseemly pressure to change the voting rules after seventy-five years is the epitome of bias and prejudice concerning a pending issue. In *Caperton v. Massey*, 129 S. Ct. 2252, 2263 (2009), the Supreme Court held that judicial recusal is required where there is a "probability of bias," not just actual bias. "The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Id.* at 2262. Although the standard for recusal in an administrative rule-making proceeding may be lesser than this, it is not nonexistent. *Association of Nat'l Advertisers v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979) (recusal required "when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding.").

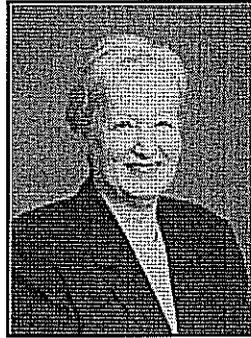
Here, given the haste with which the proposed rule was promulgated, the procedural irregularities committed by Members Puchala and Hoglander in stifling the Chairman's dissent, the lack of formal evidentiary hearings (unlike those the NMB held in *Chamber of Commerce*, 14 N.M.B. 347 (1987), and the disparate treatment shown in the Delta Airlines representation investigation as compare to other recent investigations, it is clear that Members Puchala and Hoglander have "unalterably closed mind[s] on matters critical to the disposition of the proceeding." *Nat'l Advertisers*, 627 F.2d at 1170. Their recusal or disqualification is mandated.

Respectfully submitted,



Raymond J. LaJeunesse, Jr.

Linda Puchala



Nominated by President Barack Obama, Ms. Linda A. Puchala was confirmed as Member of the National Mediation Board by the United States Senate on May 21, 2009. She was sworn in on May 26, 2009, completing the term of her predecessor as Chairman through June 30, 2009. Ms. Puchala's current term as Member runs through June 30, 2012.

Prior to becoming a Member, Ms. Puchala served as the Sr. Mediator (ADR) and the Associate Director of Alternative Dispute Resolution Services of the National Mediation Board. She joined the agency in May, 1999, as a Mediator working on both airline and railroad cases.

Member Puchala has 40 years of experience in Labor Relations, including work as International President of the Association of Flight Attendants-CWA, AFL-CIO, and Staff Director, Michigan State Employees Association, AFSCME, AFL-CIO.

Ms. Puchala resides in Glen Burnie, Maryland, and holds a Bachelor's degree in Business Administration from Cleary University in Howell, Michigan. She has two daughters, Jennifer Puchala of Pasadena, MD and Jessica Puchala of Grand Rapids, MI.

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Harry R. Hoglander

Member



Harry R. Hoglander, a Member of the Board since August 6, 2002, has also served as Chairman twice: from July 1, 2007, through June 30, 2008, and from July 1, 2004, through June 30, 2005. He was first confirmed by the United States Senate on August 1, 2002, reconfirmed for a second term on December 8, 2006, and a third term on July 24, 2009.

Prior to joining the Board, Mr. Hoglander served as a Legislative Specialist in the office of Congressman John Tierney of Massachusetts. His responsibilities were: Transportation issues including aviation, rail and maritime, Labor, Defense and Veterans Affairs.

Member Hoglander has an extensive background in the aviation industry. He flew as a Captain for Trans World Airline (TWA) and was rated to fly Boeing 707, 727, and 747's during his 28 year career with TWA. Additionally, while with TWA, he was elected Master Chairman of TWA's Master Executive Council. He was also elected Executive Vice-President of the Air Line Pilots Association. After leaving TWA, Mr. Hoglander was named Aviation Labor Representative to the United States Bi-Lateral Negotiating Team by then Secretary of State James Baker.

Mr. Hoglander was a pilot in the United States Air Force and retired with the rank of Lt. Colonel. He graduated from Suffolk University Law School, became a member of the Florida Bar, and serves his community in a variety of volunteer positions.

Member Hoglander and his wife Judith reside in Magnolia, Massachusetts. They have six grown children and twelve grandchildren.

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September 2, 2009

VIA FAX AND COURIER

The Honorable Elizabeth Dougherty
Chairman
National Mediation Board
1301 K Street, NW
Suite 250
Washington, DC 20005

The Honorable Harry Hoglander
Member
National Mediation Board
1301 K Street, NW
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Re: Revisions to Representation Manual

Dear Chairman Dougherty and Members Hoglander and Puchala:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), and its 32 affiliated unions¹, we are writing to request that the National Mediation Board ("Board" or NMB) amend its Representation Manual to allow employees to more effectively exercise their statutory right to designate bargaining representatives under the Railway Labor Act ("the Act" or RLA). Specifically, we are asking the Board to change its election procedures to allow employees to choose union representation when a majority of those voting express support for a union as opposed to treating all workers who did not vote as "no" votes for purposes of representation. For reasons stated below, this requested change is consistent with the statute and is urgently needed to ensure that the representation duties of the Board are carried out in a fair and just manner.

¹ Attached is a complete list of TTD affiliated unions.

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The unions that belong to the TTD represent hundreds of thousands of employees working in all segments of transportation, including the airline and railroad industries. In theory, these workers all enjoy the right to bargain collectively through freely chosen representatives, whether they are covered by the RLA, the National Labor Relations Act (NLRA), or other labor relations laws. In practice, however, those workers subject to the RLA are uniquely and substantially disadvantaged whenever they attempt to choose union representation in an NMB-conducted election.

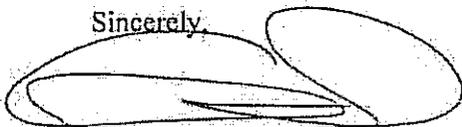
Specifically, when secret ballot elections are conducted under the NLRA, the affected employees win collective bargaining representation based on a majority of valid votes cast. This is the fundamental principle followed in fair and democratic elections for political office throughout this country. By contrast, workers seeking union representation in NMB elections are denied the representative they want if a majority of the unit does not vote in the election. Even when 100 percent of the voters choose a union, workers are denied their bargaining representative unless an *absolute majority* of eligible voters cast votes for representation. No where in American democracy – other than during a union election in the airline and railroad industry – does an eligible voter wishing to sit out an election have his or her silence tabulated as a *NO* vote by virtue of non-participation. Permitting such a veto-by-silence or inaction obviously sabotages the expressed will of the voting majority and creates a perverse incentive for vote-suppression efforts by employers.

This peculiar NMB practice is not required by the RLA (indeed, the relevant provisions of the RLA and the NLRA use substantially the same language). And the NMB's policy is clearly inconsistent with the longstanding, widely accepted understanding of a democratic election process in the public arena. Accordingly, we respectfully ask the NMB to revise its Representation Manual to provide for certification of the representative designated by a majority of valid votes cast in an NMB election, in conformity with the accepted standard for fair and democratic elections.

Although the procedural guidance and policies set forth in the NMB Representation Manual are not subject to the Administrative Procedure Act, we recognize that the Board has followed a practice of inviting and considering written comments from the public regarding proposed changes. We believe such an approach is appropriate in this matter and would therefore urge the Board to expeditiously release a proposal consistent with our recommendations and seek the views of interested parties and stakeholders.

We look forward to the opportunity to provide further input in support of these proposed changes. Thank you for your consideration of our views.

Sincerely,



Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)