



December 28, 2009

**SENT VIA E-MAIL [LEGAL@NMB.GOV] AND FACSIMILE [202-692-5085]**

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**RE: Docket # C-6964 Notice of Proposed Rulemaking (Representation Election Procedure)**

Dear Members of the Board:

Regional Air Cargo Carriers Association (RACCA) submits the following comments in response to the Notice of Proposed Rulemaking (NPRM) published on November 3, 2009. RACCA is an organization dedicated to meeting the policy, communications and information needs of on-demand cargo aircraft operators in the United States. Our membership includes more than 50 certificated air carriers, as well as many other companies involved in the service and support of these carriers.

RACCA is opposed to changing the 75-year-old majority rule, requiring that a majority of eligible employees in a craft or class cast ballots for representation before the Board will certify a union as the bargaining representative of a craft or class. In the 75 years that the majority rule has been in place, the Board has consistently held that the majority rule is necessary for labor stability. The Board's NPRM contains no persuasive reasoning for changing the rule at this time. Additionally, the process by which the Board published the NPRM and under which the Board is considering changing the rule is flawed.

Chairman of the Board  
**Jeanne Cook**  
BankAir

Secretary/Treasurer  
**Jeffrey Flaherty**  
Cape Air/Nantucket Airlines

Directors:

**Dave Corey**  
Air Now

**Gary Richards**  
Ameriflight

**William Womick**  
IBC Airways

**Jim Germek**  
Air Cargo Carriers

**James Thomforde**  
Wiggins Airways

**Noel Rude**  
Air Tahoma

**Beth Wood**  
Westair

**Alan Rusinowitz**  
MARTINAIRE Aviation

**Tim Komberec**  
Empire Airlines

Associate Member Council  
Chairman  
**Terry Hibbler**  
FlightSafety International

President  
**Stan Bernstein**

V.P Technical Affairs  
**John Hazlet**  
Ameriflight

Director of Communications  
**Richard Mills**  
Empire Airlines

Director of Administration  
**Jerry Sullivan**

Since the Board was formed in 1934, the Board has held that a majority of eligible voters in a craft or class must cast ballots for representation in order for a union to be certified as the bargaining representative for that craft or class. From its inception, the Board has dismissed applications where only a minority of eligible voters cast ballots for representation. See e.g. Third Annual Report of the National Mediation Board, pg. 9 (noting that, from June 1936 until June 1937, two representation cases were dismissed because fewer than a majority of eligible voters cast votes for representation); Fifth Annual Report of the National Mediation Board, pg. 11 (noting that, from June 1938 until June 1939, two cases were dismissed because fewer than a majority of eligible voters cast votes for representation). During this 75-year period, the Board has consistently held that the majority rule helps the Board to fulfill its duty under Section 2, Ninth of the Railway Labor Act and promotes stable labor relations. For example, when the majority rule was challenged in 1948, the Board held, “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.” Pan American Airways, Inc., 1 NMB 454, 455 (1948). In 1987, the Board stated that labor unions that do not enjoy the support of a majority of employees “cannot be as effective in negotiations as a union selected by a process which assures that a majority of employees desire representation.” Chamber of Commerce of the U.S. and the Internat’l Brotherhood of Teamsters, 14 NMB 347, 362 (1987). In 2008, the Board reiterated its stance that the Board’s duty under Section 2, Ninth “can be more readily fulfilled and stable labor relations maintained by a requirement that a majority of eligible employees cast valid ballots...” Delta Air Lines, Inc., 35 NMB 129, 131-32 (2008).

The Board’s NPRM does not provide any compelling reasoning to change the majority rule. The Board claims that it can fulfill its duty to maintain stable labor relations through mediation. This claim ignores the reality that a union that does not enjoy the support of a majority of employees will not have bargaining power, regardless of whether the Board is mediating negotiations or not.

The Board further claims that the rule change will make elections under the RLA more democratic. The Board states that it is unaware of any democratic elections conducted in the manner of the majority rule election. While it may be true that some political elections and elections held under the National Labor Relations Act result in a win for whichever candidate or union draws the majority of votes cast, it is also true that, under both the American political process and the NLRA, constituents have an opportunity to vote out a political candidate or union if they are displeased with their representation. Thus, unless a formal decertification process is added to the Board’s election procedure, any analogies to political elections and to the NLRA are not relevant because a fundamental key to those election processes is that the majority has the ability to vote the politician or union out.

In addition to the flaws in the reasoning behind the NPRM, the process under which the Board is proceeding is in violation of the Board’s past precedent. The

Board has repeatedly held that, prior to any change to the majority rule, the Board would hold “a full, evidentiary hearing with witnesses subject to cross-examination...” Chamber of Commerce of the U.S. and the Internat’l Brotherhood of Teamsters, 13 NMB 90, 94 (1986). See also Delta Air Lines, Inc., 35 NMB 129 (2008) (finding that the Board would not make a change to the majority rule without first engaging in a process similar to the one used in Chamber of Commerce of the U.S. and the Internat’l Brotherhood of Teamsters). The Board has not held a full evidentiary hearing on the issue, nor has it subjected any witnesses to direct or cross-examination. Instead, the Board held a one-day “open meeting” during which participants read statements regarding their position on the NPRM. No participants were subjected to examination of any kind during the open meeting.

The process used to draft and publish the NPRM was similarly flawed. The Board failed to consult Chairman Elizabeth Dougherty during the drafting and finalizing of the NPRM. Instead, Chairman Dougherty was presented a “final” version of the NPRM and told that it would be published on that same day. Chairman Dougherty was also told that she could not publish a dissent in the Federal Register. After continued requests, Chairman Dougherty was told that she could publish a dissent, but that she had only one and one-half hours to complete it. Chairman Dougherty’s dissent was then edited by the other two members of the Board, and she was informed that she could not include any discussion of the procedure flaws in the preparation of the NPRM in her dissent.

We appreciate the opportunity to provide comments on the NPRM.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Bernstein". The signature is written in a cursive, flowing style with a prominent initial "S" and "B".

Stan Bernstein, President