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LEGAL ALERT



## Airline Legal Alert: Hoglander and Puchala Propose to Change NMB Voting Rules

10/30/2009

On October 29, 2009, two members of the National Mediation Board (NMB), Harry Hoglander and Linda Puchala, submitted a Notice of Proposed Rulemaking for publication in the Federal Register, proposing to change the "majority of the craft or class" voting rule that the NMB has used throughout its 75-year history. The proposal would result in the outcome of union elections being determined by a majority of the employees who vote, rather than requiring a majority of the employees in the craft or class to vote for representation, as currently is the case. The Chairman of the NMB, Elizabeth Dougherty, dissented from the proposal.

The proposed rule is an extreme departure from the NMB's position in the past. The NMB has repeatedly stated that the majority rule promotes stable and harmonious labor relations. The NMB has also recognized that a union cannot be as effective if it does not receive support from a majority of employees.

As we explained in our October 5, 2009 Legal Alert, the current majority rule has been in place since the NMB was formed in 1934. Under the current rule, a majority of all eligible employees in the craft or class must cast ballots for representation before a union will be certified as the bargaining representative for a craft or class. For example, under the majority rule, if a craft or class has 500 employees, the NMB will certify a union as the bargaining representative only if 251 voters cast ballots for representation. Under the proposed rule submitted to the Federal Register, if a craft or class has 500 employees, 100 of those employees cast ballots, and 75 vote for representation, a union would be certified, even though it did not garner support from a majority of the craft or class – and even if less than a majority of the employees participated in the election.

The proposed rule would mimic the National Relations Labor Board's (NLRB) voting procedure. However, unlike the NLRB, the NMB has never adopted a formal decertification process. Thus, under the NMB's proposed rule, a union could be voted in by a minority of employees, but that union would not be subject to a formal decertification process. The United States Chamber of Commerce has requested that the NMB adopt a formal decertification rule if the NMB decides to change the majority rule. The NMB has ignored the Chamber's request. Recently, in conjunction with efforts to represent Continental's ramp workers, the IBT asked the NMB to adopt an Excelsior rule, which would require airlines and railroads to provide employees' names and addresses to the union involved in a representation election. The NMB's

proposed rule does not address the IBT's request.

The comment period for the proposed rule will be 60 days. We will continue to keep you up to date.