



## Airline Legal Alert: NMB Maintains Prohibition Against Use of "Hyperlinks" to Voting Website

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As reported in a previous Alert, in July 2009 the National Mediation Board (NMB) announced that it was soliciting comments on whether it should permit the use of electronic "hyperlinks" to the website where employees may cast their vote in NMB elections. After receiving and considering those comments, on December 1, 2009, the NMB reaffirmed its position that participants in elections – carriers, unions and individuals involved in the election – may **not** post hyperlinks to the NMB's voting website. The one modification the NMB did make to its hyperlink policy is to reinstate a hyperlink to the voting site on the NMB's own website, [www.nmb.gov](http://www.nmb.gov); parties remain free to post hyperlinks to the NMB's website.

The NMB first dealt with the issue of hyperlinks in NMB elections in early 2008, a few months after it initiated Internet voting. Carriers raised concerns that the use of hyperlinks could compromise the secrecy of the voting process and make it appear to voters that the NMB was not impartial with respect to the outcome of the election. Thereafter, the NMB decided to remove from its own website the hyperlink to the voting site and stated that a participant's use of a hyperlink could be considered as evidence of election interference. See *Removal of Internet Voting Hyperlink on Board's Website*, 35 NMB 92 (2008).

On July 22, 2009, the NMB received a request from the Association of Flight Attendants – CWA ("AFA"), asking that the NMB reconsider its hyperlink policy, arguing that it "adversely impacts a union's ability to promote voter turnout." The NMB solicited comments on the matter and received comments from six industry sources – Delta Air Lines, the Airline Industrial Relations Conference, the National Railway Labor Conference, the Regional Airline Association, the Cargo Airline Association, and the Port Authority of New York and New Jersey – as well as one other union, the International Association of Machinists and Aerospace Workers. After consideration of those comments and consultation with computer experts, the NMB decided to reinstate a hyperlink from its own website to the voting site. The NMB felt that this was secure because its website is maintained by neutral government agencies, and because people visit the NMB's website for a variety of reasons; thus only a small portion of those visiting the NMB website would be doing so to access the hyperlink.

The NMB stated, however, that it was continuing to direct participants in NMB elections – including any carriers, organizations or individuals involved in the election –not to post hyperlinks to the voting website, and that the use of a hyperlink to track persons accessing the voting website and impair the

confidentiality of the voting process may constitute evidence of election interference. Participants can provide hyperlinks to the NMB's website, and can post the text address of the voting website if they wish to direct employees where to vote.

If you have any questions about this issue or other labor or employment related issues in the airline industry, please contact the Ford & Harrison attorney with whom you usually work.