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LEGAL ALERT



Airline Legal Alert: NMB's Notice of Proposed Rulemaking

11/2/2009

On October 29, 2009, Harry Hoglander and Linda Puchala, two members of the National Mediation Board (NMB), submitted a Notice of Proposed Rulemaking with the Federal Register. As we noted in our October 30, 2009 Legal Alert, 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 proposal would also change the election ballot by providing employees the option to register a "no" vote. Please [click here](#) to view a copy of the Notice of Proposed Rulemaking.

The comment period for the proposed change is 60 days from November 3, 2009. We expect that all major airline and railroad industry associations, including ATA, AirCon, and RAA, will be filing comments with the NMB.

The Chairman of the NMB, Elizabeth Dougherty, dissented from the Notice of Proposed Rulemaking. In her dissent, Chairman Dougherty questions whether the NMB has the statutory authority to change the majority rule. Chairman Dougherty asserts that the majority rule has been in place for 75 years and that a Board appointed by President Carter declared that only Congress could change the form of the ballot. Chairman Dougherty also questions the timing of the change, noting that, at a minimum, the Board should have requested comments from all interested parties prior to filing the Notice of Proposed Rulemaking. Chairman Dougherty further states that the NMB is currently involved in representation proceedings involving close to 40,000 employees at two major airlines and that it is harmful to the reputation and credibility of the NMB for the NMB to take a position in favor of a rule change during these representation proceedings. Chairman Dougherty concludes by noting that the NMB has received other requests to change the election rules, including requests to implement a decertification process and a request to require airlines and railroads to provide Excelsior lists to unions. According to Chairman Dougherty, the NMB should have considered all of these requests together prior to filing a Notice of Proposed Rulemaking on the majority rule issue.

On November 2, 2009, Chairman Dougherty sent a letter to several Senators regarding the manner in which the Notice of Proposed Rulemaking was prepared. She points out that the process by which the Notice of Proposed Rulemaking was drafted is flawed. Please [click here](#) to view a copy of Chairman Dougherty's letter and the full dissent, which she was not permitted to file with the Notice of Proposed Rulemaking.

We will continue to keep you up to date on these issues.

