



## Airline Legal Alert: NMB Rules Under Union Siege

10/5/2009

In a blatant effort to take advantage of a change in the membership of the National Mediation Board (NMB), unions have petitioned the NMB to alter its longstanding procedures on how representation elections are conducted.

Since the NMB was created in the 1930s, it has held that a union will be certified to represent a classification of employees only if 50 percent plus 1 of the entire employee group affirmatively votes in favor of union representation. In light of this "majority rule" requirement, the NMB's standard ballot does **not** include an option for an employee to vote against representation. Instead, employees "vote" no by simply not returning a ballot.

The NMB's procedures are different than the approach taken by the National Labor Relations Board (NLRB), which uses "yes/no" ballots, and determines the outcome from the majority of votes cast. So, in a hypothetical NLRB election involving 500 employees where only 100 employees vote and 75 vote for the union and 25 vote against it, the union would win, even though only a minority of the entire group voted to support the union. Under the NMB's procedures, 251 employees would have to vote for representation for the union to win.

On September 2, 2009, the Transportation Trades Department (TTD) of the AFL-CIO sent a letter to the NMB urging it to replace its 75-year old procedures with the NLRB's rules. Although the letter is signed by the TTD, the driving force behind this effort is the Association of Flight Attendants – CWA (AFA), which is in the process of trying to become the representative of the Delta flight attendants following that carrier's merger with Northwest.

Numerous airline industry organizations – including the ATA, RAA, AirCon, NACA, RACCA, ACAA and CAA – and individual carriers have responded to the TTD's letter by pointing out that the NMB has rejected similar requests on at least four occasions (most recently in 2008), and that the NMB stated in 1978 that a change of this sort would have to be implemented by Congress, not the NMB. In addition, the U.S. Chamber of Commerce has weighed in, opining that if the NMB were to consider the TTD's request, then the NMB also should adopt procedures allowing employees to decertify unions. (Unlike the NLRB, the NMB has never adopted a formal process for decertifying a union.) The NMB has yet to respond to the TTD's letter or any of the responses.

In addition to the TTD's efforts, the AFA has directly petitioned the NMB to abolish its policy with respect to "hyperlinks" to the Internet voting website. Shortly after adopting voting via the Internet as the primary manner in which it

conducts elections, the NMB held that participants in elections should not include hyperlinks to the voting website on the participants' own websites or in e-mails. The NMB was concerned that the use of such hyperlinks could compromise the security of the voting process, and that it could make it appear to voters that the NMB was not impartial with respect to the outcome of the election. On September 22, 2009, the NMB issued a notice that it was seeking comments on whether it should permit hyperlinks to the voting website. The deadline for submission of comments is October 22, 2009. Most of the airline industry trade associations as well as numerous carriers have indicated that they intend to file comments opposing the abolition of the hyperlink policy.

The unions have made no secret that the impetus for their efforts to change the NMB's rules is the fact that a majority of the NMB is now comprised of Obama appointees. The TTD's president, for example, was quoted as saying that he was "obviously hopeful that the Obama appointees of the NMB will recognize how unfair the current rules are and will agree to change them." Historically, the NMB has been free of such partisanship, and has not changed its rules based on who was in the White House. It would be an unwelcome development for that to start happening now. We will keep you posted as these issues unfold.