



## Airline Legal Alert: Industry Challenge to NMB's Final Rule

5/18/2010

On May 17, 2010, the Air Transport Association of America, Inc. ("ATA") filed suit against the National Mediation Board in the United States District Court for the District of Columbia, challenging the NMB's recent change to its longstanding rule regarding how representation elections are conducted. As discussed in our May 10, 2010 Legal Alert, the NMB's final rule changes the manner in which RLA elections have been conducted for over 75 years. Since the NMB's inception, the NMB has repeatedly held that, in order for a union to be certified as the bargaining representative for a craft or class, a majority of eligible employees must vote for representation. The final rule will drastically change this requirement, allowing a union to be certified as the bargaining representative if a majority of employees who vote cast ballots for representation, regardless of how many employees actually vote in the election. The rule, which is scheduled to go into effect on June 10, 2010, was passed by two of the three members of the NMB (Harry Hoglander and Linda Puchala), over the vigorous and well-reasoned dissent of Chairman Elizabeth Dougherty.

In the Complaint, ATA argues that the NMB violated the Administrative Procedure Act's ("APA") requirement that agency action not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." The Complaint states that the NMB's final rule is arbitrary and capricious and not in accordance with the APA because (1) the NMB has failed to state any legitimate justification for the departure from the 75-year-old majority rule; (2) there is, in fact, no justification for the departure; (3) the NMB provided no legitimate justification for departure from its prior precedents regarding what evidentiary hearing process should be used in connection with the consideration of changing the voting rule; (4) Members Hoglander and Puchala predetermined the issues raised by the NPRM; (5) the NMB arbitrarily and capriciously engaged in a selective borrowing exercise from the NLRB rules in a manner designed to favor unionization; and (6) the NMB arbitrarily and capriciously refused to adopt a parallel decertification procedure and a "no union" option on the run-off ballot, causing the final rule to discriminate against employees' option of rejecting unionization.

ATA requests that the Court declare the final rule invalid and preliminarily and permanently enjoin the NMB from implementing the final rule.

The full text of the Complaint can be found by [clicking here](#). We will continue to keep you updated as this litigation proceeds.