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Before The National Mediation Board
Re: Docket Number C-6964
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Thank you, Chairman Dougherty and members Hoglander and Puchala, for the opportunity to speak with you today on this very important matter. My name is Robert Roach, Jr., General Vice President of Transportation for the International Association of Machinists and Aerospace Workers. I represent more than 115,000 airline and railroad workers in the United States, making the Machinist Union the largest union with members working under the Railway Labor Act (RLA).

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." My comments today are based on the principles set forth in that document.

As the National Mediation Board's (NMB) largest stakeholder, we strongly support the proposed change to make union representation elections more in keeping with our nation's democratic principles.

The current election process has been in existence since the creation of the National Mediation Board in 1934. Opponents argue that if the process was broken it would have been fixed many years ago. But sometimes it takes government a very long time to correct mistakes.

The federal government did not guarantee women the right to vote until 1920, 131 years after the U.S. Constitution was ratified. Although some states conferred limited rights earlier, there were no nationwide constitutional protections until the 19th Amendment. There was fierce opposition to allowing women the right to vote, with ridiculous reasons ranging from "women really don't want to vote", to "it would lead to our nation's collapse". Today, society finds these bigoted excuses offensive. Denying women the right to vote was wrong. People who opposed women's suffrage were wrong. But it still took more than a century for the government to correct it.

African-Americans were denied the right to vote even longer. While the voting rights of former slaves were recognized by the federal government in 1870 through the 15th Amendment, it was nearly another 100 years before the government finally fixed the *process* of voting to ensure it was fair to people of all races. It was not until 1965's Voting Rights Act that the government finally outlawed discriminatory voting practices and afforded all citizens a fair voting process. There was violent opposition to granting African-Americans the same rights enjoyed by other citizens. Denying Americans their right to vote because of their race was wrong. Those who opposed eliminating racial prejudice in voting practices were wrong. But it still took 176 years, a Civil War and a massive nationwide civil rights movement for the government to correct it.

Under the current NMB election process, people who do not participate in an election are considered to have voted against union representation. It doesn't matter why they

didn't vote. They may have wanted a union but were unable to cast their ballot. But the government, without regard to a person's true desire, counts them as voting against union representation. They may have even decided not to participate in the election for religious or other personal reasons. However, the government does not allow them to abstain. It counts them as voting "no." The U.S. government is impermissibly imposing a viewpoint on a select group of its citizens.

There have been more than a hundred thousand jobs lost in the airline industry in recent years, and many of them are gone forever. Yet if these furloughed employees remain on a carrier's seniority list they are eligible to vote in NMB elections. Although they may have found other jobs in or out of the industry and may be disinterested in the election, if they choose not to vote or if they do not receive voting instructions because they were sent to an old address, the NMB counts them as voting "no".

The current voting procedures of the Board do not even allow voters who do not want a union to express that opinion. If somebody marks "no" on their ballot to indicate they oppose unionization, their ballot is voided and their vote not formally counted. We should not have a process that discourages voters from expressing their true intent while at the same time assigning a viewpoint to voters who do not cast a ballot. That is not a democratic system. Every voice should be heard and counted. Every employee should be allowed to choose for him or her self whether to vote yes, no or to abstain. And our government should respect that choice.

In a free and democratic society people have the right to form and express their own opinions, including the right not to express any opinion. The *process* of voting under the RLA needs to be changed to ensure the voice of everyone who wishes to convey their viewpoint is heard and fairly counted. As has happened every time the government tried to change the voting process to make it fair, there are people loudly objecting. Yet, opposing the fair voting rights of air and rail workers is wrong. The people and organizations who wish to allow the government to continue imposing a viewpoint on non-participatory voters are wrong. This unfairness has gone on for 75 years, but now is the time for the government to correct it.

The carriers and their representatives are opposed to air and rail voters' rights for the same reason people were opposed to voting rights for women and African Americans – they are afraid to upset the status quo and lose the advantages they enjoy at the expense of others. Airlines have enjoyed an advantage in union organizing campaigns for decades. The new rule will not suddenly give unions an edge in elections, as some claim. It will only take the advantage away from the carriers – leveling the playing field to ensure that every voice is heard. It will simply allow workers who participate in an election to vote for a union or vote against a union for the first time.

Ironically, many of the same people who are opposing this proposal were elected to a place on their company's Board of Directors utilizing the same process the NMB is

advocating - those who choose to abstain from voting are not counted. Air and rail employees deserve the same fair process as their corporate leadership.

The IAM was founded as a rail union in 1888 – long before the passage of the RLA. The rail industry was largely unionized when the RLA was crafted. The Act was designed around the concept of cooperation between labor and management. The NMB representation process was not developed to decide *whether* a union would represent workers at a carrier, but which union would represent them. At a time when wildcat rail strikes endangered interstate commerce, railroads sought the stability that unions and collective bargaining agreements provided. Even before the Act railroads routinely voluntarily recognized unions. Things have changed.

Airlines are now covered by the Act, and the airline industry is strongly opposed to unionization. The common purpose that existed between labor and management in 1926 is no longer present. Carriers today mount massive anti-union campaigns and voter suppression drives. Yet the Act was designed in such a way that the carrier was not intended to be a party to the representation dispute; carriers were to remain neutral. Today, with the carriers no longer a neutral party in the election process, the current system is rigged against representation and needs to be corrected. I have some examples to demonstrate the unfairness of the current system.

In a 2001 representation election for 110 Pan Am mechanic and related employees (R-6891), 100% of the employees who voted chose unionization. But since only 54 workers cast votes, 5 less than the mandated NMB minimum, the 54 employees who voiced their opinion were denied unionization.

Fleet service employees at American Trans Air faced a similar result in July, 2000 (R-6757). With 224 employees eligible to vote, 106 (or 47%) cast a ballot. In spite of every employee who participated wanting IAM representation, their wishes were ignored because seven (7) of their coworkers chose not to take part in the election.

Earlier this year the outdated NMB rules ignored another group of employees' desire to unionize because only 50% of the employees participated, instead of the required 50%+1. Half of the 34 eligible helicopter mechanics at The Center for Emergency Medicine (R-7208) voted to join the Machinists Union. The other half, for whatever reason, did not participate in the election. Because only 17 employees voted, not 18, the NMB dismissed their case. A process where a group of employees' desire to join a union can be hijacked because a single person refrained from voting is unfair.

Carriers are claiming the NMB's proposed rule would lead to industry instability by increasing the likelihood of a strike without majority membership support. This position is both irrelevant and illogical. Under the RLA, strikes can only occur after an exhaustive NMB-controlled process. Because the NMB controls when the parties may seek self-

help, strikes are no more likely to occur because the Union won representation without an absolute majority of support. In fact, the opposite is true. Individual unions set their own requirements and procedures for authorizing a strike. In recognition of the need for strong membership support before a strike is called, the Machinist Union constitution requires approval from 2/3rds of the voting membership before a strike can be authorized. Other organizations have similarly stringent requirements, showing the responsible way unions seek input and guidance from their membership before undertaking a strike. If a Union does not have sufficient support for a strike, they will not undertake one. As the NMB has no authority over the method unions utilize before calling a strike, the entire issue should be disregarded.

The question is not whether the current and proposed voting processes favor unions or carriers; unions and carriers do not vote in representation elections. The only question for the NMB to consider is which process is the most fair to the working people involved and impacted by the election.

The NMB should reject a process in which the government imposes a viewpoint on its citizens. It should support a process where each person has the opportunity to choose for themselves if they want to vote “yes” or vote “no”, and those who abstain from voting for whatever reason do not influence the outcome of the election.

If our government had not modified its election rules, 2/3rds of today's National Mediation Board and the current President of the United States would not be eligible to vote in public elections. I would not be eligible to vote. A government of the people, by the people and for the people must change to ensure that its people are not disenfranchised. It is time for the NMB to change its election rules.

We, the transportation workers of America, in order to have a fair opportunity to form a union, establish justice, provide for our common defense and to secure the blessings of liberty for ourselves and our children, request the National Mediation Board provide us with a fair election process.