



NATIONAL MEDIATION BOARD
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The National Mediation Board
1301 K Street NW
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Good afternoon, Chairman Oberstar, Ranking Member Mica, and Members of the Committee.

The National Mediation Board is pleased to have this opportunity to testify and we note that all three of the Board's Members are here before the Committee. Our comments today will focus primarily on the issue of representation.

The NMB is a neutral agency with a three member bipartisan board. The NMB's statutory duties involve mediating disputes involving wages and working conditions in the railroad and airline industries, resolving representation disputes among railroad and airline employees, and administering the arbitration of railroad grievances. To carry out this mission, the Agency relies on its experienced and knowledgeable staff with a diverse background in railroad and airline labor relations. The NMB's staff comes from both labor and management backgrounds. Our mediators include former union presidents as well as corporate officers. These men and women have a combined 350 years of experience working in the air and rail industries and under the Railway Labor Act.

The Railway Labor Act was created by labor management consensus and passed without amendment by Congress in 1926. In the succeeding 80 years, the Act has only been modestly amended. After the addition of airlines in 1936, there have been few amendments. The Board and the Act have functioned successfully for over 70 years. Today, both the airline and railroad industries are highly unionized -- 60% of airline employees and 84% of railroad employees are union members.

One of the NMB's primary purposes under the RLA is the resolution of representation disputes. Section 2, Ninth of the RLA charges the NMB with the responsibility to conduct representation elections "in such a manner as shall insure the choice of representatives . . . without interference, influence or coercion exercised by the carrier." To fulfill this statutory mandate to conduct elections untainted by carrier interference, the Board applies the "laboratory conditions" standard to the elections it conducts. This standard focuses on protecting employees' right to choose or not choose representation free of coercion or influence, not on whether the carrier has violated the law:

[The Board employs its laboratory conditions test] to provide an election environment in which eligible voters [are] able to make their decision regarding representation with sufficient insulation from interference, influence or coercion by the carrier. This factual conclusion does not constitute or imply any determination the carrier committed illegal acts, but rather, that the factual circumstances in these cases were materially detrimental to the employees' freedom of choice under Section 2, Ninth of the Act. *Evergreen International Airline*, 20 NMB 675, 714 (1993)

The Board also recognizes that its laboratory conditions standard does not and should not prohibit the normal relations and standard communications between employer and employee.

The Board permits the filing of allegations of election interference at any time during the pendency of a representation dispute until seven days following the election tally. While the NMB may, in extraordinary circumstances, investigate such allegations prior to the holding of the tally, the Board generally defers any investigation until the completion of the election. Further, the Board investigates interference allegations only if they state a prima facie case that laboratory conditions were tainted and are supported by substantive evidence.

As part of its jurisdiction over representation disputes, the Board also investigates the representation consequences that result from the merger of two carriers. In such cases, the NMB determines whether the entities in question constitute a "single transportation system" or "single carrier" for representation purposes. In *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987), the Board articulated the single carrier test that it has since consistently applied in both the airline and railroad industries. To determine whether two or more entities constitute a single transportation system, the

NMB employs a two part test: (1) whether the two carriers are held out to the public as a single transportation system; and (2) whether there is substantial integration of operations, financial control, and labor and personnel functions. The test is applied on a case-by-case basis based on the facts existing at the time employees file the representation application as opposed to a speculative future system. With regard to the first part of the test, whether the carriers are held out to the public as a single carrier, the Board looks at the carrier intent, public perception and factors such as whether there is a combined schedule, how the carrier advertises its services, whether reservations systems are combined, whether signs, logos and other publicly visible indicia have changed to indicate only one carrier's existence and whether tickets are issued on one carrier's stock.

In assessing the second part of the test, whether there is substantial integration of operations, the NMB considers whether the two carriers have common or separate boards of directors, corporate officers, flight operations, maintenance departments, customer service departments, accounting functions, finance departments, marketing functions, and labor relations. The Board also looks to see whether the operations are integrated from a managerial and labor relations perspective. Although common ownership is a factor in the determination, it is not controlling.

Existing certifications remain in effect until an organization or individual files a single carrier application and the NMB rules on the representation consequences of its finding of a single transportation system. Thus, the certifications of the minority unions may remain in effect until the date of the NMB's determination that the minority union does not have a sufficient showing of interest to trigger an election. The Board's statutory authority to investigate representation issues in mergers arises when requested by an organization or individual.

Under longstanding Board policy, once the NMB determines that a single transportation system exists as a result of the merger, the Board will extend an organization's certification to cover unrepresented employees in the merged craft or class only when the numbers of represented and unrepresented are not comparable.

The Board has never extended an organization's certification to cover the unrepresented employees in the merged craft or class on the basis of an existing collective bargaining agreement or dues check off combined with authorization cards from the unrepresented employees. Under existing NMB policy, authorization cards are accepted to satisfy the showing of interest requirement for an election in the merged craft or class. For example, if an organization only represented 25% of the employees in the merged craft or class, the organization may submit additional authorization cards to establish the requisite 35% showing of interest to trigger an election.

The Board has long held that nothing in the RLA precludes voluntary recognition. The Board will certify an organization based on a voluntary recognition agreement where the investigation discloses evidence of majority support. A recent decision, *NetJets Aviation*, demonstrates the Board's flexibility and commitment to employee free choice. The International Brotherhood of Teamsters (IBT) had represented NetJets Aviation's (NetJets) Pilots since 1973. The Pilots decided they wanted to form their own internal union, the NetJets Association of Shared Aircraft Pilots (NJASAP). NetJets, the IBT, and the NJASAP all agreed to participate in a privately-conducted election to resolve the representational question among the Pilots. On June 30, 2008, an internal election was conducted using the NMB's election contractor BallotPoint Election Services. This was not, however, an authorized NMB election. NJASAP received 97.7 percent of the vote.

On July 10, 2008, NJASAP filed its application with the Board supported by the certified election results from BallotPoint certifying NJASAP as the collective bargaining representative for Pilots at NetJets. NJASAP also provided the Board with valid authorization cards from almost eighty percent of the NetJets Pilots. Both IBT and NetJets management submitted letters to the Board consenting to NJASAP's certification.

Based on the agreement of the parties and the evidence that NJASAP's support by the majority of Pilots at NetJets, the Board used its discretion under Section 2, Ninth to "utilize any . . . appropriate method of ascertaining the names of . . . duly designated and authorized representatives and certified NJASAP as the representative of the Pilots at NetJets on August 26, 2008. *NetJets Aviation*, 35 NMB 245 (2008).

We hope that this summary of our representation procedures is helpful to the Committee. All three Board Members are available to address any questions or comments you might have.

Submitted by:

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