

## Support Fair Election Rules for Aviation and Rail Workers

### Overview

In the FAA Reauthorization and Reform Act of 2011 (H.R. 658), a provision was included that would reverse a recent rule issued by the National Mediation Board (NMB) that allows a majority of those voting in aviation and rail union elections to decide the outcome. Before this new rule, workers who did not vote were automatically counted as votes against the union.

During floor consideration of H.R. 658, we urge you to support an amendment expected to be offered that would protect the democratic election rules issued by the NMB.

The opponents of the agency's election procedure have systematically advanced baseless and erroneous claims meant to distract policymakers from the merits of the rule and undermine core democratic principles. Here are the facts:

- The new rule is not “card check” or the Employee Free Choice Act, and it does not mandate unions or create minority unions. It simply allows a majority of *voting employees* to choose whether they wish to vote for union representation, against union representation or not vote at all.
- These are the same election standards used for workers covered under the National Labor Relations Act (NLRA) and other labor relations laws.
- In addition, institutions ranging from the local PTA to the House T&I Committee use the voting procedures adopted by the NMB – a majority of those voting prevail.
- Most mid-term elections in this country don't involve majority participation. As a result, many Representatives would not be in office today if elected under the old procedure.
- The FAA Reauthorization bill is critical to the aviation industry and inclusion of an unrelated attack on fair election rules will only make passage of this bill more difficult and controversial.
- The U.S District Court for the District of Columbia upheld the new rule and rejected all claims that the NMB acted improperly or beyond its authority. This case is currently pending in the Court of Appeals and it would be improper for Congress to interfere in that litigation.

### The legal framework

The opponents of the rule claim the Board does not have the authority to make the change and that statute requires a majority of a work group to vote in order to certify an election. Here is the truth:

- The Railway Labor Act (RLA) states that “the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class,” but the statute is silent as to how the majority should be determined.
- The U.S. Supreme Court (and subsequently the U.S. District Court) has confirmed the NMB's discretion to determine how to conduct union elections and *that the past procedure was not required by the statute.*
- According the District Court's opinion, “nothing in the statute...requires that a majority of all *eligible* voters select the representative of the employees.” Further, “the new rule promulgated by the Board is consistent with the Board's discretion to investigate

representation disputes...under the RLA.”

- The NMB has made many changes to its election procedures over the years, utilizing a variety of methods and ballots, including the current procedure, and has the clear authority under the RLA to continue doing so.

### **Rulemaking Procedure**

The opponents of this reform claim that the NMB’s process to reform its rules was illegal, lacked sufficient transparency and was unduly rushed. Here is the truth:

- The NMB published a Notice of Proposed Rulemaking (NPRM) on November 3, 2009 with a specific proposal and a detailed rationale. It provided a standard 60-day comment period, and even held a public hearing in which all interested parties were able to testify.
- The final rule was issued on May 11, 2010 with a full review and response to the comments filed. This is the process federal agencies use every day, and there is no reason for the NMB to be held to higher or different standard.
- According to the District Court the process was “adequate under the Administrative Procedures Act (APA).”
- Despite claims that then-Chairman Dougherty was not consulted, she published a lengthy dissent in the NPRM and in the Final Rule.
- Meanwhile, suggestions that the NMB was “coordinating with special interests” or specific unions was summarily rejected by the District Court.
- Claims that representation elections were intentionally delayed at Delta by the NMB is false. The statute gives employees the right to file a petition at a time of their choosing to start the representation process.

### **Answering the critics**

- Simply because the old rule was used for a long time does not make it right, and does not prevent the NMB from updating its rules.
- The old procedure, first implemented in 1934, was not a formal rule but was adopted because the Board believed that it was “best from an administration point of view.”
- The NMB was apparently concerned about the ability for workers – often geographically spread across the country – to participate in elections given the technological limitations of the era. However, with the advancements in communications and the Board’s use of internet and telephonic voting procedures, such concerns are outdated and immaterial.
- Contrary to claims that it is “nearly impossible” to remove a union under the RLA, the NMB’s procedures have long afforded a clear process for workers to change or remove representation.
- The rules adopted by the NMB not only continue to provide this process but also provide workers with the specific ability to vote “no union” on a ballot to remove representation.
- Some suggest that if a majority of *all eligible* employees do not vote more strikes are likely. This argument makes no sense since strikes are handled through the NMB’s rigid dispute resolution functions, not its election procedures.
- Allegations that the NMB is forcing workers to unionize through regulations are false. The decision to organize a union is entirely at the employees’ discretion, and this rule merely allows a voting democratic majority to determine the outcome.

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