



The National Mediation Board's Proposal to Change Union Election Procedures

Overview

- On November 3, 2009 the National Mediation Board (NMB), which oversees labor relations in the rail and aviation industries, issued a proposed change to its election procedures so that a majority of those participating in a union election prevail.
- This is a change from current procedures which require a majority of eligible workers to cast a vote and which count all workers who don't vote as "no" votes. So if there are 1,000 workers in the unit and 499 vote for the union, but the remaining 501 simply do not vote, the 499 who actually voted and who want a union lose the election.
- The current election procedures allow "veto by silence" – the majority opinion of participating voters is often vetoed by those who do not even vote.
- Just because a worker does not vote, that does not mean that he or she does not want a union – it just means the worker did not vote.
- Arbitrarily assigning voter intent when none has been expressed is undemocratic.
- To address this undemocratic process, the NMB is proposing a change to its election rules allowing workers to vote either "yes" or "no" for a union and have the majority of those voting prevail.

The legal framework

- The current election procedures are not required by law. The Railway Labor Act (which governs labor-management issues in aviation and rail) gives the NMB discretion on how it conducts elections and does not require the current procedure.
- The NMB has the right and responsibility to set policy and procedure. The NMB has made many changes to its Representation Manual in the past and should do so again.
- The U.S. Supreme Court has confirmed that the NMB has broad discretion to determine what a union ballot looks like, and that the current voting procedures are not required. The U.S. Attorney General issued an opinion letter in 1947 advising that the NMB has the authority to make the change now proposed. There has been no subsequent change to the RLA that would alter that conclusion.

Bad policy encourages bad behavior

- Voter interference, coercion and suppression by employers are encouraged by the current election procedures, and the will of those who do vote is ignored and undermined. Time after time, well over 90 percent of workers will vote for the union, but the majority opinion does not prevail because the majority of eligible voters have not voted.
- In the 2008 union election for flight attendants at Delta Airlines, management through its "Give a Rip" campaign instructed employees to destroy government-issued balloting instructions. Because current election procedures count all non-voters as "no" votes, this type of employer misconduct can be very effective and is essentially rewarded.

Transportation Trades Department, AFL-CIO

888 16th Street, NW • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
Edward Wytkind, President • Patricia Friend, Secretary-Treasurer



This current voting standard is not consistent with American democracy

- Most political systems and organizations in America – from the local PTA to the U.S. Congress – allow a majority of those voting to settle a question.
- Most mid-term elections in this country don't involve majority participation. Records show that nationwide voter participation was below 50 percent in every mid-term election since 1930. As a result, many – if not most – Representatives and Senators would not be in office today if that same standard applied.
- Three former presidents – John Quincy Adams, Warren Harding and Calvin Coolidge – would not have been elected if federal elections followed the current NMB standard.
- This change is long overdue. The current NMB practice has been contested and controversial for decades. There is no intellectually honest reason why airline and railroad employees, specifically, should be subjected to this election standard when no one else is.

Answering the critics

- Delta's claim that the "rules are being changed in the middle of the game" is incorrect. There are no current elections at Delta and there will be no union elections until the NMB authorizes elections for flight attendants and ground workers.
- There are always going to be potential or expected union elections in the rail and aviation industries – if the NMB was precluded from making changes to its Representation Manual based on this rationale, it would never be able to reform its procedures.
- The fact that union elections have been conducted under these undemocratic standards for a number of years is not a compelling reason for them to continue in this manner. Government policies change all the time – there is nothing wrong with updating NMB policy to ensure fairness for airline and railroad workers.
- The Air Transport Association (ATA) and the U.S. Chamber of Commerce are raising the issue of decertification as a distraction. They don't have a good argument in defense of the current election procedures, so they are trying to change the subject. This is not about decertification, it is about giving airline and rail workers the right to form unions under the same standards followed throughout American democracy.

November 9, 2009