

Congress of the United States

Washington, DC 20515

October 29, 2009

Elizabeth Dougherty, Chair
Harry Hoglander, Member
Linda Puchala, Member
National Mediation Board
1301 K Street, NW, Suite 250 East
Washington, DC 20005-7011

Dear Chairman Dougherty and Members Hoglander and Puchala:

We are writing in support of changing current election procedures of the National Mediation Board (NMB) which treat non-voters as if they had voted “no.” Elections across our country are based on recognizing the choice of a majority of voters who participate in the election. Non-votes are not counted as favoring one outcome or the other. This should be the practice of the NMB as well.

Organizing under the NMB rules poses unique and unfair obstacles for aviation and rail employees who desire representation. In no other sector of society or mode of transportation does a union certification election require a “yes” vote from an absolute majority of bargaining unit employees, counting those voters who choose not to participate as “no” votes. There are many possible reasons for which employees do not vote or may choose not to vote in a certification election, including fear of employer retaliation. NMB policy cannot and should not entail assuming the role of divining and declaring the intent of such non-voters.

The Railway Labor Act, which was designed to protect the rights of workers to organize and bargain collectively, does not require the NMB to conduct elections in this manner. In fact, the Board is granted broad discretion in setting its Representation Manual, which governs election policies and procedures. The Board is free to amend the Manual, as it has done previously. Under current NMB rules, many thousands of employees in the rail and aviation industries have been unduly hindered in their desire to bargain collectively. Example: From 1996 through 2008, NMB set aside nearly 200 elections – causing tens of thousands of employees to go without representation. A majority of workers participating in these elections voted for union representation; however, the Board invalidated the election because a majority of *eligible* voters did not participate.

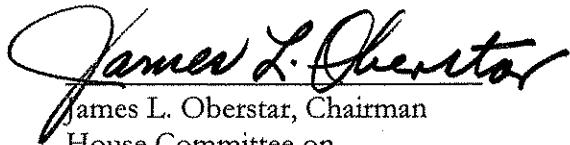
We see no convincing policy reason to require an absolute majority of all eligible voters in a unit to cast a “yes” vote for representation; and see no reason to continue to subject aviation and rail workers to this undemocratic process. The NMB should amend its Representation Manual by updating its election procedures to provide that a *majority of those voting* shall determine the outcome.

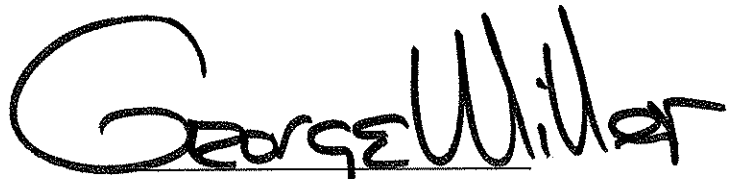
Elizabeth Dougherty, Chair
Harry Hoglander, Member
Linda Puchala, Member
Page 2

This change will help the NMB to effectuate the purposes of the Railway Labor Act, including ensuring employees' full freedom of association.

We appreciate your consideration of our views.

Sincerely,


James L. Oberstar, Chairman
House Committee on
Transportation and Infrastructure


George Miller, Chairman
House Committee on
Education and Labor