**International Association of Machinists and Aerospace Workers**

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OFFICE OF THE GENERAL VICE PRESIDENT

GL 2 Legal

June 15, 2012

*Via Electronic Mail at OLA-efile@nmb.gov and Legal@nmb.gov*

Mary L. Johnson, General Counsel
National Mediation Board
1301 K Street, NW, Suite 250 East
Washington, DC 20005

Re: Notice of Proposed Rule Making Involving
Representation Procedures and Rulemaking Authority
Docket No. C-7034

Dear Ms. Johnson:

Enclosed please find the written submission of the International Association of Machinists and Aerospace Workers' ("IAM") Oral Statement before the Board for June 19, 2012, regarding the Board's Notice of Proposed Rule Making involving Representation Procedures and Rulemaking Authority.

Sincerely,

IAM LEGAL DEPARTMENT

By: _____
Carla M. Siegel
Deputy General Counsel

CMS/rc

**STATEMENT OF**
**CARLA SIEGEL, DEPUTY GENERAL COUNSEL**
**INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS**

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**BEFORE THE**
**NATIONAL MEDIATION BOARD**
**ON**
**PROPOSED RULES INVOLVING REPRESENTATION PROCEDURES**
**AND RULEMAKING AUTHORITY**
**DOCKET NO. C-7034**
**FOR THE NATIONAL MEDIATION BOARD'S PUBLIC HEARING**

**June 19, 2012**

The International Association of Machinists and Aerospace Workers ("IAM") thanks the Board for the opportunity to address the proposed rulemaking. We intend to submit a full written statement in accordance with the timeline the Board has developed. In general, the IAM does not oppose the Board's proposed changes. However, we wanted to take this opportunity to address the Board's question regarding the application of the RLA amendments to the merger setting. The IAM supports the position statement of the TTD. We speak separately only to emphasize that the RLA goals of labor peace and stability are best served by continuing the Board's existing policy on mergers.

Two of the major goals of the RLA were to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment, on the right of employees to join a labor organization, and to provide for the complete independence of employees in self-organization. Section 2, Ninth, giving the Board the authority to determine who the representative shall be without interference from the Carrier was an important vehicle for achieving these goals. In the 1920's and 1930's, Company unions were common. Additionally, employees in the same work classification often belonged to different unions causing much friction in the work place. With the passage of the RLA, and particularly 2, Ninth, order was restored to the workplace by ensuring a peaceful method of determining who the single representative would be for the entire craft or class.

While Congress chose not to dictate the means by which this selection would be made, it did grant the NMB exclusive jurisdiction to make the determination. Since then, the Courts have consistently deferred to the Board in its determinations of how a representative would be selected. For example, deferring to the Board's use of secret ballot elections in which the majority of all eligible voters must reject representation or secret ballot elections in which the majority of those who cast votes decide or even using card check authorizations.

The purpose of a showing of interest requirement is to ensure that the Board's resources are not wasted on elections in which there is not a legitimate interest by the employees for

representation. Congress has now decided that for applications seeking to become a newly certified representative under the Railway Labor Act, that showing of interest requirement is 50%. Congress did not, however, explicitly address the showing of interest requirement with regard to mergers in the Amendments, leaving the matter to the Board's sound discretion.

In a merger, or other corporate change of structure, where the employees already have had representation, the general purposes behind a showing of interest requirement have already been met. The employees have already selected a representative. In some cases, the employees may have been represented for decades under successive collective bargaining agreements. The entire culture of the workplace may be based around the collective bargaining relationship. Thus, the Board can already be assured that there is a legitimate interest in representation.

The fact that the carrier decided to change its corporate structure should not penalize the employees in their choice of a representative. Otherwise, carriers will have the opportunity to unilaterally remove the employees' chosen representative simply by changing its corporate structure. By merging carriers, or by making a strategic acquisition, the carrier could "get rid" of a union it did not want by ensuring that the workforce with the union that the carrier no longer wanted to "treat with" consisted of less than 50% of the combined workforce. In this way, the carrier would directly influence the employees' choice of a representative contrary to the purposes of the act.

It is axiomatic that in every combination of two carriers, one workforce will be greater than 50% of the combined workforce. Therefore, if 2, Twelfth were to be interpreted to apply to corporate changes in structure, in every merger or acquisition, one incumbent union could be kept off the ballot. While there is still an opportunity for the smaller organization to raid the larger to collect sufficient cards, the burden on the smaller incumbent organization is significant. Moreover this type of raid preceding an election can be a significant disruption to the workforce which would be unjustified if both incumbent organizations were already comparable.

Even if a carrier were not intentionally trying to keep one union off the ballot, the effect, none-the-less, may be to deprive the employees of their free choice of a representative. In this way, Carriers would have a direct influence over the employees' choice of a representative, contrary to the mandate of the RLA.

This is true even if there were no union representation on one carrier. The Carriers, intentionally or otherwise, could thwart the employees' long-held representation by merging a unionized carrier with a larger non-union carrier. If the incumbent organization had a showing of representation or interest of 49% of the combined carrier and if 2, Twelfth were to apply, once the Board found a single transportation to exist, it would not even authorize an election to determine whether the employees would keep their representative. The carrier's decision about corporate structure would effectively "decertify" the union without the employees' having any voice what-so-ever.

Yet for decades the Board's practice has recognized that in this scenario the two workgroups are comparable and therefore an election should be held to determine the impact of the merger on the existing certifications. The Board should continue to apply its long-held practice of first

determining if the two employee groups are comparable (i.e. at least 65-35%). If they are comparable, the Board should hold an election with the incumbent organizations on the ballot and allow the employees to select which representative, if any, they prefer. If the groups are not comparable, then the smaller group will have an opportunity to collect cards to reach the 35% showing. If the smaller group attains 35%, the election should go forward.

Allowing comparable incumbent unions on the ballot (along with "no union") brings more labor peace and stability to the workplace. Employees, who may be very loyal to their existing union, are more likely to accept having to change representatives due to the results of an election than they are having a new representative forced on them without even the option of selecting their old representative. By allowing both incumbents on the ballot, the winner can be more readily accepted as the legitimate choice of the employees and the workgroup can begin to be effectively integrated.

However, if the larger organization is foisted on the smaller (albeit comparable) group without even an opportunity to vote (as would happen if an incumbent needed 50% to appear on the ballot), the smaller group is likely to remain disgruntled and to feel disconnected making integration even more difficult. While this is possible in any numeric combination (even a 90%-10% split), the Board is allowed to balance numerous considerations, including its own resources, to decide where the cut-off should be. Again, the long-standing practice of the Board has been to use a 65-35% split. This split is practical, not only for the Board's resources, but when the numbers are not comparable, as they would not be if the incumbent organization did not even have a 35% showing of representation or interest, the employees are more likely to accept the fact that the larger union is the new representative.

Nothing about the wording of 2, Twelfth detracts from this analysis. Given the statute's silence with regard to mergers, the Board has the discretion to adopt regulations on this matter. Both the placement of 2, Twelfth in the Act and the wording of the Amendment support the Board maintaining its long-held practice of placing all incumbent unions on the ballot when the size is comparable (65-35). Further supporting this interpretation is the colloquy in which Senators made clear that this new 50% threshold was not to apply "to the entirely different circumstance where a labor organization or employees petition the National Mediation Board for a determination as to whether a merger or other transaction has altered an existing representational structure as a result of a creation of a single transportation system."

In short, the goals of the RLA to promote labor stability and peace are best served by continuing the Board's long-standing policy on mergers and acquisitions. As a result, the IAM urges the NMB to adopt its existing merger procedures as part of its formal regulations.