

## NMB Rule Change Summary

On May 11, 2010, the National Mediation Board finalized the regulation repealing the “Majority Rule,” whereby a majority of the organizing unit must affirmatively vote “yes” to organize a union. Under the new rule, only a majority of those voting are needed to organize – permanently – the entire organizing unit. Like the pernicious card check legislation, this proposed voting rule change is a blatant politically motivated move by the Obama Administration to tilt representation processes in favor of unions.

### 75 Years of Precedent

- There is no sound legal or policy basis for hastily changing a rule that has been in place and upheld repeatedly for over 75 years, including twice by the Supreme Court.
- The National Mediation Board under Democratic and Republican Administrations previously rejected a change to the majority rule on four separate occasions.
- Over three decades ago, a Board appointed by President Carter concluded that the NMB did not have the authority to unilaterally change the longstanding practice, ruling that only Congress could make such a decision.
- As Elizabeth Dougherty, Chair of the NMB wrote in her strong dissent, making this change “would be an unprecedented event in the history of the NMB.” She continued, “Regardless of the composition of the board or the inhabitant of the White House, this independent agency has never been in the business of making controversial, one-sided rule changes at the behest of only labor or management.”

### Merits of the Majority Rule

- Contrary to claims that the current rules are unfair to union organizing efforts, over two-thirds of the 1,850 reported elections since 1935 have resulted in union representation.
- The majority rule is not anti-union. An average of 72% of airline and railroad employees are represented by unions while only 8% of all private sector workers are union represented.
- Under current rules, if an airline has 6,000 nonunion employees, 3,001 must vote yes to unionize. Under the new rule, if only 1,000 of 6,000 vote, and 501 vote yes, all 6,000 become subject to unionization.
- Due to the lack of a decertification procedure (discussed more below), the minority of 501 would permanently organize all 6,000 workers.

### Lack of Decertification

- Unlike the National Labor Relations Act that covers most other private sector workers, airline and railroad employees do NOT have the right to decertify a union.
- While we in the Senate must stand for reelection every six years, a union elected under the Railway Labor Act never has to stand for reelection.
- Under the new Minority Rule, employees simply cannot vote **out** a certified union in an election conducted in the same manner as the election which resulted in the initial certification, even if a majority is dissatisfied with the union leadership.

- In 1985, the Supreme Court wrote in *Russell v. National Mediation Board* that “employees were given the right under the (Railway Labor) Act not only to opt for collective bargaining, but to reject it as well.”

#### Contrary to the Intent of the RLA

- The Railway Labor Act was designed to ensure harmonious labor relations in the rail and airline industries and avoid costly labor strikes that can harm the national economy.
- Allowing a **minority** of workers in a class to elect a permanent union is inconsistent with the statutory goal of stable and harmonious labor relations.

#### Flawed Procedure

- Here is how Chairman Dougherty described the process leading up the proposed rule change: “The proposal was completed without my input or participation, and I was excluded from any discussions regarding the timing of the proposed rule.”
- The Democrat Members of the NMB told Chairman Dougherty that they had prepared a “final” version of the proposed rule and that she had only one and a half hours to consider their proposal.
- They also told her that she would not be permitted to publish a dissent in the Federal Register. Of course, publication of a dissent is not prohibited by any agency policy.
- These actions of the Democrat Majority—appointed by an Administration that prides itself on transparency—were clearly intended to stifle honest notice and comment because they had already made up their minds.

#### No Need For Change

- The Majority members of the Board still have not provided any serious or credible evidence to support a change either as a matter of law or policy.
- Their move to radically alter these rules without any real changes on the ground is clearly arbitrary and capricious.
- As the leader of the transit unions has said, the sole basis for this rule change is the change of Administration.
- This is little more than a politically motivated move by a biased National Mediation Board kowtowing to Big Labor demands.