



Aviation Group Client Update

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NMB HOLDS PUBLIC HEARING ON PROPOSED CHANGES REGARDING MERGERS

Today, the National Mediation Board (NMB) held an open public hearing to solicit views of interested persons concerning proposed changes to its existing rules for handling representation disputes, which were published [last month](#) in the Federal Register. The proposed changes were a result of amendments made to the Railway Labor Act (RLA) by the FAA Modernization and Reform Act of 2012 (the “Act”). In particular, NMB sought comment regarding the impact of the amended language on the Board’s policies and procedures with respect to mergers.

Speakers at today’s hearing represented several unions, including: 1) AFL-CIO; 2) International Association of Machinists and Aerospace Workers; 3) Association of Flight Attendants – CWA; 4) Aircraft Mechanics Fraternal Association; 5) Transport Workers Union of America; and 6) International Brotherhood of Teamsters and its Affiliates.

In general, the public hearing focused on whether NMB should extend the proposed 50% showing of interest (required for representation elections) to its merger proceedings. For varying reasons, the resounding consensus of the speakers, who all represented unions, was that NMB should not require more than its current 35% showing of interest.

Speakers lamented that if NMB increased the showing of interest threshold to 50%, situations will arise where the smaller of two merged carriers will not have the opportunity to have its past or chosen representative on the voting ballot. If a smaller carrier cannot muster a 50% showing of interest, only the larger carrier’s choice of representative will appear on the ballot. In the extreme, increasing the showing of interest for mergers could lead to situations where carriers merge for the sole purpose of unilaterally abrogating the representative rights of the employees of the smaller carrier. If a smaller unionized carrier merges with a larger nonunionized carrier, and the smaller cannot obtain a 50% showing of interest, then the smaller carrier will cease to be unionized.

Speakers advocated that these types of situations were neither the intent of Congress, nor the RLA. Numerous speakers commented that because the Act is silent as to whether the 50% showing of interest should apply in the context of mergers, Congress did not so intend. Further, AFL-CIO stated that, contrary to the intent of the RLA, increasing the showing of interest would cause considerable delay in NMB proceedings, rendering NMB unable to settle disputes promptly. The International Association of Machinists and Aerospace workers offered that when

NMB finds two merged carriers comparable, all incumbent unions should be placed on the ballot.

Finally, both AFL-CIO and the Transport Workers Union of America suggested that NMB take formal steps to codify its merger procedures in its regulations. Prepared public hearing statements may be found on the [NMB website](#).

There were no additional speakers representing the airlines. The NMB did not offer comment or take questions regarding any of the proposed changes, including the impact on mergers. We will continue to track activity related to the proposed changes. If you have any questions, please do not hesitate to contact our office.

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