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WRITTEN STATEMENT OF RAYMOND J. LAJEUNESSE, JR.,
VICE PRESIDENT & LEGAL DIRECTOR,
NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.,
CONCERNING
THE NATIONAL MEDIATION BOARD'S CONTROVERSIAL PROPOSAL TO REVISE ITS RULES FOR DETERMINING MONOPOLY BARGAINING REPRESENTATIVES UNDER THE RAILWAY LABOR ACT

Hearing Set for December 7, 2009
Docket Number C-6964

Chairman Dougherty and Members Hoglander and Puchala:

The National Right to Work Legal Defense Foundation opposes the National Mediation Board majority's proposal to change the voting procedures for imposition on workers of union "exclusive representatives" under the Railway Labor Act, procedures that the Board has utilized for more than seventy years.

In short, the Board's majority has acceded to the AFL-CIO Transportation Trades Division's request that the Board discard 75-year-old procedures and implement new procedures intended to maximize unionization of workers in the railway and airline industries.

The Foundation is a nonprofit, charitable organization that provides free legal assistance to individual employees who, as a consequence of compulsory unionism, suffer violations of their Right to Work; freedoms of

association, speech, and religion; right to due process of law; and other fundamental liberties and rights guaranteed by the Constitution and laws of the United States and of the states. Since its founding in 1968, the Foundation has provided free legal assistance in all of the United States Supreme Court cases involving employees' right to refrain from joining or supporting a labor organization as a condition of employment, some of which arose under the RLA. *E.g.*, *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866 (1998); and *Ellis v. Railway Clerks*, 466 U.S. 435 (1984). Many lower federal court cases brought for employees in the Foundation's litigation program have directly concerned the RLA or the NMB's procedures, including *Russell v. NMB*, 714 F.2d 1332 (5th Cir. 1983).

Because the Foundation's staff attorneys regularly represent individual employees in litigation challenging the abuses of compulsory unionism arrangements and advise employees about their rights in proceedings involving the imposition of union monopoly bargaining in their workplaces, the Foundation is uniquely qualified to comment on the AFL-CIO's proposal for an extraordinary change in the NMB's long-standing election procedures.

No employee should be subjected to the "representation" of union officials whom they have not *individually* chosen to represent themselves.

The NMB's current election rules at least ensure that unions receive the extraordinary power of "exclusive representation" only when a true majority of all employees in a given craft or class actually desire such representation.

Requiring a showing of true majority support is appropriate given the unbridled and often abused privileges inherent in the exclusive representation regime imposed by, and enforced under, the RLA, such as the powers to: a) dictate the terms and conditions of employment for even unwilling nonmembers, denying them freedom of contract; and, b) force an employee's discharge for nonpayment of compulsory union dues, even in the 22 Right to Work states.

It is particularly inappropriate for exclusive representation to be imposed in the railway and airline industries by a mere majority of employees voting in an election for three reasons.

First, the nationwide nature of RLA units makes it extremely difficult for employees opposed to unionization, located around the country in numerous different facilities in a given rail or air system, to organize against a union's well-funded and professionally orchestrated campaign to win the monopoly bargaining privilege — the proposed change would further stack the deck against employees opposed to unionization.

Second, the burden of demonstrating majority status would be unfairly and improperly reduced significantly for the union hierarchy seeking the new privilege, while new burdens would be placed on the targeted employees, who may wish to remain union free. Under the proposed radical change, employees who are not union activists, who have expressed absolutely no interest in unionization, and whose jobs frequently require traveling and/or work at odd hours, would be forced to take *affirmative action* to vote against the union. Otherwise, their silence would make it easier for union monopoly bargaining to be imposed upon them.

Third, it is extremely difficult for employees to remove a union once it is certified as their exclusive bargaining agent, particularly because the NMB has not established a formal process for decertification, despite the United States Court of Appeals for the Fifth Circuit's holding in *Russell v. NMB* in 1983 that the RLA requires the Board to process an application for an election to terminate a union's monopoly bargaining privileges. 714 F.2d at 1346.

Accordingly, the Board should reconsider and reject the AFL-CIO's attempt to game the system for union organizers. The NMB has previously, indeed as recently as 2008, considered and rejected the AFL-CIO's proposed change, and should do so again. Changes in the partisan

political climate in Washington do not warrant radical changes in the NMB's time-tested election procedures, which are more consistent with the RLA's "statutory mandate to allow employees their right to full and free expression of their choice regarding collective representation, including the right to reject collective representation." *Id.* at 1341.

Indeed, if the Board is to make any change in its "exclusive representation" certification rules, it should implement the RLA's mandate as explicated in *Russell* and establish procedures for decertifying unions. The Board's previous failure to do so should be remedied, because the RLA's stated policy of freedom of association includes, of necessity, the freedom of non-representation and the freedom to decertify an unwanted union. *See* 45 U.S.C. §§ 151a, 152 Fourth; *Russell*, 714 F.2d at 1343-46.

Finally, the Foundation again strongly urges the Board to reject the proposed amendment of its rules as an unwarranted diminution of the rights and choices of individual railway and airline employees.

Thank you for your consideration of these views.