U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

John L. Mica
Chairman

James W. Coon II, Chief of Staff

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Chief of Staff

August 2, 2012

Chairman Harry Hoglander
Member Linda Puchala
National Mediation Board
1301 K Street, NW
Suite 250E
Washington, DC 20005

RE: Docket Number C-7034
NPRM on Representation Procedures

Dear Chairman Hoglander and Member Puchala:

We are submitting these comments in response to the National Mediation Board's ("NMB") Notice of Proposed Rulemaking (NPRM) and request for comments on proposed changes to its representation manual (77 Fed. Reg. 28536 (May 15, 2012) and 77 Fed. Reg. 33701 (June 7, 2012)). The proposed changes are the result of provisions amending the Railway Labor Act ("RLA") included in the Federal Administration Modernization and Reform Act of 2012 ("FAA Reform Act").

In particular, the FAA Reform Act amended the RLA by adding a new Section 2, Twelfth. The new section requires that all union applications seeking to represent a craft or class of employees must be supported by a showing of interest from at least 50% of the employees in the craft or class. In the NPRM, the NMB invited comments regarding the effect of that amendment with respect to representation disputes in airline mergers.

At the NMB's June 19th public hearing on the NPRM, several unions asserted that Section 2, Twelfth does not cover elections resulting from a merger of two or more carriers. As principal authors of the amendment, we are submitting the following comments to reaffirm that Section 2, Twelfth unequivocally covers *all* representation elections and disputes including representation elections arising as the result of mergers.

Had Congress wished to exclude merger-related representation elections from the scope of Section 2, Twelfth, such an exception could have easily been written into the amendment; clearly it was not. Even a quick review of section 1003 of the FAA Reform Act unambiguously establishes that the provision applies to all representation applications by unions, without any exception for merger situations:

> *"Twelfth. Showing of interest for representation elections. The Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class."*

Further, we would point out that the provision was drafted with full knowledge that over 80% of all airline workers involved in recent NMB representation elections have been participating in elections arising after a merger. In light of this reality, there would have been no rational basis for excluding merger related elections.

Finally, unions have relied on floor comments made by Senator Reid regarding Section 2, Twelfth, so we will address those remarks. We do concur with one part of Senator Reid's statement: "We modified that standard to require a 50% showing of interest for all elections…" *See* 158 Cong. Rec.S329, 340 (daily ed. Feb. 6, 2012). (emphasis added). However, we must respectfully disagree with Senator Reid's subsequent assertion that the amendment was "not intended to apply to the unique situation in mergers." *Id.* S329, 341. As noted above, we wrote Section 2, Twelfth without any exception for merger related representation elections. Senator Reid's colloquy with Senator Harkin, in which no Republican Senator was invited to participate, cannot overcome the clear wording of the amendment. Additionally, no similar colloquy took place in the House of Representatives during consideration of the FAA Reform Law again reflecting that Senator's Reid statement does not reflect the understanding, agreement, or intent of the conference committee or the Congress as a whole.

Thank you for your close consideration of these comments.

Sincerely,

John L. Mica
Chairman
Committee on Transportation and Infrastructure

Thomas E. Petri
Chairman
Subcommittee on Aviation

John J. Duncan
Member of Congress

Sam Graves
Member of Congress

Bill Shuster
Member of Congress

Jean Schmidt
Member of Congress

Chip Cravaack
Member of Congress