

New NMB rule to benefit rail, plane unions

(The following story by Mike Esterl and Melanie Trottman appeared on the Wall Street Journal website on November 3, 2009.)

NEW YORK — Organized labor appears to be gaining the upper hand in the skies and on rails, as labor and business battle for influence under the Obama administration.

The National Mediation Board wants to make it easier for thousands of airline and railway workers to unionize under the Railway Labor Act by seeking to junk a 75-year-old election rule, according to a proposal published Monday in the Federal Register.

The move comes after a White House appointment shifted the balance of the government agency's three-person board. Linda Puchala, a former flight attendant union leader, was selected to replace Read Van de Water, a former Northwest Airlines lobbyist, earlier this year. She joined Harry Hoglander, a former pilots union leader appointed in 2002. The NMB regulates labor relations in aviation and rail.

More than 570,000 workers are employed by railroads and airlines, more than two-thirds of whom already are unionized. But changes to the election rules could affect thousands more workers. Delta Air Lines Inc., the world's largest airline, and Continental Airlines Inc. are awaiting unionization votes that would affect about 40,000 workers.

The new policy could mark a significant victory for unions.

Under an interpretation of the Railway Labor Act dating to 1934, aviation and rail workers who don't vote on whether to create a union are counted as "no" votes. That means a union cannot be approved without a full majority of all employees voting yes.

Under the National Labor Relations Act governing other industries, a union can be created as long as a majority of all votes cast are in favor of collective bargaining. In such elections, nonvotes don't count.

Under the proposal made public Monday, which is subject to a 60-day comment period, the NMB would tally votes for air and rail workers in the same way as those other industries. "Few if any" democratic elections treat nonvotes as no votes, the NMB said in the proposal.

Railways, and airlines such as Delta and Continental, strongly oppose the measure. The Air Transport Association, an umbrella group for airlines, said Monday that Congress, not the NMB, has the authority to overhaul the rule.

In a letter Monday to more than a dozen Republican senators, NMB board member Elizabeth Dougherty said the process used by her two colleagues to draft the proposal was "flawed" and that she had been frozen out of deliberations.

"Making this change would be an unprecedented event in the history of the NMB, which has always followed a policy of making major rule changes with consensus," Ms. Dougherty said in a dissenting opinion included in the agency's proposal. Ms. Dougherty, an NMB board member since 2006, was appointed by President George W. Bush.

Labor leaders praised the proposal. "The deck is currently stacked against airline and railroad workers," said Edward Wytkind, president of the AFL-CIO's Transportation Trades Department and its 32 affiliated unions.

"This reform lets workers choose a union the same way they choose the president of the United States," said Teamsters General President Jim Hoffa. "Whichever side gets the most votes, wins."

A White House spokesman declined Monday to comment on the proposal. He said the NMB was an independent agency.

The broader tug of war between business and labor began heating up this year when labor -- emboldened by a majority Democratic Congress and the most union-friendly U.S. president in a generation -- began pushing Congress and regulatory agencies to make it easier for unions to expand.

United Parcel Service Inc., for example, has been cooperating in recent months with a push by the Teamsters

union to liberalize other federal labor rules to help the union make inroads at archrival FedEx Corp., where the Teamsters hope to organize as many as 100,000 truck drivers, package sorters and other nonunion employees.

Labor's top priority this year -- passage of the Employee Free Choice Act -- would make it easier for unions in most industries to organize workers and win labor contracts through binding arbitration. It has since stalled in the Senate.

Congress in January did, however, secure the Lilly Ledbetter Fair Pay Act -- extending the window in which workers can sue their employers for wage discrimination. President Barack Obama signed the bill nine days into his presidency.

Mr. Obama named a longtime labor activist, former California Rep. Hilda Solis, to head the Department of Labor. Ms. Solis has stepped up regulatory enforcement on a wide range of issues, including workplace safety.

On Friday, the Labor Department's Occupational Safety and Health Administration issued its highest fine ever for a safety violation, an \$87.4 million penalty against BP PLC, more than four times the previously highest fine. BP said it would appeal.