**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Extra Flugzeugproduktions- und Vertriebs-GmbH**: Docket No. FAA–2009–1025; Directorate Identifier 2009–CE–055–AD.

**Comments Due Date**

(a) We must receive comments by December 18, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

(1) Model EA–300/200 airplanes, serial numbers (S/N) 01 through 31, and 1032 through 1043; and

(2) Model EA–300/L airplanes, S/N 01 through 170, 172, 173, 1171, and 1174 through 1299.

**Subject**

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

''The manufacturer has advised that the combination of a redesigned tail spring support with a stiffer tail spring and rough field operations has led to cracks in the tail spring support mounting base. Cracks have also been reported on aeroplanes already compliant with Part II of Extra Service Bulletin No. SB–300–2–97 issue A, as mandated by the LBA AD D–1998–001, dated 15 January 1998.

''For the reasons stated above, this new AD mandates instructions for recurring inspections and modification in the area of the tail spring support in order to prevent separation of the tail landing gear which could result in serious damage to the airplane during landing.''

**Actions and Compliance**

(f) Unless already done, do the following actions:

(1) Before further flight after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours time-in-service, inspect the tail spring support for cracks in accordance with PART I of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009.

(2) If any crack is found as a result of the inspections required by paragraph (f)(1) of this AD, before further flight, modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009. Modification of the tail spring support structure terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(3) You may at any time modify the tail spring support structure as instructed in PART II of Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, to terminate the repetitive inspections required in paragraph (f)(1) of this AD.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2009–0160, July 21, 2009 (corrected on July 28, 2009); and Extra Flugzeugproduktions- und Vertriebs-GmbH EXTRA Service Bulletin No. SB–300–2–97, Issue: C, dated September 24, 2009, for related information.

Issued in Kansas City, Missouri, on October 28, 2009.

**Margaret Kline,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–26391 Filed 11–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## NATIONAL MEDIATION BOARD

## 29 CFR Parts 1202 and 1206

**[Docket No. C–6964]**

**RIN 3140–ZA00**

## Representation Election Procedure

**AGENCY:** National Mediation Board.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** As part of its ongoing efforts to further the statutory goals of the Railway Labor Act, the National Mediation Board (NMB or Board) is proposing to amend its Railway Labor Act rules to provide that, in representation disputes, a majority of valid ballots cast will determine the craft or class representative. The NMB believes that this change to its election procedures will provide a more reliable measure/indicator of employee sentiment in representation disputes and provide employees with clear choices in representation matters.

**DATES:** NMB must receive comments on or before January 4, 2010.

**ADDRESSES:** You may submit comments identified by Docket Number C–6964 by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Agency Web Site: http://www.nmb.gov.* Follow the instructions for submitting comments.

• *E-mail: legal@nmb.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 692–5085.

• *Mail and Hand Delivery:* National Mediation Board, 1301 K Street, NW., Ste. 250E, Washington, DC 20005.

*Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.nmb.gov,* including any personal information provided.

*Docket:* For access to the docket or to read background documents or comments received, go to *http://www.nmb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

**SUPPLEMENTARY INFORMATION:** Under Section 2, Ninth of the Railway Labor Act (RLA or Act), 45 U.S.C. 152, Ninth, it is the NMB's duty to investigate representation disputes ''among a carrier's employees as to who are the representatives of such employees * * * and to certify to both parties, in writing * * * the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier.'' Upon receipt of the Board's certification, the carrier is obligated to treat with the certified organization as the employee's bargaining representative.

The RLA authorizes the Board to hold a secret ballot election or employ ''any other appropriate method'' to ascertain the identities of duly designated employee representatives. 42 U.S.C. 152, Ninth. As the Supreme Court has noted, ''not only does the statute fail to spell out the form of any ballot that might be used but it does not even require selection by ballot. It leaves the details to the broad discretion of the Board with only the caveat that it 'insure' freedom from carrier interference.'' *Bhd. of Ry. and S.S. Clerks* v. *Assn. for the Benefit of Non-Contract Employees,* 380 U.S. 650, 668–669 (1965).

The Board's current policy requires that a majority of eligible voters in the craft or class must cast valid ballots in favor of representation. This policy is based on the Board's original construction of Section 2, Fourth of the RLA, which provides that, ''[t]he majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class * * *.'' 45 U.S.C. 152, Fourth. This ''interpretation was made, however, not on the basis of legal opinion and precedents, but on what seemed to the Board best from an administration point of view.'' 1 NMB Ann. Rep. 19 (1942).

The Board has since maintained that policy, but believes that under its broad statutory authority, it may also reasonably interpret Section 2, Fourth to allow the Board to certify as collective bargaining representative any organization which receives a majority of votes cast in an election. In *Virginian Railways Co.* v. *Sys. Fed'n,* 300 U.S. 515, 560 (1937), the Court stated that the words of Section 2, Fourth, ''confer the right of determination upon a majority of those eligible to vote, but is silent as to the manner in which that right shall be exercised.'' Congress left it to the Board to determine the manner in an exercise of its discretion and, as Attorney General Tom C. Clark noted in his 1947 opinion on this issue:

> Under Section 2, Fourth, of the Railway Labor Act, the National Mediation Board has the power to certify as collective bargaining representative any organization which receives a majority of votes cast at an election despite the fact that less than a majority of those eligible to vote participated in the election.

Majority Vote under the Railway Labor Act, 40 Op. Att'y Gen. 541 (1947). In reaching this conclusion, the Attorney General cited not only the plain language of the Act and the Court's decision in *Virginian Railways,* but also the legislative history of Section 2, Fourth. The report of the Senate Committee on Interstate Commerce stated specifically that this section provides ''that the choice of representative of any craft shall be determined by a majority of the employees voting on the question.'' *Id.* at 542 (*quoting* Sen. Rep. 1065, 73d Cong. 2d Sess., p. 2). The Attorney General noted that the language of Section 2, Fourth appears to have been taken from a rule of the United States Railroad Board (Railroad Board) acting under the labor provisions of the Transportation Act of 1920 and that the Railroad Board had held that a majority of ballots cast in an election were sufficient to designate a representative. *Id.* at 541 n. 1. The Attorney General further noted the similarity between the language of Section 2, Fourth and Section 9(a) of the National Labor Relations Act (NLRA), 29 U.S.C. 159(a), which provides that, ''[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *.'' Under the NLRA, collective bargaining representatives are certified on the basis of the majority of ballots cast. The Attorney General also cited the statement in the House Committee report on the bill that became the NLRA that ''the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by Section 7(a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern.'' 40 Op. Att'y Gen. at 543 n.3 (quoting H. Rep. 1147, 74th Cong., 1st Sess., p. 3).

Finally, Attorney General Clark further observed the following:

> [W]hen the Congress desires that an election shall be determined by a majority of those eligible to vote rather than by a majority of those voting, the Congress knows well how to phrase such a requirement. For example, in Section 8(a)(3)(ii) of the National Labor Relations Act, as amended by the Labor Management Relations Act, the Congress has required that before any union shop agreement may be entered into, the National Labor Relations Board must certify 'that at least a *majority of the employees eligible* to vote in such election have voted to authorize such labor organization to make such an agreement.'

*Id.* at 544. (emphasis in original).

Since 1935, the Board has reexamined its policy of certifying a representative based on a majority of eligible voters on several occasions, most recently in 2008. *Delta Air Lines, Inc.,* 35 NMB 129 (2008). In each instance, the Board relied on an assertion that the current election policy, which as noted above was adopted for administrative rather than legal or factual reasons, maintains stable labor relations and fulfills the obligations under Section 2, Ninth. With regard to the stability in labor relations under the RLA, the Board believes that this stability which is often associated with the low incidence of strikes is more directly related to the Board's mediation function than to its representation function. The Board exercises a unique power under the RLA: The ability to determine the duration of mediation and thus the timing of a release from mediation and the potential opportunity for either side to engage in self-help. Because of the mandatory nature of the mediation process under the RLA, the parties are pressured to compromise their positions even though each may believe that its

original position was reasonable. The Supreme Court has recognized that the Board's mediation process is designed to be ''almost interminable'' so that the parties are moved to compromise and settlement without strikes or other economic disruptions. *Detroit & Toledo Shore Line R. R.* v. *United Transp. Union,* 396 U.S. 142, 149 (1969).

With regard to its obligations under Section 2, Ninth, the Board notes that its current construction of Section 2, Fourth was adopted in a much earlier era, under circumstances that differ markedly from those prevailing today. During the 1920s and 1930s widespread company unionism undermined collective bargaining and incited labor unrest. *See Pennsylvania R.R.* v. *Railroad Labor Bd.,* 261 U.S. 72 (1923).[1] Between 1933 and 1935 some 550 company unions on 77 Class I railroads were replaced by national unions. Benjamin Aaron, et al., *The Railway Labor Act at Fifty: Collective Bargaining in the Railroad and Airline Industries,* 26 (Charles M. Rhemus ed., 1977) (citing Leonard A. Lecht, *Experience Under Railway Labor Legislation* 155 (New York 1955)). Labor relations in the air and rail industries have progressed since the early days of the RLA but many of the Board's election procedures have not.

Under the existing election procedure, there is no opportunity for an employee to vote ''no'' or cast a ballot against representation. Abstaining from voting, for whatever reason, is counted by the Board as a vote against representation. Thus, under current election procedures, the Board determines that the failure or refusal of an eligible voter to participate in an NMB-conducted election is the functional equivalent of a ''no union'' vote. In these instances, the Board's current election procedure appears to be at odds with the modern participatory workplace philosophy that has evolved in the air and rail industries and the basic principles of democratic elections. Air and rail labor and management now go to great lengths to encourage employee participation in workplace matters. *See, e.g., Bucking Trend, Airline Keeps Repairs In-House,* NPR, All Things Considered, October 20, 2009, *http://www.npr.org/templates/transcript/transcript.php?storyid=113971588; A New Approach for Airlines,* Wall St. J., May 12, 2008, at R3. *http://online.wsj.com/article/SB121026578961977661.html;* The Proposed Delta/Northwest Airlines Merger: The Impact on Workers: Hearing Before the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions (testimony of Robert Kight, Vice President, Compensation and Benefits Delta Air Lines) 110th Cong. 5–6 (2008). *http://republicans.edlabor.house.gov/Media/File/Hearings/help/73008/Kight.pdf.*

The proposed change, if adopted, should bring the Board's election process in line with industry developments and discourage employee non-participation by giving every employee a chance to affirmatively express their preference for or against representation.

Further, to the Board's knowledge, few if any democratic elections are conducted in this manner. In our society, free choice is expressed on the basis of a majority of valid votes cast in an election. In *Virginian Railway,* the Court stated that, ''[e]lection laws providing for approval of a proposal by a specified majority of an electorate have been generally construed as requiring only the consent of the specified majority of those participating in the election. Those who do not participate 'are presumed to assent to the expressed will of the majority of those voting.' '' 300 U.S. at 560 (internal citations omitted).

There are many reasons individuals do not vote in elections. Nonvoting can be a conscious choice and assigning those who choose not to vote a role in determining the outcome of an election is a type of compulsory voting, not practiced in our democratic system. A system of compulsory voting or assigning a position to those who choose not to vote denies individuals the right to abstain from participating in an election, a right available in other democratic elections in this country. In political elections, those who do not vote acquiesce to the will of those who choose to participate. To allow a contrary policy could allow those lacking the interest or will to vote to supersede the wishes of those who do take the time and trouble to cast ballots.

The Board's primary duty in representation disputes is to determine the clear, un-coerced choice of the affected employees and the Board believes that this duty can be better fulfilled by modifying its election procedures to rely on the choice of the majority of valid ballots cast in the election. This process will ensure that each employee vote, whether for or against representation, will be regarded with equal weight. The Board will no longer substitute its opinion for that of the employee and register the lack of a vote as a ''no'' vote.

If the proposed regulatory change is adopted, the Board will specify that in secret ballot elections conducted by the Board, the craft or class representative will be determined by a majority of valid ballots cast. The proposed change will also provide employees with an opportunity to vote ''no'' or against union representation.

The Board's proposed change will not affect the showing of interest requirements as set forth in 29 CFR 1206.2. For the sake of clarity, 29 CFR 1202.4 as revised is cited in full.

Chairman Dougherty dissented from the action of the Board majority in approving this proposed rule. Her reasons for dissenting are set forth below.

I dissent from the proposed rulemaking for several reasons. Our current election rules have a long history and are supported by important policy reasons. I do not believe there is any evidence or legal analysis currently before the Board to support making the change proposed by my colleagues. Serious questions exist about the Board's statutory authority to make the rule change and its ability to articulate a rationale for change that complies with the Administrative Procedure Act (APA). Perhaps most importantly, the proposed rule makes no reference to other requests the Board has received to consider decertification and *Excelsior* list issues. For these and the following reasons, I believe it is, at a minimum, premature to propose a rule change of this magnitude, and a more prudent course of action would be for the Board not to prejudge this issue, but rather to give all interested parties an opportunity to comment on the request made by the Transportation Trades Division of the AFL–CIO (TTD), together with subsequent requests regarding

[1] This case involved the refusal by the Pennsylvania Railroad to confer with the trade union which represented a majority of its employees and instead proceeded to deal with a company union which it had fostered and recognized as the workers' representatives. The Board's precursor, the Railway Labor Board, ordered a new election to determine the workers' choice of representative and the Railroad refused to comply with this order. The Union sought an injunction to keep the Railroad from enforcing its agreements with the company union, but the injunction was denied. The Court upheld the denial on the ground that the labor provisions of the Transportation Act expressed only Congress' recommendations regarding collective bargaining rights of railway employees. The RLA was enacted following widespread dissatisfaction with the Transportation Act and the lack of prohibitions on employer control of employees' organization. *Effect of the Railway Labor Act of 1926 Upon Company Unions,* 42 Harv. L. Rev. 108 (1928). The need for complete freedom from carrier involvement in employees' selection of a collective bargaining representative is expressed in the General Purposes Clause of the RLA which states that one of the purposes of the Act is ''to provide for the complete independence of carriers and of employees in the matter of self organization.'' 45 U.S.C 151a.

decertification and other issues, before making any proposals.

The rule in question has been applied consistently for 75 years—including by Boards appointed by Presidents Roosevelt, Truman, Johnson, Carter, and Clinton. 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 and only when required by statutory amendments or essential to reduce administrative burdens on the agency. *Chamber of Commerce of the United States,* 14 NMB 347, 356 (1987). 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.

No one, including my colleagues, has suggested that the Railway Labor Act (RLA) mandates the change in the proposed rule or that the rule change is necessary to reduce administrative burdens on the Agency. In fact, a serious question exists as to whether the NMB even has the statutory authority to make this reversal. A Board appointed by President Carter unanimously decided that the Board is of the view that it does not have the authority to administratively change the form of the ballot used in representation disputes and that such a change, if appropriate, should be made by Congress.[2]

I also believe that my colleagues have not articulated a rationale for this rule change as required by the APA. With this notice of proposed rulemaking, my colleagues seek to radically depart from long-standing, consistently applied administrative practices. Under the APA, a change in such a long-standing policy must be supported by a strong rationale. While administrative agencies are not bound by prior policy, there is a duty to explain adequately ''departures from agency norms.'' *Pre-Fab Transit Co.* v. *Interstate Commerce Comm'n*, 595 F.2d 384, 387 (7th Cir. 1979). A change in the majority voting rule must be based on more than the preferences of the current Board. ''An agency's view of what is in the public interest may change either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis * * * [I]f it wishes to depart from its prior policies, it must explain the reasons for its departure.'' *Panhandle E. Pipeline Co.* v. *Fed. Energy Regulatory Comm'n*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (internal citations omitted). ''Conclusory statements'' and ''conjecture cannot substitute for a reasoned explanation'' for such a change in precedent. *Graphic Comm. Int'l Union* v. *Salem-Gravure Div. of World Color Press, Inc.*, 843 F.2d 1490, 1494 (DC Cir.)

There is nothing in the proposed rule to support changing this long-standing Board tradition. The Board has repeatedly articulated important policy reasons for our current majority voting rule—including our duty to maintain stability in the air and rail industries. 16 NMB Ann. Rep. 20 (1950); *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). This duty stems directly from our statutory mandate to ''avoid interruption to commerce or the operation of any rail or air carrier.'' *Id.* The Majority attempts to ignore this important statutory mandate by claiming that only our mediation function is relevant to keeping stability in the air and rail industries. This argument has no merit. The statute does not limit our mandate to only mediation, and it is disingenuous to suggest that our representation function does not play an important role in carrying out our duty to maintain stability in these industries. Moreover, the Board has repeatedly in the past raised this policy issue in conjunction with our representation function. 16 NMB Ann. Rep. 20 (1950); *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). As the Board stated in 1987, ''[a] union without majority support cannot be as effective in negotiations as a union selected by a process which assures that a majority of employees desire representation.'' *Chamber of Commerce of the United States*, 14 NMB 347, 362 (1987). Assuring that a representative certified by the NMB enjoys true majority support is even more important given that union certifications under the RLA must cover an entire transportation system [3]—often over enormously wide geographic areas with large numbers of people. I also note that there is no process for decertifying a union under the RLA. These unique aspects of the RLA do not exist under the National Labor Relations Act or elsewhere, and they render irrelevant comparisons between the RLA and other election procedures.[4]

The only other rationale offered by my colleagues is changed circumstances and an increasingly participatory workforce. I fail to see how these changes, if true, support changing a 75-year-old practice based on important statutory mandates that have not changed. Moreover, any argument that changed labor relations support changing our election practices are definitively rebutted by the facts: The percentage of rail and air employees who are union members is dramatically higher than in other industries, and the percentage of air and rail employees participating in elections has increased by almost 20% over the last decade.

The Majority has not articulated a sufficient rationale for making the change. Moreover, the request from the Transportation Trades Division of the AFL–CIO (TTD) that prompted this rule change was made in an informal, two-page letter with no legal analysis, no mention of changed conditions, and no discussion of our statutory authority. In light of these facts, the Board's history, and the lack of support for the change, I don't see how the Board could propose a rule change this controversial and divisive without the benefit of a full briefing from all interested parties.

I also dissent because I am concerned about the timing of the Majority's proposal. The Board recently established a bi-partisan, labor-management committee (which we are calling Dunlop II) to examine the RLA and the NMB and recommend changes. The committee has not yet delivered its report. In my view, it would be premature and irresponsible for the Board to propose any change to one of its most long-standing procedures before this committee has made its report.

Moreover, the Board has received requests to begin representation proceedings involving close to 40,000 employees at two major airlines—the largest group of elections in the history of the NMB. I believe it is harmful to the reputation and credibility of the Board for it to take a position in favor of a change to our election rules during these elections, which the Majority does by proposing this change. As I have previously stated, I believe the more impartial and responsible approach

[2] In addition, the only court ever to rule specifically on the question of whether the Board has the authority to certify a representative where less than a majority of the eligible voters participates in an election found that it did not. *Virginian Railways Co.* v. *Sys. Fed'n,* 11 F. Supp. 621, 625 (E.D. Va 1935). That ruling was not appealed and no court has ever specifically held that the Board has this authority.

[3] It is well settled that the Board applies the term ''craft or class'' under the RLA on a system-wide basis. *Delta Air Lines Global Servs.*, 28 NMB 456, 460 (2001); *American Eagle Airlines*, 28 NMB 371, 381 (2001); *American Airlines*, 19 NMB 113, 126 (1991); *America West Airlines, Inc.*, 16 NMB 135, 141 (1989); *Houston Belt & Terminal Railway*, 2 NMB 226 (1952).

[4] As the Supreme Court has long recognized, ''that the National Labor Relations Act cannot be imported wholesale into the railway labor arena. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes.'' *Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 US 369, 383 (1969).

would be to seek comment on the TTD's request, together with other related issues, so that we could have the benefit of a full briefing on all the issues before making proposals in favor of the change.

I also dissent because the Majority's proposed rule does not request comment on several related issues that have been raised by our constituents in connection with the TTD's request. I believe firmly that the Board should not consider the TTD petition in a vacuum. Several parties have requested that we consider a decertification procedure, noting that a minority voting rule necessitates some sort of decertification mechanism or else it deprives employees of the right to be unrepresented. We have also received a request to consider providing *Excelsior* lists to unions. And there are also other areas of our representation policy and procedures that would be implicated by a change in voting rules. For example, we currently require a union seeking to challenge an incumbent union to submit authorization cards from more than 50% of eligible voters. If we were to change our voting rules to permit fewer than 50% of eligible voters to select a representative, we must contemporaneously consider whether we should still require a greater than 50% showing of authorization cards to challenge an incumbent union. In order to be fair to all interested parties, I believe that Board must consider all of these issues together, and I am surprised that my colleagues have ignored these other requests and are addressing only the TDD's request. I believe the Board should have requested comment on all relevant issues before making any proposals and I encourage interested parties to submit comments addressing these other issues.

Chairman Elizabeth Dougherty.

**Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

**Regulatory Flexibility Act**

The NMB certifies that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**National Environmental Policy Act**

This proposal will not have any significant impact on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

**List of Subjects in 29 CFR Parts 1202 and 1206**

Air carriers, Labor management relations, Labor unions, Railroads.

Accordingly, as set forth in the preamble, the NMB proposes to amend 29 CFR chapter X as follows:

## PART 1202—RULES OF PROCEDURE

1. The authority citation for 29 CFR Part 1202 continues to read as follows:

**Authority:** 44 Stat. 577, as amended; 45 U.S.C. 151–163.

2. Section 1202.4 is revised to read as follows:

**§ 1202.4 Secret ballot.**

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. Except in unusual or extraordinary circumstances, in a secret ballot the Board shall determine the choice of representative based on the majority of valid ballots cast.

## PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

3. The authority citation for 29 CFR Part 1206 continues to read as follows:

**Authority:** 44 Stat. 577, as amended; 45 U.S.C. 151–163.

**§ 1206.4 [Amended ]**

4. Amend § 1206.4(b)(1) by removing the phrase ''less than a majority of eligible voters participated in the election'' and by adding in its place the phrase ''less than a majority of valid ballots cast were for representation.''

Dated: October 28, 2009.

**Mary Johnson,**

*General Counsel, National Mediation Board.*

[FR Doc. E9–26437 Filed 11–2–09; 8:45 am]

**BILLING CODE 7550–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2008–0780; FRL–8976–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Case-by-Case Reasonably Available Control Technology

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision consists of amendments to the Commonwealth's existing regulations in order to clarify and recodify provisions covering case-by-case reasonably available control technology (RACT), as well as to add the 1997 8-hour ozone standard RACT requirements to the Commonwealth's regulations. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 3, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0780 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0780, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2008–0780. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise