

## **STATEMENT OF JOHN F. MURPHY**

INTERNATIONAL VICE-PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

DIRECTOR, TEAMSTERS RAIL CONFERENCE

Members of the Board, I am John Murphy, an International Vice-President of the International Brotherhood of Teamsters and Director of the Teamsters Rail Conference, which includes the Brotherhood of Locomotive Engineers and Trainmen and the Brotherhood of Maintenance of Way Employees. I speak today on behalf of the more than 150,000 Teamsters who work under the Railway Labor Act in both the rail and aviation industries, represented by the BLET, the BMWED and the IBT Airline Division, in response to the Board's Notice of Proposed Rulemaking. I submitted a more extensive version of my comments today to the Board in advance of today's hearing.

Concerning the question asked by the Board whether the 50 percent showing of interest requirement mandated by Congress under the FAA Reauthorization Bill for applications for representation elections ought to be applied also under the Board's "Merger Policy" set forth in Section 19 of its Representation Manual, the IBT does not believe it is either necessary or appropriate to do so.

I wish to first state the IBT's position concerning the NMB's proposed amendments to its rules set forth in the NPRM. Concerning the Board's proposed modification to § 1206.1 of its Rules, governing runoff elections, the Board's proposal appears generally to implement Congress' directive concerning runoff elections. The Board's proposed modification to §

1206.2, establishing the percentage of valid authorizations required to support an application requesting certification as representative, also accurately implements Congress's directive.

Concerning the Board's proposed amendment to § 1206.5 of its Rules, the IBT agrees that the Board should apply the increased showing of interest requirement to applications of intervenors in representation elections. Requiring an intervenor to make a similar showing is consistent with the statutory goal of maintaining stability in labor relations, as well as being consistent with Congress' directive under the FAA Reauthorization Bill. The Board has also long required intervenors to make the same showing of interest among unorganized employees as that made by the applicant. To permit another party to intervene on a reduced showing of interest would conflict with long-established Board practice on this subject and would complicate the election, and potentially create confusion among employees.

From an administrative standpoint, permitting intervention under a lesser standard would necessarily generate more multiple-party elections that, in turn, would potentially increase the number of runoff elections held by the Board. Moreover, adding parties to an election increases the likelihood of post-election protests that both introduce uncertainty to the final resolution of the dispute and affect the speed by which that resolution occurs. For all these reasons, we believe the Board should maintain its practice of requiring the same showing of interest by intervenors.

As I stated in my introduction, the IBT does not believe it is either necessary or appropriate for the Board to apply a 50 percent showing of interest requirement to a representation election occurring under its merger procedures. The FAA Reauthorization Bill

does not by its terms mandate such a result. The statute only amends the RLA to require that the NMB apply a showing of interest of not less than 50 percent of valid authorizations when an organization or individual files “an application requesting that it be certified as the representative of any craft or class of employees.” This does not occur under the Board’s merger procedures. Rather, a representative files under Section 19.3 of the Representation Manual a request for the Board to investigate whether a single transportation system exists among two or more carriers. And while the investigation unquestionably occurs under Section 2, Ninth of the RLA, it is not the application contemplated by the Reauthorization Bill. It is only after the Board first determines that a single transportation system exists that it will proceed to consider other representation issues. But no further application is submitted by any existing representative. Because existing certifications continue in effect at the involved carriers, and the Board already possesses jurisdiction over the case, it is not necessary for the Board to have yet another application from a representative to complete its representation investigation.

Moreover, it is impractical to impose a 50 percent showing of interest requirement under the Board’s merger procedures. The NMB first requires that an application asking the Board to investigate whether a single carrier exists must come from a representative with a 35 percent showing of interest. The Board imposes such a requirement in the interest of stability in labor relations—so that existing certifications will not be prematurely affected—and to efficiently use the Board’s resources. At the same time, this 35 percent showing is not so high as to effectively give the power to invoke the Board’s investigation procedures to a single representative. Raising that application threshold to 50 percent, however, would in every case, limit the ability to invoke the Board’s procedures to just one representative, the representative

of the larger carrier. Further, if a multi-carrier transaction occurred, and no one carrier was substantially larger than the other carriers, there is the potential that *no* representative could exceed 50 percent of a putative combined craft or class under Section 19.3, and so no one could invoke the Board's merger procedures. . If the Board determines a single system exists, it will consider representation issues and review the relative sizes of the pretransaction crafts or classes to determine if an election is required. Only if the represented groups of the involved representatives are disproportionate will the Board extend the certification of one existing representative to the entire single system without election. Otherwise, the Board requires a necessary showing of interest of 35 percent for an existing representative, or an intervenor, to appear on a ballot in an election arising from the single carrier determination.

Increasing this showing of interest requirement at the subsequent representation phase of a single carrier proceeding would be just as impractical as at the initial application stage. Increasing that threshold to 50 percent would mean that the Board could not measure the relative size of the involved premerger crafts or classes—only one representative could have more than a 50 percent showing of interest. The Board would therefore extend a certification if a representative had more than a 50 percent showing. That would result in *fewer* elections in merger situations. Or, alternatively, the Board would have to conduct an election in every proceeding regardless of how disproportionate are the relative sizes of the involved employee groups. That would be contrary to the Act by permitting the mere occurrence of a transaction to raise a representation dispute. We do not believe Congress intended these results by its amendment of the Act to address a different question of representation.

In summary, the IBT believes the Board's proposed amendments to its rules are in general properly drafted, consistent with the Congressional mandate in the FAA Reauthorization bill, and otherwise consistent with the RLA. We believe that the Board need not, and should not, increase the showing of interest standard established under its merger procedures. That permissible policy judgment should be reflected in the regulations under consideration.

Thank you for your time and attention.