

2014

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### Scholarly Commons Citation

Elsenrath, M. (2014). Effect of NMB Voting Change on Airline Unionization. *Journal of Aviation/Aerospace Education & Research*, 23(2). <https://doi.org/10.15394/jaaer.2014.1611>

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## Effect of the NMB Voting Change on Airline Unionization

“Effective July 1, 2010, the Board’s voting procedures for representation elections will change to add a ‘No’ option and to provide that the majority of votes-cast will determine the outcome of an election” (National Mediation Board, 2010, para. 2). Policy changes occur within all branches of the Federal Government, however, the changes implemented by the National Mediation Board (NMB or Board) altered two facets of Railway Labor Act (RLA or Act) precedent in effect since 1936 (Michels, 2011). Heavily backed by pro labor organizations and strongly opposed by employers, it is believed the amendment promotes an easier path toward unionization of labor forces covered under the RLA (Michels, 2009). Fallout from the amendment has sparked debate and increased political pressure to rescind the change (Mitchell, 2011). This article seeks to review the historical significance and purpose of the RLA and present the impact of the RLA amendment via statistical comparison of airline union certification activities pre and post policy change.

### **Historical Overview**

To better understand the ramifications of the recent rule change it is important to understand the genesis of the RLA and its governing body, the NMB. Labor conditions in the United States during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries

were deplorable. Similar to other industrial workers of the era, railroad laborers were faced with working environments tainted by low wages, perilous conditions and exhaustingly long hours (Marek, 2003). Labor strife and unrest were common responses to the awful conditions and manifested in various forms ranging from strikes to physical conflicts. Considering the railroad was the primary means of transcontinental shipping, service interruptions at the hands of labor were uniquely detrimental to the movement of goods required to fuel the economic engine of the United States (Kaps, Hamilton, & Bliss, 2012).

The United States' entrance to World War I impacted the railroad industry in a vastly positive manner for labor. Utilizing the Army Appropriation Act of 1916, the Federal Government took direct control of the railroad network and immediately enhanced the labor environment to suppress the potential of future labor instability. According to Kaps, Hamilton, and Bliss (2012), the government "prohibited union discrimination...standardized wages and working conditions and imposed restrictive work rules over the objections of management" (p. 51). Despite increased cost structure, wartime government intervention yielded previously unattainable levels of operational efficiency for the railroad. Moving forward into post-war America, cementing operational and labor gains required development of legislation designed to capture and expand achievements garnered during World War I; the RLA was the legislative vehicle to accomplish such goals (Kaps et al., 2012).

The Railway Labor Act of 1926 consists of four foundational concepts (Thoms, 1990):

1. To avoid any interruption to commerce.
2. To provide for the freedom of association of employees (the right to join a labor union).
3. To provide complete independence of organization by both parties to carry out the purposes of the RLA.
4. To provide for the prompt and orderly settlement of major and minor disputes.

Under RLA governance, cooperative, non-adversarial relationships were fostered between labor and management. Furthermore, when compared to non-railroad industries of the era where strikes and lockouts remained commonplace, the benefits garnered by the RLA were unmistakable (The Labor Story in Congress, 1949). As described by Kaps et al. (2012) “the RLA was widely proclaimed as ‘ideal’ labor-relations legislation. It avoided compulsory arbitration and encouraged industrial peace in an essential industry” (p. 56). Seizing on the momentum generated through implementation of the RLA, Congress amended the Act to encompass what many felt was the logical counterpart if not successor to the railroad, commercial aviation.

To manage stakeholder disputes and issues surrounding the RLA, Congress established the National Mediation Board to serve as the primary

custodian of the Act (Thoms, 1990). The tasking of the NMB included the following tenets (Kaps et al., 2012, p. 57):

- Mediation of disputes relating to the changing of existing agreements affecting rates of pay, rules, and/or working conditions.
- Determination or certification of the representatives of a class or craft of employee.
- Election monitoring.
- Interpretation of agreements made under its mediation program.

Of particular interest to this study, the Board established voting procedures requiring the majority of a craft or class elect a union and that votes not cast equate to a no vote. This process assured the elected union represented the true majority of its constituents thereby fostering greater resolve and unity among the membership. Considering the RLA serves industries spanning large geographic areas, worker solidarity across an entire system is essential to avoid localized labor disruptions (Kaps et al., 2012). Since its inception, the RLA election process has remained relatively unchanged which is what made the recent ruling of the Board to amend election protocol remarkable. Despite the contentious atmosphere present in the wake of its decision, the Board itself presented a sound and articulate argument capturing the motivation for their decision.

### **Arguments for RLA Change**

Writing in the majority, Board members Hoglander and Puchala summarize their opinion and motivation to change RLA election procedures:

...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.

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. (National Mediation Board, 2009, p. 56572)

Results of a certification vote occurring shortly after the 2010 NMB procedural change provides empirical support for the new procedure. The pilots of JetBlue Airlines voted against unionizing their work force in an election that

garnered a 97% participation rate. A vote tally of 1,193 against to 857 for unionization highlights the strengths of the new RLA election procedure, namely increased voter participation and philosophies consistent with other democratic elections (Compart, 2011). Despite enhanced benefits, not all industry experts feel the change supports the core tenets of the RLA.

### **Arguments Against Change**

The minority opinion of Board member Dougherty may be the most vocal of those opposed to change. Citing historical precedent and procedure, Dougherty stated the following:

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. Regardless of 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.

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”....Assuring that a representative certified by the NMB enjoys true majority support is even more important given that union certification under the RLA must cover an entire transportation system – often over enormously wide geographic areas with large numbers of people. (National Mediation Board, 2009, p. 56573)

In addition to opinions such as those expressed by Board member Dougherty, industry conglomerates such as the Air Transport Association (ATA) contend the NMB lacks the statutory authority to make the change. In furtherance of their cause, the ATA filed a lawsuit with the US District Court for the District of Columbia alleging suspect practices on behalf of the NMB surrounding their decision to change election procedures (Michels, 2010). Additionally, efforts to repeal the change have made their way into Congressional legislation. A 2011 House of Representatives version of the FAA Reauthorization Act included language to rescind the new RLA election procedures. The added language to the bill prompted a wave of lobbying support by industry giants such as Delta Airlines and FedEx (Mitchell, 2011). Despite momentum building for repeal, President Obama suggested he will veto any bill containing a provision to overturn the NMB’s decision (Michels, 2011).

The ATA and other opponents point to elections lending credit for repeal of the new procedure. In early 2011 the Fleet and Passenger Service Workers at

AirTran Airways held a vote for unionization. According to Michels (2011), “of the 2,904 eligible voters, 994 voted for the union and 870 voted against it. That means 1,040 chose not to vote. Under the old rules, the union would have lost” (para 10). This exemplifies the core concern of the opposition to change; a minority of a populace can successfully install a collective bargaining entity.

### **Research Problem**

The Board’s decision has spawned a contentious battle with both sides adamant their positions serve the best interest of employees and employers alike. Despite a highly charged environment, objective review of recent election data may help to quell the current abyss of opinionated hearsay to which both parties have fallen victim. Factual review may also provide a clear path toward reconciliation of differences surrounding the change and assurance the doctrine of the RLA will remain intact for the foreseeable future. The primary research question seeks to evaluate pre and post change election results to answer the following: Has the NMB’s changes to the RLA union certification process resulted in a higher rate of airline employee unionization post implementation.

### **Method**

#### **Pearson’s Chi-Square**

To test the relationship between the dependent variable, certification, with the independent variables of rule sets, Pearson’s chi-square statistical test was

utilized with  $\alpha = .05$  as a criterion for significance. Details regarding Pearson's chi-square model can be found by referring to Field (2009). The chi-square test includes the following assumptions:

1. Independence of input data is maintained and repeated measures designs are not allowed.
2. To ensure statistical power is maintained, and considering the specific sample size applicable to this design, expected frequencies should be greater than 5 as determined by Fisher's exact test.

The chi-square test is expressed mathematically as found in Equation 1 with  $i$  representing the rows and  $j$  representing the columns in the cross tabulation Table

1.

$$x^2 = \sum \frac{(\text{observed}_{ij} - \text{model}_{ij})^2}{\text{model}_{ij}} \quad (1)$$

The chi-square test was selected due to its ability to determine relationships between categorical variables, in this case old or new rules compared to certification or dismissal. A potential problem associated with chi-square tests on small sample sizes relates to the ability of the sampling distribution to approximate a chi-square distribution. As the assumptions of the test dictate, the expected count values in the cross tabulation table must be greater than 5 to validate in accordance with Fisher's exact test. All expected count values exceed

5 indicating adequate sample size is present and an acceptable fit to the chi-square model is achieved.

## **Data**

Data for election results were obtained from the NMB's website and mined for a four-year window established two-years on either side of the July 1, 2010 rule change. The sampling window was established to maximize data collection pre and post rule change while maintaining an even time balance for comparison purposes. Analysis was limited exclusively to certification cases for airline employees not already represented by a collective bargaining entity, railroad employees were excluded. This limitation was imposed to best serve the primary research question related exclusively to airline employees. 56 elections took place inside of the sampling window. Elections were further divided into categories based on representative election rule sets and election outcomes. Refer to Table 1 for specifics. All data was entered into IBM SPSS © for analysis.

## **Results**

Table 1 highlights that under new election rules, union certification was observed in a slightly higher number of elections ( $n_o = 11$ ) than expected ( $n_e = 10.5$ ). Under old rules, union certification was observed in a slightly lower number of elections ( $n_o = 20$ ) than expected ( $n_e = 20.5$ ). Additionally, certification occurred in 58% of sample elections occurring under the new rules compared to

54% under the new rules. Observationally, both metrics suggest the new rules may favor union certification.

**Table 1**

**Old rules or new rules? \* Certification or Dismissal? Crosstabulation**

			Certification or Dismissal?		Total
			Certification	Dismissal	
Old rules or new rules?	Old Rules	Count	20	17	37
		Expected Count	20.5	16.5	37.0
		Std. Residual	-.1	.1	
	New Rules	Count	11	8	19
		Expected Count	10.5	8.5	19.0
		Std. Residual	.1	-.2	
Total	Count	31	25	56	
	Expected Count	31.0	25.0	56.0	

Despite cross tabulation data signifying a relationship between variables, the chi-square test failed to establish significance as found in Table 2,  $\chi^2(1) = .075, p = .784$ . This result validates a lack of relationship between categorical independent variables with no change in effect on the dependent variable, certification. Union certification is just as likely to occur under the old rules as it is under the new rules established by the NMB.

**Table 2**

**Chi-Square Tests**

	Value	df	Asymp. Sig (2-sided)	Exact Sig. (2-Sided)	Exact Sig. (1-Sided)
Pearson Chi-Square	.075 <sup>a</sup>	1	.784		
Continuity Correction <sup>b</sup>	.000	1	1.000		
Likelihood Ratio	.075	1	.784		
Fisher's Exact Test				1.000	.505
Linear-by-Linear Association	.074	1	.786		
N of Valid Cases	56				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.48.

b. Computed only for a 2x2 table

**Discussion**

Lack of statistical significance tends to refute arguments for a return to the original NMB voting procedure as the new procedure has no effect on the likelihood of a labor group to certify a union. This also rebuts the primary research questions as well as anecdotal arguments that new NMB election procedures will promote an easier path toward unionization. Results from this study should be considered a first step toward cooperative compromise between opposing viewpoints.

Admittedly, the sampling window utilized for data extraction was limited due to the recency of the rule change and the focus on the aviation labor environment. Statistical testing inclusive of railway data and a larger time window may yield different results than realized here and should be a consideration for additional analysis. Future testing may also consider more inferential elements

such as average contract negotiation length, arbitration, union decertification or any variables attributed to the resolve and solidarity of the labor force. Such metrics may provide a more comprehensive analysis of the impact of the rule change on organized labor. This is of particular interest in instances where minority membership installs a collective bargaining entity.

History reveals the RLA has done a magnificent job serving its stakeholders. Considering the primary goal of the RLA was the assurance of a continuous flow of commerce, the original election procedure should be viewed as an extension of that primary goal. True majorities unite a multitude of voices into one singular and powerful entity which is arguably better suited to collectively bargain. The new reality that a minority of a craft or class can install a labor representative to bargain on behalf of the whole does not lend itself well for solidarity among workers. Ultimately, the potential for a minority rule environment may serve to weaken the Act's original intent of maintaining a strong and unified labor force capable of providing a continuous and uninterrupted flow of commerce. Only requisite time combined with increased data collection and analysis will render the true verdict on the wisdom of the Board's decision.

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