



Legal Alert: FAA Reauthorization Act Amends RLA Election Procedures

2/15/2012

Executive Summary: On February 14, 2012, President Obama signed the FAA Reauthorization and Reform Act (the "Act") into law. The last long-term FAA funding act expired in September 2007. In addition to the typical funding provisions, the FAA Reauthorization Act contains several amendments to the Railway Labor Act ("RLA"). These amendments pertain to the election and voting procedures under the RLA as well as to oversight of the National Mediation Board ("NMB").

The Act changes the showing of interest requirement for RLA representation elections. Prior to the amendment, the NMB required organizations to present a showing of interest from 35% of employees in an unrepresented craft or class (if a craft or class was represented by an incumbent organization, the showing of interest requirement was 50% of employees). Accordingly, if the craft or class had 1,000 employees, the NMB would authorize an election if a union presented valid authorization cards from at least 350 employees. The Act changes the showing of interest requirement to 50% of the employees in a craft or class in all cases. Under the example used above, a union would now be required to present authorization cards from 500 employees before the NMB would authorize an election.

The second amendment concerns which options appear on runoff election ballots. The NMB conducts runoff elections when a majority of voters cast votes for representation, but no single organization receives a majority of the votes cast. Prior to this amendment, the NMB's practice was to conduct runoff elections between the two organizations that received the most votes in the original election. The NMB would not list "no representation" as an option on a runoff ballot, even where the top two vote getters were an organization and the "no representation" option. For example, if during an election, 500 voters cast votes, 200 voted for no representation, 175 voted for Union A, and 125 voted for Union B, the NMB would conduct a runoff election between Union A and Union B even though the "no representation" option garnered more votes than either Union A or Union B. The Act dictates that a runoff election must be between the two options receiving the largest and the second largest number of votes, regardless of whether the second largest number of votes were cast for an organization or for the "no representation" option. Accordingly, in the example above, the runoff election would be conducted between Union A and the "no representation" option.

The Act also dictates that the Comptroller General of the United States will evaluate and audit the NMB's programs and expenditures no less than every two years. The Act further mandates that, within 180 days after the

enactment of the law, the Comptroller General will review the process used by the NMB to certify or decertify labor organizations and make recommendations to the Board and to Congress regarding actions that should be taken to ensure that the certification and decertification procedures are "fair and reasonable for all parties."

Finally, the Act requires the NMB to use the rule-making procedure set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. § 553, including holding a public hearing, when making, amending, and rescinding "rules and regulations" necessary to carry out the provisions of the RLA. This amendment is notable because the NMB did not follow the APA's rule-making procedure when it changed the voting rule in 2010. The NMB is not required to use the rule-making procedure when making "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."

If you have any questions about this legal alert or about the amendments to the RLA, please contact Sarah Aufdenkampe, saufdenkampe@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.