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Effects of Railway Labor Act Election Rule Changes on Voter Participation and Unionization Activity

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EFFECTS OF RAILWAY LABOR ACT ELECTION RULE CHANGES ON VOTER
PARTICIPATION AND UNIONIZATION ACTIVITY

by

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Bachelor of Science, University of North Dakota, 2000

A Thesis

Submitted to the Graduate Faculty

of the

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in partial fulfillment of the requirements

for the degree of

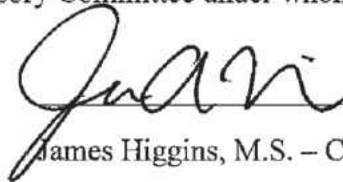
Master of Science

Grand Forks, North Dakota

May
2014

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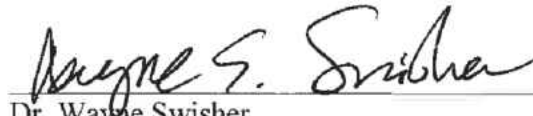


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April 28, 2014

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To my Mom and Dad, thank you for your ever present guidance and support.

To my Brother Dan, thank you for being the greatest role model possible.

ABSTRACT

In 2010 the National Mediation Board changed the process by which airline and railroad employees certify a union. New election rules require the majority of ballots cast be in favor of unionization to install a collective bargaining entity. This differed from the previous procedure which required the majority of a craft or class of laborers vote in favor of unionization. This study investigates the effects of the voting change on unionization and voter participation for industries covered under the Railway Labor Act. Data from airline and railroad related union elections were mined pre and post procedural change and analyzed. Chi-square analysis revealed no significant change in union certification efforts. Analysis also indicated no significant change in union certification efforts when comparing the airline to the railroad sample groups. *T*-test results indicate a significant increase in voter participation in Railway Labor Act elections under the new election rules, $p < .001$.

Keywords: Railway Labor Act, National Mediation Board, certification, union, labor, voting, craft, class, RLA, NMB

CHAPTER I

INTRODUCTION

On July 1, 2010, the National Mediation Board (NMB or Board) changed over seven decades of Railway Labor Act (RLA or Act) precedent and procedure utilized during union certification elections (National Mediation Board, 2010). The Board's proposal and ultimate decision to change the long-standing election process spawned a contentious debate from vested RLA stakeholders and constituents. Those supporting the Board's decision argue RLA election protocol is antiquated, in conflict with modern democratic election philosophy, and in desperate need of renovation. Those opposed to the Board's decision highlight seven decades of labor stability and the Act's success of ensuring the uninterrupted flow of commerce in the United States (National Mediation Board, 2009a). The history and background of the arguments postulated by both the opposition and supporters provides insight into the nature of each group's respective concerns.

Those opposed to the rule change frequently highlight historical precedent as a prime argument for rescinding the Board's change. As originally implemented in 1926, RLA union certification required the majority of a craft or class of laborers vote in favor of a collective bargaining entity. Laborers electing to refrain from voting retained a role in the election as their abstention yielded a vote against unionization (Kaps, Hamilton, & Bliss, 2012). These foundational tenets of the RLA election process were designed to

ensure that if certified, the elected union would represent the true majority voice of its membership. This philosophy engendered an atmosphere of unity and cohesiveness among workers that at times were separated by hundreds if not thousands of miles. Solidarity of this nature was deemed paramount in supporting the continuous flow of commerce as the majority voice was omnipresent and pervasive in supporting the obligations of service expected from the union (National Mediation Board, 2009a).

Despite the rationale associated with continuation of a historically sound process, supporters of the Board's change suggest the original rule is in direct conflict with modern election philosophy. The traditional RLA electoral process of assigning a compulsory voting position to individuals not participating in an election is unique when compared to other egalitarian elections held in the United States (Kaps et al., 2012). The 2010 modification enacted by the NMB rescinded the role of non-participants; if a member chooses to not vote in an election, their vote is simply not cast and has no bearing on the outcome. Additionally, the Board changed the threshold for union certification from a majority of the craft or class to a simple majority of votes cast (National Mediation Board, 2010). Both changes attempted to align RLA principles with the philosophies and concepts utilized in modern democratic elections.

Implementation of the changes generated a fervent and at times contentious environment from industry and labor representatives lobbying on both sides of the issue. Prior to implementation, the Board heard public comments from 33 different industry representatives and constituents (National Mediation Board, 2009a). Comments from industry leaders on the subject offer insight into the contentious nature of the issue.

Lobbying against changing RLA election procedure, Robert Siegel from the Air Transport Association of America stated the following:

I'll conclude there is simply no basis for the proposed rule change. The Board has successfully employed the existing majority rule since President Franklin D. Roosevelt's first term in office and it has undeniably become part of the fabric of the Railway Labor Act.

The Board has reaffirmed the majority rule on at least four prior occasions. The rule has twice passed scrutiny under the Supreme Court and there has been no relevant material change in circumstances that would warrant such a radical departure from long standing practice. (National Mediation Board, 2009a, pp. 12-13)

Lobbying in favor of the change to the election procedure, Edward Wytkind from the Transportation Trades Department argued the following:

The unreliable and unarbitrary [*sic*] nature of the Board's election procedures place rail and airline workers in a unique and unfair electoral category, completely detached from the democratic norms lying at the heart of any representation election in America. Throughout the country from school boards to the United States Congress, a majority of those casting a ballot determines election outcomes. In contrast, the NMB's rules assign non-participating voters a role in determining electoral outcomes. (National Mediation Board, 2009a, p.17)

The arguments from Mr. Siegel and Mr. Wytkind represent the central positions of both groups. Anecdotally, both arguments are based in sound judgment and fact further fueling the debate (Michels, 2010). Often times the wisdom of contentious

litigious decisions is only realized during the course of future history; a philosophy central to this thesis. Accordingly, this study seeks to analyze the impacts of the Board's decision to amend RLA election protocol and procedure for the purpose of quelling industry arguments as well as providing further insight into the wisdom of the Board's decision

Historic Overview

To understand the impetus of the RLA and its significance for organized labor and the United States as a whole, examination of the late 19th and early 20th century work environment is imperative. As highlighted by Marek (2003), labor conditions across multiple industries of the era were deplorable and chaotic. Workers were subject to hazardous environments, exhaustingly long hours, and woefully inadequate remuneration. The United States Census of 1900 revealed nearly two million children were working side by side with their adult counterparts (Marek, 2003). The resulting frustration, anger and angst manifested in various forms from verbal confrontations to physical conflicts and strikes. To ensure the continued production and flow of commerce, employers of the era utilized aggressive tactics including the deployment of security forces to break up strikes and aggressively coerce laborers to return to work (Kaps et al., 2012). One of labor's primary opportunities to progress away from such abhorred circumstances was realized with the continued implementation and expansion of the national rail network.

The railroad was paramount in accelerating the United States' economic progression and advancement. Citing the operational significance of the railroads Adelman (2010) stated the following, "compared to roads, rivers, and canals, the

advantages of rail transport were obvious: improved safety, year-round service, shorter delivery times, and lower costs” (p.26). Considering the gains in transportation efficiency realized via the railroad, service disruptions at the hands of labor were costly for not only employers but the nation. This reality provided labor with immense leverage and served as a catalyst for negotiations seeking comprehensive improvements to the working environment (Kaps et al., 2012). From 1888 through 1920, five laws were enacted to address ongoing labor disputes and disruption. Many foundational components of the RLA were found in these early attempts to legislate solutions to labor unrest. Most notably, the Erdman Act of 1898 introduced the first structured policy of mediation and voluntary arbitration between employers and employees (Thoms & Dooley, 1990). Despite several legislative attempts to resolve labor strife, the ultimate resolution arrived in the form of global conflict.

The United States’ entrance into World War I placed immense demand on the industrial engine of the nation. Considering the transportation backbone of the United States’ manufacturing machine was the railroad, service failures due to labor strife were extremely costly to the war effort. To stabilize the unpredictable labor environment, the Federal Government seized control of the railroads utilizing the Army Appropriations Act of 1916 and proceeded to issue equitable labor contracts in an effort to suppress labor disruptions (Kaps et al., 2012). As stated by Thoms and Dooley (1990), “as a result of this national operation, working conditions for railroad employees were greatly improved....finding that wages in the industry were unduly low, the government raised wages and shortened hours” (p.3). Additionally, the government facilitated further expansion and growth of pinnacle RLA concepts including collective bargaining,

nationalized application of labor policies, and the formation of union organizations (Thoms & Dooley, 1990). The monumental gains achieved by labor during this period, combined with the high service reliability of the railroad industry, generated immense momentum to solidify such improvements in the post-World War I labor environment.

Railway Labor Act

Incentive from all stakeholders to capitalize on gains made during the War ultimately brought forth the inception and implementation of the RLA in 1926. The RLA assembled the best attributes of prior legislative actions into a singular law designed to procure the unfettered flow of commerce. The five primary tenets of the RLA are as follows:

1. to avoid any interruption to commerce or to the operation of any carrier engaged therein;
2. to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization;
3. to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act;
4. to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;
5. to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation of application of agreements covering rates of pay, rules, or working conditions. (Thoms & Dooley, 1992, p. 276)

The RLA was received with great fanfare from both labor and management as its unique design provided multiple pathways to resolve disputes in a constructive fashion benefitting all parties involved. The RLA was also designed to facilitate dispute resolution between labor and management without government intervention (Thoms & Dooley, 1990). This process was a natural extension of prior labor legislation yet, for the first time in the history of organized labor, the RLA created a working environment where all stakeholders were held accountable for their actions in the interest of industrial harmony.

The RLA as a legislative piece has seen relatively few amendments over the course of its existence. One such amendment involved the inclusion of air carriers into the RLA. In 1936, led by strong lobbying influence from the Air Line Pilots Association, Congress placed air carriers under the RLA umbrella. In many ways the burgeoning aviation industry was viewed by many as the logical successor to the rail industry. Air carriers of the era were already augmenting the flow of commerce via an ever expanding air mail network (Kaps et al., 2012). Similarities in logistical concepts and geographic coverage between both industries made air carrier inclusion a logical choice.

National Mediation Board

Another and perhaps more significant amendment to the RLA was introduced in 1934 with the Congressional mandate for the creation of the NMB to oversee certain aspects of RLA governance. Specifically, the NMB provides the following services to its stakeholders:

- 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 employees;
- Election monitoring;
- Interpretation of agreements made under its mediation program. (Kaps et al., 2012, p. 57)

Philosophically, the NMB does not retain the ability to interpret the RLA, merely to facilitate the execution of its core concepts. Reality suggests the Board is able to implement procedures supporting governance of the Act so long as the Board's congressionally mandated scope is not exceeded (Thoms & Dooley, 1992). Throughout the history of the Board this authority resulted in various policies influencing RLA related decisions and outcomes.

Considering the RLA does not specify the method used to determine union certification, the Board implemented a policy requiring that 50 percent plus one vote of a craft or class vote for a union during a certification election in order for that union to be installed as the collective bargaining entity. Additionally, votes not cast during the election automatically counted against unionization. Authority for installation of such a procedure was validated by the United States Supreme Court when the High Court ruled that, "Board election rules are not subject to judicial review unless there is a showing that it has acted in excess of its statutory authority" (Kaps et al., 2012, p.96). The Court's decision granted the NMB a certain level of omnipotence in establishing and implementing procedures in support of RLA concepts. While the Board rarely acts without due consideration, the swift implementation of election protocol modifications

highlights the freedom afforded to the Board to enact procedural changes deemed appropriate in support of the RLA.

Changing Representation Procedure

On July 1, 2010, the NMB changed its long standing voting protocol for union elections to include a ballot option against unionization as well as dictate the majority of votes cast determine the outcome of an election (National Mediation Board, 2010). In the history of labor law, so rarely has a simple procedural change generated such a passionate atmosphere of debate. The Board's decision transformed election procedure in existence since nearly the inception of the NMB. It also challenged decades of precedent involving union elections widely viewed as successful and beneficial for all participants as witnessed by generations of relatively harmonious labor relations (Kaps et al., 2012).

Further examination of the Board's decision reveals the vote was not unanimous. Board members Hoglander and Puchala were in the majority while Chairman Dougherty was the dissenting voice (National Mediation Board, 2009b). Internal discord among the Board grasped the attention of various industry associates further amplifying concern over the pending change. Speaking to the lack of Board solidarity, Joanna Moorhead, General Counsel of the National Railway Labor Conference stated the following:

...the Board has always tried to act on the basis of consensus, especially with respect to hotly debated issues. Indeed when it comes to proposals for sweeping change, the Board has virtually never acted without the agreement of all three Board Members. This emphasis on consensus has long roots in the RLA. The statute itself was the product of cooperation between rail labor and rail management. (National Mediation Board, 2009a, p. 27)

Ms. Moorhead's comments highlight one aspect of the debate; is it truly a wise decision to implement sweeping change on a matter of historical precedent when the governing body of oversight is conflicted? Many industry representatives felt that indeed it was a good idea, and their rationale is very persuasive.

Arguments for change

The Board's decision was heralded by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) as well as various other industry labor groups and unions. One of the main arguments lobbied by advocates for change stems from the perception of election coercion of laborers (Michels, 2009). Suppression efforts by employers inclusive of company sanctioned destruction of voting ballots have plagued RLA unionization efforts for decades (Michels, 2010). Considering votes not cast under traditional rules equate to a vote against, the simplest manner to keep a union off company property is to entice laborers to not vote. If a company is successfully able to dissuade its employees from voting in a union election, that company exerts influence on the election.

Election interference is a serious matter as it violates one of the core tenants of the RLA; namely the freedom of association. One of the primary roles of the NMB is to investigate all instances of election interference for which there have been numerous examples over the course of the Board's history (Kaps et al., 2012). Dr. Kate Bronfenbrenner, Director of Labor Education Research at Cornell University, stated the following regarding her research into RLA representation election coercion tactics:

...employer suppression takes many forms under the RLA, including making positive changes in personnel, wages and working conditions so as to make a

union seem less necessary; making it more difficult to organize or vote through transferring workers, initiating layoffs, and threatening bankruptcy; and suppressing the vote either through urging workers to tear up their ballots or providing misleading information about election procedures. This is all separate and beyond the majority of campaigns where the employer intimidates, threatens, harasses, coerces, and retaliates against union supporters to try to dissuade them from voting for the union. (Bronfenbrenner, 2009, p. 3)

Bronfenbrenner's (2009) research compares RLA elections to those occurring under the direction of the National Labor Relations Act (NLRA). The NLRA stands next to the RLA as the Nation's counterpart piece of labor legislation for non-RLA industries and non-public sector unions. Certification elections occurring under the umbrella of the NLRA are monitored by the National Labor Relations Board (NLRB) and model the form and concepts of other democratic elections inclusive of the voter making a choice in the affirmative or negative for representation. Furthermore, votes not cast under NLRB monitored elections are not tallied (Kaps et al., 2012). Realizing the goal of RLA voter suppression is capitalization of absentee votes, it must be considered if similar suppression issues exist in NLRA elections. This concept was a focal point for Bronfenbrenner's (2009) research as any evidence of reduced voter suppression in NLRA elections would lend support for a change to the RLA process.

Figures 1 and 2 highlight the findings of Bronfenbrenner's (2009) multi-year study comparing NMB and NLRB certification elections. Figure 1 shows that during NLRB elections, lower voter turnouts actually yield higher union win rates; this is in stark contrast to NMB elections.

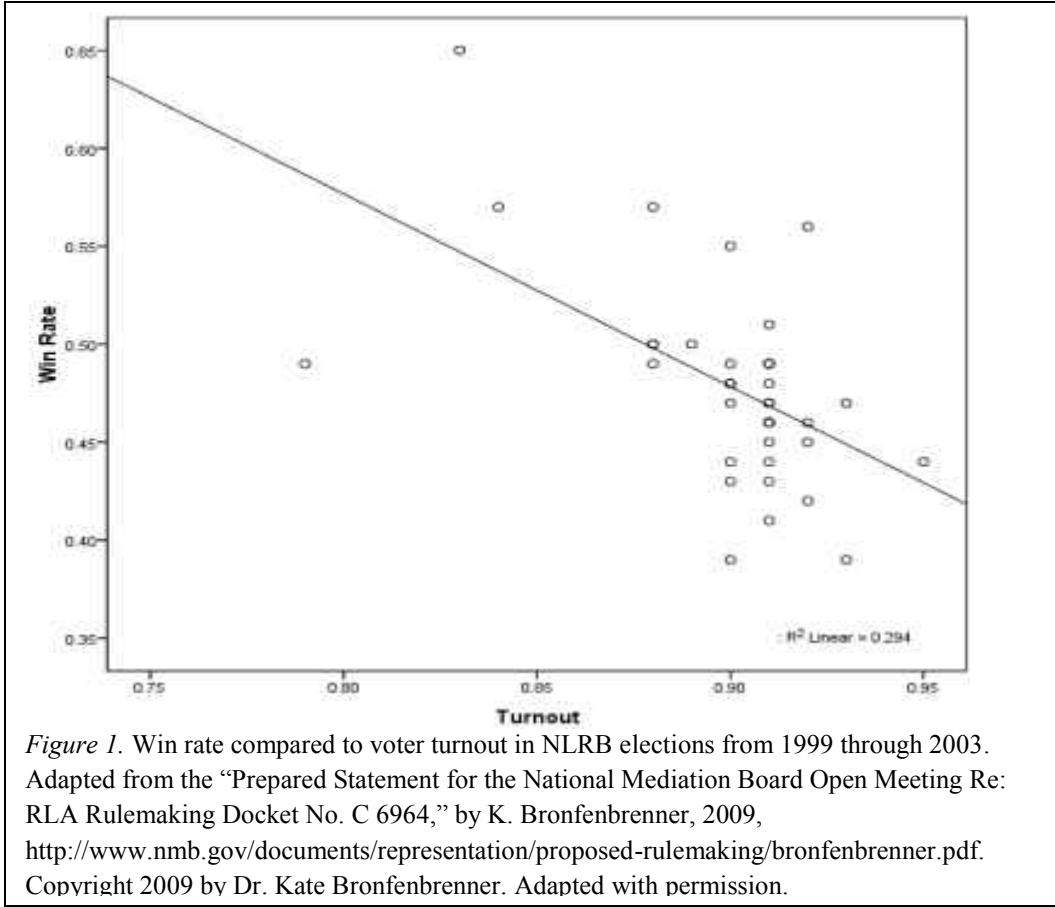


Figure 2 highlights that during NMB elections, lower voter turnout resulted in lower union win rates as low turnout generates as many votes against unionization as there are absentees from the given craft or class (Bronfenbrenner, 2009). This tends to support prior arguments for a change in NMB procedure on the grounds that updated election protocols will negate the effects of voter suppression tactics.

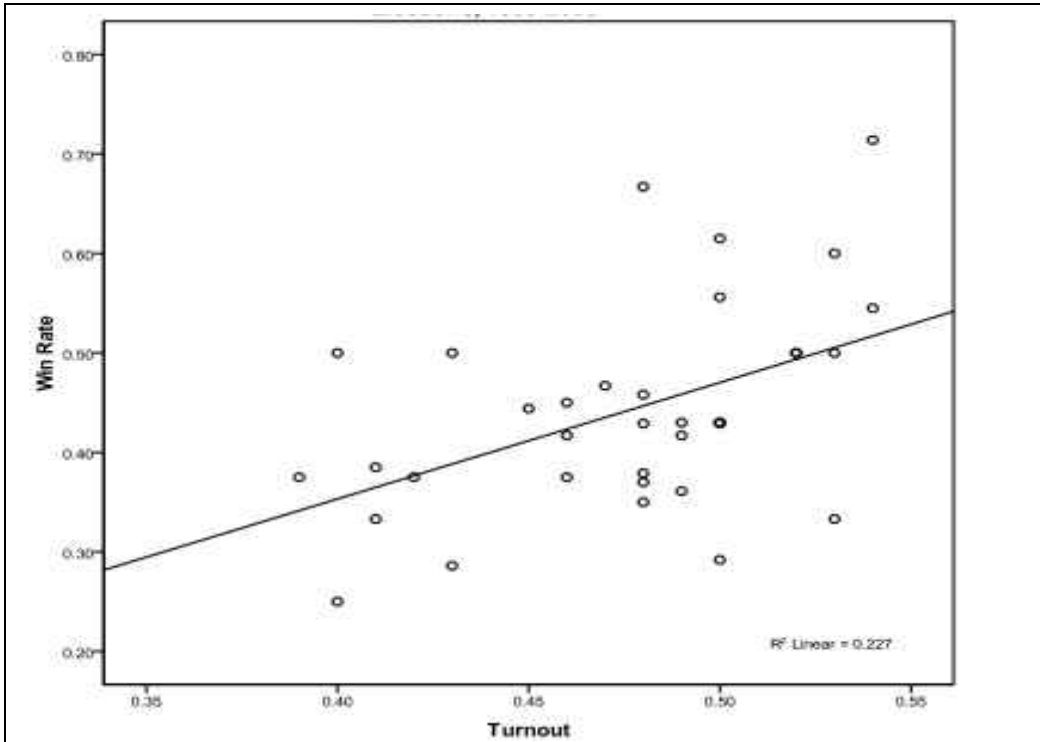


Figure 2. Win rate compared to voter turnout in NMB elections from 1999 through 2003. Adapted from the “Prepared Statement for the National Mediation Board Open Meeting Re: RLA Rulemaking Docket No. C 6964,” by K. Bronfenbrenner, 2009, <http://www.nmb.gov/documents/representation/proposed-rulemaking/bronfenbrenner.pdf>. Copyright 2009 by Dr. Kate Bronfenbrenner. Adapted with permission.

In contrast to NMB monitored elections, both labor and management strive to educate and motivate employee participation in NLRB monitored union elections as the decision of the membership to vote is paramount to the outcome. NLRA elections average between an 80 and 90 percent voter participation rate while RLA participation rates are much lower (Bronfenbrenner, 2009). Comparing the distributions in Figures 1 and 2 lends visual support to this premise. NLRB elections in Figure 1 show a relatively close distribution associated with higher percentages of voter turnout in the sample population. Figure 2 shows a more even distribution across the sample suggesting less concentrated voter turnout. This is not to imply that voter suppression is causal in

explaining the differences between distributions, it simply lends credit to the argument for change as some sort of difference between election platforms is present.

Despite sound arguments for change, amending a functionally viable and proven process tends to expose the rationale for such a decision to increased scrutiny. While not admonishing the original election procedure, the majority opinion of the Board stated the original election design was purely for administrative purposes and the solidarity of RLA labor groups is more a function of Board mediation than election protocol or other attributes. The Board's mediation function is indeed a valuable component of labor peace and solidarity; however, suggesting original election design was born of administrative needs may neglect an impressive track record of harmonious elections (National Mediation Board, 2009b). Opponents to change highlight various strengths beyond Board mediation as evidence and motivation to maintain the traditional election process.

Arguments against change

Perhaps the most passionate and articulate argument for maintaining the Board's election status quo originated from NMB Chairwoman Elizabeth Dougherty.

Chairwoman Dougherty expressed her rationale as the sole dissenting voice as follows:

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....This duty stems directly from our statutory mandate to "avoid interruption to commerce or the operation of any rail or air carrier."....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 certifications under the RLA must cover an entire transportation system - often over enormously wide geographic areas with large numbers of people. (National Mediation Board, 2009b, p. 56753)

Chairwoman Dougherty's assertions emphasize the simple reality that the manner in which the Board has administered various aspects of the RLA has ultimately served the core tenets of the Act effectively (Michels, 2010). Any departure from historical precedent stands as a threat to the Board's primary tasking and accordingly warrants caution and due process.

This shared concern is also expressed by industry executives. Ms. Joanna Moorhead voiced the rail industry's concern stating:

...altering the voting rules to allow certification of a representative by [a] small but a vocal minority of eligible voters could undermine the stability of labor relations in our industry, by increasing the frequency of attempts to replace existing unions with rival organizations. This effects stability of labor management relations as well as employee morale and can interfere with operational cohesiveness. (National Mediation Board, 2009a, p. 30)

It is not surprising a certain level of industry anxiety is present in the face of this particular change. Considering labor cost is one of the largest line item expenses in both industries, a more heavily unionized work force represents potential cost increase which could erode already narrow profit margins (Michels, 2010). Add to the financial concern the sudden and aggressive manner in which the change was implemented and the environment can quickly progress from contentious to downright hostile. Consequently,

the opposition to change was not finished with their legislative battle to rescind the Board's decision.

Post-change developments

Armed with decades of RLA precedent and success, the lobbying wing of the opposition took their battle to Washington D.C. in attempt to rescind the change via Congressional legislation. Initial attempts to completely rescind the change were introduced in a 2011 Federal Aviation Administration modernization bill. A stalemate over the contents of the bill developed between the politically polarized Houses of Congress delaying action on the proposal for over a year (Jerman, 2013). Ultimately, the two Houses compromised and agreed to leave the 2010 rule change in place; however, the following language was added to the RLA:

The Mediation Board...shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class. (FAA modernization and reform act of 2012, p. 126 STAT. 147)

Previous to this amendment, only 35 percent of the employees of a craft or class were required to show interest in representation (Siegel, Hollinger, Giddon, & Waglow, 2012). Jerman (2013) also highlights that in addition to the increased showing of interest requirement, an additional amendment was added to the RLA requiring the Board to conduct public hearings as part of any new rulemaking effort. No explanation was given by lawmakers responsible for raising the showing of interest threshold or the need for public hearings prior to installation of new Board policy (Jerman, 2013). Jerman (2013)

does not attempt to surmise the motivation for the policy changes but does emphasize the recent amendments, “clearly impose specific restrictions on the NMB’s investigation of a representation dispute” (para. 19). While political motivations and rationale for the recent RLA amendments may never be known, it must be considered whether the changes are simply sound policy or a form of political referendum on the Board’s 2010 policy change.

Research Questions

Stakeholders from both sides of this issue have made lucid and rational arguments supporting their respective positions. Consideration for all arguments must include the reality that individuals tasked with hypothesizing the outcome of the Board’s election change at the time of implementation did so in a relative vacuum void of quantifiable data. Almost four years removed from the change, with ample opportunity to analyze factual data, the industry continues to result to conjecture as a form of gospel. This study seeks to resolve arguments postulated throughout the airline and rail industries as well as the Nation’s Capital. Political lobbying, speculation, and emotional based disputes have no place in an environment capable of producing results based on data and fact.

The primary argument solicited by stakeholders opposed to change surrounds the belief that new election rules will generate large increases in unionization efforts. To address this concern, differences in unionization activity before and after the rule change are analyzed. Additionally, consideration was given as to how the new voting procedure affects the rail and airline industries differently. Finally, this study assess whether the post-change RLA voting environment is conducive toward higher voter turnouts. Such a discovery may indicate the new procedure has reduced voter suppression and provide

validating evidence to the supporters of the Board's change. In support of resolving these industry arguments, this study is based on the following research questions:

1. To what extent has the new NMB election procedure increased the number of successful unionization efforts?
2. To what extent has the new election procedure impacted the frequency of unionization efforts comparing airline to railway labor groups?
3. To what extent has the new NMB election procedure increased voter participation?

Limitations and assumptions

Research analysis for this study is dependent upon data provided by the Federal Government. It is assumed supplied data is complete and without error. Admission or recognition to the contrary may impact the outcome of this study. Additionally, this research assumes a fixed time window for analysis. Data collection and assessment outside of the stipulated time frame may influence the results of this study. Finally, conclusions and inferences drawn from this study are limited exclusively to industries covered by the RLA.

CHAPTER II

METHODOLOGY

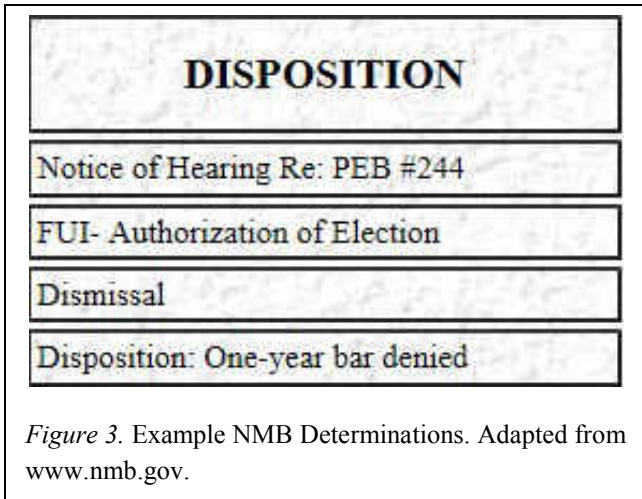
Resolution to the questions posed by this thesis attempt to resolve various concerns expressed by industry experts in response to the NMB's change in certification procedure. Quantitative analysis of union certification elections in the airline and railroad industries was performed to ascertain the impacts of the Board's decision on industries covered under the governance of the RLA. Previous analysis into the impact of the Board's decision was studied in a limited fashion by Elsenrath (2014) utilizing a smaller sample limited to airline employees only. Elsenrath's (2014) work assessed the impact of unionization efforts by airline employees before and after the Board's rule change and did not consider a larger sample, multiple RLA industries, or voter participation. This thesis is the only known analysis of the Board's change covering all RLA industries utilizing a comprehensive research question framework designed to assess the impact of the Board's decision from multiple vantages.

Sampling Procedure

Results from union certification elections were retrieved from the NMB's website <http://www.nmb.gov/services/representation/determinations/>. Representation cases were accessed and data collected for all available railroad and airline elections inside the sampling window. The sampling window included data from union elections occurring on or after January 1, 2007 through December 31, 2013. This window represents a

balanced timeframe of three and half years on either side of the July 1, 2010 rule change. All classes and crafts of RLA laborers were included for analysis.

As displayed in Figure 3, determinations related to any Board investigation may include matters unrelated to union elections such as a notice of hearing or findings upon investigation (FUI).



Dispositions resulting in any action other than Certification or Dismissal were filtered and omitted from the sample. This was done to provide a sample consisting of labor groups only involved in unionization activity. Cases were then filtered based on NMB statements of qualification to this study. Statements of qualification incorporate a narrative provided by the Board clarifying whether a given labor group was previously represented in whole or in part by a labor union. Cases sampled for this study contained NMB narratives ensuring the specific sample was not previously represented by a labor union. Appendix A contains an example of qualifying statement and Appendix B contains an example of a disqualifying statement. Cases containing disqualifying statements were filtered and excluded.

Elections remaining after filtering and occurring under traditional NMB election procedures were categorized under the heading old rules; elections occurring after the change were categorized under the heading new rules. It is important to note that while the sample time frame is balanced, certification elections starting prior to but near the July 1, 2010 change were frequently not resolved until after July 1, 2010. Such results were categorized under the old rules based on the election procedure in use at the time of the election.

Sample size and power analysis

Sample size was dictated as a function of elections remaining after previous filters were applied. Filtering criteria yielded 90 elections grouped into the old rules with a sample size of participating voters $N = 19365$. Fifty-four elections were grouped under the new rules with a sample size of participating voters $N = 15421$. Specific research questions required utilization of different statistical tests; accordingly power analysis is dependent on the test utilized.

A priori sample size estimates for the first two research questions were accomplished utilizing G*Power software version 3.1.3 (Faul, Erdfelder, Lang, & Buchner, 2007). Research questions one and two compare categorical variables utilizing Pearson's chi-squared model. G*Power computations calculated a total required sample size of $N = 88$ based on an effect size of $w = .3$, error probability of $\alpha = .05$, and power of $\beta = .8$. This agrees with Field (2009) who recommends a sample size $N = 85$.

The third research question utilized a t -test to assess voter participation between old rules and new rules. Considering the population of the old rules group is 125% larger than that of the new rules group, G*Power software version 3.1.3 (Faul et al., 2007) was

utilized to account for the variance in size between the two sample populations. Post Hoc analysis utilizing the resultant effect size $r = .32$, error probability $\alpha = .05$ and the sample size of the old rules group $N = 90$ and the new rules group $N = 54$ yielded a power of .58. This is below the power threshold established by Field (2009) suggesting a larger sample is required. However, when looking at the voting participants contained in the sample, which is the basis for statistical computations, the total population swells from $N = 144$ to $N = 61682$. Post Hoc analysis based on total available population yields a power of 1.0 indicating the test is capable of detecting even the smallest effect.

Research Design

This research did not utilize an experimental design involving direct contact with human subjects. Accordingly, randomization or masking of data was not considered. Data collected from the NMB website was manually entered into Microsoft Excel¹ and grouped into two separate worksheets labeled old rules and new rules. Delineation between which cases were assigned to specific worksheets was based on the rule set utilized to determine the election outcome as determined from published NMB election material. Data was inputted sequentially based on election number found on the NMB's website. Once recorded and categorized, election data was entered into IBM SPSS² for statistical analysis.

Research question one compares categorical variables of election results based on rule sets, question two compares categorical variables based on industry type. Pearson's chi-square test was selected for both research questions one and two due to its relative

¹ Microsoft and Excel are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

² IBM and SPSS are trademarks of International Business Machines Corporation, registered in many jurisdictions worldwide.

simplicity to compare observed frequencies against expected frequencies in given categorical variables (Field, 2009). The alpha level for significance was established at $\alpha = .05$. Pearson's chi-square is expressed in Equation 1 by:

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

The third research question compares the difference in voter participation between the two election groups. The *t*-test was selected to compare the two group means of voter participation between rules sets. The alpha level for significance was established at $\alpha = .05$. Due to the difference in sample sizes between groups, a pooled variance independent *t*-test was utilized and expressed in Equation 2 by:

$$t = \frac{\bar{x}_1 - \bar{x}_2}{\sqrt{\frac{S_p^2}{n_1} + \frac{S_p^2}{n_2}}} \quad (2)$$

Additionally, post analysis effect size for the third research question was calculated as expressed in Equation 3 by (Field, 2009):

$$r = \sqrt{\frac{t^2}{t^2 + df}} \quad (3)$$

Finally, consideration must be given to the characterization of voter participation as applied to the third research question. Active voter participation is a process whereby an individual participating in an RLA certification election casts a ballot. Active voter participation is applicable to elections taking place under either the old or new rule sets. Passive voter participation pertains to voters who did not cast a ballot but were assigned a role in the election. Passive voter participation is only applicable to elections taking place

under the old rules. Participation rates and data as applied to this thesis pertain to active voter participation in an election, regardless of the utilized rule set.

CHAPTER III

RESULTS

Table 1 highlights the general breakdown of sampled data. The disparity between total elections occurring under the old and new rules is due in part to the fact some of the old rule elections were not resolved after the July 1, 2010 change. Considering the sampling window was balanced based on time and not number of elections, this reality effectively encroaches on the new rule election sampling window and representative number of cases. It is also worthy of note to highlight the mean populace difference between industries. This difference forms the foundation for comparing the impacts of the Board's change between the two industries.

Table 1. Descriptive Statistics - Election Breakdown by Industry

Industry	Number of Old Rule Elections	Number of New Rule Elections	Old Rule Elections - Mean Populace	New Rule Elections - Mean Populace
Airline	41	26	885	753
Railroad	49	28	39	14
Total	90	54	924	767

Question One

The first research question seeks to determine the effect of the new NMB voting procedure on unionization activity. A total of 144 qualifying elections were analyzed to determine if the new NMB rules impacted unionization efforts. 90 elections occurred

under the authority of the old NMB elections rules and 54 elections occurred under the new rules. Table 2 highlights that union certification occurring under the new rules was observed in a slightly higher number of elections ($N_o = 37$) than expected ($N_e = 35.6$). Elections occurring under the old rules resulted in fewer certifications ($N_o = 58$) than expected ($N_e = 59.4$). Additionally, union certification occurred in 71% of elections occurring under the new rules compared to 64% of elections occurring under the old rules.

Table 2. Cross Tabulation of Rule Sets and Results

Rule Sets		Results		χ^2
		Certification	Dismissal	
Old Rules	Count	58	32	.250*
	Expected Count	59.4	30.6	
	Std. Residual	-.2	.2	
New Rules	Count	37	17	
	Expected Count	35.6	18.4	
	Std. Residual	.2	-.3	

Note. * $p > .05$

Despite cross tabulation data and certification percentages suggesting the new rules may have influenced unionization activity, chi-square results indicate the NMB rule change on unionization efforts was not significant $\chi^2 (1) = .25, p > .05$. This suggests unionization efforts are just as likely to occur under the new rules as they were under the old rules.

Question Two

While both industries are covered under the governance of the RLA, a noticeable difference exists in the size of each industry's labor groups captured in the sampling

window. Table 1 highlights that the mean populace of airline labor groups seeking certification under the old rules greatly exceeded the mean size of railroad labor groups. Similar results were found when comparing industries sampled under the new election rules. Because of the noticeable difference in means between labor groups, the second research question was designed to assess the impact of the new election procedure between industries.

A total of 144 qualifying elections were analyzed to determine if the new NMB rules impacted unionization efforts between industries. The railroad industry was responsible for 49 of the 90 old rule elections and 28 of the 54 new rule elections. Table 3 highlights that elections resulting in union certification under the old rules slightly favored the railroad industry as the observed elections ($N_o = 35$) exceeded the expected value ($N_e = 34.2$). This is in contrast to the airline industry where observed elections ($N_o = 23$) were slightly less than expected ($N_e = 23.8$). Conversely, new rule elections resulting in union certification appear to slightly favor the airline industry as the number of elections ($N_o = 16$) were higher than expected ($N_e = 15.2$) while railroad certifications ($N_o = 21$) were slightly less than expected ($N_e = 21.8$).

Table 3. Cross Tabulation of Certification Rules Sets and Industry Type

Certification Rule Sets		Industry		χ^2
		Railroad	Airline	
Old Rules	Count	35	23	.091*
	Expected Count	34.2	23.8	
	Std. Residual	.1	-.2	
New Rules	Count	21	16	
	Expected Count	21.8	15.2	
	Std. Residual	-.2	.2	

Note. * $p > .05$

What is not obvious from Table 3 is whether a relationship exists between industries as related to the new election procedure. Chi-square analysis reveals the association between the airline and railway labor groups and their unionization efforts is not significant $\chi^2 (1) = .091, p > .05$. This suggests the new election rule has not impacted unionization efforts differently between industries.

Question Three

The third research question seeks to assess changes in active voter participation across both industries. Table 4 highlights the average mean participation rates of all elections occurring under both rule sets. What is noticeable is the 85 percent mean participation rate under the new voting rules compared to only a 59 percent mean participation rate under the old rules.

Table 4. Participation Group Statistics

Rule Sets	Mean Participation	Std. Deviation	Std. Error Mean
Old Rules	.5928	.24944	.02629
New Rules	.8534	.13405	.01824

On average, participation in union elections under the new rules has increased ($M = .8534$, $SE = .01824$) compared to participation under the old rules ($M = .5928$, $SE = .02629$). This difference was significant $t(140.597) = -8.141$, $p < .001$; and represents a medium-sized effect $r = .32$. These results indicate the increase in voter participation is not by chance and the new election rules have impacted voter turnout.

CHAPTER IV

DISCUSSION

Impacts on Unionization

The first research question strikes at the central focus of the debate surrounding the NMB mandated election change; specifically, to what extent has the new NMB election procedure increased the number of successful unionization efforts? Media influence and biased industry opinions portray very different and conflicting outcomes of the NMB's change that can finally be addressed via factual assessment. As indicated by the results of the analysis, the NMB's rule change did not result in a significant change in unionization activity in either the airline or railroad industries.

Ironically, this reality quells central arguments from both allies and opposition of the rule change. It becomes increasingly difficult for the opposition to claim massive increases in unionization as a result of the rule change when it is simply not occurring. Likewise, the perceived notion by advocates for change that the atmosphere for labor organization was previously laden with hostility to the point it impacted the ability of laborers to unionize fails to materialize in a substantive fashion as witnessed by a lack of significant increase in unionization. What is curious is the reason why an arguably substantial procedural change has had relatively no impact on unionization efforts?

Various theories exist to explain the rationale for why workers elect to unionize that expands beyond the form of the election process itself. One such argument highlights the terms of the existing labor contract as the source of motivation for unionization.

Flynn and Donnelly (2012) demonstrated that employees working under labor contracts that remove all possibility of positive reciprocity between employer and employee are three times more likely to form a labor union than those employees who are able to reap the benefits of positive reciprocity. Positive reciprocity can be defined as enhanced employee incentive in exchange for increased labor (Flynn & Donnelly, 2012). Forms of positive reciprocity may include increased earning potential, time away from work or other associated benefits.

Various other studies support Flynn and Donnelly's (2012) findings and identify additional variables considered by employees when contemplating unionization. Prior to unionization, employees tend to consider factors such as wage level, intrinsic job satisfaction, satisfaction with administration, union instrumentality, and unionization itself (Premack & Hunter, 1988). Such variables are frequently considered not just individually but collectively by employees which may slow the progression toward forming or joining a union.

The concept of positive reciprocity as well as other variables influencing employees deciding to form a union should not be construed as causal in explaining the lack of significance found in the first research question. Instead, alternative theories provide direction for additional and refined focus in future studies of RLA trends in unionization. Additionally, the concepts mentioned failed to be considered in the core arguments made by industry and labor constituents during the vetting process surrounding the NMB's procedural change. Accordingly, future research should consider the voting motivations and characteristics of laborers concerning unionization in search

of relationships that foster explanation for how or why a particular RLA demographic elects to unionize.

Unionization Differences Between Industries

The first research question encompassed the entire demographic and population of RLA operators but did not assess any differences between industries. The genesis for the development of the second research question surrounded the disparity in mean labor force populace between the airlines and railroads. Despite the fact that the railway labor force unionizes in much smaller pockets of employees when compared to its airline brethren, significance was not achieved when comparing industries. This suggests the NMB's change did not alter election activity when comparing one industry to another.

Postulating theories as to why a difference does not exist despite the variance in sample means returns the discussion to familiar territory. Specifically, what is the true motivation for unionization? As previously mentioned, numerous variables affecting individual employees can form synergistic relationships which motivate an individual or group of individuals to consider unionization (Deshpande, 1995). This concept has yet to be defined by employee size yet meta-analysis across labor forces of varying size conducted by multiple researchers (Premack & Hunter, 1984; Deshpande, 1995) infer labor size may be irrelevant.

Another factor in the relationship between RLA carriers relevant to this study concerns the difference in industry culture between airline and rail labor groups. Speaking to the cultural state of affairs in the rail industry, Rosner (2001) highlights that for true cultural change to occur the railroad industry must, "eliminate abusive managers and make such behavior a dismissible offense" (para. 7). Rosner (2001) also highlights

the archaic nature of railroad management structure and general practice which negatively contributes to the overall culture. With a pervasively negative management style in effect, it has to be considered how such an environment impacts the organizational efforts of non-unionized employees especially considering the factual reality that those seeking representation are often small in number.

By comparison, the airline industry has several examples of cooperative cultures that seek to foster mutual strategies benefitting employer and employee alike regardless of union affiliation. Southwest Airlines remains a marquee example of this philosophy as the airline is heavily unionized yet retains excellent employee relations (Quick, 1992). This is not to imply the airline industry is immune from negative relationships with its employees. It merely suggests that any sort of a positive relationship may have an effect on unionization efforts that differ from similar efforts in the rail industry.

The lack of significance when comparing the effects of the NMB's change on the labor groups of the rail and airline industries may simply suggest the change is inconsequential to either industry. Despite this potential, it is still worthwhile to consider other possibilities specific to the individual labor groups and their membership. Any additional research into this subject matter should consider the aforementioned concepts of employee motivation for unionization as well as the cultural influence of a given industry on employee groups of varying size.

Voter Participation Differences

Results based on participation rates pre and post NMB rule change show a significant increase in active voter participation during union certification elections. This supports the data and beliefs of many supporters of the rule change who cited voter

suppression as a primary issue in NMB elections occurring under the old rules. What the results fail to address is the reason why participation in certification elections changed so substantially after the rule change was implemented.

The NMB's recent rule change effectively aligned NMB election protocol with that of NLRB elections. Traditionally, NLRB elections garner participation rates in excess of 80 percent of eligible voters which eclipses not only historic trends in NMB elections but also the national average of 50 percent participation in political elections (Block & Roomkin, 1982). The decision of a potential voter to participate in an election is theorized to be dependent upon several variables. The first voter based consideration addresses the benefit of one party winning over the other party, in this case the union or the company. Second, an individual's decision to participate in an election will depend upon that person's perception of how much of a difference their vote will make in the overall election. Finally, the voter will consider the ease with which they can participate in a given election (Downs, 1957). Further analysis of the new NMB voting environment incorporating the recommendations of Downs (1957) begins to expose potential reasons why the new procedure has generated higher participation rates.

It is likely the importance of one party winning over another is of similar weight to the individual voter regardless of whether the new or old NMB procedure is utilized. Individuals voting to implement a union are typically passionate about their position on the matter which is universal regardless of voting protocol (Block & Roomkin, 1982). Likewise, the ease with which individuals can participate in the election itself is relatively simple in the modern era as witnessed with the advent of internet and telephone based voting. Where obvious change has occurred, which supports increased voter participation

based on guidance supplied by Downs (1957), concerns the importance of the individual's vote on the election outcome. In this specific area the value of the vote has changed dramatically under the new rules as individuals who choose to abstain from voting are no longer assigned a role in the election. Additionally, as suggested by Bronfenbrenner (2009), under the old rules, the company's primary focus was to motivate a lack of voter turnout yielding an increase in votes against unionization. By comparison, under the new rules, both the company and the union advocate for voter turnout in support of their respective positions which may persuade the individual voter's perception regarding the importance of their vote. Considering NMB elections now follow a similar format to NLRB elections with both the union and the company sharing vested interest in encouraging voter turnout, a simple analysis of NLRB elections can stress the importance of voter participation.

Data from recent NLRB elections in 2014 highlights the extremely close nature of union certification campaigns. Specifically, of the 70 NLRB certification elections occurring in January of 2014, unions won 52 percent of the elections with an average of 3.2 votes separating the outcome on a per election basis (National Labor Relations Board, 2014). Similar ratios are found in NLRB data sets from prior months and highlight the importance of voter participation in elections as the margins for victory are relatively narrow. If NMB elections ultimately parallel NLRB elections, it is likely NMB participation rates will continue to remain high moving forward. This logic is not only supported by Downs' (1957) criteria but is also reflected in the significant findings of this study.

Conclusion

On June 23, 1925, Winston Churchill (1925) stated the following in a speech to the House of Commons, “there is nothing wrong in change, if it is in the right direction. To improve is to change, so to be perfect is to change often” (p. 2). It is highly unlikely Churchill’s statement was ever intended to relate to a matter of labor law, yet it is very fitting for the subject matter of this study. The quintessential question seeking resolution in this thesis is echoed in Churchill’s quotation; was the NMB’s decision to alter decades of industry precedent a change not only in the right direction but also an improvement upon the preexisting rule?

The foundation of the RLA inclusive of its primary tenants was well maintained throughout the course of its history by an election rule that was only recently deemed outdated and ineffective. Pundits for change, including a majority of the Board, argued that despite successful historical precedent, the voting process for RLA elections unjustly exposed employees to suppression efforts and generally did not align well with every other piece of electoral legislation in the United States. Their argument is not only rationale and sound but also supported by ample evidence.

Opponents to change are armed with decades of data showing impressive levels of stability in the airline and rail industries that can be connected to the original election rule. Opponents also speculated that updating the election rule set may very well establish a relatively easy pathway toward unionization. If realized, such an increase in organized labor would represent a substantial financial burden to both industries. Again, rational and articulate arguments supported by historical precedent are continually lobbied in support of a return to original election protocols.

This thesis provides the industry with needed resolution to a colossal struggle between two goliath arguments. Lack of significance in union certification efforts between pre and post rule change elections is the first evidentiary step in resolving industry arguments. This reality refutes speculation by opponents to change that massive waves of labor organization would occur in the wake of the Board's ruling. Essentially, new NMB rules have not made an impact on union certification efforts.

This research also exposed the reality that the rule change does not impact certification efforts of the airline and rail industries differently. This is an important realization as the two industries exhibit unique characteristics in terms of mean labor size. A lack of significant difference between industries allows the findings of this research to apply to all RLA constituents affected by the rule change. This serves to strengthen the results of this research by refuting future arguments targeting individual RLA industries or labor groups.

Finally, the reality that a significant increase in RLA voter participation has occurred is not only encouraging but addresses one of the primary concerns of the supporters for change, namely voter suppression. It is difficult to argue against the finding that an environment capable of producing greater voter participation is not only more democratic in nature but also healthier for the overall culture. Active involvement in any voting process suggests a demographic of voters who are both motivated to participate and hopefully educated in part or whole on their rationale for casting a vote in a particular direction. Such concepts serve the RLA well as a union elected via an election bolstering high participation rates strengthens the resolve and solidarity of the workers; a principle central to the notion of uninterrupted commerce.

Future research into the wisdom of the NMB's decision should focus on employee motivation to unionize in RLA industries. Despite the potential for an easier path toward unionization under the new rules, the lack of significance begs the question as to why an increase was not present. Additionally, cultural influences on the laborers in the rail and airline industries should be a consideration for future research. The nature of the relationship between management and labor and the impacts of that relationship on unionization efforts may assist in painting a more comprehensive picture surrounding why RLA laborers choose to organize. Finally, continued growth in sample size of election efforts will provide an opportunity to revisit the findings of this study in an effort to support these results or perhaps expose new trends that develop as a function of a maturing body of legislation.

Regardless of the focus of future research, at present it is safe to suggest the assertions of Churchill are affirmed as it relates to this research. The effect of the NMB's decision to change certification procedures has proven to be a change in the right direction. Updated election protocols benefit RLA workers via greater election participation rates while not threatening the financial liability of their employers. As previously mentioned, the wisdom of many impactful legislative decisions is a function of the course of future history. In this matter, time has served the wisdom of the Board's decision quite well.

APPENDICES

Appendix A
Qualifying Statement



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
REPRESENTATION OF
EMPLOYEES
of
ALLEGiant AIR
Pilots

39 NMB No. 62
CASE NO. R-7332
CERTIFICATION
August 24, 2012

The services of the National Mediation Board (Board) were invoked by the International Brotherhood of Teamsters on June 29, 2012, to investigate and determine who may represent for the purposes of the Railway Labor Act (RLA), as provided by Section 2, Ninth, thereof, personnel described as "Pilots," employees of Allegiant Air (Carrier).

At the time this application was received, these employees were unrepresented.

The Board assigned Investigator Angela I. Heverling to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Pilots, and by direction of the Board, the Investigator was instructed to conduct an election to determine the employees' representation choice.

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Appendix B
Disqualifying Statement



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the REPRESENTATION OF EMPLOYEES of PINNACLE SYSTEM Flight Attendants	39 NMB No. 58 CASE NO. R-7324 CERTIFICATION July 17, 2012
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The services of the National Mediation Board (Board) were invoked by the Association of Flight Attendants-CWA on June 9, 2011, to investigate and determine who may represent for the purposes of the Railway Labor Act (RLA), as provided by Section 2, Ninth, thereof, personnel described as "Flight Attendants," employees of Pinnacle System (Carrier).

At the time this application was received, these employees were represented in part by the United Steelworkers of America (USW) and in part by the Association of Flight Attendants-CWA (AFA-CWA).

The Board assigned Investigator Eileen M. Hennessey to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the craft or class of Flight Attendants, and by direction of the Board, the Investigator was instructed to conduct an election to determine the employees' representation choice.

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