

National Mediation Board

Docket No. C-7198

March 19, 2019

Comments submitted by: Watco Transportation Services, L.L.C.



315 West 3rd Street
Pittsburg, KS 66762
Phone: 620-231-2230
Fax: 620-231-0812

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National Mediation Board
1301 K St NW #250E
Washington, DC 20005

Re: Decertification of Representatives, Docket No. C-7198, Pages 612-614, January 31, 2019

Dear Board Members:

We write this letter in support of your January 31, 2019 proposal set forth in Docket No. C-7198. First, thank you for the opportunity to be heard in this matter. We hope this letter helps you in your decision-making process.

Watco Transportation Services, L.L.C., as the largest privately held shortline railroad company in the United States, employs hundreds of employees (“Team Members”) subject to the rules set forth by the Railway Labor Act, and enforced by your Board. On five (5) different occasions, Team Members at Watco owned shortline railroads have had to use the “straw man” process you seek to eliminate through your proposal. It is for this reason and on behalf of our Team Members that we feel compelled to submit comments.

Position

Before going into legal detail, we’ll simply state that the issues at hand for us are fairness, and a Team Members right to choose whether or not s/he is represented by a labor union. The current process you seek to eliminate hinders a Team Members’ right to choose and creates an uneven playing field. The current expectation is that a Team Member, often with no knowledge of the innerworkings of the NMB, must become an expert on a convoluted process to exercise his/her right to choose.

Under 45 U.S. Code §151a – General Purposes it states, in pertinent part, “The purposes of the chapter are: (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.” Our understanding of this is that neither a company, a union, nor even a government entity will stand in the way of an employee’s right to choose his/her representative.

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Similar language can be found under 45 U.S. Code §152, Fourth, in which an “Employee” is again given the “right to organize and bargain collectively through representatives of their own choosing.” When giving someone the absolute right to choose their representative, this must include the choice to have no representative if a Team Member so decides and, of equal importance, an avenue to use to exercise this choice. We believe your proposed rule does exactly this.

Proposed Rule

In your Proposal of January 31, you first propose to modify 29 CFR Part 1203 – Applications for Services §1203.2 to include language that applies dually to both certifications and decertifications. Watco is in full support of this proposed change because it is equitable. It restores balance and creates an even playing field for the Team Member who wants union representation, and a Team Member who no longer wants a union to represent him/her. Your proposed changes to 29 CFR Part 1206 §1206.2, §1206.4 and §1206.5 are similar in that they all seek to create a fair process. Watco will always support a process that is fair and gives its Team Members the right to choose without imposing unfair burdens on them.

Supporting Evidence

Evidence to support the removal of the current “straw man” process can first be found through the absence of this process anywhere in the current statutes. Not only is this process unfair, but unnecessary. It is our opinion that your removal of this process is simply making the process what the Railway Labor Act initially intended when it sought to give employees the freedom to choose.

In addition to this, the Fifth Circuit in *Atchison, T. & S.F. Railway*, 8 NMB 469, stated that the “implicit message throughout the Act [Railway Labor Act] is that the ‘complete independence’ of the employees necessarily includes the right to reject collective representation.”

More support for this notion is garnered from *International Brotherhood of Teamsters v. Brotherhood of Railway, Airline and Steamship Clerks*, where the United States Court of Appeals for the District of Columbia stated, in summary, “it is inconceivable that the right to reject collective representation vanishes entirely if the employees of a unit once choose collective representation.” We have seen first-hand at Watco instances where Team Members changed their mind and no longer wanted a union.

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COMPANIES

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Summary

Watco is a Company with longstanding values of fair treatment and doing the right thing. That's all we're asking for from the Board, to treat matters of wanted decertification as fairly as you do matters of certification. Remove the unnecessary burden placed on employees through the current process and give them a process whereby they can truly exercise their choice. Thanks again for your time in this matter and we look forward to seeing your proposal pass.

Respectfully,

Richard B. Webb
Executive Chairman
Board of Directors
Watco Companies, L.L.C.

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