

National Mediation Board
Notice of Proposed Rulemaking
Docket No. C-7198
84 Fed. Reg. 612 (Jan. 31, 2019)

Comments of JetBlue Airways Corporation

JetBlue Airways Corporation submits the following comments in support of the Notice of Proposed Rulemaking issued by the National Mediation Board on January 31, 2019. For the reasons below, JetBlue supports the Board's proposed rule change.

First, the proposed rule recognizes and protects employees'¹ freedom of expression, guaranteed to them under the Railway Labor Act. *See* 45 U.S.C. § 151a(2), (3) (the stated purposes of the RLA include "to forbid any limitation upon freedom of association among employees" and the "complete independence of ... employees in the matter of self-organization"). Employees are free to decide for themselves whether they want to be represented for collective bargaining purposes. *See, e.g., Brotherhood of Railway and Steamship Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650, 670 (1965) ("ABNE"); *International Brotherhood of Teamsters v. Brotherhood of Railway, Airline and Steamship Clerks*, 402 F.2d 196, 202 (D.C. Cir. 1968). The proposed rule allows employees to exercise that choice in a direct and straightforward manner.

Second, the proposed rule is consistent with the Board's statutory obligation to serve as a neutral "referee" in representation matters. *Switchmen's Union v. NMB*, 320 U.S. 297, 304 (1943). The Board has no stake in the outcome of a representation dispute. "It simply investigates, defines the scope of the electorate, holds the election and certifies the winner." *ABNE*, 380 U.S. at 667. *See also Switchmen's*, 320 U.S. at 350 (the Board is "to find the fact and then cease"). Otherwise, the Board risks "cross[ing] over from being a disinterested 'referee' to being a participant." *Russell v. NMB*, 714 F.2d 1332, 1347 (5th Cir. 1983).

In conclusion, the Board's proposed rule change is consistent with key principles of the RLA: freedom of employee expression and Board neutrality. JetBlue, therefore, supports its adoption.

Dated: April 1, 2019

Respectfully submitted,

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¹ The term "employees" is common vernacular in the industry and the statute and is therefore used herein to avoid external confusion; but at JetBlue, we are all Crewmembers (not employees).