



# Legislative Bulletin

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## S.J. Res. 30

*Providing for congressional disapproval of the rule submitted by the National Mediation Board relating to representation election procedures.*

On May 11, 2010, Senate Republicans introduced a resolution (**S.J. Res. 30**) that would disapprove and nullify a new rule submitted by the National Mediation Board to allow a majority of ballots cast to determine union representation. The new rule that Senate Republicans oppose is consistent with statute, was considered in an open and transparent process, and makes union election procedures for airline and rail workers fairer and more consistent with democratic norms.

Under the old rules, the NMB counted all workers who did not vote in a representation election as a vote against a union. There are, of course, several reasons why a person may not vote in an election, and it makes no sense to automatically and arbitrarily assign a “no” vote to all non-voters. As a result, the old process was structurally tilted against union representation, despite the Board’s clear mandate to promote collective bargaining. More importantly, counting all non-voters as no votes is unfair to the majority of those who choose to vote.

The new NMB rule provides workers with an opportunity to vote either for a union, against a union, or to abstain from voting and have a voting majority decide the outcome. Despite claims from the supporters of the resolution, this is not “card-check” or “minority rule.” Rather, it is the same procedure that we use to elect Senators, Members of Congress and is found throughout our democratic society.

As Democratic Senators wrote in a letter to the National Mediation Board: “[the] same democratic process that governs other elections – requiring a simple majority of those who cast a ballot – should be extended to workers covered by the Railway Labor Act... Aviation and rail workers should not be subject to a different and more onerous process when deciding whether to choose union representation.” [Letter to the NMB, [12/7/2010](#)]

The Senate is scheduled to consider this resolution on September 23, 2010.

## Background

The National Mediation Board governs labor relations in the rail and airline industries, much like the National Labor Relations Board does for other types of private sector workers. The Board recently promulgated a new regulation changing the procedures that govern union

elections in these industries. Prior to the recent change, in order for rail and airline workers to gain union representation, a majority of all eligible voters had to cast a vote for the union. Workers who did not vote, for whatever reason, were counted as a vote against unionization. This is contrary to how elections function for other types of workers under the *National Labor Relations Act* (**29 USC §151-169**), and to basic principles of democracy. There are many reasons why a person might not vote. For example, he or she might be ill, might have forgotten to vote, or simply might be disinterested in the result. Under the old rules, all such voters were arbitrarily assigned the position of being opposed to the union, regardless whether that was their actual point of view.

Last November, the NMB published a proposed rule that would make these elections more fair and democratic by requiring only a simple majority of those who cast a ballot to choose union representation. The new rule, very simply, recognizes that in an election, the side with the most votes wins.

The new rule was proposed and implemented through appropriate channels. The notice of proposed rulemaking included a detailed explanation of why the Board was considering this change; allowed parties 60 days to comment; and provided a detailed rationale for the proposal. The Board considered nearly 25,000 public comments and held a public meeting where over 34 members of the public testified. These new rules were ultimately finalized in May of this year. [95 *Fed. Reg.* 26062]

Senator Isakson opposes the new rules, arguing that the Board did not have the legal authority to make this change. This argument was rejected by a federal district court reviewing a legal challenge to the rules, which upheld the change as a proper exercise of the Board's discretionary authority. He and Senator Enzi have also argued that Democratic NMB member Linda Puchala did not approach the issue with an open mind, since the rule change was proposed only six months after her confirmation. There is no evidence to indicate that Puchala prejudged the issue or that she misrepresented her views in any way when she told the Committee during her confirmation process that she would "review [the issue] on the merits... and consider all applicable precedents." (This challenge was also rejected by the district court.)

Some opponents of the rule change have also claimed that the NMB is trying to "do card check by running around the back door" through this rule change – that claim could not be further from the truth. The NMB rule has nothing to do with the *Employee Free Choice Act* or card check. It does not modify in any way the mechanism that rail and aviation workers use to vote. Rather, it simply makes clear that a decision not to vote is not treated as a "no" vote.

## Major Provision

**S.J. Res. 30** is a resolution of disapproval of the rule enacted by the National Mediation Board with respect to procedures used for union elections in the rail and airline industries.

## Legislative History

On May 11, 2010, Senator Isakson introduced **S.J.Res. 30**, which was read twice and referred to the Committee on Health, Education, Labor, and Pensions.

On September 21, 2010, the Senate entered into an agreement to consider **S.J.Res.30**. Under this agreement, on Thursday, September 23, there will be 2 hours for debate on the motion to proceed, with the time equally divided and controlled between Senators **Harkin** and Isakson, or their designees. Upon the use or yielding back of time, the Senate will proceed to vote on adoption of the motion to proceed.

- If the motion to proceed is successful (the motion is subject to a simple majority-vote threshold), there would be 1 hour for debate with respect to the joint resolution, with the time equally divided. Upon the use or yielding back of time, the Senate would proceed to vote on passage of the joint resolution.
- If the motion to proceed is defeated, then no further motions to proceed to the joint resolution would be in order.

No amendments or any other motions are in order to the joint resolution and all provisions of the statute governing consideration of the joint resolution remain in effect during the pendency of this agreement.

## **Expected Amendments**

Amendments are not in order to this Resolution.

## **Administration Position**

As of this writing, the Administration has not yet issued a Statement of Administration Position.