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President Obama Signs FAA Modernization and Reform Act of 2012 Containing Amendments to the Railway Labor Act

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On February 14, 2012, President Barack Obama signed into law H.R. 658, the FAA Modernization and Reform Act of 2012 (the “Act”). The Act contains four important provisions amending the Railway Labor Act (“RLA”) and is effective immediately.

The four provisions amending the RLA, which are found in Title Ten of the Act, are as follows:

1. **NMB Rulemaking:** Section 1001 of the Act adds a new section to the RLA, permitting the NMB to make, amend, and rescind rules and regulations necessary to carry out the provisions of the RLA, but only after providing notice of the proposed changes in the Federal Register and the opportunity for a public hearing on any changes.
2. **Run-off Elections:** Section 1002 of the Act amends Section 2, Ninth, of the RLA. Under the Act, if a representation election occurs and there are three or more options on the ballot, and no option receives a majority of the votes cast, the NMB shall arrange for a second election between the two options capturing the largest number of votes. Notably, the amendment provides that a run-off election may include “the option of not being represented by any labor organization.” Previously, when a run-off election was conducted in a representation election, the top two *unions* (not options) receiving the largest number of votes in the original election were

placed on the ballot in a run-off election.[1]

3. Showing of Interest Threshold: Section 1003 of the Act amends RLA Section 2 by adding a Twelfth paragraph, which requires a showing of interest from not less than 50% of the employees in the craft or class before proceeding with a representation election. Previously, only a 35% showing of interest was required.[2]

4. NMB Audits: Section 1004 of the Act adds a new section to the RLA, which provides for audits of the NMB at least every two years. The United States Comptroller General is directed to evaluate and audit the NMB's programs and procedures. Specifically, the Act directs the Comptroller General to review, at a minimum, the NMB's (a) information management and security, (b) resource management, (c) workforce development, (d) procurement and contracting planning, practices, and policies, (e) practices in selected management areas, and (f) processes to address challenges in investigations of certification applications, the certification of employee representatives, and ensuring that the process occurs without interference, influence, or coercion. In addition, the Act calls for a separate and immediate review of the NMB's union certification and decertification procedures within 180 days after February 14 to ensure that the procedures are fair and reasonable. The Act specifically directs that the review include an evaluation of the existing NMB processes and changes to the processes; an evaluation of whether the NMB's processes are consistent with similar processes applied to other federal or state agencies with jurisdiction over labor relations; and an evaluation of any justification for any discrepancies between the NMB's processes and those of other similar federal or state processes.

A copy of the legislation is available at:

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr658enr/pdf/BILLS-112hr658enr.pdf>

If you have any questions about this Alert, please contact Robert Siegel, Chris Hollinger, Mark W. Robertson, Sloane Giddon, or Natasha Waglow.

[1] See 29 C.F.R. § 1206.1(b).

[2] See National Mediation Board Representation Manual § 3.601.