

## D.C. Circuit Upholds Rule Change By National Mediation Board

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**Gerald F.  
Lutkus**  
Of Counsel  
(Retired)

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Union elections in the airline and rail industries just got a bit easier for Unions.

The U.S. Circuit of Appeals for the D.C. Circuit in a 2-1 decision upheld a decision by the National Mediation Board (NMB) to change the majority of votes rule in representation elections. Since 1934, members of the proposed bargaining units were counted as “no” votes if they decided not to vote in the election. But the NMB decided earlier last year that the rule should be a majority of the votes actually cast instead of a majority of the eligible voters.

On Friday, Dec. 16, 2011, the D.C. Circuit, in a case entitled *Air Transport Association v. NMB*, decided that the rule change was not an arbitrary and capricious change. In fact, the court determined, since the statute was silent on the issue, it suggests deference to the agency in deciding how votes were to be counted.

“As the district court observed, nothing in the [Railway Labor Act] clearly and unambiguously requires that a majority must participate in order to have a valid election,” the opinion said. “The fact that a majority of eligible voters decides to abstain — i.e., not exercise its right — hardly suggests that the majority was deprived of its right. This is how voting rights work.”

You can access the decision online by [clicking here](#).

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