FACTS ON REPRESENTATION

The question has been raised of whether, under the RLA, a union which succeeds in decertifying and replacing the union which has previously represented a class or craft, may, by serving Section 6 notices on the employer/carrier, obligate that employer/carrier, regardless of how much time remains during which the existing CBA is defined by its own terms as unamendable, to negotiate terms and conditions of employment with the new union, which differ from these set forth in the CBA. In other words: if a new union replaces TWU as representative of a class or craft at AA, does that union have the legal right to insist that AA negotiate with it to amend the ratified 6 year CBA between AA and TWU?

The answer to this question, which has been accepted without question for many years, is a simple No.

The National Mediation Board made its policy on the issue clear as early as 1934, its first year of operations:

> "When there is an agreement in effect between a carrier and its employees signed by one set of representatives and the employees choose new representatives who are certified by the Board, the Board has taken the position that a change in representation does not alter or cancel any existing agreement made in behalf of the employees by their previous representatives." First Annual Report of the National Mediation Board (1935) pp. 23-24, cited with approval by the court in AFA v. USAir 24 F3d 1432, 143 (DC Cir., 1994). In 1994, the AFA v. USAir court further characterized as still "well established" the principle that "a mere change of representatives does not alter otherwise applicable contractual agreement," Id. And the ABA/BNA Treatise "The Railway Labor Act" (3d edition, 2012), generally considered an authority in the field, stated, unequivocally, this year: "If a new representative is selected to replace an incumbent, an existing collective bargaining agreement with the carrier remains in effect in accordance with its duration clause, and the new representative becomes responsible for administering that contract,". pp. 13-14

There is no reported decision or otherwise authoritative opinion that supports the position that a "mere" change of representative--such as would take place at AA should the IBT or AMFA or any other union replace TWU as the bargaining representative of a class or craft as a result of an NMB election--can alter the provisions of a CBA already in effect, including its duration provision. The situation where the change of representative takes place in the context of, and as a result of a merger situation, involves far more complicated factors (including the disappearance of both originally contracting parties, and the disappearance of the original carrier class or craft into the class or craft at the new "single carrier") than does a "mere" change of representative. To the extent that anyone—like IBT, in literature now being distributed--relies on the law in a merger situation to apply to a "mere" change of representative, its reliance is entirely misplaced, and leads to wrong conclusions. The analysis and conclusion applicable to a "mere" change in representative continue to be exactly as stated by the NMB in its First Annual Report, and, most recently, by the 2012 Railway Labor Act Treatise: the existing CBA, including its duration provision, remains in effect to be administered by the new representative. To put it simply, a union which decertifies an incumbent union has no greater bargaining rights under the RLA than the union it replaces.