

June 27, 2012

Congressional Committees

Subject: *National Mediation Board Mandates in the FAA Modernization and Reform Act of 2012*

This letter is to confirm our approach to the work mandated for GAO in the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 1004, pertaining to the National Mediation Board (NMB) and discussions with your staff regarding these mandates. The first mandate required GAO to review, within 180 days, the processes applied by the NMB to certify and decertify representation of employees by labor organizations, including the existing processes, changes to such processes over time, and the extent to which those processes are consistent with the processes of other agencies with jurisdiction over labor relations.<sup>1</sup> The second mandate required GAO to evaluate and audit, within 2 years, the programs, operations, activities, and expenditures of the NMB.<sup>2</sup> As described below, we discussed with your staff and they concurred with our proposal to terminate our work on the 180-day mandate and begin working on the 2-year mandate.

We met with your staff on May 3, 2012, and contacted them later by e-mail with a proposal regarding the information that we could report in response to the first mandate. Subsequently, as described below, the Congressional Research Service (CRS) issued a comprehensive report on May 11, 2012, entitled *Federal Labor Relations Statutes: An Overview*, that addresses key questions posed by the first mandate.<sup>3</sup> The information provided in the CRS report is very similar to the information we proposed to report in order to respond to the 180-day mandate on NMB's certification and decertification procedures.

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<sup>1</sup> See Pub. L. No. 112-95, § 1004, 126 Stat. 11, 147 (adding Railway Labor Act § 15(b)).

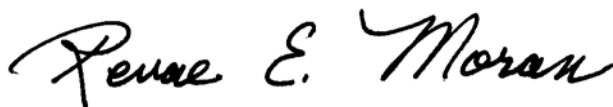
<sup>2</sup> See Pub. L. No. 112-95, § 1004, 126 Stat. 11, 147 (adding Railway Labor Act § 15(a)).

<sup>3</sup> Congressional Research Service, *Federal Labor Relations Statutes: An Overview*, R42526 (Washington, D.C.: May 11, 2012).

Specifically, the CRS report describes those procedures and how they have changed over time, including the recent amendments to the certification procedures that NMB made as part of its May 11, 2010, rulemaking. In addition, the CRS report describes certification and decertification procedures of the other federal agencies that have key responsibilities for labor relations: the National Labor Relations Board and the Federal Labor Relations Authority. In describing the statutes authorizing these three entities, and the corresponding legislative history, CRS also provides context for the varying approaches adopted by the agencies. In addition, the U.S. Court of Appeals for the District of Columbia Circuit recently upheld the 2010 changes to NMB's certification procedures in *Air Transp. Ass'n of Am. Inc. v. Nat'l Mediation Board*.<sup>4</sup> In finding that NMB's certification procedures were a reasonable implementation of the Railway Labor Act, it analyzed the same legal sources that GAO would have in undertaking this work: the law itself, the legislative history, and relevant judicial opinions.

To avoid duplication of efforts, we notified your offices that we proposed to terminate our work on the 180-day mandate and begin working on the 2-year NMB mandate (Railway Labor Act § 15(a)). We discussed this with your staff and they concurred with this proposal. Therefore, we are proceeding with terminating work on the first mandate and beginning work on the second mandate.

We look forward to working with you and your staff on the 2-year mandate. If you have any questions, please contact me at (202) 512-3863 or [moranr@gao.gov](mailto:moranr@gao.gov), or Gretta Goodwin, Assistant Director, at (202) 512-7952 or [goodwing@gao.gov](mailto:goodwing@gao.gov).



Revae Moran  
Director, Education, Workforce,  
and Income Security Issues

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<sup>4</sup> 663 F.3d 476 (2011).

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