



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

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46 NMB No. 18
July 30, 2019

NOTICE

TO: All Carriers and labor Organizations
FROM: Mary L. Johnson *Mary L. Johnson* General Counsel
RE: Comment Period for Proposed Changes to the
National Mediation Board's Representation Manual

The National Mediation Board (NMB or Board) intends to revise **Sections 1.01-6, 1.01-7, 3.1, 13.201, 13.202, and 14.201** of the Board's Representation Manual (Manual) to implement a direct decertification and provide guidance to its participants on the appropriate language and content of authorization cards for employees who no longer wish to be represented for purposes of collective bargaining. In the NMB's Final Rule, 84 FR 35977 (July 26, 2019), the Board stated that employees may submit an application supported by authorization cards to decertify their incumbent representative and that in a decertification election that ballot will be limited to the incumbent union and the no representation option, along with the write-in option. The revised **Manual Sections 11.01-6, 1.01-7, 13.201, 13.203, and 14.201** contain new language conforming those sections to the Final Rule. The revised **Manual Section 3.1** provides some examples of acceptable language for employees seeking a decertification election. The new language is in bold font.

Participants have 30 days from the date of this Notice to submit their comments to legal@nmb.gov with a subject of "Proposed Manual Changes."

1.01-6 Participants

Participants in a representation matter are: the carrier, any labor organization(s) or individual(s) seeking to represent a carrier's employees, **any employee(s) seeking decertification**, or any incumbent representative of a carrier's employees. The term "participant" includes parties defined below.

1.01-7 Parties

Parties are any labor organization(s) or individual(s) seeking to represent a carrier's employees, **any employee(s) seeking decertification**, and any incumbent representative of the carrier's employees. Carriers are not parties under Section 2, Ninth, however, they are under a statutory obligation to provide information and documentation to the NMB in representation matters.

3.1 Form and Content of Authorizations

Each authorization must be signed and dated in the employee's own handwriting. See NMB Rule §1206.3 (29 CFR §1206.3). Although not required, it is recommended that the authorization include the employee's job title and employee number. Petitions are not accepted.

Authorizations submitted to the NMB must be in alphabetical order on a system-wide basis. Failure to provide authorization cards in alphabetical order on a system-wide basis may result in the return of authorizations to the submitter. Duplicate authorizations should not be submitted.

The language on authorization cards must be unambiguous and the NMB must be able to determine the employee's intent to seek an election or be represented by the applicant(s) or intervenor(s). Authorizations should not contain unnecessary or superfluous language that could create ambiguity or confusion for the signer. The following are examples of acceptable language used on authorizations submitted to the NMB:

a) "I, the undersigned, an employee of (Carrier) authorize the (Organization) to apply to the National Mediation Board to hold a representation election."

b) "I want the (Organization) to represent me at (Carrier)."

c) "I do not want the (Organization) to represent me at (Carrier)."

d) "I, the undersigned, hereby authorize the (Organization) to represent me for purposes of collective bargaining and to negotiate all agreements as to hours of labor, wages, and other conditions of employment."

e) “I, the undersigned, hereby authorize the (Organization) to represent me at (Carrier), or to apply to the National Mediation Board to hold a representation election.”

f) “I, the undersigned, no longer wish the (Organization) to represent me at (Carrier), and apply to the National Mediation Board to hold a representation election so I can become unrepresented.”

All of the above examples are appropriate for requesting a representation election. In an accretion application, or an application for certification by card check, the authorization cards must be unambiguous and state clearly the sole purpose of the card. See language in b) and c) above. The NMB will not accept authorization cards requesting a representation election as support for accretion applications or certification by card check. Cards which both request an election and authorize the applicant(s) to represent the employees will also not be accepted as support for accretion applications or certification by card check.

13.201 Telephone and Internet Voting Instructions

The Instructions consist of the Telephone and Internet Voting Instructions, and an Access Code.

In elections to get initial representation or change representation, it is NMB practice to list the incumbent, the applicant, the intervenor, the “write-in” option, and the “no representative” option in descending order on the Instructions. If there is no incumbent and more than one applicant or intervenor, the Investigator will determine the placement of the names.

In decertification elections, the ballot will list the incumbent, the “write-in” option, and the “no representative” option.

The Investigator will establish a time period for voting. The number of eligible voters, the number of stations involved, and the geographical distribution of the voters will be considered when determining the appropriate voting period. Participants may request additional time for the voting period. This request must be filed electronically at OLA-efile@nmb.gov prior to the establishment of the voting period. The request must include a detailed explanation of the circumstances requiring an extended voting period. In no event will the Instructions be mailed less than 21 days before the tally. Only NMB agents administer Instructions and Access Codes.

13.203 Voting with the Access Code

To vote, the voter can either call a toll-free telephone number or access a designated website as explained in the Instructions. Voters can only vote once with their assigned Access Code through either the telephone or the Internet. As the systems are linked, voters are prevented from voting more than once.

Telephone Voting. The voter follows the voice prompts. When the voter's identity is confirmed, the voter will be prompted with voting instructions for the election.

In elections to get initial representation or change representation, the Telephone Electronic Voting (TEV) voice prompt will list the incumbent, the applicant, the intervenor, the "write-in" option, and the "no representative" option. If there is no incumbent and more than one applicant or intervenor, the Investigator will determine the placement of the names on the voice prompt.

In decertification elections, the TEV voice prompt will list the incumbent, the "write-in" option, and the "no representative" option.

Internet Voting. After accessing the website, the voter enters his/her assigned Access Code. When the voter's identity is confirmed, a ballot screen will appear for the election in which he/she is eligible to vote.

In elections to get initial representation or change representation, the incumbent, the applicant, the intervenor, the "write-in" option, and the "no representative" option will be listed in descending order. If there is no incumbent and more than one applicant or intervenor, the Investigator will determine the placement of the names on the ballot screen. **In decertification elections, the incumbent, the "write-in" option, and the "no representative" option.** The Access Code ensures the confidentiality and the integrity of the election by eliminating unauthorized votes.

14.201 Official NMB Mail Ballots

All ballots must have a non-reproducible NMB seal. Different colored ballots are used for each election to preserve the integrity of the election.

In elections to get initial representation or change representation, it is NMB practice to list the incumbent, the applicant, the intervenor, the “write-in” option, and the “no representative” option in descending order on the ballot. If there is no incumbent and more than one applicant or intervenor, the Investigator will determine the placement of the names on the ballot.

In decertification elections, the ballot will list the incumbent, the “write-in” option, and the “no representative” option.