



**NATIONAL MEDIATION BOARD**

WASHINGTON, DC 20572

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30 NMB No. 80  
September 30, 2003

TO: All Carriers and Labor Organizations  
FROM: Benetta M. Mansfield, Chief of Staff  
RE: Telephone Electronic Voting

On September 30, 2002, the National Mediation Board (Board) announced the beginning of representation elections using Telephone Electronic Voting (TEV). *Telephone Electronic Voting*, 29 NMB 482 (2002). The announcement provided that the Board would accept comments regarding TEV during a 120-day period commencing September 30, 2002. The Board extended the comment period and accepted comments through February 7, 2003. *Telephone Electronic Voting Comment Period*, 30 NMB 174 (2003).

The Board received two responses to its request for comments, one from the Airline Industrial Relations Conference (AIR CON) and the other from the Association of Flight Attendants (AFA). AIR CON requested that the Board devise an alternative Personal Identification Number (PIN) system, shorten the minimum election voting period to 21 days, and add a “no union” instruction. The Board carefully reviewed AIR CON’s and AFA’s comments and then invited other carriers and organizations to submit responses to AIR CON’s comments. Specifically, the Board was interested in responses to the following options regarding the use of PINs:

1. The current system. The Telephone Voting Instructions (Instructions) containing a confidential, randomly generated Voter Identification Number (VIN) are mailed to the voter. To vote, the voter’s identity is

confirmed through the use of the VIN and the PIN, the last four digits of the voter's Social Security number.

2. Randomly generated PINs. The Instructions, containing a confidential, randomly generated VIN and a confidential, randomly generated PIN are mailed to the voter. To vote, the voter's identity is confirmed through the use of the VIN and the PIN.
3. Randomly generated PINs sent in a separate mailing. The Instructions containing a confidential, randomly generated VIN are mailed to the voter. The following day, in a separate mailing, a confidential, randomly generated PIN is mailed to the voter. To vote, the voter's identity is confirmed through the use of the VIN and the PIN.

The Board received comments from the following three organizations: the Brotherhood of Locomotive Engineers (BLE), the Air Line Pilots Association (ALPA), and the United Transportation Union (UTU).

The BLE stated that options 2 and 3 would ensure "confidentiality and maintain the integrity of the voting." The BLE also stated that Section 3.1 of the Board's Representation Manual (Manual) which addresses the form and content of authorizations should remain unaltered. Manual Section 3.1 states "Although not required, it is recommended that the authorization include the employee's job title and employee number. If the carrier does not utilize employee identification numbers, the authorization should include the last four digits of the employee's social security number." In addition, the BLE opposed AIR CON's requests to shorten the minimum election period to 21 days and to add a no-union instruction.

ALPA opposed all of AIR CON's comments. Specifically, ALPA argued that the current TEV procedures are adequate and that no change is warranted. However, ALPA stated that "it would not object . . . if the Board desired to simplify the process and solely rely upon the randomly generated VIN." ALPA also stated that if the Board decides to use randomly generated PINs, "in no event should the Board use a separate mailing to deliver such PINs . . . ."

The UTU "supports the system in its present form and strongly opposes the suggestions made by AIR CON."

#### VIN and PIN

The use of the VIN/PIN combination enhances the security and integrity of the TEV process. Because the VIN is a randomly generated six digit number, the possibility that an individual will be able to duplicate an eligible voter's VIN/PIN combination is statistically remote. In addition, the TEV system locks a user out after repeated incorrect VIN/PIN entries. This lockout prevents hackers from discovering user VIN/PIN combinations. The Board finds that it is necessary to use a VIN/PIN combination to ensure the security of the TEV process.

The Board's experience has demonstrated that using randomly generated numbers enhances the existing integrity and confidentiality of the TEV process. Therefore, the Board will eliminate the use of the last four digits of the employees' social security number as the PIN. Instead, the PIN will consist of a randomly generated four digit number. The Board has also determined it would be cumbersome and costly to issue the VIN and the PIN in separate mailings. Therefore, the Instructions, containing a confidential, randomly generated VIN and a confidential, randomly generated PIN will be mailed to

the voter in one mailing. To vote, the voter's identity is confirmed through the use of the VIN and the PIN.\*

### Shortening the Voting Period

Currently, Manual Section 13.201 states that Instructions for TEV are mailed not less than 28 days before the tally. The Board analyzed data in the 26 elections it has conducted using TEV as of the date of this decision. Based on this research, the Board has determined that the minimum voting period in TEV elections will be 21 days. In addition, prior to 1992, the minimum voting period was 21 days. The voting period was changed in 1992 to 28 days due to delays in the postal system. TEV elections have eliminated the need for an extended voting period absent unusual circumstances. Consistent with the Board's long-standing policy, participants may request additional time for the voting period. See Manual Section 13.201.

### "No-Union" Instruction

The Board's long-standing policy regarding voting provides that, if a voter does not wish to be represented, he or she either abstains from voting or casts a void vote. The following votes are void and are not counted:

- Votes cast for a carrier or carrier official;
- Votes where the voter's intent is unclear;
- Votes indicating no desire for representation, such as "write-ins" indicating "no" or "no Union;"
- Votes where the voter has "written in" "self," "self representation" or the equivalent; and

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\* Based on this determination, the Board will not address the issue of modifying manual Section 3.1.

- Votes which identify the voter.

See Manual Section 13.303-2.

The Board has never had a “no union” option on its ballots; either using the mail ballot system or the TEV system. In *Chamber of Commerce of the U.S. v. International Brotherhood of Teamsters (IBT)*, 14 NMB 347 (1987), the Chamber of Commerce filed a petition requesting the Board amend its rules. The Board conducted a hearing and addressed the IBT’s proposal to change “the form of the ballot to ‘Yes’ or ‘No’ in single-party elections (with the Board adding a ‘No Representation’ choice in multi-party cases).” *Id.* at 352. The Board cited a long-standing policy of amending its rules only when required by statute or essential to the administration of the RLA, and noted that those seeking rule changes bear a heavy burden of persuasion. The Board found that the IBT did not meet the burden of persuasion required for such a change.

In addition, the Board’s voting instructions, specifically the absence of a “no union” option, have been upheld unanimously by the courts. *Brotherhood of Railway & S.S. Clerks v. Ass’n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965); *Continental Airlines, Inc. and Continental/Air Micronesia v. NMB*, 793 F.Supp. 330 (D.D.C. 1991), *aff’d*, 957 F.2d 911 (D.C. Cir. 1992); *USAir, Inc. v. NMB*, 711 F.Supp. 285 (E.D. Va.), *aff’d*, 894 F.2d 403 (4<sup>th</sup> Cir. 1989), *Zantop International Airlines v. NMB*, 732 F. 2d 517 (6<sup>th</sup> Cir. 1984). Therefore, the Board will not add a “no union” option to its TEV process.

#### Instructions and Voice Prompts

After carefully reviewing the Instructions and the voice prompts in the TEV system, the Board has determined that both provide clear directions to the voter. Therefore, both the Instructions and voice prompts will remain unchanged.

Conclusion

The changes to the TEV system outlined above will be effective October 15, 2003. The attached documents reflect the changes listed above.

- Attachments -

13.0 TELEPHONE ELECTIONS

13.1 The Notice of Election

The NMB will provide copies of the Notice of Election/ Telephone Voting Instructions (Notice) to the participants at least five calendar days before the Telephone Voting Instructions (Instructions) are mailed to the eligible voters. The Carrier must post the Notice on Carrier bulletin boards and all locations where other notices to employees usually are posted. At least one Notice per station must be posted.

13.2 Telephone Voting

13.201 Telephone Voting Instructions

The Instructions consist of the telephone voting instructions, a Voter Identification Number (VIN), and a Personal Identification Number (PIN). The Investigator will establish a time period for voting. The number of eligible voters, the number of stations involved, and 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 in writing with the Investigator prior to the establishment of the voting period. The request must include a detailed explanation of the circumstances requiring an extended voting period.

The Instructions are mailed not less than 21 days before the tally. Only NMB agents administer Instructions, VINs, and PINs.

13.202 Voter Identification Numbers

Each voter will be assigned a VIN to be used in conjunction with the voter's PIN. The VIN is a randomly generated six digit confidential number known only to the voter and NMB agents.

13.203 Personal Identification Numbers

Each voter will also be assigned a PIN. The PIN is a randomly generated four digit confidential number known only to the voter and NMB agents.

13.204 Telephone Voting with the PIN and VIN

To vote, the voter must call a toll-free telephone number as explained in the Instructions. The voter follows the prompts. When the voter's identity is confirmed, the voter will be prompted with voting instructions for the election.

The PIN and VIN ensure the confidentiality and the integrity of the election by eliminating unauthorized votes.



13.205 Foreign Language Notice and Instruction

In cases where the electorate is composed of individuals who are unable to or have limited ability to read, speak, or understand English, the participants should notify the Investigator in writing. If the NMB determines that eligible voters are unable to or have limited ability to read, speak or understand English, the NMB will translate the Notice, Instructions and telephone voting prompts to the appropriate foreign language as an alternative to English for the eligible voters.

13.206 Challenged Individuals

Individuals whose eligibility or ineligibility has been challenged, and no final decision has been made, will be sent Instructions, a VIN and PIN. Their votes, if cast, will be considered challenged votes. Prior to the tally, the eligibility determinations will be made by the NMB election officials and appropriate adjustments to the election records will be made.

13.207 Requests for Duplicate Telephone Voting Instructions

Voters may request duplicate Instructions, including a VIN and a PIN, by contacting the NMB in writing. The request must be signed by the

voter requesting the Instructions and mailed in an individual envelope; group requests are not accepted. Requests by telephone, facsimile or electronic mail are not accepted. Requests received less than seven days before the tally will not be honored. Requests dated or received prior to the mailing of the Instructions will not be honored.

The name of any voter requesting duplicate Instructions will be confidential. The voter will be mailed duplicate Instructions, including a VIN and a PIN, and the Official Eligibility List will be marked to reflect that duplicate Instructions were mailed.

13.208 Returned Telephone Voting Instructions

Instructions returned to the NMB for incorrect addresses or any other reason, will be checked for accuracy. If a “corrected” address is obtained at least seven calendar days prior to the tally, the Instructions will be mailed to the corrected address.

13.209 TTY Communications System Users

Voters may use the NMB’s TTY communications system as explained in the Instructions. When the voter uses the TTY communications system, the voter must identify himself or

herself with the correct PIN and VIN. NMB election officials shall assist the voter as necessary.

13.210 Adjustments to the Official Eligibility List

The Investigator will verify the number of eligible voters prior to the tally by making the following adjustments:

- (1) clearing all challenges;
- (2) removing names for those individuals whose Instructions were undeliverable; and
- (3) adjusting for changes in employee status.

13.3 The Tally of Votes

13.301 Location and Time of the Tally of Votes

The voting will close at 2 p.m., Eastern time, unless the Investigator establishes an alternate time. The tally of votes will occur at the NMB's Office, in Washington, DC.

13.302 Admission and Control of the Tally of Votes

The NMB may allow a reasonable number of representatives from the Organization(s) and the Carrier to observe the tally.

13.303 Vote Determinations

13.303-1 Valid Votes

Where the voter's intent to vote for representation is clear, the vote is valid and will be counted. Valid votes include "write-in" votes which clearly indicate the voter's desire for representation.

13.303-2 Void Votes

The following votes are void and will not be counted:

- (1) votes cast for a carrier or carrier official;
- (2) votes where the voter's intent is unclear;
- (3) votes indicating no desire for representation, such as "write-ins" indicating "No" or "No Union;"
- (4) votes where the voter has "written in" "self," "self representation" or the equivalent; and
- (5) votes which identify the voter.

13.304 Tally of Votes

Following any adjustments to the list of eligible voters, the NMB agents will enter the website, tally the votes, print the tally and provide copies to the Organization(s) and the Carrier.