



**NATIONAL MEDIATION BOARD**  
WASHINGTON, DC 20572


(202) 692-5000

42 NMB No. 25

June 16, 2015

**NOTICE**

TO: All Carriers and Labor Organizations

FROM: Mary L. Johnson, General Counsel 

RE: Comment Period for Proposed Changes to the National Mediation Board's Representation Manual

This Notice addresses proposed changes to the National Mediation Board's (NMB or Board) Representation Manual (Manual). The proposed changes are mainly clarifications to existing Board policy, but include one proposed policy change in Manual Section 2.4. Minor drafting changes will not be highlighted here as they do not affect the meaning of the Manual section. **The proposed changes below will be highlighted in bold font.**

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

**I. Proposed Policy Change to the Board's Manual**

**Section 2.4, LIST OF POTENTIAL ELIGIBLE VOTERS AND SIGNATURE SAMPLES**

The carrier must serve one (1) copy of a system-wide alphabetized list of potential eligible voters on the Investigator and serve one (1) copy on each participant's representative. Even if a participant is contesting single transportation status (see Section 19.0), they are required to produce a list in conformity with the section. The NMB requires the carrier to provide a copy of the alphabetized list in Microsoft Excel format to the NMB only. The carrier should send a separate alphabetized list in PDF to each of the participants.

The list of potential eligible voters must include all individuals in the craft or class with an employee-employer relationship as of the cut-off date. The list must identify each employee's full name, the job title, and the duty station or location. The carrier must also submit an attestation by a carrier officer (e.g., vice president of labor relations or equivalent) of the accuracy of the list to the best of his or her knowledge. **A carrier's failure to provide a substantially accurate eligibility list may be considered interference with the Board's election process and constitute grounds for setting aside an election.**

The carrier must also provide the NMB with one (1) hard copy of legible, alphabetized signature samples for each employee on the list. Examples of acceptable signature samples include tax-withholding forms and employment and insurance applications. The alphabetized signature samples must be in the same order as the names on the list of potential eligible voters.

## **II. Proposed Clarifications to the Board's Manual**

In revised Manual Section 3.6, the Board wants to remind participants that it regards the integrity of its election process to be a matter of paramount importance since it lies at the heart of the NMB's statutory mission. The Railway Labor Act requires that the Board authorize an election or otherwise determine the representation desires of employees only when a showing of proved authorizations (checked and verified as to date, signature, and employee status) has been received from at least 50 percent of the craft or class. 45 U.S.C. § 152, Twelfth. The NMB's Investigators examine each card submitted and compare the signature on the card to the signature sample provided by the carrier. The integrity of the NMB's election process also relies on each individual employee only submitting an authorization card that he or she personally signed and dated for presentation to the Board.

### **Section 3.6, CHECK OF ALPHABETIZED AUTHORIZATIONS**

The Investigator compares the list of potential eligible voters with the names of the employees who signed authorizations to determine if a sufficient percentage of authorizations have been submitted to require checking the validity of the authorizations. **The employee signature on every authorization card is checked against the signature sample provided by the carrier, and the Investigator also checks that the date is**

**valid.** If there are insufficient authorizations submitted, the Investigator may, in his/her discretion, allow adjustments to the list prior to checking the validity of the individual authorizations.

### Section 1.02, APPLICATIONS

Applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes among a carrier's employees must be made on Form NMB-1, available from the NMB's Office of Legal Affairs or at [www.nmb.gov](http://www.nmb.gov). **There must be a separate application for each craft or class.** Only applications with original signatures submitted to the NMB's office in Washington, DC, and accompanied by original authorization cards will be accepted. Applications and authorization cards will not be accepted by facsimile or electronic mail. The application must meet the following requirements set forth in NMB Rule §1203.2 (29 CFR §1203.2)....

### Section 2.3, CUT-OFF DATE

For determining eligibility to vote, the cut-off date is the last day of the **latest** payroll period ending before the day the NMB received the application. This cut-off date is applicable regardless of whether there are multiple payroll periods for the craft or class.

Revised Manual Section 3.1 reflects the Board's recent decision in *Union Pacific Railroad*, 41 NMB 7, 11 (2013), where the Board stated that it would consider providing guidance to its participants on the appropriate language and content of authorization cards. The revised section provides some examples of acceptable language for authorization cards, as well as other information about their form.

### Section 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, 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.”**

In an accretion application, 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.

### Section 3.2, AGE OF AUTHORIZATIONS

Authorizations must be dated within one year from the date the application **was filed with** the NMB. See NMB Rule §1206.3 (29 CFR §1206.3).

In *Frontier Airlines, Inc.*, 41 NMB 202, 220 (2014), the Board articulated the requirement that an application for accretion must be supported by “the requisite 50 percent showing of interest.” This clarification is noted in Manual Section 3.601.

#### Section 3.601, PERCENTAGE OF AUTHORIZATIONS REQUIRED

Applications must be supported by valid authorizations from at least 50 percent of individuals in the craft or class. **Accretion applications must be supported by at least 50% of the employees covered by the application.** See also NMB Rule §1206.2 (29 CFR §1206.2).

#### Section 7.0, DISPOSITION OF DISPUTE BY CHECK OF AUTHORIZATIONS

If the employees involved in the craft or class are unrepresented and only the applicant organization is involved, certification on the basis of a check of authorizations may be appropriate provided the participants agree in writing. **The NMB will not accept authorization cards requesting a representation election as support for certification by card check.**

#### Section 8.1, SCHEDULE FOR FILING CHALLENGES AND OBJECTIONS

The Investigator generally sets the schedule for challenges and objections after an election is authorized. However, the Investigator may request challenges and objections prior to authorizing an election. Challenges and objections which do not meet the simultaneous service requirements of Manual Section 1.2 will be rejected. Requests for an extension of time must be **in writing** and supported by reasonable justification and submitted electronically at OLA-efile@nmb.gov. Ordinarily, each participant will be limited to one extension of time. Absent extraordinary circumstances, challenges and objections not filed by the deadline will not be considered. **Absent extraordinary circumstances**, no request for an extension of the deadline received on the date a submission is due will be considered. The Investigator will notify the participants electronically whether an extension has been granted.

Section 10.2, APPEALS OF INVESTIGATOR'S RULING

All appeals should be filed electronically at OLA-efile@nmb.gov, directed to the General Counsel, and supported by substantial evidence. If the Investigator's ruling is not appealed to the NMB by the deadline, the Investigator's ruling is final. Absent extraordinary circumstances, evidence submitted on appeal will not be considered by the NMB unless it was submitted to the Investigator **during the investigation**.

Section 10.202, EXTENSIONS OF DEADLINES FOR APPEALS

Requests for an extension of the deadline for appeals must be **in writing and must be** supported by reasonable justification and submitted electronically at OLA-efile@nmb.gov. The submission must reference the assigned representation case number in the subject line of the email. Absent extraordinary circumstances, no request for an extension of the deadline received on the date a submission is due will be considered.

Section 13.206, UNDELIVERABLE TELEPHONE AND INTERNET 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 (7) calendar days prior to the tally, the Instructions will be mailed to the corrected address. Otherwise, the Instructions are undeliverable **and the names will be removed from the Official Eligibility List**.

Section 14.1, THE NOTICE OF ELECTION

The NMB will provide copies of the Notice of Election/Sample Ballot ("Notice") to the participants at least five (5) calendar days before the ballots are mailed. The carrier must post the Notice on carrier bulletin boards, **physical and electronic**, and **at** all locations where other Notices to employees usually are posted. At least one Notice per **work location** must be posted.

Section 14.206, UNDELIVERABLE BALLOTS

Ballot packages returned to the NMB for incorrect addresses will be checked for accuracy. If a “corrected” address is obtained at least seven (7) calendar days prior to the count, the ballot package will be sent to the corrected address. Otherwise, the ballot package is undeliverable **and the names will be removed from the Official Eligibility List.**

Section 16.0, RUN-OFF ELECTIONS

**In an election among any craft or class where three or more options (including the option for no representation) receive valid votes, if no option receives a majority of the legal votes cast, or in the event of a tie vote, the Board shall authorize a run-off election. (29 CFR § 1206.1(a)).**

In a run-off election, the ballot will not include a space for “write-in” votes. The option receiving the highest number of votes in the run-off is declared the winner. The procedures for run-off elections are set forth in the NMB Rules § 1206.1 (29 CFR § 1206.1).

Section 17.0, ALLEGATIONS OF ELECTION INTERFERENCE

**Except in extraordinary circumstances, the NMB will only investigate allegations of election interference when filed by participants after the tally.**

Allegations should be submitted electronically at OLA-efile@nmb.gov and directed to the General Counsel no later than 4 p.m., Eastern Time, seven (7) business days after the date of the tally. Participants may respond to such allegations by 4 p.m., Eastern Time, seven (7) business days after the General Counsel’s receipt of the interference allegations. All submissions must comply with the simultaneous service requirements in Manual Section 1.2....