



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

36 NMB No. 46

July 8, 2009

NOTICE

TO: All Carriers and Labor Organizations

FROM: Mary L. Johnson 
General Counsel

SUBJECT: E-filing Comment Period

Effective September 8, 2009, the National Mediation Board (Board) will primarily accept submissions in representation cases electronically. On December 1, 2008, the Board began a three month trial period for testing a new electronic "E-filing" system for representation cases filed with the Office of Legal Affairs (OLA). *Introduction of E-filing for Representation Cases – Trial Period*, 36 NMB 16 (2008). The announcement provided that the Board would accept comments regarding E-filing during a three month period commencing December 1, 2008. The Board extended the trial period and comment period and accepted comments through May 29, 2009. *Extension of Trial Period – E-filing for Representation Cases*, 36 NMB 80 (2009).

The trial period is now being extended one additional month, until August 10, 2009. For applications received during this period, assigned NMB Counsel will contact participants from the organization and carrier and inquire about participation in the E-filing trial. Participation is voluntary at this time, but will be greatly appreciated as we continue to test our E-filing system.

The Board will continue to accept comments regarding E-filing until **August 10, 2009**. Please direct comments of no more than five (5) single-spaced pages to Mary L. Johnson, General Counsel, at legal@nmb.gov. The Board will evaluate all written comments regarding the proposed E-filing system.

In addition, we are reminding our participants receiving this Notice to send a current email address to legal@nmb.gov so we can compile a comprehensive database of contact information. Representatives in OLA will be

available to assist participants as they become familiar with the new E-filing processes at **202-692-5040**.

Proposed revisions to sections of the Board's Representation Manual are attached.

Thank you in advance for your cooperation.

-Attachments-

DRAFT**1.1 General Communication Guidelines**

Unless otherwise specified in this Manual, the General Counsel's Office is the contact point for representation matters filed with the NMB. The General Counsel typically will designate a specific NMB Investigator on each case. The Investigator may designate other NMB employees to perform certain tasks.

Documents should be filed with the NMB electronically at OLA-efile@nmb.gov except for the following items which are still required in hard copy: 1) the initial Application for Investigation of Representation Dispute; 2) authorization cards; 3) signature samples; and 4) employee address labels. All electronic submissions must reference the assigned representation case number, NMB Case No. R-XXXX, in the subject line of the email so that the document is properly filed. All electronic submissions must be in Portable Document Format (PDF) and cannot exceed a 50-page limit. In certain circumstances, documents may be filed by hand delivery, U.S. mail, express delivery, or facsimile at (202) 692-5085 (applications and supporting authorizations require original documents). In addition, documents in excess of thirty (30) pages will not be accepted by facsimile. Failure to complete timely service due to errors of a delivery company or difficulties with facsimile transmissions will not excuse untimely, partial, or illegible submissions.

2.1 Investigator's Role and Responsibility

The Investigator will determine the scope and the form of the investigation, including whether to conduct the investigation on-site. If the participants wish to raise any particular issue(s) in the representation matter, the issue(s) and supporting evidence or documentation should be submitted electronically at OLA-efile@nmb.gov within time limit(s) established by the Investigator.

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 18.0, and 18.501), 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.

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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 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.

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 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. 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.

8.2 Challenges and Objections

All challenges or objections should be filed electronically at OLA-efile@nmb.gov. All challenges or objections should be summarized in a clear and concise manner. Similar groups of individuals, i.e. part-time employees, employees on leaves of absence, management officials, or employees with the same job titles, etc. should be listed together. All challenges or objections must be supported by substantive evidence. **Unsupported allegations will not be considered.** Questions or issues concerning craft or class objections must be supported by NMB case citation. Agreement by the participants regarding employee eligibility is not determinative.

9.212 Preponderance

Employees who perform work in more than one craft or class may be eligible to vote if the preponderance of their work time is spent performing job functions encompassed by the craft or

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class during a time period specified by the Investigator. Participants asserting that employees not on the list of potential eligible voters are eligible must provide evidence that these employees preponderantly perform job functions in the craft or class.

The Investigator will inform the participants electronically of the specific documentation required for consideration of whether these employees are eligible to vote. Absent unusual circumstances, a period of 30 to 90 calendar days will be used by the Investigator for a preponderance check.

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.

10.202 Extensions of Deadlines for Appeals

Requests for an extension of the deadline for appeals 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.

11.0 MOTIONS FOR RECONSIDERATION

Reconsideration may not be sought from the NMB's certification or dismissal. Any motions for Reconsideration of Board determinations must be received by the General Counsel within two (2) business days of the decision's date of issuance. The motion should be filed electronically at OLA-efile@nmb.gov and directed to the General Counsel. The motion must comply with the NMB's simultaneous service requirements of Manual Section 1.2. The motion must state the points of law or fact which the participant believes the NMB has overlooked or misapplied and the grounds for the relief sought. Absent a demonstration of material error of law or fact or circumstances in which the NMB's exercise of discretion to modify the decision is important to the public interest, the NMB will not grant the relief sought. The

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mere reassertion of factual and legal arguments previously presented to the NMB is insufficient to obtain relief.

12.0 PREPARATIONS FOLLOWING AUTHORIZATION OF ELECTION**12.1 Address List**

When the NMB authorizes an election, the carrier is required to furnish, within five (5) calendar days of the date of authorization, alphabetized peel-off labels bearing the names and current addresses of all employees on the list of potential eligible voters. The labels must be provided in hard copy and may not be filed electronically.

The participants should notify the Investigator, within five (5) calendar days of the authorization, of any employees on military leave who are serving in foreign countries or of any potential eligible voters located outside the U.S.

It is the responsibility of the carrier to provide address labels for any individuals who may be added to the list or treated as challenged voters. Unused labels will be returned or destroyed following the close of the case.

13.201 Telephone and Internet Voting Instructions

The Instructions consist of the Telephone and Internet Voting Instructions, a Voter Identification Number (VIN), and a Personal Identification Number (PIN).

It is NMB practice to list the incumbent, the applicant, and then the intervenor in descending order on the Instructions. If there is no incumbent and more than one applicant, the Investigator will determine the placement of the names.

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, VINs, and PINs.

DRAFT13.302 Request to Postpone the Tally

Absent extraordinary circumstances, requests to postpone the tally must be filed electronically at OLA-efile@nmb.gov no later than two (2) business days before the scheduled count, directed to the General Counsel, and must be supported by substantive evidence. The Board will consider granting such requests only in extraordinary circumstances. Unless the Investigator is officially advised by the Board to defer or cancel the tally, the Investigator shall tally the votes and overrule requests of participants either to defer or to cancel the tally, even when the applicant desires to withdraw the application.

17.0 ALLEGATIONS OF ELECTION INTERFERENCE

The NMB will investigate allegations of election interference only after the tally, except in extraordinary circumstances. 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.

Allegations of election interference must state a prima facie case that the laboratory conditions were tainted and must be supported by substantive evidence. Allegations of election interference not sufficiently supported by substantive evidence will be dismissed.

If the NMB finds a prima facie case of election interference, the General Counsel will notify the participants in writing or electronically.

19.3 Notice to NMB

A Carrier should notify the NMB electronically at OLA-efile@nmb.gov when any of the transactions described in Section 19.1 occur, or of:

- 1) an intent to merge, at the same time it files with the Surface Transportation Board (STB) or the Department of Transportation (DOT); and
- 2) a completed merger including the date of the merger and the Carriers (or business entities) involved.

Notices must comply with the service requirements of Section 1.2.