

NATIONAL MEDIATION BOARD  
REPRESENTATION MANUAL



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NOTICE

This Manual provides general procedural guidance to the National Mediation Board's staff with respect to the processing of representation cases before the NMB. Such procedural guidance is not required by or subject to the Administrative Procedure Act. The provisions of this Manual are neither obligatory upon the Members of the Board nor do they constitute the exclusive procedure for the NMB's investigation of representation matters pursuant to the Railway Labor Act.

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## **NATIONAL MEDIATION BOARD REPRESENTATION MANUAL**

### **1.0 The Authority to Investigate—Initial Filing and NMB Processing**

#### 1.1 Definitions

##### 1.101 Statutory Authorization

45 U.S.C. § 152, Ninth (Section 2, Ninth), of the Railway Labor Act (RLA) authorizes the National Mediation Board (NMB or Board) to investigate a representation dispute and to take a secret ballot of the employees or to utilize any other appropriate method of ascertaining the names of representatives of the employees involved.

##### 1.102 Representation Matter

A representation matter is an investigation initiated by the filing of an application with the NMB under Section 2, Ninth, of the RLA.

##### 1.103 Application to Investigate Representation Disputes

The process for filing an application can be found in the National Mediation Board Rules (NMB Rules) § 1203.2 (29 CFR § 1203.2).

##### 1.104 Investigation

During the investigation of a representation application, the NMB will address any question concerning representation in accordance with the RLA, the NMB Rules (29 CFR §§ 1201-1209), this Manual, and any other directives the NMB issues.

##### 1.105 Carrier

Carrier by rail is defined at 45 U.S.C. § 151, First of the RLA. Carrier by air is described at § 181, of the RLA.

##### 1.106 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.

#### 1.107 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.

#### 1.108 R-Case or RD-Case Docket

Upon receipt of a proper application, the application is docketed and assigned an "R-Case" (representation) or "RD-Case" (decertification) identification number.

#### 1.109 CR-File Pre-Docket

Representation applications requiring a pre-docketing investigation will be assigned a "CR-File" identification number.

### 1.2 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**. 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 email. The application must meet the following requirements set forth in NMB Rule § 1203.2 (29 CFR § 1203.2):

- (1) It must be signed by the chief executive officer of the international or national organization or other specifically designated and authorized officers.
- (2) It must specify the craft or class of employees and the estimated number of employees in the craft or class.
- (3) It must identify whether there is an incumbent representative.
- (4) It must be accompanied by signed authorization cards from the employees in the craft or class in dispute. The authorizations must comply with the requirements in Manual Sections 3.0 and 18.0 and NMB Rule § 1206.4 (29 CFR § 1206.4).

A Notice(s) of Appearance for not more than three representatives must be attached to the application. The representative who will be the primary contact for the Investigator must be one of the three.

Upon receipt of a proper application, an identification number will be assigned and preliminary correspondence will be initiated. The correspondence will identify the Investigator assigned. Information on specific representation matters will be available only to the designated representatives in those matters.

### 1.3 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. See 29 C.F.R. § 1202.15. In certain circumstances, documents may be filed by hand delivery, U.S. mail, or express delivery (applications and supporting authorizations require original documents).

### 1.4 Service of Submissions to the NMB and Notice of Appearance

Submissions, including Notices of Appearance, to the NMB, except privileged documents, shall be simultaneously served on all representatives by the same method as used for service on the NMB, if available, or if unavailable, by a substantially similar method. All submissions must be accompanied by a signed certificate of service. Submissions not in compliance with the foregoing simultaneous service provisions will not be considered except in extraordinary circumstances.

Within five (5) business days of the date of the NMB's initial correspondence, the representatives of the participants who have not done so must file a Notice of Appearance with the NMB, including name, title, address, telephone number(s), and email address(es). Notices of



Appearance will be accepted from no more than three (3) representatives per participant. The representative who will be the primary contact for the Investigator must be one of the three representatives. Only representatives listed on a Notice of Appearance will receive documents relating to the case from the NMB or other participants.

## 1.5 Ex Parte Communications

An “ex parte communication” is an oral communication to the NMB in which all participants are not present at the time it is made, or a written communication to the NMB not served simultaneously on all participants. Ex parte communications must not be conducted with the Board Members or their Confidential Assistants. In addition, ex parte communications are prohibited between the participants and NMB Counsel assigned to any appellate matter including: Motions for Reconsideration; Allegations of Election Interference; Craft or Class Determinations; and/or Jurisdictional Issues. Ex parte communications are permitted with the Investigator(s) assigned to the case when the Investigator is engaged in the fact finding phase of a case.

## 1.6 Timeliness of Investigation

Participants in a representation case must comply with the time limits established by the Investigator.

## 2.0 **Commencing the Investigation**

### 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.

### 2.2 Access to and Copies of Carrier Books and Records

The NMB has a statutory right to have access to and to make copies of carrier books and records (Section 2, Ninth). The Investigator will advise the carrier of these statutory rights whenever the Investigator determines that carrier books and records are necessary to the investigation.

### 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.

### 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.

### 2.5 Delivery of Documents

The list of potential eligible voters and signature samples must be delivered to the NMB's Washington, D.C. office by the deadline set by the General Counsel.

### **3.0 Evidence of Dispute—Authorizations**

#### **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:

- (1) "I, the undersigned, an employee of (Carrier) authorize the (Organization) to apply to the National Mediation Board to hold a representation election."
- (2) "I want the (Organization) to represent me at (Carrier)."
- (3) "I do not want the (organization) to represent me at (Carrier)."
- (4) "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."
- (5) "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."
- (6) "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.

### 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).

### 3.3 Acceptance of Additional Authorizations

An applicant(s) or intervenor(s) may present the Investigator with additional authorizations up until 4 p.m., Eastern Time, on the day the Investigator receives the applicable list and signature samples.

### 3.4 Cancellation or Revocation of Authorizations

The Investigator will neither accept nor honor proposed cancellations or revocations of authorizations. Individuals seeking to revoke their authorizations must go through the party to whom the original authorizations were furnished.

### 3.5 Confidentiality of Authorizations

Authorizations will be handled only by NMB representatives. The NMB keeps all authorizations confidential. This includes the names of individuals who have signed authorizations and the number of authorizations submitted. The carrier or opposing party or parties should not be privy to the number or percentage of authorizations furnished.

### 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 and in the employee's own handwriting. 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 authorizations.

### 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 percent of the employees covered by the application. See also NMB Rule § 1206.2 (29 CFR § 1206.2).

### 3.7 [Resolving Discrepancies in Authorizations \(List of Potential Eligible Voters\)](#)

If, during the check of authorizations, certain names cannot be located on the list of potential eligible voters, the Investigator should attempt to resolve this discrepancy. However, the Investigator will treat all authorizations as confidential.

## 4.0 **Confidential Report Regarding the Check of Authorizations**

After a check of authorizations has been completed, the Investigator must provide the General Counsel with a written report of the results.

The contents of the Investigator's report are confidential and will not be revealed to the organization(s), the carrier, or any individual not employed by the NMB.

## 5.0 **Finding of Dispute—Authorization to Proceed by NMB**

The election will proceed after written authorization by the General Counsel. The authorization will indicate that the NMB has found a dispute to exist in the subject craft(s) or class(es). The authorization will establish the manner of resolving the dispute. Copies will be sent to the involved carrier and organization(s).

## 6.0 **Disposition of Dispute by Voluntary Recognition**

If the applicant desires to be recognized by the carrier rather than to have its application processed further, then the applicant should furnish a statement withdrawing its application. This withdrawal will be the basis for the NMB's closing of its case file.

## **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.

## **8.0 Filing Challenges and Objections During the Investigation**

The Investigator will inform the participants in writing that they may raise challenges or objections during the investigation. Challenges involve issues concerning employee eligibility but do not include employment status changes. Status changes are governed by Manual Section 12.3. Objections involve all other issues or questions.

### **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.

### **8.2 Challenges and Objections**

All challenges or objections should be filed electronically at **OLA-efile@nmb.gov**. All challenges or objections should be summated 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.

### 8.3 Objections to NMB Jurisdiction

Determinations of statutory jurisdiction are made by the Board. Objections to NMB jurisdiction should be raised as early as possible in the investigation. The Board may reject objections to NMB jurisdiction if the objection is not raised in a timely manner. In support of a jurisdictional investigation, the Investigator may request any relevant information and documentation including whether:

- (1) the company reports to or is regulated by the Surface Transportation Board or the Department of Transportation and/or the Federal Aviation Administration;
- (2) the company is involved in interstate commerce;
- (3) the company engages in common carriage;
- (4) the company is a subsidiary involved in either rail or air transportation, the organizational and operational relationships between the subsidiary and the parent company;
- (5) the company is an airline. The investigator examines whether the company:
  - a) carries U.S. mail;
  - b) engages in scheduled air transportation;
  - c) interlines with a carrier covered by the RLA and/or;
  - d) provides substitute air service for a carrier covered by the RLA;
- (6) the company has a contract with a carrier covered by the RLA for the performance of services; and,
- (7) the company has any operations which may be relevant to the NMB's jurisdictional investigation.

## 9.0 **Determinations**

### 9.1 Craft or Class

In craft or class determinations, the NMB considers many factors, including the composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications. Previous decisions of the NMB are also

taken into account.

## 9.2 Eligibility

All individuals working regularly in the craft or class on and after the cut-off date are eligible to vote in an NMB representation election. Employees may not vote in more than one election at the same time.

### 9.201 Part-Time Employees

Only employees with a regular employee-employer relationship or scheduled work assignments are eligible to vote.

The Investigator should determine:

- (1) whether the employee works an identifiable schedule during a specified time period;
- (2) whether the employee regularly relieves other employees;
- (3) what benefits the employee receives;
- (4) what deductions are taken from the employee's pay; and,
- (5) other relevant facts.

### 9.202 Temporary Employees

Only employees with a present interest in the craft or class in dispute are eligible to vote. Temporary employees are eligible if they have a reasonable expectation of continued employment or re-employment in the craft or class.

### 9.203 Dismissed Employees

Dismissed employees are ineligible to vote unless the dismissal is being appealed through an applicable grievance procedure or an action for reinstatement has been filed before a court or a government agency of competent jurisdiction. If the grievance or court action is final, and the dismissal has been upheld prior to the count of ballots, the individual is ineligible to vote. See also NMB Rule §1206.6 (29 CFR §1206.6).

### 9.204 Furloughed Employees

Furloughed employees are eligible to vote in the craft or class in which they last worked if they retain an employee-employer relationship and have a reasonable expectation of returning to work. Furloughed employees



regularly working in another craft or class are ineligible to vote in the craft or class from which the employees are furloughed.

9.205 [Leaves of Absence](#)

Employees on authorized leaves of absence including military leave, leave for labor organization activities, or authorized sick leave are eligible. Employees receiving disability payments are eligible if they retain an employee-employer relationship and have a reasonable expectation of returning to work. Employees working in another craft or class, working for the carrier in an official capacity, or working for another carrier are ineligible.

9.206 [Probationary Employees](#)

Probationary employees in the craft or class in probationary status are eligible.

9.207 [Working for Another Carrier](#)

Employees working for another carrier other than the carrier involved in the dispute are ineligible.

9.208 [Employees of Contractors](#)

Employees of contractors which are not part of the carrier's transportation system are ineligible.

9.209 [Individuals Based in Foreign Countries](#)

Only employees based within the United States and/or its possessions are eligible.

9.210 [Retired Employees](#)

Retired employees are ineligible.

9.211 [Management Officials](#)

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;

- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and,
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational hierarchy of the carrier; and,
- (3) any other relevant factors regarding the individual's duties and responsibilities.

#### 9.212 Trainees

Trainees are not eligible to vote unless they perform line work in the craft or class by the cut-off date.

#### 9.213 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 class during a time period specified by the Investigator.

The Investigator will perform a preponderance check and will inform the participants electronically of the specific documentation required for consideration of whether these employees are eligible to vote.

### **10.0 Appeals of Challenges and Objections**

#### 10.1 Investigator's Ruling on Challenges and Objections

The Investigator will issue a written ruling on the challenges and objections. The ruling will set forth the participants' appeal rights and the appeal deadline.

#### 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 previously provided to the Investigator and/or legal precedent. If the Investigator's ruling is not appealed to the NMB by the deadline, the Investigator's ruling is final. Absent extraordinary circumstances, new evidence submitted on appeal which was not submitted to the Investigator during the investigation will not be considered by the NMB.

#### 10.201 Submissions on Appeal

The participant may file a position statement and/or appeal. The other participant(s) may file one response to the position statement or appeal. Participants may request the opportunity to file rebuttal statements. Absent extraordinary circumstances, no further submissions will be accepted by the NMB.

#### 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.

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

## **12.0 Preparations Following an Authorization of Election**

### 12.1 [Address Labels](#)

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.

### 12.101 [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 the initial position statement. All requests for Foreign Language Notice and Instruction should be submitted with supporting documentation. If the NMB determines it necessary, the NMB will translate the Notice, Instructions, and telephone voting prompts to the appropriate foreign language. Absent extraordinary circumstances, foreign language requests will not be considered once the Notice has been mailed.

### 12.2 [Designation of the Official Eligibility List](#)

The "List of Potential Eligible Voters" previously obtained from the carrier and corrected, if necessary, by the Investigator constitutes the "Official Eligibility List" following an election authorization. The Investigator should notify the participants of any changes to the Official Eligibility List.

### 12.3 [Changes in Employee Status](#)

Changes in employee status include, but are not limited to: death, retirement, promotion to management official, transfer out of craft or class, resignation, and working for another carrier. Employees who leave the

craft or class prior to the ballot count are not eligible.

The participants must advise the Investigator of any changes in employee status during the election period. Status changes should include the effective date of the change and supporting documentation. It is the carrier's responsibility to provide supporting documentation when status changes are raised by the participants. Agreement by the participants regarding status changes is not determinative.

The Investigator is not obligated to accept status changes in employee status, absent extraordinary circumstances, if this information is provided less than seven (7) calendar days before the scheduled count. The Investigator's ruling is not appealable.

## **13.0 Telephone and Internet Elections**

### **13.1 The Notice of Election**

The NMB will provide copies of the Notice of Telephone and Internet Voting Instructions (Notice) to the participants at least five (5) calendar days before the Telephone and Internet Voting Instructions (Instructions) are mailed to the eligible voters. The Carrier must post the Notice on Carrier bulletin boards and at all locations where other notices to employees usually are posted. At least one Notice per station must be posted.

### **13.2 Telephone and Internet Voting**

#### **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 NMB will list the incumbent, the "write-in" option and the "no representative" option in descending order on the Instructions.

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.

### 13.202 Access Codes

Each voter will be assigned an Access Code. The Access Code is a randomly generated twelve (12) digit confidential number known only to the voter and NMB agents.

### 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 will be listed in descending order.

The Access Code ensures the confidentiality and the integrity of the election by eliminating unauthorized votes.

#### 13.204 Challenged Individuals

Individuals whose eligibility or ineligibility has been challenged, and for whom no final decision has been made, will be sent Instructions and an Access Code. 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 List of Eligible Voters will be made.

#### 13.205 Requests for Duplicate Telephone and Internet Voting Instructions

Voters may request duplicate Instructions, including an Access Code, 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 or email are not accepted. Requests received less than seven (7) calendar 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 employee requesting duplicate Instructions will be confidential. The employee will be mailed duplicate Instructions, including an Access Code, and the Official Eligibility List will be marked to reflect that duplicate Instructions were mailed.

#### 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.

### 13.207 TTY Communications System Users—for Telephone Voting

Voters may use the NMB's TTY communications system for Telephone Voting as explained in the Instructions. When the voter uses the TTY communications system, the voter must identify himself or herself with the correct Access Code. NMB election officials shall assist the voter as necessary.

### 13.208 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 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.

### 13.303 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.

Due to the security policy of the building where the offices of the NMB are



located, participants must provide the name of each individual who will be attending the tally no less than two business days prior to the tally. Participants should email the names of the attendees to **legal@nmb.gov**.

The Investigator will ensure that the observers do not interfere with the tally. Any material or information which might disclose whether particular employees cast votes or refrained from voting must be secured. Some examples of such materials would include marked eligibility lists, requests for duplicate Instructions, and voting records reflecting dates, times, and phone numbers.

### 13.304 Vote Determinations

#### 13.304.1 Valid Votes

Voters will have the opportunity to vote for representation by an organization or individual or for "no representative." Where the voter's intent to vote for representation is clear, the vote is valid and will be counted as a vote for representation. If an organization or individual receives a majority of votes cast, it will be certified as the representative. If the majority of votes cast are for "no representative," there will be no representative certified. In the event of a tie vote between votes for representation and votes for no representation, no representative will be certified.

Valid votes for representation include "write-in" votes which clearly indicate the voter's desire for representation. A voter must affirmatively "speak in" (telephone) or "write-in" (Internet) the name of an individual or organization to cast a valid vote.

#### 13.204.2 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 has "spoken in" (telephone) or "written-in" (Internet) the phrase "Any Other Organization or Individual";
- (3) votes where the voter has failed to "speak in" (telephone) or "write-in" (Internet) any text;
- (4) votes where the voter's intent is unclear; and
- (5) votes where the voter has "written in" "self," "self representation" or the equivalent.

### 13.305 Authority to Tally the Votes

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 where the applicant desires to withdraw the application.

### 13.306 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.

## 14.0 **Mail Elections**

### 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.

### 14.2 Mail Ballot Elections

#### 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 NMB will list the incumbent, the "write-in" option and the "no representative" option, in descending order on the ballot.

#### 14.202 Ballot Package

Only NMB agents handle ballot packages. A ballot package consists of the Notice of Election/Ballot and a prepaid postage ballot return envelope. The ballot package is mailed to eligible voters not less than 21 calendar days before the ballot count.

#### 14.203 Key Numbering

Each ballot return envelope is marked with the case number and a unique key number. The key numbering system controls the integrity of the election by eliminating unauthorized ballots. The key number is also noted on the Official Eligibility List next to the name of each voter.

#### 14.204 Challenged Individuals

Individuals whose eligibility or ineligibility has been challenged, and no final decision has been made, will be sent a ballot package.

#### 14.205 Requests for Duplicate Ballots

Individuals listed on the Official Eligibility List may request a duplicate ballot by contacting the NMB in writing. The request must be signed by the individual requesting the ballot and mailed in an individual envelope; group requests are not accepted. Requests by telephone or email are not accepted. Requests received less than seven (7) calendar days before the count will not be honored. Requests dated or received prior to the mailing of the ballots will not be honored.

The name of any individual requesting a duplicate ballot will be confidential. The individual will be sent a ballot package with the original key number written on the ballot return envelope. The ballot return envelope will be marked "duplicate" and the Official Eligibility List will be marked to indicate that a duplicate ballot was mailed.

#### 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.

#### 14.207 Adjustments to the Official Eligibility List

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

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

### 14.3 The Ballot Count

#### 14.301 Location and Time of the Ballot Count

The ballot count will be 2 p.m., Eastern Time, at the NMB's offices in Washington, DC, unless the Investigator establishes an alternate time.

#### 14.302 Requests to Postpone the Tally

Absent extraordinary circumstances, requests to postpone the ballot count must be in writing and received 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 cancel the tally, even when the applicant desires to withdraw the application.

#### 14.303 Admission and Control of the Ballot Count

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

Due to the security policy of the building where the offices of the NMB are located, participants must provide the name of each individual who will be attending the tally no less than two business days prior to the tally. Participants should email the names of the attendees to **legal@nmb.gov**.

The Investigator will ensure that the observers do not interfere with the count. All materials which might disclose whether particular employees cast ballots or refrained from voting must be secured from view prior to permitting any non-NMB employees to observe the final tabulation of the

ballots. Such materials would include ballot envelopes with attest, marked eligibility lists, requests for duplicate ballots, and similar documents. All ballots should be mixed thoroughly before unfolding and commencing the actual count.

#### 14.304 Commencing Tally of Ballots

The Investigator will collect the ballots from the safe on the date of the count.

#### 14.305 Ballot Determinations

The election will be supervised by the Investigator. The Investigator will interpret and apply the rules governing the election and shall make all ballot determinations. If the voter's intention is clear, the ballot should be counted in accordance with that intent.

##### 14.305.1 Invalid Ballot Return Envelopes

Ballot envelopes returned without a signed attest are invalid. Ballot envelopes from individuals not on the Official Eligibility List are invalid. Invalid envelopes are not opened. When a voter returns both the original and the duplicate ballot envelope, the original will be counted and the duplicate will be marked invalid.

##### 14.305.2 Valid Ballots

Voters will have the opportunity to vote for representation by an organization or individual or for "no representative." Where the voter's intent to vote for representation is clear, the ballot is valid and will be counted as a vote for representation. If an organization or individual receives a majority of votes cast, it will be certified as the representative. If the majority of votes cast are for "no representative," there will be no representative certified. In the event of a tie vote between votes for representation and votes for no representation, no representative will be certified. Valid ballots cast for representation include "write-in" ballots which clearly indicate the voter's desire for representation. Voters must "write-in" the name of a specific organization or individual to cast a valid vote.

##### 14.305.3 Void Ballots

The following ballots are void and will not be counted:

- (1) ballots cast for a carrier or carrier official;
- (2) ballots marked in more than one square, where the

- (3) voter's intent is unclear;
- (4) blank ballots;
- (5) ballots where the voter selected "write-in" but did not identify a specific organization or individual;
- (6) ballots where the voter has "written-in" the phrase "Any Other Organization or Individual";
- (7) ballots where the voter has "written-in" "self," "self representation" or the equivalent; and,
- (8) ballots which identify the voter, unless the voter has placed his/her name in the "write-in" space on the ballot and is not identified elsewhere on the ballot.

#### 14.305.3 Appeal of Investigator Determinations Made at the Tally

The Investigator's ballot determinations shall be final as to the immediate conduct of the election, but appeal may be made to the NMB provided that the challenge to the determinations is based on good cause, the number of challenged ballots is determinative to the outcome of the election, and written notice of such appeal is directed to the General Counsel and filed electronically at **OLA-efile@nmb.gov** on the day of the tally.

### **15.0 Tabulation and Report of Election Results**

Following any adjustment to the List of Eligible Voters, the Investigator shall complete the count, tabulate the results, and record the results on the Report of Election Results. The Investigator shall sign the Report of Election Results and provide copies to the participants.

The NMB will generally issue a Certification or Dismissal based upon the Report of Election Results the next business day following the count. Existing Certifications remain in effect until the NMB issues a new Certification or Dismissal.

### **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).

## **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.

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.

## **18.0 Bars to Representation Applications**

The NMB's representation bar procedures are set forth in the NMB Rule §1206.4 (29 CFR §1206.4).

## **19.0 Merger Procedures**

### **19.1 Merger**

Merger is a consolidation, merger, purchase, lease, operating contract, acquisition of control, or similar transaction of two or more business entities.

## 19.2 Authority

Pursuant to Section 2, Ninth, the NMB, upon an Application, has the authority to resolve representation disputes arising from a merger involving a Carrier or Carriers covered by the RLA. The NMB will consider these representation issues on a case-by-case basis.

## 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.

## 19.4 Applying for Determination of a Single Transportation System

Any organization or individual may file an application, supported by evidence of representation or a showing of interest (See Section 19.601), seeking a NMB determination that a single transportation system exists.

## 19.5 Merger Investigations

After an application is filed, the NMB will conduct a pre-docket investigation to determine whether a single transportation system exists. The investigation may take any form appropriate to the determination.

### 19.501 Factors Indicating a Single Transportation System

The following are some indicia of a single transportation system:

- (1) published combined schedules or combined routes;
- (2) standardized uniforms;
- (3) common marketing, markings or insignia;
- (4) integrated essential operations such as scheduling or dispatching;
- (5) centralized labor and personnel operations;
- (6) combined or common management,
- (7) corporate officers, and board of directors;



- (8) combined workforce; and,
- (9) common or overlapping ownership.

## 19.6 Procedure After Finding Single Transportation System

If the NMB determines that a single transportation system exists, the investigation will proceed to address the representation of the proper craft or class. The bar rules in NMB Rule § 1206.4 (29 CFR § 1206.4) do not apply to applications filed under this section.

### 19.601 Showing of Interest on the Single Transportation System

All applicant(s) must submit evidence of representation or showing of interest from at least fifty (50) percent of the employees in the craft or class.

Evidence of representation or showing of interest from incumbent organizations or individuals on the affected carrier(s) includes, but is not limited to, a seniority list, dues check-off list, a current collective bargaining agreement or a certification, or other indicia of current representation.

If the organization(s) or individual(s) filing the application does not represent any of the employees covered by the application, showing of interest is proved by valid authorization cards. (See Section 3.0)

If not already filed with the initial application, an incumbent(s), intervenor(s), and applicant(s) have thirty (30) calendar days from the date of the NMB's single transportation system determination to submit evidence of a showing of interest or to supplement the showing of interest on the single transportation system.

Applications that do not meet the showing of interest requirements will be dismissed.

## 19.7 Status of Representation Certifications

Existing certifications remain in effect until the NMB issues a new certification or dismissal.