



NATIONAL MEDIATION BOARD

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53 NMB No. 21
April 21, 2026

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Gentlemen:

The issue before the National Mediation Board (Board) involves an application filed by an individual, Edward Bauer, seeking to decertify the Train and Engine Service Employees craft or class at Missouri Eastern Railroad (MERR or Carrier). On January 21, 2026, Mr. Bauer's first application was dismissed under Part 1206.2(a) of the Board's Rules. *See Missouri Eastern R.R.*, 53 NMB 39 (2026). Rule 1206.2(a) provides

Upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, or to decertify the current representative and have no representative, a showing of proved authorizations (*checked and verified as to date, signature, and employment status*) from at least fifty (50) percent of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act. (emphasis added)

The dismissal carries a one-year bar under NMB Rule 1206.4(b)(2). Rule

1206.4(b)(2) provides that except in “unusual or extraordinary circumstances” the NMB will not accept an application for investigation of a representation dispute among employees of a carrier for a period of one year from the time the Board dismissed an application for the same craft or class on the same carrier under Rule 1206.2. On January 23, 2026, Mr. Bauer attempted to re-file his application with “a sufficient number of authorizations.”¹ On March 12, 2026, Mr. Bauer, now represented by the Right to Work Legal Defense Foundation (RTW), filed a new decertification application.

RTW concedes that several authorization cards filed with Mr. Bauer’s first application failed to comply with the requirements of Rule 1206.2(a) and NMB Representation Manual (Manual) Section 3.0. RTW contends that Mr. Bauer’s pro se status and the NMB’s “administrative misstep” in not allowing Mr. Bauer to “amend his application” with a corrected showing of interest constitutes unusual and extraordinary circumstances justifying waiver of the one-year bar. As discussed below, the Board finds that no unusual or extraordinary circumstances exist.

Background

On April 6, 2023, the International Association of Sheet Metal, Air, Rail and Transport Workers (SMART) was certified as the collective bargaining representative of the Train and Engine Service Employees craft or class at MERR. See *Missouri Eastern R.R.*, 50 NMB 48 (2023) (R-7609). Following direct negotiations, MERR and SMART entered statutory mediation on March 22, 2024 and are currently in mediation. A session had been scheduled by the NMB mediator for December 18, 2025.

Mr. Bauer called the NMB on Friday, December 19, 2025 about filing a representation application. According to Mr. Bauer, some of his questions were answered but his call was transferred to the Office of Legal Affairs (OLA) voice mailbox and he left a message. On Monday, December 22, 2025, having not received a call back from the NMB, Mr. Bauer approached Darl Farris, President of MERR. He told Mr. Farris that he had “contacted the NMB previously by phone with some questions about decertifying a representative.” Mr. Farris emailed Amy Miori, SVP for Customer and Team Services at Jaguar Transport Holdings,² stating that Mr. Bauer “would appreciate any help getting a response from the NMB on this matter.” Ms. Miori forwarded the email to Audrey Lane, Counsel for MERR. Ms. Miori and Ms. Lane are also two of the Carrier’s representatives in the NMB Mediation. Ultimately, Ms. Lane forwarded the message to the NMB “noting the delicate situation” since the Carrier “did not want to be seen as

¹ The Board received an email containing the application and authorization cards from Mr. Bauer on January 23, 2026 and the original hard-copy documents via FedEx on January 28, 2026.

² MERR is a subsidiary railroad of Jaguar Transport Holdings.

interfering.” MERR’s counsel further stated, “However, he has come to us and so out of an abundance of caution I have decided to forward this email to you in hopes you can contact Mr. Bauer to help him with his inquiry.”

Also, on December 22, 2025 OLA Attorney Andres Yoder contacted Mr. Bauer. The NMB public information log states that Mr. Bauer had “questions about representation rules and policies. [Mr. Yoder] directed him to resources online.³” On December 29, 2025, Mr. Bauer filed electronic copies of a decertification application, a notice of appearance form, and scanned copies of authorization cards. Per Manual Section 1.2, the Board does not accept representation applications electronically. Accordingly, on that same day OLA Attorney Eileen Hennessey responded by email, letting Mr. Bauer know that the NMB would not process his application until hard copies of the application, notice of appearance, and authorization cards were received at the NMB’s office. Ms. Hennessey also provided Mr. Bauer with the Board’s mailing address, a link to the NMB’s website, and information on the requirements for both the application and the authorization cards. All of the sources referenced by Ms. Hennessey are available on the NMB’s website.

Mr. Bauer’s first application, notice of appearance, and authorization cards were received by the NMB on January 8, 2026. The case was assigned to Mr. Yoder and he contacted Mr. Bauer that day. Because Board precedent requires the craft or class in a decertification application to be co-extensive with the craft or class in the certification, Mr. Yoder sought permission to administratively modify the craft or class listed on the application from “Operations Employees/Conductors-Engineers” to “Train and Engine Service Employees.” See *Carrollton Railroad*, 51 NMB 93, 96 (2024). Also, since the Notice of Appearance is limited to the three primary contacts and Mr. Bauer listed five individuals, Mr. Yoder asked Mr. Bauer to designate three individuals for inclusion on the Notice of Appearance. Mr. Bauer confirmed the conversation and the changes by email. The case was docketed as NMB Case No. RD-7626 on January 9, 2026. The docket letter—along with attachments, including the application and notice of appearance—was sent to MERR and SMART. The docket letter requested MERR to supply the list of eligible voters (List) and signature samples. On January 9, 2026, Mr. Bauer forwarded the docket letter and attachments to Mr. Farris at his personal email address. Once again, on January 11, 2026, Mr. Farris forwarded that communication to Ms. Miori and Ms. Lane. On January 12, 2026, Ms. Lane forwarded the email chain to the NMB Mediator stating that MERR “employees represented by SMART-TD have filed to decertify with the NMB and an election will be held.” Despite no election being authorized, she then requested that all mediation sessions be held in abeyance

³ Mr. Bauer called Mr. Yoder again on December 23, 2025. Mr. Yoder did not return the call until January 5, 2026, when he returned from leave. The entry in the public information log made on that date states “unclear what the caller’s original question was. He also says he can’t remember whether he called on 12/23/25 or before. He says he submitted an application to OLA electronically and then in hard copy version. He does not have a specific question at this time.”

until after the election, including the meeting scheduled for January 23, 2026. The NMB Mediator requested the Carrier to keep the session “penciled in” until the NMB heard back from SMART.

On January 15, 2026, the Carrier sent the List and the signature samples and Mr. Yoder checked the authorization cards on January 20, 2026. The number of authorization cards that met the requirements of NMB Rule 1206.2(a) was less than 50% of the craft or class. The Board issued the dismissal on January 21, 2026. On January 23, 2026, Mr. Bauer filed a second application with new authorization cards. Mr. Yoder spoke with Mr. Bauer on that date and explained that the application was time-barred under the Board’s rule cited in the dismissal and would not be docketed. The January 23, 2026 mediation session occurred as scheduled, as did a March 10, 2026 mediation session. Another mediation session was scheduled on April 6, 2026.

On March 12, 2026, having obtained RTW as his representative, Mr. Bauer filed a third application with new authorization cards. On March 25, 2026, the Board notified RTW and Mr. Bauer that the application was time-barred under its rules. RTW responded that unusual and extraordinary circumstances justified docketing the latest application and requested leave to file a position statement. On that same day, the Board received a letter from Ms. Lane on behalf of MERR stating that her client had been served a copy of the latest application on March 12, 2026⁴ and “requesting the NMB to provide written guidance on the Application and to urge the NMB to initiate an investigation to determine if it is appropriate for a decertification to go forward.” Ms. Lane further stated that the Carrier “submits this letter asking the NMB to consider the Application” under the unusual and extraordinary circumstance exception to Rule 1206.4. The Carrier argued on behalf of Mr. Bauer that Mr. Bauer was acting pro se, that there were only technical errors and not the kind of hasty refile of applications that the rule was intended to prevent. Ms. Lane also argued that “the fact that there is not and never has been any Collective Bargaining Agreement since SMART-TD was certified to represent the [Train and Engine Service Employees craft or class] should not be discredited.” Ms. Lane also served her letter on SMART and RTW. On March 26, 2026, the Board granted RTW’s request. RTW filed its position statement regarding unusual and extraordinary circumstances. The April 6, 2026 mediation session occurred as scheduled.

Discussion

As noted above, there is no dispute that a number of the authorization cards submitted by Mr. Bauer with his first application (RD-7626) were not valid under the NMB’s rules and that the number of valid cards did not provide the statutorily required 50% necessary for the Board to authorize a representation

⁴ It appears that Mr. Bauer had once again followed his practice of sending a copy of his decertification application to the Carrier.

election. *See generally* 29 C.F.R. § 1206.3 (requiring authorization cards to be hand dated within one year of the application date); 45 U.S.C. § 152, Twelfth (requiring a 50% or more showing of proved authorizations).

RTW argues that since the Board requested Mr. Bauer to make changes to the craft or class and the names listed on the notice of appearance with his first application, it should have also allowed him to correct any defects on the authorization cards. To accede to that argument would destroy the Board's impartiality as a neutral arbiter of employee free choice. The changes Mr. Yoder requested on the first application were administratively necessary to ensure that any decertification election covered the same employee group in the certification and that the List provided by the Carrier was accurate. This action was well within the Board's authority under Section 2, Ninth of the RLA to establish the parameters of the election. Requesting that the Applicant designate who the Investigator should contact regarding procedural and other matters is also administrative. The Board's role with respect to authorization cards is not; showing of interest requirements are statutory.

The Board's statutory role is to act as a neutral "referee" in representation matters. *Switchmen's Union v. NMB*, 320 U.S. 297, 304 (1943). It fulfills this role when investigating the showing of interest by reviewing authorization cards after receiving signature samples from the carrier. It cannot change that process for certain applicants. The Board is statutorily required to determine each card's validity in order to proceed to a secret ballot election to determine employee free choice. The authorization cards are the evidence of the existence of a representation dispute and that evidence must be gathered by the applicant individual or organization, not by the Board or with the assistance of the Board.

Once the Investigator receives the List and signature samples, he or she checks the validity of the signatures on each authorization card against the signature samples; and reviews the dates on each card. As required by the NMB's regulations, in order to be valid, the card must be dated and signed in the employee's own handwriting or by his witnessed mark. *See* 29 C.F.R. § 1206.3. The card must be dated within a year of the filing of the application or the card is stale. *See id.* Section 2, Twelfth of the RLA provides that the NMB "shall not direct an election" unless the application is supported by authorization cards from 50% of the craft or class. 45 U.S.C. § 152, Twelfth. The Board followed its statutory obligation and its standard representation case procedures.

Further, Mr. Bauer had access to all the necessary information to file a representation application according to the Board's requirements. He was advised by two OLA Attorneys. On December 22, 2025, Mr. Yoder explained the process and directed him to the website. On December 29, 2025, Ms. Hennessey provided a link to the NMB's website and explicitly stated the requirements that had to be met for authorization cards. On January 5, 2026, Mr. Yoder also called Mr. Bauer back to see if he had additional questions. All of the information

provided by the NMB attorneys is available on the NMB's website. A pro se applicant is not an extraordinary circumstance. Since the NMB's adoption of a direct decertification process in 2019, at least 13 Individuals have successfully filed applications for a decertification of a representative. Even under the prior indirect and cumbersome "strawman" process, numerous individuals successfully navigated the Board's representation processes. Mr. Bauer is a skilled employee in a vital transportation industry. He was provided the necessary information and the fact that he submitted valid authorization cards, although not enough, indicates that he was aware of the requirements.

RTW contends that the facts in this case do not present the kind of harm the bar rules are intended to prevent. The Board agrees that its bar rules are grounded in the idea of repose—that is, a recognition that "representation campaigns and the organizing campaigns which unnecessarily precede them cause unsettled labor conditions and, in many cases disturb employees substantially in the discharge of their duties." 20 NMB ANN. REP. 10 (1954). RTW however draws a distinction between a representation application filed by an individual and one filed by a sophisticated labor organization hastily re-filing its application. The NMB does not make this distinction. First, as noted in the NMB's decertification rulemaking, 84 Fed. Reg. 35,977 (July 26, 2019), courts and the Board recognize that inherent in the right to be represented is the right to be unrepresented. Second, under the RLA there is only one application—an application to determine whether or not a group of employees seeks a collective bargaining representative. When the Board modified its rules to allow direct decertification, it treated decertification in the same manner as it treated certification and applied a two-year bar. Similarly, the one-year bar applies to the dismissal of an application for decertification of a representative as well as an application seeking to obtain a certified representative. Many of the Board's cases speak in terms of organizing but the language of the Act speaks in terms of the right of employees to choose or not to choose representation. As the Board noted in *United Airlines*, 8 NMB 642 (1981), it is the employees who are barred from raising a representation dispute, not solely the individual or organization that filed the application. See *id.* at 651-52.

The cases cited by RTW in support of its contentions are unpersuasive. In *IBT v. NMB (Aspen Airways)*, 1981 WL 2396 (D.D.C. June 12, 1981), the Board waived its two-year certification bar where its own mistake—mismarking mail ballots—caused the applicant International Brotherhood of Teamsters (Teamsters) to lose an election. In that case, the Board acknowledged its error in mismarking the ballots and, after counting the ballots, certified the Teamsters as the collective bargaining representative. Between the initial Teamsters election and the discovery of the mismarked ballots, the employees created their own association and obtained an agreement for wage increases. The Board allowed the employees to file an application for a new representative, the Air Line Employees Association, within a year of the Teamsters' certification finding that the mismarked ballots and the employees' collective activity established unusual

and extraordinary circumstance.

Here, the Board made an administrative correction to the application with Mr. Bauer's consent and then proceeded with its investigation by obtaining a List and signature samples and checking the validity of the cards. As discussed above, there was no Board error or misconduct. Further, in *Aspen Airways* the court clearly stated that the determination of what is or is not unusual and extraordinary circumstances is a determination within the discretion Congress granted the Board under Section 2, Ninth to investigate a representation dispute. *Id.* at *2.

Similarly, RTW's reliance on *Scheduled Skyways v. NMB*, 738 F.2d 339 (8th Cir. 1984), is misplaced. In that case, the NMB waived the certification bar but in circumstances very different from the facts presented here. *Scheduled Skyways* concerned the validity of a certification issued when the NMB had only one Member of its three Member Board. Contrary to RTW's argument, the Board does not find that the dismissal of Mr. Bauer's application for an insufficient showing of interest presents the same extraordinary or unusual circumstances as conflicting court interpretations of the scope of the delegation, vacancies, and quorum provisions of the RLA.

With regard to the Carrier's unsolicited position statement on behalf of Mr. Bauer's decertification application, it should be noted that the Carrier is not a party to a representation dispute under the plain language of Section 2, Ninth. *Railway Labor Executives' Ass'n v. NMB (RLEA)*, 29 F.3d 655 (D.C. Cir.) (en banc), *amended*, 38 F.3d 1224 (D.C. Cir. 1994). In *RLEA*, the DC Circuit, en banc, confirmed that Section 2, Ninth of the RLA "does not contemplate action-initiating roles either for the Board or for carriers" in representation disputes. *Id.* at 665. Further, it is well-settled Board law that carrier interference or influence that fosters or assists an applicant may constitute interference. *Mackey Int'l Airlines*, 5 NMB 220 (1975). Despite recognizing this danger, the Carrier has had, to the Board's mind, a concerning proximity to Mr. Bauer's efforts. Equally troubling is MERR's reference to the on-going statutory mediation as a basis for waiving the NMB's rules and docketing the application.⁵ The Board reminds the Carrier that the RLA places an affirmative duty on it to make every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. 45 U.S.C. § 152, First.

The Board acted in compliance with its rules and usual procedures when it dismissed Mr. Bauer's application. There is nothing unusual or extraordinary about a pro se applicant seeking a decertification election. The Board's decertification rules were created with individual applicants in mind and many

⁵ The Carrier's implication that all applications filed under the NMB's decertification process are successful is misplaced. *See, e.g., Lufthansa Technik Puerto Rico*, 53 NMB 18 (2025), *Carrollton R.R.*, 52 NMB 3 (2024); *South Buffalo Ry.*, 52 NMB 186 (2025).

have successfully filed applications under those rules. Further, the Board routinely dismisses applications from both organizations and individuals that are not supported by the requisite showing of interest for various reasons, including defects in the authorization cards.

Conclusion

The Board denies the request to waive the dismissal bar and will not accept an application covering Train and Engine Service Employees craft or class at Missouri Eastern Railroad until January 22, 2027.

By direction of the NATIONAL MEDIATION BOARD.

A handwritten signature in black ink, appearing to read "Maria-Kate Dowling". The signature is written in a cursive, flowing style.

Maria-Kate Dowling
General Counsel