

Frequently Asked Questions: Representation

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GENERAL INFORMATION

One of the purposes of the Railway Labor Act (RLA) is to effectuate employees' rights to self-organization. The RLA provides that employees shall have the right to organize and bargain collectively through representatives of their own choosing. It is the National Mediation Board's (NMB or Board) duty to resolve any disputes among employees as to who are their collective bargaining representatives. The NMB investigates these disputes, ensuring peaceful resolutions without disruption to interstate commerce.

The NMB investigates representation disputes in the railroad, commuter railroad, and airline industries only. Collective bargaining representation of employees in other private industries is administered by the National Labor Relations Board pursuant to the National Labor Relations Act. (www.nlr.gov.) Collective bargaining representation of employees in the Federal sector (United States government employees) is administered by the Federal Labor Relations Authority pursuant to the Civil Service Reform Act of 1978, Title VII. (www.flra.gov.) Collective bargaining representation of other public sector employees (state, county and municipal government employees) varies and depends on whether there is a state or local law which permits collective bargaining.

These questions and answers are meant to provide general guidance only. They do not provide definitive determination of any representation matter and are not to be construed as legal opinions that may be cited in any administrative, legal or arbitral proceeding.

BASICS

1. Q: What is the role of the NMB in representation matters?

A: It is the NMB's duty to investigate and resolve representation disputes in the railway and airline industries.

2. Q: How do representation disputes come to the NMB?

A: A labor organization (organization) or an individual employee can request that the NMB investigate an alleged representation dispute by filing Form NMB-1, "Application for Investigation of Representation Dispute," available at www.nmb.gov/representation/rapply.html. The organization or individual is also required to file a "Notice of Appearance" with the application which is available at the same link.

3. Q: Who investigates representation matters?

A: Representation investigations are conducted and supervised by the NMB's Office of Legal Affairs.

4. Q: What are the procedures for investigating representation applications?

A: The procedures are detailed in the NMB Representation Manual (Manual) available at www.nmb.gov/representation/representation-manual.pdf. Generally, an organization or individual seeking representation rights must file an application requesting an investigation. The application must be supported by authorization cards. In appropriate cases, an NMB investigator determines: the appropriate craft or class; the eligible voters; whether an election will occur, and; the schedules for a Telephone Electronic Voting (TEV) and Internet Voting election.

APPLICATIONS

5. Q: What is an authorization card?

A: An authorization card is a card or document signed by the employee which states that the employee desires to be represented by an organization or individual for collective bargaining purposes. Authorization cards must have the name of the organization or individual seeking to represent the craft or class, and must be signed and dated by the employee. Typically, authorization cards also include the following information: employee address, telephone number, job title, employee number, and social security number. The NMB compares the signed authorization cards to the List of Potential Eligible Voters supplied by the carrier to determine the percentage of employees signing authorization cards (generally referred to as the "showing of interest").

The language on authorization cards must be unambiguous and the NMB must be able to determine the employee's intent. In an accretion application, the authorization cards must be unambiguous and state clearly the sole purpose of the card. 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 to represent the employees will also not be accepted as support for accretion applications or certification by card check.

6. Q: What is the mandatory format for the Carrier's List of Potential Eligible Voters?

A: The Carrier must deliver to the Board's Office of Legal Affairs by 10 a.m., ET, on the date specified in the docketing letter, three copies of an alphabetized list of potential eligible voters and a copy of the alphabetized list on a diskette or CD as a Microsoft Excel file. The format for the List of Potential Eligible voters provided below must be followed.

Specifically, the format of the List of Potential Eligible Voters must be prepared in five columns

or fields exactly as shown in the sample format in the docketing letter (columns A, B, C, D, E, only). There must not be any other information or data in the file, diskette, or CD, except as displayed in the five columns or fields on the sample format. The data in the Microsoft Excel file is contained in cells. The column headers, also known as field headers, must appear in the first row of cells only. Therefore, the first row is for column headings only, and all subsequent lines contain only voter information. The Carrier must not include any hidden columns or fields in the Microsoft Excel file. Also note that the employee middle initial appears with the first name. There is no separate column or field for the middle initial. In addition, no other data should appear above the column headings.

The mandatory Microsoft Excel format can be downloaded at ([Download Microsoft Excel Format](#)). Carrier representatives should contact the NMB Elections Administrator at 202-692-5040, if they have any questions about the correct format for the list of potential eligible voters.

7. Q: What is a showing of interest?

A: A showing of interest is the percentage of the craft or class that has signed authorization cards. An application must be supported by a 50% showing of interest, in the form of employee authorization cards. Authorizations will be considered invalid if dated more than one year prior to the date on the NMB application.

8. Q: Can an employee in the craft or class sign an authorization card for more than one organization?

A: Yes.

9. Q: What is an Intervenor?

A: Once an organization has filed an application, another organization may intervene in the representation dispute and place itself on the ballot by presenting authorization cards signed by at least 50% of the employees in the craft or class.

10. Q: How can employees change their labor organization?

A: Employees can change their labor organization by signing authorization cards for another organization, which then files an application and "wins" an election.

11. Q: How can employees decertify their current representative without getting another one?

A: A majority of valid votes must be cast for no representation.

12. Q: Can employees form and elect their own union?

A: Yes, employees can form their own organization if they submit an application supported by a

sufficient showing of interest.

INVESTIGATION

13. Q: What does the NMB do after an application is received?

A: The general procedure is for the NMB to docket the application, assign it an R-case number, and designate an Investigator who will handle the case investigation. The docketing letter sets forth a time schedule for the carrier to provide a list of potential eligible voters and signature samples. If the NMB notes anything unusual about the application (for example, an unusual craft or class, a jurisdictional question, or an accretion), the NMB does not docket the application, but gives the matter a CR-file number and conducts a pre-docketing investigation.

14. Q: What is a craft or class?

A: Craft or class is a term used for the group of employees the applicant seeks to represent. Crafts or classes must be system-wide.

15. Q: What factors are considered in determining the proper craft or class?

A: The Board considers several facts in determining a proper craft or class including: the composition and relative permanency of the employee grouping along craft or class lines; the functions, duties and responsibilities of the employees; the general nature of the work performed, and; the community of interest between job classifications. *See* Manual Section 9.1 at www.nmb.gov/representation/representation-manual.pdf.

16. Q: Who is eligible to vote in the election?

A: All employees working in the craft or class and who are employed as of the last day of the last payroll period prior to the receipt of the application by the NMB are eligible to vote in the election. Employees severing their employment relationship (e.g., by resignation, termination, retirement, death, or promotion) during the balloting period are normally removed from the list. *See* Manual Section 9.2 at www.nmb.gov/representation/representation-manual.pdf.

17. Q: Who is ineligible to vote in the election?

A: Employees who do not have an employer-employee relationship, for example management officials, contractor employees, or discharged employees. *See* Manual, Section 9.2 at www.nmb.gov/representation/representation-manual.pdf.

18. Q: Does the NMB provide home addresses to organizations in representation campaigns?

A: The NMB does not provide home addresses to organizations in representation elections. In

extraordinary circumstances, where the NMB determines that due to prior interference with the laboratory conditions by the carrier or voter confusion, the NMB may provide the home addresses of eligible voters to the organization.

19. Q: Can a union be certified by the NMB without an election?

A: Yes. If there is only one labor organization applying for representation, and the organization and the carrier agree in writing to a certification based on a check of authorization cards, the NMB can authorize the check of authorizations instead of an election. If a majority of the craft or class has signed authorizations, the organization will be certified without an election.

20. Q: Can my job or position be added or accreted to an existing certified craft or class without an election?

A: Yes. An organization which is certified to represent the craft or class may file an application supported by a showing of authorization cards seeking to accrete jobs or positions into the craft or class. The Investigator then determines if the position(s)' duties and responsibilities share a sufficient community of interest with the craft or class. If the position(s) share a community of interest, and if the number of employees accreted are fewer than those in the total craft or class, the NMB will accrete the employees in that position in the craft or class without an election.

VOTING

21. Q: How are NMB representation elections conducted?

A: Most elections are conducted by Telephone Electronic Voting (TEV) and Internet Voting. Approximately three weeks prior to the tally, each voter is mailed Voting Instructions explaining how to vote. In a standard TEV and Internet Voting election, employees either call in to cast their vote or access the Board's voting website. The way to vote for representation is to select one of the "Yes" options. The way to vote for no representation is to select the "No" option for no representative. The votes are tallied electronically. The results of the tally are provided to the organization(s) and the carrier in writing.

22. Q: Is Telephone and Internet Voting confidential?

A: Yes. All NMB voting is by secret ballot. To access the TEV and Internet Voting system, the voter must enter a confidential, randomly-assigned, twelve-digit Access Code. An Access Code is assigned to a single voter in a single representation election conducted by the Board, and is never used again. A voter's name and Access Code are known only to the voter and to the Election Administrator at the NMB. The confidential Access Code is mailed directly to the employees' homes. Requests for duplicate Access Codes must be made in writing and signed by the individual employee. Use of another voter's Access Code is prohibited by 18 U.S.C. § 1001. The NMB does not disclose the ballot choice of any voter.

23. Q: How is the winner of an election determined?

A: If an organization or individual receives a majority of the valid votes cast, it will be certified as the representative. If the majority of votes cast are for no representation, no representative will be certified.

24. Q: Is the NMB eliminating mail ballots?

A: No. In general, the NMB will be conducting elections using TEV and Internet Voting. The Board may use other appropriate methods, including mail ballots, as it is permitted under Section 2, Ninth.

25. Q: When was TEV implemented?

A: TEV was implemented on September 30, 2002, and Internet Voting was implemented on October 1, 2007.

26. Q: What if there is a computer failure?

A: The election system operated by the NMB's contractor has several backup power and computer systems. If one system fails, another system would pick up. This seamless process ensures that any system failure will not affect a voter's ability to vote. Further, the NMB's elections run for a period of three weeks minimum, allowing participants many opportunities to access the Internet or to use the telephone.

27. Q: How does the system prevent groups of voters from getting together for voting parties?

A: The system maintains multiple, detailed, independent audit trails which allow the contractor to substantiate election results and address election challenges. Therefore, the TEV and Internet voting system improves the Board's ability to investigate allegations of voting parties.

28. Q: How do voters vote no?

A: If a voter wishes to vote against representation, they select the phone prompt or internet phrase: "No. I vote for no representative."

29. Q: Can voters still "write-in" candidates?

A: Yes. They can "speak-in" at the prompt to vote for "any other organization or individual," on the TEV system or "write-in" their selection on the NMB's Internet Voting website. A voter must affirmatively "speak-in" (telephone) or "write-in" (Internet) the name of an individual or organization to cast a valid vote. Recording silence or the phrase "Any Other Organization or Individual" as a "write-in" or "speak-in" vote is no longer a valid vote. *See Manual Sections 13.304-1 and 13.304-2.*

30. Q: What prevents voters from voting multiple times?

A: The TEV/Internet Voting system locks out a user after repeated incorrect Access Code entries. This lockout also prevents hackers from "programmatically" discovering user Access Code combinations. In addition, as the phone and Internet systems are linked, voters are prevented from voting more than once regardless of which medium they choose to vote with.

31. Q: How are eligibility rulings and status changes handled under the TEV and Internet Voting system?

A: The same as under the mail ballot system. Electronic removal and addition of voters would be substituted for the current manual process.

32. Q: What records regarding the TEV and Internet Voting system will the parties have access to?

A: The participants will have access to information available to them under the Freedom of Information Act and the Privacy Act.

33. Q: What is the process for requesting duplicate Telephone and Internet Voting instructions?

A: The process for requesting duplicate Telephone and Internet Voting instructions will be set forth in instructions sent to each voter as well as posted at each base. The voter must request duplicate Telephone and Internet Voting instructions in writing and no group requests will be honored.

34. Q: Can voters change their votes?

A: Yes and no. While a voter is in the TEV or Internet Voting system, he/she will be prompted to confirm his/her choices and can make changes accordingly. Once the ballot is successfully cast, the voter cannot re-access the TEV or Internet Voting system and "change" the vote. The system will recognize this as an attempt to vote more than once.

35. Q: What do voters do if they are experiencing problems voting?

A: If a voter experiences problems, he/she should try again. If that fails, the voter should contact the NMB at the number provided on the Notice of Election/Telephone and Internet Voting Instructions and an OLA staff member will assist them.

36. Q: Do voters need any special equipment to participate in TEV and Internet Voting Elections?

A: Voters need access to a touch tone phone or access to the Internet in order to vote. Voters will not be able to vote using rotary dial or pulse phones.

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

37. Q: Are TEV and Internet Voting secure?

A: Yes. The TEV and Internet Voting process requires an Access Code to vote from either medium. The use of an Access Code enhances the integrity of the TEV and Internet Voting process, and as the systems are linked, users are locked out after repeated incorrect Access Code entries.

The TEV and Internet Voting system is both secure and encrypted. The physical infrastructure for the system is housed and maintained in a locked and access-controlled facility by the Board's contractor. Elections are conducted through the contractor's facility on a continuous basis, and alerts are sent immediately to contractor personnel if any interruption to normal operation of the system is detected. All votes are received directly inside the system's firewall and are stored there. Further, the system maintains multiple, detailed, independent audit trails which allows the contractor to substantiate election results and address election challenges.

Election results cannot be viewed until the election is closed and the tally conducted, thus eliminating the possibility of manipulation. The system is set up with various safeguards so that no one, including the Board Election Administrator, can link the content of a vote to the identity of a voter.

AFTER THE TALLY

38. Q: What happens after the tally?

A: If an organization or individual receives a majority of the valid votes cast, it will be certified as the representative. If the majority of votes cast are for no representation, no representative will be certified.

39. Q: If a representation application is dismissed, does the current representative of the craft or class of employees lose its representation rights?

A: It depends. If an organization files an application for a craft or class that is already represented, the incumbent organization is a party in the investigation and election. If the organization which filed the application does not have an adequate showing of interest or for some other reason the application is dismissed prior to an election, the incumbent organization will remain the representative of the craft or class. If the investigation proceeds to an election and a majority of valid votes are cast for no representation, then the application is dismissed and the incumbent organization loses its representation status.

40. Q: What is election interference?

A: The RLA states that a carrier shall not "interfere . . . influence or coerce" its employees in the choice of representative. In order to determine whether there has been interference in the election, the NMB examines whether the "laboratory conditions" essential to representation elections have been tainted. When there are allegations of election interference, the NMB examines the "totality of the circumstances" to determine whether the laboratory conditions have been tainted. The NMB has found election interference where the carrier: conducts improper surveillance of employees; interrogates employees; discharges or disciplines employees; confers benefits on employees, and; solicits or collects ballots. The NMB has shortened the application bar period when organizations have solicited or collected ballots.

41. Q: What should an employee do if he or she observes interference during the election period but before the ballot count?

A: Except in extraordinary circumstances, the NMB will investigate allegations of interference only after the ballot count. Therefore, if an employee observes conduct which may be interference during the election process, the employee should report it to the organization conducting the campaign or to the carrier, as appropriate.

42. Q: What if the organization or the carrier believes that there was interference with the election process?

A: Written allegations of interference must be received by the NMB no later than 4 PM, Eastern Time, seven business days after the count. Responses to the allegations must be received within seven business days after the NMB receives the interference allegations. The interference allegations must state a *prima facie* case (evidence sufficient to establish) that laboratory conditions were tainted and must be supported by substantial evidence in the form of affidavits and documents. After receipt of the submissions, the NMB will determine if there is a *prima facie* case of election interference. If the NMB determines there is a *prima facie* case, the investigation will continue and the NMB will issue a decision. If the NMB finds interference it can order a number of actions, including a rerun election. See Manual Section 17.0 at www.nmb.gov/representation/representation-manual.pdf.

OTHER INFORMATION

43. Q: What if I am already represented and I am unhappy with the organization?

A: The RLA does not address relationships between employees and their unions, including the payment or amount of union dues, or the representation you receive from the union in negotiations or grievances. Some questions can be answered by the U.S. Department of Labor Office of Labor-Management Standard at www.dol.gov/esa/olms/.

44. Q: Is the NMB involved in carrier mergers?

A: In a merger, the NMB will make a determination if a "single transportation system" exists based upon an application from an incumbent organization representing a craft or class on the pre-existing or merged carrier. If the NMB determines a "single transportation system" exists, it may order a representation election. See Manual Section 19 at www.nmb.gov/representation/representation-manual.pdf.

45. Q: What if there is a merger of labor organizations? Will the NMB transfer certifications?

A: Upon request of the organizations, the NMB will transfer the certifications to the new organization absent evidence of fraud or gross abuse in the merger procedures.

46. Q: If the NMB certifies an organization to represent my craft or class, do I have to join the union?

A: Under the RLA, a carrier and an organization may negotiate a "union shop agreement" which allows employees at least 60 days from the date of their actual employment to join the union or begin paying a fee to the organization, and limits the obligation to "join" to the payment of uniformly required dues and fees. This provision of the RLA preempts state right-to-work laws. Employees are permitted to become "agency fee objectors," and pay only certain fees which are "germane" to the organization's representational activities. Information on that right can be obtained from the organization. See 45 U.S.C. §152, Eleventh(c).