



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

32 NMB No. 35

NOTICE

TO: All Participants in Board Representation Proceedings

FROM: Mary L. Johnson, General Counsel

SUBJECT: Revision to Representation Manual

DATE: June 21, 2005

Enclosed please find revised Section 19, of the Board's Representation Manual, which sets forth the Board's merger procedures.

These revisions are effective June 21, 2005. For your convenience, an updated version of the complete Manual will be distributed under separate cover and will be available at the Board's web site www.nmb.gov.

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, in writing 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 Initiation of Procedure 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 19.601-2), 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, corporate officers, and board of directors;
- (7) combined workforce; and
- (8) 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 rules regarding percentage of valid authorizations in NMB Rule §1206.2 (29 CFR § 1206.2) and bar rules in NMB Rule §1206.4 (29 CFR § 1206.4) do not apply to applications filed under this section.

19.601 Incumbent organizations or individuals on the affected carrier(s) must submit evidence of representation or a showing of interest from at least thirty-five (35) percent of the employees in the craft or class. This evidence 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.

19.602 If the organization or individual filing the application does not represent any of the employees covered by the application, the organization or individual must submit authorization cards from at least thirty-five (35) percent of the employees in the craft or class. If a single organization or individual represents all of the employees in a craft or

class on the newly created single transportation system, an application filed by an intervening organization or individual must be supported by authorization cards from a majority (more than fifty (50) percent) of the employees in the craft or class. (See Section 3.601).

19.603 If not already filed with the initial application, organizations (Incumbents and Intervenors) have fourteen (14) 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.