

Background Information:

The National Mediation Board and The Railway Labor Act

*Prepared by the National Mediation Board
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The airline industry's problems have prompted a number of articles in the recent past concerning the National Mediation Board's role in contract negotiations in the airline and railroad industries. In order to provide background information that may be useful, the NMB assembled the following bullet points.

The National Mediation Board (NMB), was established by the 1934 amendments to the Railway Labor Act (RLA) of 1926. The Board is an independent agency performing a central role in facilitating harmonious labor-management relations within two of the nation's key transportation sectors – the railroads and airlines. Pursuant to the RLA, NMB programs provide an integrated dispute resolution process that effectively meets the NMB's statutory mandate to minimize work stoppages in the railroad and airline industries by securing voluntary agreements.

- The legislation creating the NMB is unique in that it was drafted by labor and management, then passed by the Congress without amendment in 1934.
- Beginning in 1994, the Commission on the Future of Worker-Management Relations (the "Dunlop Commission") and its subcommittees examined each of the nation's labor laws and the labor enforcement agencies. The Airline Industry Labor-Management Committee, an offshoot of the Dunlop Commission, was convened in October, 1995. In April, 1996, this body, made up of representatives from airline management and labor, offered as its first recommendation, "No Legislative Changes to the Railway Labor Act." The Committee recommended several administrative changes, all of which were subsequently adopted by the NMB.
- The negotiation process usually begins with the parties engaging in direct negotiations, without the presence or influence of the Board and its mediators. The parties control the timing of direct negotiations, with some beginning well before the amendable date of their current contracts, and some beginning very near the amendable date. How long it will take to complete negotiations and produce a tentative contract agreement (an agreement between the parties subject to ratification by a vote of the union members) is greatly influenced by the point at which the parties apply for mediation, and how many unresolved issues remain when they apply for mediation.
- The responsibility of the NMB to work with parties in both industries to avoid disruptions to essential transportation services puts the Board in a unique position to recognize and understand the impact of potential work stoppages in both industries, for all sections of the country.

- The Board has no control over the parties in direct negotiations. Although some parties reach final resolution in direct negotiations, the majority of parties file for mediation with the Board to resolve their many open issues. In fact, within the last year the Board received a case with almost 500 open issues from parties who had been in direct negotiations, without the Board's presence, for over one year.
- If an agreement is not reached in direct negotiations, the parties are required by law to come to the Board for mediation as part of the contract negotiation process. Application for mediation with the NMB may be made by either party, at which time a mediator is appointed and the Board's active involvement begins.
- When mediation cases are brought to the NMB there are internal customer service standards against which the Board measures its performance. Based upon the parties' performance over the years, the Board has established the goal of reaching tentative agreements within one calendar year of docketing, or within 45 days of face-to-face negotiations.
- In Fiscal Year 2002, the Board handled 59 mediation cases. 55 (93%) reached tentative contract agreements with 45 days or less of negotiation. 49 of the 59 cases (80%) reached tentative contract agreements in one year or less.
- In FY 2001, 94% of mediation cases reached tentative contract agreements with 45 days or fewer of negotiations, and 60% reached tentative contract agreements in less than one year.
- In FY 2002 cases were in mediation for an average of 14 days (at the table) spread out over 287 calendar days. (Railroads averaged 7.3 days of mediation in a 169 day period, and Airlines averaged 22.2 days of mediation in a 420 day period.)
- In FY 2002, six airline cases were spread over more than 500 days - four United cases, Delta/TWU, and PSA/ALPA.
- If one looks at the performance of the Board over time, it is clear that a large majority of cases come to the Board and reach agreement in less than one year, with less than a month and a half at the table in face-to-face negotiations with the assistance of a mediator.
- It is the exception for cases to take more than a year. As mentioned, work done in direct negotiation greatly affects the Board's ability to resolve cases quickly. Also, there are many external factors in any negotiation that may produce special circumstances.
- If the parties cannot reach agreement, even with Board mediation, they are offered arbitration, which either party may refuse. The refusal of either party triggers a "cooling off" period, at the end of which either party may engage in self-help. If the Board determines that a work stoppage would cause significant disruption to essential transportation services for any section of the country, the Board must notify the

President, who may choose to appoint a Presidential Emergency Board (PEB). PEB's recommend a settlement to the parties, but either party may reject the PEB's recommendations, leading to a final cooling off period, further preventing self-help for another 30 days. Even during cooling off periods and PEB's, the Board may continue "public interest" meetings with the parties, often resulting in a settled agreement.

- During the past three years there have been only two Presidential Emergency Boards created. In FY 2002, one PEB was created (United/IAM), and the parties reached agreement without a strike or lock-out in that case. In FY 2001, again only one PEB was created (Northwest/AMFA), and again the parties reached agreement without a strike or lock-out, in this case by negotiating an agreement with the NMB's assistance before the PEB issued its recommendations. There were no PEB's in FY 2000.
- There have been only three (3) RLA-based, airline Presidential Emergency Boards after 1966: #236 in 2002 (United/IAM), #235 in 2001 (Northwest/AMFA), and #233 in 1997 (American/APA). The Wein Air Alaska PEB (#189 in 1979) was not RLA-based; it was created by special Congressional legislation pursuant to Section 44 of the Airline Deregulation Act of 1978 (Public Law 95-504). In PEB #235, a settlement was reached by the parties before the scheduled report date.
- Over the last three years the Board has helped the parties reach tentative contract agreements in a total of 379 mediation and ADR cases, with only one strike.
- Since 1997, the Board's mediators have successfully resolved over 600 cases, with only three instances of self-help involving strikes, work stoppages, or lock-outs. One of the three actions lasted for 90 minutes before being resolved with assistance from the Board.
- The experience of the Board's mediation staff is deep and varied. Currently, 7 mediators are from the rail industry and 7 are from the airline industry. 6 have a union background, and 8 have a management background. 3 are former union presidents. 4 are lawyers.
- The combined labor relations/mediation experience of the Board's current mediators is 355 years (an average of 25.4 years each).
- As these bullet points indicate, mediation of contract negotiations is one major responsibility of the NMB. The other two major areas of responsibility are representation and arbitration.
- In representation cases, the Board constantly interacts with the parties from both industries by conducting representation investigations. For the five years ending in FY 2001, the Representation program at the NMB docketed an average of 74 cases per year, and closed an average of 79 cases per year. These cases included questions regarding whether there was sufficient showing of interest to warrant elections, and actually conducting elections in those instances where there was sufficient showing of interest. The attorney handling the representation investigation has direct contact with the mediator later assigned to mediate the first contract.

- During the same five-year period, the Arbitration program at the NMB docketed an average of more than 4700 cases per year, closing an average of more than 5500 cases per year in both the airline and railroad industries.
- A full explanation of the NMB's mission, along with a full copy of the Railway Labor Act, all of the NMB's Annual Reports, and customer service performance reports, may be found on the NMB's web site (www.nmb.gov)

If you have any questions, please call the Board's public information line (202-692-5050) and the staff will respond to specific inquiries.