

**NATIONAL MEDIATION BOARD
FISCAL YEAR 2020
CONGRESSIONAL BUDGET SUBMISSION
MARCH 18, 2019**



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EXECUTIVE SUMMARY

The National Mediation Board (NMB) presents its justification supporting the Fiscal Year (FY) 2020 budget request of \$13,800,000. The agency believes the requested level is necessary for the Board to operate efficiently while not impeding the ability to successfully accomplish its statutory mission.

The NMB is a small agency (51 FTE) with a mission to deliver critical services to approximately 150 commercial airlines and over 500 railroads and their unions. To fulfill our mission, the agency requests \$9,220,000 for personnel compensation and benefits. Included in this amount is \$1,200,000 for referees who conduct statutory arbitration of minor disputes in the railroad industry. This level of funding will ensure that the NMB can maintain its obligations for arbitration under the Railway Labor Act (RLA), and remain in compliance with prior audits and Government Accountability Office (GAO) decisions regarding how we must account for the cost of cases once they are assigned to a referee. The remaining \$4,580,000 includes the \$400,000 set aside for the Presidential Emergency Boards (PEB) and all the remaining object classifications for NMB operations.

In light of findings made by GAO regarding NMB's information security and privacy in 2013, 2016 and 2018, NMB has recently hired a new Chief Information Officer (CIO). The NMB CIO is undertaking a comprehensive review of NMB's Information and Technology (IT) environment and security program and has identified a significant number of actions that need to be taken in order to correct deficiencies identified by GAO and bring the agency into compliance with existing mandates, including the Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure (Executive Order 13800, May 11, 2017), Office of Management and Budget (OMB) mandates, National Institute of Standards and Technology (NIST) standards, and Department of Homeland Security (DHS) Binding Operational Directives. These actions will require new resources, to include hardware, software and contractor support, which are necessary to improve the maturity of NMB's IT security program and enhance the efforts of the NMB's IT staff.

In order to ensure that cases are settled in a timely manner, and to reduce the overall cost of arbitrating "minor disputes" in the railroad industry, the NMB has for the past few years encouraged the parties to take advantage of grievance mediation (GM) as a precursor to formal arbitration. The NMB GM Ambassador Program and the ongoing efforts by the Board Members and NMB staff have resulted in significant cost savings for the agency.

The NMB has been and continues to be at the forefront of organizational and technological innovation among Federal government agencies. Development and use of online applications in Representation, Mediation, and Arbitration have increased the parties' access to NMB mission area services and has allowed the NMB to continue to provide outstanding service in an era of frozen and shrinking budgets. NMB implemented the first all-electronic records program and was the first Federal agency to move completely to a secure cloud for all of its business systems. Use of GM and other innovative approaches to resolve minor disputes has allowed the agency to help the parties resolve outstanding disputes at a lower per-case cost than ever before. This spirit of innovation ensures that the NMB will continue to be one of the premier labor-management dispute resolution programs in the world. The Board anticipates an increase in demand for its services from the parties.

APPROPRIATION LANGUAGE

National Mediation Board Salaries and Expenses

For expenses necessary to carry out the provisions of the Railway Labor Act, including emergency boards appointed by the President *\$13,800,000*. (Department of Labor, Health and Human Services and Education, and Related Agencies Appropriations Act, 2019).

SALARIES AND EXPENSES

Appropriation History

<u>Year</u>	<u>Budget Estimate to Congress</u> \$	<u>House Allowance</u> \$	<u>Senate Allowance</u> \$	<u>Appropriation</u> \$
2007	11,749,000	11,749,000	12,500,000	11,595,760 <u>1/</u>
2008	12,242,000	12,992,000	12,992,000	12,685,000 <u>2/</u>
2009	12,432,000	12,992,000	12,992,000	12,992,000 <u>3/</u>
2010	13,434,000	12,992,000	13,934,000	13,463,000 <u>4/</u>
2011	13,772,000	14,972,000	13,772,000	13,436,074 <u>5/</u>
2012	13,961,000	13,436,000	13,436,000	13,410,606 <u>6/</u>
2013	13,530,000	13,411,000	14,411,000	12,709,000 <u>7/</u>
2014	13,347,000		13,384,000	13,116,000 <u>8/</u>
2015	13,227,000	13,108,734	13,108,734	13,227,000 <u>9/</u>
2016	13,230,000	13,230,000	12,600,000	13,230,000 <u>10/</u>
2017	13,300,000	13,300,000	13,800,000	13,800,000 <u>11/</u>
2018	13,205,000	13,500,000	13,800,000	13,800,000 <u>12/</u>
2019	13,205,000		13,800,000	13,800,000 <u>13/</u>
2020	13,800,000			

1/ Pursuant to the Fiscal Year 2007 Continuing Appropriations Resolution, P.L. 110-5.

2/ Pursuant to the Fiscal Year 2008 Continuing Appropriations Resolution, P.L. 110-161.

SALARIES AND EXPENSES

Appropriation History Cont.

- 3/ Pursuant to the Fiscal Year 2009 Omnibus Appropriations Act, P.L. 111-8.
- 4/ Pursuant to the Fiscal Year 2010 Consolidated Appropriations Act, P.L. 111-117.
- 5/ Pursuant to the Fiscal Year 2011 Full-Year Continuing Appropriations Act, P.L. 112-10.
- 6/ Pursuant to the Fiscal Year 2012 Consolidated Appropriations Act, P.L. 112-74.
- 7/ Pursuant to the Fiscal Year 2013 Consolidated Appropriations Act, P.L. 113-6, section 3004(c) dated March 26, 2013, this is the 0.2% across the board reduction.
- 8/ Pursuant to the Fiscal Year 2014 Consolidated Appropriations Act, P.L. 113-32.
- 9/ Pursuant to the Fiscal Year 2015 Consolidated Appropriations Act, P.L. 113-235.
- 10/ Pursuant to the Fiscal Year 2016 Consolidated Appropriations Act, P.L. 114-113.
- 11/ Pursuant to the Fiscal Year 2017 Consolidated Appropriations Act, P.L. 115-31.
- 12/ Pursuant to the Fiscal Year 2018 Consolidated Appropriations Act, P.L. 115-141.
- 13/ Pursuant to the Fiscal Year 2019 Consolidated Appropriations Act, P.L. 115-245.

SUMMARY OVERVIEW

National Mediation Board

The National Mediation Board requests \$13,800,000 for its total program for FY 2020 to continue its efforts to perform the statutory mandates of managing representation issues and resolving major and minor labor disputes in the airline and railroad industries. The Board continues its efforts to maintain a highly skilled workforce by recruiting, developing, and retaining qualified individuals. This budget provides an overview of the Railway Labor Act (RLA) and the functions of the NMB. It also provides information on the resources needed for the Board to accomplish its strategic and performance goals.

SUMMARY OVERVIEW (FINANCIAL)

Fiscal Year 2019 Enacted Level	\$13,800,000
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Fiscal Year 2020 Request Level	<u>\$13,800,000</u>
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Personnel Summary

FY 2018 Actual – FTE	38
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Information Technology Specialist; Communication Specialist; Mediator; Senior Mediator; Chief Financial Officer; Management Assistant; Mediation Program Specialist; Financial Management Specialist (3); Attorney Adviser (2); and a Supervisory Program Management Specialist.

FY 2019 Enacted – FTE	51
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Information Technology Specialist; Communication Specialist; Mediator; Senior Mediator; Chief Financial Officer; Management Assistant; Mediation Program Specialist; Financial Management Specialist (3); Attorney Adviser (2); and a Supervisory Program Management Specialist.

FY 2020 Request - FTE	51
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National Mediation Board
Program and Financing Schedule
(In Thousands of Dollars)

Identification Code 95-2400-0-1-505	FY 2018 Actual	FY 2019 Enacted	FY 2020 Request
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Obligations by Program Activities:

Mediation Services	6,690	8,080	8,080
Representation Services	1,899	2,473	2,473
Arbitration Services	2,221	2,847	2,847
Emergency Disputes	0	400	400
Total obligations	10,811	13,800	13,800

Budgetary Resources Available for Obligation:

New budget authority (gross)	13,800	13,800	13,800
New obligations	(13,800)	(13,800)	(13,800)
Unobligated balance expiring	(0)	(0)	(0)

New Budget Authority (Gross), Detail:

Appropriation	13,800	13,800	13,800
Appropriation permanently reduced	0	0	0
Appropriation (total discretionary)	13,800	13,800	13,800

Change in Obligated Balances:

Obligated balance: start of year	2,920	4,611	4,795
Total new obligations	12,483	13,506	12,905
Total outlays (gross) (-)	(10,533)	(12,906)	(12,755)
Adjustments in expired accounts	(259,055)	(415,884)	0
Obligated balance: end of year	4,611	4,795	4,945

Net Budget Authority and Outlays:

Budget Authority gross	13,800	13,800	13,800
Actual Offsetting Collections	(1,556)	0	0
Recoveries of Prior Year Paid Obligations	1,556	0	0
Budget Authority (net)	13,800	13,800	13,800
Outlays (net)	10,531	13,000	13,000

National Mediation Board
Personnel Summary

	FY 2018 Actual	FY 2019 Enacted	FY 2020 Request
Total Number of Full Time Permanent Positions	51	51	51
Full Time Equivalent			
Full Time Permanent	32	45	45
Other	6	6	6
Total Employment, end of year (FTE)	38	51	51
Average GS Grade	13.03	13.03	13.03
Average GS Salary	\$123,474	\$125,820	\$128,868
Senior Executive Service (SES)	1	2	2
Average Salary of SES Positions	\$164,495	\$167,620	\$170,805
Executive Level Positions	3	3	3
Average Salary of Executive Level Positions			
Level 3, Chairman	\$165,300	\$165,300	\$165,300
Level 4, Board Members	\$155,500	\$155,500	\$155,500

National Mediation Board
Object Classification
(In Thousands of Dollars)

	FY 2018 Actual	FY 2019 Enacted	FY 2020 Request
Personnel Compensation:			
Full-time Permanent	4,889	6,021	6,021
Special personnel services payments	3,132	1,200	1,200
Total Personnel Compensation	8,021	7,221	7,221
Civilian Benefits	1,857	1,999	1999
Benefits for Former Personnel	0	0	0
Travel & Transportation of Persons	497	630	630
Transportation of Things	0	2	2
Rental Payments to GSA	1,320	1,358	1,358
Communications, Utilities, & Misc. Charges	475	90	90
Printing & Reproduction	3	2	2
Other Services	1,616	1,983	1,983
Supplies and Materials	205	65	65
Equipment	65	50	50
Subtotal Obligations	12,762	13,400	13,400
PEB Obligations	0	400	400
Total Obligations	12,762	13,800	13,800

DETAILED EXPLANATION OF CHANGES

BY OBJECT CLASS FOR FISCAL YEAR 2020

National Mediation Board

(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '19	FY '20	Net Change
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Personnel Compensation and Benefits

\$9,220	\$9,220	\$0
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The personnel category provides funding for all salaries and benefits of the Federal career staff along with the government's share of the two retirement systems (CSRS, FERS), Medicare, and the Thrift Savings Plan. This category also includes payments for work by the arbitration referees.

NMB's request of \$9,220 funds the three program areas and three program support areas, which includes 51 career staff across the offices of the Board, Administration, Mediation Services, Fiscal Services, Information Services, Representation and the salary compensation for the arbitration referees.

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2020

National Mediation Board
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level
Travel and Transportation of Persons

FY '19	FY '20	Net Change
\$630	\$630	\$0

This category will fund the travel expenses of the Board Members, Mediators, Attorneys, Arbitration referees, and local transportation costs for the entire Agency.

Transportation of Things

\$2	\$2	\$0
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The requested amount will cover the cost of commercial courier services by the Board's staff.

Rental Payments to GSA (Rent)

\$1,358	\$1,358	\$0
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This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. In addition, the cost of leasing the office space in Chicago for the National Railroad Adjustment Board is in this category

Rent, Communications, and Utilities (RCU)

\$90	\$90	\$0
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This category covers funds for the use of commercial, local and long distance telephone services, and payment to GSA for after-hour utilities.

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2020

National Mediation Board
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '19	FY '20		Net Change
		<u>Printing and Reproduction</u>	
\$2	\$2	This category covers printing, reproduction, binding and related composition operations of the Board.	\$0
		<u>Other Services</u>	
\$1,983	\$1,983	This category provides funding for a wide range of commercial and government services. These services include maintenance contracts on all general and information management equipment, commercial database access, payments for systems development and support, repairs and/or alterations to existing space, consultants and experts, agency training and conference fees for its staff. This category also provides training for the staff, funding to support services for the agency's accounting, procurement, human resources, information technology and records management activities, which are outsourced.	\$0

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2020

National Mediation Board
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '19	FY '20		Net Change
		<u>Supplies and Materials</u>	
\$65	\$65		\$0
		<p>This category provides funding to purchase general office supplies, IT supplies, subscriptions, and government publications.</p>	
		<u>Equipment</u>	
\$50	\$50		\$0
		<p>This category provides for the equipment needs of the agency including hardware and software for information technology requirements, tele-communication equipment as well as office furniture purchases.</p>	
		<u>Presidential Emergency Board</u>	
\$400	\$400		\$0
		<p>This category funds the Presidential Emergency Boards (PEB) in which the NMB compensates members appointed by the President to resolve disputes. The object class breakout is determined once the board is enacted. Based upon historical knowledge, funds can be obligated in personnel compensation, travel, rent and communication and other services.</p>	
\$13,800	\$13,800	TOTAL FOR ALL OBJECT CLASSES	

MISSION STATEMENT

Railway Labor Act and NMB Functions

The National Mediation Board is an independent Executive Branch agency established by the Railway Labor Act of 1926, as amended in 1934. The Act was expanded in 1936 to cover the airline industry. The NMB performs a key role in achieving the principal purpose of the Act: "to avoid any interruption in commerce or to the operation of any carrier engaged therein" by assisting the carriers and their employees in their duty under the Act to "exert every reasonable effort" to settle disputes. The Board's principal statutory goals are:

1. To facilitate the resolution of disputes in the negotiation of new or revised collective bargaining agreements;
2. To insure employee rights of self-organization, without interference, when representation disputes exist, and;
3. To provide for the prompt and orderly settlement of disputes growing out of minor disputes or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

General Agency Goals

- To promote the amicable resolution of disputes between carriers and employees by providing quality conflict prevention and resolution services, including both traditional mediation and alternative dispute resolution, while encouraging an atmosphere of harmony that will facilitate future bargaining in the airline and railroad industries.
- To deliver, through the prompt investigation of representation disputes among rail and air employees definitive resolution of employees' representation status for collective bargaining purposes.
- To improve and strengthen the NMB's systems and processes for resolving minor disputes in the air and rail industries.
- To improve the management of our human capital and to continue to assess the opportunities to outsource commercial tasks, improve financial performance, and expand e-government applications; and strengthen the linkage between budget planning and agency performance.

- To develop a program of outreach and coordination with entities engaged in dispute resolution, with entities engaged in collective bargaining, and to engage in educational enterprises with other agencies.

PROGRAM DESCRIPTION

OFFICE OF THE BOARD

Funding (in thousands) and FTE			
FY 2019 Enacted		FY 2020 Request	
\$	FTE	\$	FTE
1,401	10	1,401	10

*The amounts listed above reflect personnel compensation. The total cost of this program includes the Office of Administration, Office of Fiscal Services, and Office of Information Services.

The three Board Members of the National Mediation Board administer the Railway Labor Act, which governs labor relations in the rail and air industries. The Board Members oversee the mediation of collective bargaining disputes, and by quorum they are responsible for determining whether and when to release the parties so they may engage in self-help. If the Board Members determine that a labor dispute potentially threatens interstate commerce, the Members are responsible for notifying the President. Additionally, the Members are responsible for certifying the results of representation elections, and for all representation policy decisions, including, but not limited to, jurisdiction, merger issues, system and craft or class issues, and election interference. The Board Members also oversee the funding of arbitration of disputes over the interpretation of collective bargaining agreements in the rail industry.

The Board Members provide overall leadership and strategic direction for the entire Agency, but the Board has delegated most of the day-to-day oversight and administration to the departmental directors and the General Counsel. The departmental directors and General Counsel direct the program areas, which include: Office of Mediation Services (OMS), Office of Legal Affairs (OLA), and Office of Arbitration Services (OAS). The departmental directors also direct the operation support offices of the Agency including, the Office of Administration (OA), the Office Fiscal Services (OFS) and Office of Information Services (OIS).

OFFICE OF MEDIATION SERVICES

Funding (in thousands) and FTE			
FY 2019 Enacted		FY 2020 Request	
\$	FTE	\$	FTE
2,082	15	2,082	15

*The amounts listed above reflect personnel compensation.

The total cost of this program includes the Office of Administration and Office of Fiscal Services and Office of Information Services.

Overview of Mediation for Fiscal Year 2018

The Office of Mediation Services (OMS) manages mandatory mediation of collective bargaining disputes pursuant to statutory authority under Section 6 of the RLA, which is applicable to both the airline and railroad industries. The Alternative Dispute Resolution (ADR) component of OMS offers voluntary dispute resolution programs to the parties including training, facilitation, grievance mediation, and other dispute resolution efforts.

Mediation Overview

The RLA requires labor and management to exert every reasonable effort to make and maintain collective bargaining agreements. Initially, the parties must give notice to each other of their proposals for new or revised agreements. Direct negotiation between the parties must commence promptly and continue in an effort to conclude a new collective bargaining agreement or to narrow their differences. Should parties fail to reach agreement during direct negotiations, either party or the parties jointly may apply to the NMB for mediation. Following receipt of an application, the NMB promptly assigns a mediator to assist the parties in reaching an agreement. An application for NMB Mediation Services may be obtained from the Agency’s web site at www.nmb.gov.

The NMB is obligated under the Act to use its “best efforts” to bring about a peaceful resolution of the dispute. If such efforts do not settle the dispute, the NMB advises the parties and offers Interest Arbitration (proffers arbitration) as an alternative approach to resolving the remaining issues. If either party rejects this offer of binding arbitration, the NMB releases the parties from formal mediation. This release triggers a thirty-day cooling off period, during which the Agency continues to work with the parties to achieve a consensual solution to the dispute.

However, if an agreement is not reached by the end of the thirty-day period and the President of the United States does not establish an Emergency Board, the parties are free to exercise lawful self-help, which includes carrier-imposed working conditions or a strike by the union/organization.

A flow-chart of mediation procedures can be found in the Mediation section of the NMB website at www.nmb.gov.

Mediation Highlights

Mediation for collective bargaining agreements was successful in FY 2018. Mediators effectively used their skills to assist parties in finding ways to bridge their disputes and reach agreement. Agreements were mediated in the airline sector with passenger and freight carriers, and in the rail sector with freight and commuter lines. Challenges at the bargaining table included consolidating agreements after mergers, and dealing with health care changes.

Settlements: Settlements were reached with two ALPA represented pilot groups: Frontier and ATI. In the medical transport industry, an agreement was reached with Air Methods and OPEIU. Other notable case closures included the Wheeling & Lake Erie and the BLET, METRA and the BRS, and PAR and the BLET.

Pending Cases: We estimate that just under seventy cases will remain open at the close of FY 2019. In the airline sector, legacy carriers are reaching amendable dates with many of their unions in 2019. We have docketed cases representing hundreds of employees at both United and American Airlines and we anticipate other requests from legacy carriers this fiscal year. We also continue to be deeply engaged with Air Wisconsin and three of its unions: ALPA, AFA and IAM. In the area of commuter rail, we are working with PATH and eight of its unions to reach agreements, with Keolis and eight of its unions, and with SEPTA and five of its unions.

An application for NMB Mediation Services may be obtained from the Agency's web site at <http://www.nmb.gov/documents/forms/maform.pdf>

A chart reflecting the actual Mediation case numbers for FY 2018, estimated case numbers for FY 2019, and the five-year average, FY 2014 – FY 2018 follows:

MEDIATION CASES	FY 2018 Actual	FY 2019 Estimate	FY 2014 - FY 2018 Five Year Average
Cases Pending Start	72	69	81
Cases Docketed	42	50	37
Sum	114	119	118
Cases Closed	45	50	44
Cases Pending End	69	69	74

ADR Overview

In addition to statutory mediation and arbitration services under Sections 3 and 6 of the RLA, the NMB provides voluntary Alternative Dispute Resolution (ADR) services. ADR Services include training, facilitation, grievance mediation, and applying technology to the dispute resolution process.

The primary goal of the NMB’s ADR program is to assist the parties in learning and applying more effective, less confrontational methods for resolving disputes. Another goal is to help the parties resolve more of their own disputes without outside intervention, and to use appropriate technology to increase the efficiency and reduce the cost of dispute resolution efforts for the parties.

The NMB established its ADR Services program with the conviction that use of ADR methods would result in fewer cases progressing to statutory mediation, reducing and narrowing the issues that the parties bring to mediation, and positively affecting working relationships among the parties.

A complete description of and an application for ADR Services may be found on the Agency’s web site at www.nmb.gov.

ADR Highlights

ADR personnel continued to develop and deliver a wide range of services, including training, facilitation, grievance mediation, facilitated problem solving and use appropriate technology to increase the efficiency and reduce the cost of dispute resolution efforts for the parties. These services included training programs and facilitation efforts outside of, and in addition to traditional grievance mediation work.

Training: ADR Services has seen interest grow in its various training programs. NMB Mediators are skilled at instructing, and regularly train parties as they began facilitation or grievance mediation cases, or when they encountered problems during negotiations.

Facilitation: Facilitation plays an important role in helping parties to reach common ground. It offers carriers and unions a way to reach agreement outside the stricter confines of traditional mediation. With each experience, the NMB's knowledge base grows, and best practices from the process increase to the parties' benefit.

Grievance Mediation: Interest in grievance mediation continues to grow with the parties we serve in both the air and rail sectors. Activity in the rail sector in particular has grown with the ADR Ambassador program, which pairs a Mediator with a particular rail carrier and its unions to advance alternatives to arbitration. Grievance mediation also serves to solve problems before they become grievances, and helps to clarify issues ahead of bargaining.

Technological Dispute Resolution: Technology continues to play an important role in resolving disputes in the air and rail industries. Especially when timing is critical, or when information exchange is beneficial between sessions, technology helps to bridge the gap. In other instances when circumstances prevent in person meetings, online capabilities allow mediation sessions to continue.

Pending Cases: The ADR component of our work includes activities such as training, facilitation, grievance mediation and outreach endeavors. Much of that case work opens and closes in quick succession, however, grievance mediation cases stay open for many years. The Agency considers that a success because it means the parties find value in the process that helps them to find resolution to the individual disputes that we work on. Mediators take on a docket of claims or grievances at each session and work them to conclusion. On any given property, one grievance may represent hundreds of claims so the resolution of one grievance can significantly reduce the number of claims and grievances that require resolution.

A chart reflecting the actual ADR case numbers for FY 2018, estimated case numbers for FY 2019, and the five-year average, FY 2014 – FY 2018 follows:

ADR CASES	FY 2018 Actual	FY 2019 Estimate	FY 2014 - FY 2018 Five Year Average
Cases Pending Start	48	52	33
Cases Docketed	38	40	58
Sum	86	92	91
Cases Closed	34	35	53
Cases Pending End	52	57	38

Forecast for Fiscal Year 2019 and 2020

In any given year, it is difficult to predict which disputes may require the assistance of the NMB. There are a variety of factors that cause some carriers and unions to agree to contract extensions instead of entering into Section 6 negotiations, or parties may reach agreement in direct negotiations and never require NMB assistance. When they do, however, the circumstances of the dispute are often complex and the problems difficult to resolve.

The tables below indicate a slight increase in mediation case numbers for FY 2019, then a noticeable increase in FY 2020. That is consistent with Agency expectations. Our amendable date forecast shows that a high volume of rail cases will likely cycle from direct negotiations into mediation in FY 2020. It should also be noted that the decrease in absolute mediation cases in the tables hides the complexity of the disputes to resolve.

The tables also indicate a flattening in ADR activity and that is likewise consistent with Agency expectations. Grievance mediation tends to be consistent because the parties appreciate the benefits it affords, and opt to meet quarterly or more often to resolve dockets of minor disputes. In the rail sector, a generational shift is occurring in the workforce that will mean new people in management and labor. Such a shift presents an opportunity to teach and train, and will contribute to the upward trend in that aspect of ADR activity. Our ADR Ambassador program has been effective in generating interest and activity in grievance mediation in the rail sector.

The following charts reflect the estimated case numbers for FY 2019, FY 2020 and FY 2021 for both Mediation and ADR Cases:

MEDIATION CASES	FY 2019 Estimate	FY 2020 Estimate	FY 2021 Estimate
Cases Pending Start	69	76	84
Cases Docketed	45	48	50
Cases Closed	38	40	42
Cases Pending End	76	84	92

ADR CASES	FY 2019 Estimate	FY 2020 Estimate	FY 2021 Estimate
Cases Pending Start	52	60	57
Cases Docketed	35	37	36
Cases Closed	27	40	35
Cases Pending End	60	57	58

FY 2020 MEDIATION PERFORMANCE GOALS

Mediation Strategic Goal

The resolution of disputes arising out of the negotiation of new or revised collective bargaining agreements.

Goal 1: To provide prompt and appropriate intervention and assistance for disputes involving pay, work rules, and working conditions (major disputes).

FY 2018 Accomplishments: NMB standards applicable to processing and managing cases involving major disputes were consistently met in FY2018. The NMB will continue to refine case processing with enhancements to and refining of the Agency's Mediation Case Management System to track cases from application to closure. Case management was accomplished as planned with Mediators utilizing appropriate techniques at the table with support from Senior Mediators acting in an oversight role. Quarterly reviews of cases one year old or older by Board Members and senior mediation management insured that parties to the process received assistance appropriate for their case.

Goal 2: Provide appropriate and effective mediator training and continuous development.

FY 2018 Accomplishments: Through the use of Individual Development Plans (IDP) each Mediator participated in training and development that met her or his individual needs. In addition, training covering industry specific topics was conducted during each mediator meeting. Mediators attended conferences such as the Association of Labor Relations Agencies annual conference, the Federal Mediation and Conciliation Service Labor-Management Conference, the Texas Labor Management Conference, and the American Bar Association's conferences on the Railway Labor Act, Dispute Resolution and Employment and Labor Law. Each of these provided targeted information and training that enhanced the skills Mediators bring to the table.

Goal 3: Pursue innovation in the delivery of mediation and alternative dispute resolution services.

FY 2018 Accomplishments: The Agency continued to provide its negotiation training that was developed for air and rail parties to use to prepare for negotiations.

Mediators continued to refine ADR strategies and techniques that addressed the unique needs of our parties especially in grievance mediation.

Goal 4: Improve efficiency and effectiveness of NMB programs by providing leading online dispute resolution (ODR) technology and techniques to the Mediators and the parties.

FY 2018 Accomplishments: The Agency continues to use technology for dispute resolution and offer its possibilities to our parties. Mediators made use of technology to remotely share information and language, to track changes in language, and to discuss proposals. Technology has been helpful in continuing the mediation process when travel to meet in person with the parties is restricted.

PRESIDENTIAL EMERGENCY BOARDS

Overview of Fiscal Year 2018

Section 159A (Section 9A) of the Railway Labor Act (RLA) provides special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. Section 160 (Section 10) of the RLA covers all other railroads and airlines.

When the National Mediation Board determines that a collective-bargaining dispute cannot be resolved in mediation, the agency proffers Interest Arbitration to the parties. Either labor or management may refuse the proffer and, after a 30-day cooling-off period, engage in a strike, implement new contract terms, or engage in other types of economic self-help, unless a Presidential Emergency Board (PEB) is established.

If the NMB determines, pursuant to Section 160 of the RLA, that a dispute threatens substantially to interrupt interstate commerce to a degree that will deprive any section of the country of essential transportation service, the NMB notifies the President. The President may, at his discretion, establish a PEB to investigate and report upon such dispute. Status-quo conditions must be maintained throughout the period that the PEB is impaneled and for 30 days following the PEB report to the President. If no agreement is reached, and there is no intervention by Congress, the parties are free to engage in self-help 30 days after the PEB reports to the President.

Apart from the emergency board procedures provided by Section 160 of the RLA, Section 9a provides special, multi-step emergency procedures for unresolved disputes affecting employees on publicly funded and operated commuter railroads. If the Mediation procedures are exhausted, the parties to the dispute or the Governor of any state where the railroad operates may request that the President establish a PEB. The President is required to establish such a board if requested. If no settlement is reached within 60 days following the creation of the PEB, the NMB is required to conduct a public hearing on the dispute. If there is no settlement within 120 days after the creation of the PEB, any party or the Governor of any affected state, may request a second, final-offer PEB. No Self-Help is permitted pending the exhaustion of these emergency procedures.

A chart reflecting the actual case numbers for FY 2018, FY 2019 to date and the five-year average, FY 2014-2018 follows:

	FY 2018 Actual	FY 2019 Estimate	FY 2014-FY 2018 Five Year Average
Emergency Board Sec. 160	0	0	.4
Emergency Board Sec. 159A	0	0	.75

Highlights of Fiscal Year 2018

There were no PEBs established in FY 2018.

Forecast for FY 2019, FY 2020, and Beyond

The NMB cannot predict precisely the number of PEBs that may be created during a given fiscal year. Estimates are based, among other factors, upon prior experience and knowledge of the contentiousness of the parties in the bargaining process and mediation, the number of cases, and the degree of impact of any dispute. For example, activity leading up to a release and the creation of a PEB for the LIRR and multiple unions occurred in FY 2013, but the PEB was established in FY 2014

The following chart reflects the actual case numbers for FY 2018 and estimated case numbers for FY 2019 and FY 2020:

	FY 2018 Actual	FY 2019 Estimate	FY 2020 Estimate
Emergency Board Sec. 160	0	1	1
Emergency Board Sec. 159A	0	2	1

OFFICE OF LEGAL AFFAIRS / REPRESENTATION

Funding (in thousands) and FTE			
FY 2019 Enacted		FY 2020 Request	
\$	FTE	\$	FTE
1,802	9	1,802	9

Overview of Fiscal Year 2018

Under the Railway Labor Act (RLA), employees in the airline and railroad industries have the right to select a labor organization or individual to represent them for collective bargaining. Employees may also decline representation. An RLA representational unit is "craft or class," which consists of the overall grouping of employees performing particular types of related duties and functions. The selection of a collective bargaining representative is accomplished on a system-wide basis, which includes all employees in the craft or class anywhere the carrier operates in the United States. Due to this requirement and the employment patterns in the airline and railroad industries, the Agency's representation cases frequently involve numerous operating stations across the nation. [An application for a representation investigation may be obtained from the Agency's web site at www.nmb.gov.]

If a showing-of-interest requirement is met, the NMB continues the investigation, usually with a secret ballot Telephone/Internet election. Only employees found to be eligible to vote by the NMB are permitted to participate in elections. The NMB is responsible for determining RLA jurisdiction, carrier status in mergers, and for ensuring that the requirements for a fair election process have been maintained without "interference, influence or coercion". If the employees vote to be represented, the NMB issues a certification of that result which commences the carrier's statutory duty to bargain with the certified representative.

In many instances, labor and management raise substantial issues relating to the composition of the electorate, jurisdictional challenges, allegations of election interference, and other complex matters which require careful investigations and ruling by the NMB.

The following chart reflects the actual case numbers for FY 2018, FY 2019 to date, and the five-year average, FY 2013-2017 follows:

	FY 2018 Actual	FY 2019 Actual (To Date)	FY 2013 - FY 2017 Five-Year Average
Cases Pending at Start	7	5	4
Cases Docketed	23	8	32
Cases Closed	25	9	30
Cases Pending at End	5	4	4.2

The NMB Office of Legal Affairs (OLA) continues to operate at a high level of quality and efficiency. As a review of customer service and performance standards will attest, the Agency’s Representation program consistently achieves its performance goals, delivering outstanding services to the parties and the public.

In FY 2018, the OLA staff closed 23 cases and also docketed 25 cases during the year. With the Agency resources requested for 2019, it is estimated that 33 representation cases will be investigated and resolved in the next fiscal year.

Highlights during Fiscal Year 2018

Representation disputes involving large numbers of employees generally are more publicly visible than cases involving a small number of employees. However, all cases require and receive neutral and professional investigations by the Agency. The NMB ensures that the employees’ choices regarding representation are made without interference, influence or coercion. The case summary that follows is an example of the varied representation matters which were investigated and resolved by the NMB in FY 2018.

Jet Blue Airways

On December 6, 2017, the Transport Workers Union of America, AFL-CIO (TWU) filed an application seeking to represent the craft or class of Flight Attendants at Jet Blue Airways. At the time the application was filed, these employees were unrepresented. After determining that the TWU had supported the application with a showing of interest from at least 50 percent of the 4,701 employees in the craft or class, the Board authorized an election. On April 18, 2018, the NMB certified TWU as the representative of the Flight Attendant craft or class at Jet Blue. *Jet Blue Airways, Inc.*, 45 NMB 85 (2018).

ABM-Onsite Services

In this jurisdiction case referred from the National Labor Relations Board (NLRB), the NMB stated its opinion that airline service provider ABM-Onsite Services (ABM) was subject to RLA jurisdiction. In reaching this conclusion, the NMB reaffirmed its traditional two-part test for determining whether an entity is a derivate carrier subject to the RLA and its reliance on multiple factors to establish the required control by an air or rail carrier.

When an entity is not a rail or air carrier engaged in the transportation of freight or passengers in interstate commerce, the NMB has traditionally applied a two-part test to determine whether the employer and its employees are subject to the RLA. First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. The NMB applied a six-factor test to determine whether a company was controlled by a carrier. *Air Serv Corp.*, 33 NMB 272 (2006). Beginning in 2013, however, the NMB had moved away from the six-factor test for control to an analysis requiring a substantial degree of control by a carrier over personnel matters before the NMB would find RLA jurisdiction. *Huntleigh USA Corp.*, 40 NMB 130 (2013); *Bags, Inc.*, 40 NMB 165 (2013).

ABM provides services to airlines but does not fly aircraft and is not directly or indirectly owned by an air carrier. Since ABM employees provide baggage handling services that is work traditionally performed by airline employees, the jurisdictional issue turns on the degree of direct or indirect control exercised by the airlines. The NMB noted that changing corporate relationships and the increasing use of contractors to perform work integral to rail and air transportation cannot be used to evade the procedures of the RLA that minimize interruptions to interstate commerce. Therefore, the Board found that the rail or air carrier must effectively exercise a significant degree of influence over the company's daily operations and its employees' performance of services in order to establish RLA jurisdiction. Further, no one factor is elevated above all the others in the Board's analysis of control. The Board determined that the factors to be applied include extent of the carriers' control over the manner in which the company conducts its business; access to the company's operations and records; role in personnel decisions; degree of supervision of the company's employees; whether the employees are held out to the public as carrier employees; and control over employee training.

Applying those factors to the record in this case, the Board majority found there was significant carrier influence over ABM's operations, including meeting performance measures and following operational procedures, significant influence over employee scheduling, control over labor costs and staffing levels, hiring, firing, promotion, and discipline.

Member Puchala dissented. Member Puchala disagreed with the Board majority's decision to return to the six factor analysis for determining carrier control. In her view, many of those factors have lost their significance as subcontracting has increased and the airline industry's business model has changed. Member Puchala stated that demonstrable evidence of carrier control over personnel decisions including the hiring, firing, and discipline of subcontractor employees and a high degree of supervision over how subcontractor employees perform their duties are required factors to establish RLA jurisdiction. In her view, the record did not establish the required degree of carrier control over ABM. *ABM-Onsite Services*, 45 NMB 27 (2018).

Lufthansa Technik Puerto Rico

In FY 2017, the NMB authorized a telephone and internet election for the Mechanics and Related Employees employed by Lufthansa Technik and sought to be represented by the International Association of Machinists and Aerospace Workers (IAM). The election was scheduled to start on September 6, 2017 and the tally was scheduled to take place on September 27, 2017.

As a result of the impact of Hurricane Irma and the forecasted landfall of Hurricane Maria, the Board extended the original voting period by two weeks. *Lufthansa Technik Puerto Rico*, 44 NMB 200 (2017). On October 6, 2017, the Board issued its decision cancelling the election. *Lufthansa Technik Puerto Rico*, 44 NMB 204 (2017). The NMB took administrative notice of the devastating effect of Hurricane Maria on the people and infrastructure of Puerto Rico and determined that to prolong the election period in circumstances where there is not reliable access to potable water and basic services let alone, internet, telephone service and mail was inappropriate. The NMB denied the IAM's motion for reconsideration of its decision to cancel the election. *Lufthansa Technik Puerto Rico*, 44 NMB 208 (2017).

The Board continued to monitor the situation in Puerto Rico. In April 2018, the NMB determined, pursuant to its duty under Section 2, Ninth of the RLA, that the appropriate method to reliably measure employee choice in this representation disputes was a manual ballot election at Lufthansa Technik's facility in Aguadilla,

Puerto Rico.

The election was conducted on May 10, 2018 and a majority of the employees cast votes for no representation. *Lufthansa Technik Puerto Rico*, 45 NMB 91 (2018).

United Airlines

On January 24, 2018, UNITE HERE filed an application seeking to represent approximately 2,800 employees of United Airlines in the craft or class of Flight Kitchen, Commissary, Catering & Related Employees. United contended that UNITE HERE's showing of interest was tainted by fraud, threats, and coercion on the part of UNITE HERE and its supporters in obtaining authorization cards, and the fact that many employees for whom English is not their primary language did not understand the authorization cards that they signed. United further alleged that the appropriate craft or class was Flight Kitchen employees, and argued that many of the employees were already represented by organizations in other crafts or classes.

The NMB's investigators conducted an on-site investigation into the question of taint at each of the six flight kitchens. The Board investigators interviewed management and union witnesses as well as randomly selected employees. Based on the record developed during the investigation, the Board found that there was negligible evidence of misconduct and misunderstanding, and that the showing of interest was not tainted. The Board further found that the Flight Kitchen, Commissary, Catering & Related Employees is the appropriate craft or class because those employees share a work-related community of interest and are functionally integrated.

Based on its findings and the authorization cards submitted by UNITE HERE, the Board found a representation dispute exists regarding the representation of the Flight Kitchen, Commissary, Catering & Related Employees, and ordered an election to be held. The Board also denied United's request for an on-site ballot box election, finding no extraordinary circumstances warranting a deviation from its normal telephone and internet election. *United Airlines, Inc.*, 45 NMB 114 (2018). The election was conducted on October 23, 2018. A majority of the employees cast votes for representation and the Board certified UNITE HERE as the representative for the craft or class of Flight Kitchen, Commissary, Catering & Related Employees at United Airlines. *United Airlines, Inc.*, 46 NMB 4 (2018).

The following chart reflects the actual case numbers for FY 2017, the actual case numbers for FY 2018 and the estimated case numbers for FY 2019:

	FY 2018 Actual	FY 2019 Actual (To Date)	FY 2020 Estimate
Cases Pending Start	7	5	4
Cases Docketed	23	8	24
Cases Closed	25	9	22
Cases Pending End	5	4	6

Highlights to date in Fiscal Year 2019

NMB Representation Procedures

On January 31, 2019, the NMB issued a Notice of Proposed Rulemaking (NPRM) (84 FR 612), proposing to amend its representation rules to allow a straightforward election process to decertify representation. These rule changes are proposed to be codified at 29 CFR Part 1206. The NPRM reflects the Board majority's view that these changes are necessary to ensure that each employee has a say in their representative and remove unnecessary hurdles for employees who no longer wish to be represented.

Currently, while employees have the ability to decertify a representative under the RLA, they must navigate an unnecessarily complex and convoluted path to an election using the "straw man" process. Under the "straw man" process, employees with current representation seeking a decertification election must submit authorization cards seeking representation by an individual employee who must be listed by name. If "straw man" cards are submitted representing at least 50% of the employee group, an election is directed allowing employees to vote for their current representative, the "straw man," no union, or a write in option. In order to decertify, employees must vote for "no union" or for the "straw man" who once certified can subsequently disclaim interest.

By failing to have a straight-forward process for decertification of a representative, the Board is maintaining an unjustifiable hurdle for employees who no longer wish to be represented and failing to fulfill the statutory purpose of "freedom of association among employees." 45 U.S.C. 151a (2). Accordingly, the proposed rule would eliminate the "straw man" process, simplify the decertification process, and place decertification on an equal footing with certification. Under the proposed rule, employees would be able to submit authorization cards stating the intention to decertify. If cards are submitted representing the intent of at least 50% of the

employee group to decertify, the Board will authorize an election with the current representative and "no union," along with a write-in option.

Further, under the NPRM the two year election bar currently applied following a successful representation election will similarly be applied to a successful decertification election. This change represents the Board majority's view that changes to the employee-employer relationship that occur when employees become represented, change representative, or become unrepresented require similar treatment.

On March 1, 2019, the NMB issued a Notice of Public Hearing, 84 FR 6989, inviting interested parties to attend an open public hearing on March 28, 2019. In addition to the comment procedure outlined in the NPRM, this hearing will provide another opportunity for interested persons to provide their views to the Board on this important matter.

FY 2020 REPRESENTATION PERFORMANCE GOALS

Representation Strategic Goal

Investigate and resolve representation disputes efficiently. Provide effective legal counsel for the agency. Serve as counsel to any Presidential Emergency Boards.

Goal 1: Prompt investigation of representation disputes and definitive resolution of employees' representation status for collective bargaining purposes.

FY 2018 Accomplishments: In most cases, OLA responded to representation applications within 2 business days of receipt by the NMB; assigned an investigator within 2 business days of receipt of the application; determined showing of interest within 45 days of docketing an application; and issued a certification or dismissal the next business day after the ballot count.

Goal 2: Enhance training and development of OLA staff.

FY 2018 Accomplishments: Each OLA staff member updated their Individual Development Plan (IDP). Each year OLA employees meet with their manager to update or develop a plan to enhance career related skills. To-date in Fiscal Year 2018 OLA staff took classes related to the Freedom of Information Act (FOIA), records management, government ethics, the Railway Labor Act, federal sector personnel law, conflict resolution and employment law. In 2018 OLA began the recruitment process for two new attorneys.

Goal 3: Enhance outreach opportunities in the legal, labor relations and alternative dispute resolution communities to better inform stakeholders about developments and increase the skills and experience of OLA employees.

FY 2018 Accomplishments: Members of the Office of Legal Affairs continue to actively participate as panelists and attendees at conferences sponsored by the American Bar Association, American Law Institute, the National Association of Railroad Referees and the Association of Labor Relations Agencies. This year OLA attorneys gave presentations on the Railway Labor Act, Ethics, recent RLA case developments, and remedies under the RLA. OLA continued to participate in intra-governmental initiatives with other federal agencies such as the Department of

Transportation, Federal Labor Relations Authority, Department of Labor, National Labor Relations Board, and the Federal Mediation and Conciliation Service. OLA attorneys serve as both Senior Editors and Contributing Editors of the Railway Labor Act treatise published by the Bloomberg/BNA and this year completed the fourth edition of this treatise.

Goal 4: OLA staff provides prompt and efficient assistance to Presidential Emergency Boards.

FY 2018 Accomplishments: All OLA staff members are trained on Emergency Board Procedures. OLA maintained continuous industry and agency communication at a level that provided for early preparation for potential Presidential Emergency Boards.

Goal 5: OLA maintains concise, relevant reference materials that are readily available to the public and which reduce the number of man-hours used to research and respond to inquiries.

FY 2018 Accomplishments: OLA conducts semi-annual reviews of the Representation Manual and web site, updating where appropriate. On June 12, 2018 the NMB updated its representation Manual to include a clarification of the Board's criteria for determining management official status and to emphasize that the Board will not consider on appeal evidence not submitted to the Investigator during the investigation.

Goal 6: Expand the use of technology to further streamline and reduce costs in representation and interference investigations.

FY 2018 Accomplishments: OLA continued to investigate use of voice recognition software and other cost and time saving mechanisms in taking employee statements during interference investigations and drafting representation determinations.

OFFICE OF ARBITRATION SERVICES

Funding (in thousands) and FTE			
FY 2019 Enacted		FY 2020 Request	
\$	FTE	\$	FTE
1,629	6	1,629	6

Overview of Arbitration for Fiscal Year 2018

The RLA provides for both grievance and interest arbitration. Access to grievance arbitration, involving the interpretation or application of an existing collective bargaining agreement, is mandatory under the RLA. The Board has significant administrative responsibilities for the three sources of grievance arbitration in the railroad industry. These sources are the National Railroad Adjustment Board established under the RLA, as well as the arbitration panels established directly by the labor-management parties at each railroad (Public Law Boards and Special Boards of Adjustment). Grievance arbitration in the airline industry is accomplished at the various System Boards of Adjustment created jointly by labor and management at the parties' expense. The Board furnishes panels of prospective arbitrators for the parties' selection in both the airline and railroad industries.

However, in most instances in the railroad industry, the parties agree to allow the NMB to directly appoint an arbitrator. The NMB has substantial financial responsibilities for railroad arbitration proceedings in that it pays the fees and travel expenses of the arbitrators. Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

Interest arbitration is a process used to establish the terms of a new or modified collective bargaining agreement through arbitration, rather than through negotiations. Although the RLA provides an effective process for interest arbitration, its use is not statutorily required. The NMB offers the parties the opportunity to use interest arbitration when the Board has determined that further mediation efforts will be unsuccessful. In addition, the parties may directly agree to resolve their collective bargaining dispute or portions of their dispute through interest arbitration. The NMB generally provides the parties with panels of potential arbitrators from which they select the individual to resolve the dispute. In some instances, the parties' agreement to arbitrate allows the NMB to directly appoint an

arbitrator. The interest arbitration decision is final and binding with very narrow grounds for a judicial appeal.

Grievance Arbitration Caseload

A chart reflecting the actual case numbers for FY 2018, estimated numbers for FY 2019, and the five-year average, (FY 2014-2018), follows:

	FY 2018 Actual	FY 2019 Estimate	FY 2014 - FY 2018 Five year Average
Cases Pending at Start	8,550	6,408	6,933
Cases Docketed	4,280	4,262	4,262
Cases Closed	6,428	3,737	3,737
Cases Pending at End	6,408	6,933	7,458

Arbitration Highlights

The Office of Arbitration Services directed its attention to promoting a more efficient Section 3 process, thereby fostering faster resolution of minor disputes (grievances). The NMB made a well-received move in this regard during FY 2018 by targeting the backlog of grievance arbitration cases for resolution using alternative methods such as grievance mediation. The Office of Arbitration Services was successful in increasing the number of arbitrators available to hear and decide cases and introducing more technology to the administrative processing of cases with its arbitrators. It is estimated that there will be 6,933 cases pending at the end of FY 2019 compared to 6,408 cases pending at the end of FY 2018. This will result in an increase of 525 cases. The increase is attributed to the filing of more grievances concerning the applicability of certain provisions of the agreement covering the Class I freight railroads.

The NMB Arbitration program continued its efforts to modernize the processing of minor disputes. The agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. The agency has a section on grievance mediation in the arbitration menu on the website. The section provides information on grievance mediation as well as online courses in the Lyceum Training Center section of the NMB website.

During FY 2018, the NMB revised the Arbitrators Workspace (AWS), which has been in operation for several years. The Arbitrators Workspace is a web based information system which gives arbitrators online access to their case information. This system is used by the arbitrators to request work and submit requests for compensation for work. The Arbitrators Workspace replaced numerous hard-copy forms.

This fiscal year, the agency placed NRAB Division Awards templates on the website to assist the arbitrators in performing their duties as neutrals. This will ensure consistency in awards.

The revised Arbitrators' Workspace now closes cases quicker and shortens the time for the adding of cases. The level of grievance activity handled through the NMB Arbitration program in FY 2018 increased when compared to the activity in FY 2017.

During FY 2018, the parties brought 4,280 new cases to arbitration compared to 4,148 cases in FY 2017. In FY 2018, 6,422 cases were closed compared to 3,057 in FY 2017, leaving 6,408 cases pending at the end of FY 2018.

On several occasions during the fiscal year, the Agency met with representatives from the labor organizations and carriers to review its caseload. Carriers included Canadian National Railroad, Norfolk Southern Corporation, Union Pacific Railroad, Burlington Northern Santa Fe, Kansas City Southern Railway, and CSX Transportation. The NMB also met with carriers engaged in the transportation of passengers such as Amtrak, Metro North Railroad, SEPTA, New Jersey Transit, and Metra. The Office of Arbitration Services met with all of the labor organizations representing employees in the railroad industry. During this fiscal year, the Office of Arbitration Services met with various groups of arbitrators who hear and decide cases in the railroad industry. NMB efforts have been directed to facilitating a more efficient Section 3 process under the RLA, thereby reducing the backlog and furthering the RLA objective of prompt resolution of minor disputes.

The NMB continued its efforts designed to improve the arbitration of grievances under Section 3 of the Railway Labor Act. The Board had five ambitious goals for this transformation: (1) to ensure that the parties receive timely and outstanding arbitration services from the Board's staff and its contract arbitrators; (2) to ensure that the Board uses e-business capabilities to the maximum extent possible; (3) to ensure that Board procedures are improved through a process involving public input; (4) to ensure that arbitrators schedule, hear, and decide cases in a timely manner; and (5) to ensure that NMB resources are used wisely and in accordance with Federal regulations and sound accounting practices.

Annual Case Audit: In June 2018, the NMB conducted an intensive audit of all pending cases before Public Law boards and Special Boards of Adjustment. The

Agency provided the Class I freight railroads, commuter railroads, regional railroads and all labor organizations representing railroad employees with a list of cases pending on these boards. The feedback from the audit enhanced the accuracy of the NMB case management system.

Alternative Dispute Resolution in The Railroad Industry: The NMB actively promoted grievance mediation as an alternative means of dealing with grievances in the railroad industry by reaching out to the largest Class I freight carriers and labor organizations. During FY 2018, Arbitration Services made presentations at a meeting of Class I freight railroads and the labor organizations. The NMB also met with individual carriers to promote grievance mediation. The NMB anticipates continuing and in some instances expanding upon these initiatives during FY 2019. The NMB had several grievance mediation cases with carriers in the railroad industry during 2018.

Arbitrator Productivity: The NMB continued its efforts to increase arbitrator productivity as a result of strict adherence to the three month rule. Arbitrators who have not issued a decision within three months of a hearing are contacted monthly and encouraged to issue those decisions.

The Agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. The NMB used the website to keep the parties and the public informed regarding Section 3 activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. In FY 2018, the agency posted additional information on the AWS System on the NMB website. The Arbitrator Caseload Report was improved. The report shows by arbitrator, grievance cases of railroad employees the parties have chosen to pursue. It also indicates whether a case is late (i.e., a decision has not been rendered within 3 months of when a case was heard by the arbitrator). The Arbitrator Caseload Report is real-time in that it has a direct link to an NMB database reflecting updates as they are made by Arbitration Services staff. The availability of information on the website reduces the staff time which ordinarily would be required to respond to questions and requests. The NMB has also placed an NMB National Railroad Adjustment Board Open Case Report on the website. This report lists all of the open cases at the NRAB. With this report and the Arbitrators Caseload Report, the NMB's entire Section 3 caseload is on the NMB website (www.nmb.gov).

Enhanced Enforcement of the 60 Day, 90 Day and 120 Day Rules: During this fiscal year, the NMB implemented enhanced enforcement of the 60 Day, 90 Day and 120 Day rules by programming the time limits into AWS. When a case is assigned to an arbitrator, within 60 days, one of the three must be initiated, **(1)**

the case must have been decided, and the award submitted or **(2)** the case must be heard by an arbitrator or **(3)** the case must have been scheduled for a hearing. If the case is scheduled for a hearing, the scheduled date must be within 120 days of the date of assignment. Once the case has been heard, the arbitrator must render the award within 90 days of the hearing. When an arbitrator enters the AWS, the arbitrator is now notified when assigned cases have not been progressed in accordance with these rules. The arbitrator must bring those identified cases in compliance with the rules before the system will permit them to open and work on new cases.

Knowledge Store: The NMB further expanded its use of technology at the NRAB. All NRAB awards are entered into the Knowledge Store at the same time that they are distributed to the parties. Parties have been trained to enter awards into the Knowledge Store. In some instances, valid awards are entered within 24 hours of completion.

Removal of Non-progressed and Over-aged Cases: This fiscal year the NMB began removing over-aged cases which have not been progressed by the parties from the NMB's case tracking system. Cases in our case management system which are not assigned to an arbitrator constitute an ongoing unfunded liability. The NMB removed all cases three years and older which had not been progressed by the parties. This resulted in the removal of over 400 cases. The NMB will periodically review its caseload and remove over-aged cases. Next fiscal year, the NMB will remove all non-progressed and over-aged cases that are two years and older.

Arbitration Info Series: During FY 2018, the Office of Arbitration Services continued its info series on Arbitration and Section 3 topics. Using the NMB's Lyceum, the NMB posted several information film segments on various topics and issues in arbitration under the Railway Labor Act.

Forecast for FY 2019, FY 2020, and Beyond

The NMB projects that the number of cases pending at the end of FY 2019 and FY 2020 will increase. The estimated cases for FY 2019 and FY 2020 are based on a projection using the estimated caseload. The forecasts for FY 2019 and FY 2020 are driven by two assumptions: that the number of newly docketed cases will be 4,262, which is the five year average for new cases; and, that the number of closed cases will be 3,737, the five year average for closed cases.

The following chart reflects the actual case numbers for FY 2018 and the estimated case numbers for FY 2019 and FY 2020:

	FY 2018 Actual	FY 2019 Estimated	FY 2020 Estimated (based on 5 year average)
Cases Pending at Start	8,550	6,408	6,933
Cases Docketed	4,280	4,262	4,262
Cases Closed	6,422	3,737	3,737
Cases Pending at End	6,408	6,933	7,458

FY 2020 ARBITRATION PERFORMANCE GOALS

Arbitration Strategic Plan

To facilitate the settlement of disputes arising from the implementation or interpretation of existing agreements covering rates of pay, work rules, and working conditions.

Goal 1: Arbitration will provide outstanding service delivery to internal and external customers.

FY 2018 Accomplishment: An audit was conducted of the administrative caseload processes, and procedures governing public law boards and system boards of adjustments were reviewed with the goal of streamlining. Procedures at the NRAB were also reviewed. Electronic processing of cases was introduced at the NRAB resulting in a change by the NRAB in its procedures for processing cases. Grievance mediation/arbitration was introduced to successfully resolve several cases at the NRAB.

Goal 2: To engage in active roster development for the contract arbitrators serving the airline and railroad industries.

FY 2018 Accomplishment: NMB worked with the outside professional associations to increase the diversity of its applicants for the NMB's Arbitrators Roster. NMB participated in an arbitrator training program with a major organization representing diverse arbitrators to introduce more arbitrators to railroad and airline arbitration

Goal 3: The Office of Arbitration Services will be a center of innovation in the resolution of "minor" disputes.

FY 2018 Accomplishment: The NMB met with railroad labor and management officials several times during FY 2018 to discuss innovation to improve the program. NMB also continued its review of all grievance mediation cases. The NMB met with labor and carrier representatives at the NRAB to implement the electronic processing of cases at the NRAB.

OFFICE OF ADMINISTRATION

Funding (in thousands) and FTE			
FY 2019 Enacted		FY 2020 Request	
\$	FTE	\$	FTE
1,105	6	1,105	6

*The personnel compensation amounts listed above includes the cost for the Office of the Board, Office of Mediation Service and Office of Administration.

Overview of Administration for Fiscal Year 2018

The Office of Administration (OA) provides operational management, leadership and support for the entire agency. These services include: budgeting; accounting and finance; human resources management; procurement and contracting; telecommunications; property and space management; and office support.

Highlights of Administration during Fiscal Year 2018

Human Capital: OA continues to utilize online services in the personnel arena. The NMB continues to use the E-verify system to ensure that all new appointees are eligible to work.

With an aging workforce at the NMB, succession planning continues to be a challenge, but the agency’s new Succession and Workforce Plan analyzes the NMB’s future staffing requirements and sets forth strategies for adequately recruiting, promoting, and retaining employees. Training plans, both through the Individual Development Plan’s (IDP) and the department training plans, career development, including details and shadow assignments as a way to broaden skills and prepare for job transitions. The agency uses internal details when possible to broaden skills and give staff exposure to a range of work possibilities within the agency.

The NMB has devoted more attention and resources to training and has provided meaningful training programs opportunity for our employees. The NMB continues to provide subscriptions to Manager Advantage for supervisors and managers. Manager Advantage is an online information service for managers and supervisors. The information is based on case law, statutes and regulations. It provides extensive federal policy and guidance for supervisors and managers. This

information is obtained from the vendor LRP Publications' experienced attorney editors and senior editorial staff who have gathered and then converted the information in easy-to-understand major categories, key topics, scenario-based videos and more. Manager Advantage breaks down the complexities of federal civil service law to provide managers with practical, authoritative guidance in easy-to-understand terms while also providing essential tools for developing necessary leadership and managerial skills from one definitive source. OA is working with the Office of Personnel Management (OPM) and the Department of Interior (DOI) to improve the NMB's human capital operations and payroll. This will continue the NMB's objective of providing all its services electronically. In April 2018, OA provided all NMB managers and supervisors Telework Fundamentals-Managers Training. Also, OA provided Telework Fundamentals-Employee training to all NMB employees.

Continuity of Operations: The NMB participated in FEMA's Eagle Horizon 2018 (EH 2017), which was conducted as part of the National Exercise Program (NEP) Capstone Exercise on May 4, 2018. It was a one-day, internally-evaluated table top exercise to test the Federal Executive Branch Departments and Agencies' readiness and capabilities to execute their continuity program.

The NMB was required to activate its continuity plan, deploy continuity personnel to a continuity site, and perform essential functions. At the conclusion of EH 2017, participants, planners, and evaluation teams noted their observations and identified critical issues associated with the agency's continuity plans and programs. The NMB's overall rating for the EH 2017 was "green." This was NMB's second overall "green". The overall rating for EH 2018 has not been published.

Financial Performance: The NMB has continued its interagency agreement with the Bureau of Fiscal Services (BFS) for financial management services. The OA provides budget planning, budget development, and oversight of budget execution. In addition, OA is responsible for the maintenance of the Agency's core accounting system; financial reporting to the Office of Management and Budget (OMB) and Treasury; payments to vendors for goods and services received; issuing bills; and the preparation of the Agency's financial statements which are audited on an annual basis. The NMB continues to work with an outside firm (Allmond & Company) to audit its financial statements. For the 20th consecutive year, Allmond & Company reported that the financial statements were presented fairly, in all material respects, and in conformity with U.S. generally accepted accounting principles (GAAP) for Federal Agencies. In the FY 2018 independent audit, the NMB received an "Unmodified Audit Opinion" on its financial statements. Along with the "Unmodified Audit Opinion," the report of independent auditors found "No Material

Weaknesses or Significant Deficiencies” in the design and operation of the agency’s system of internal controls over financial reporting.

The audit opinion reflects a financial operation that meets U.S. Department of the Treasury guidance, OMB guidance, federal financial regulations, and generally accepted accounting principles.

Procurement: With the continued partnership with BFS, the NMB utilizes PRISM to electronically create requisitions, purchase orders, and inter-agency agreements. This system, along with new processes and procedures, is ensuring that the NMB complies with all applicable rules and regulations governing contracting.

In Fiscal Year 2018, there were improvements substantially exceeding the Small Business Administration’s Government-wide goal to ensure that small businesses get their fair share of work with the federal government by awarding the following entities:

- Small Business Goal 23 percent – Actual awards 74.63 percent;
- Small Disadvantage Business Goal 5 percent – Actual awards 63.32 percent;
- Small-Disabled Veteran-Owned Small Business Goal 3 percent – Actual awards 5.3 percent;
- Women-Owned Business Goal 5 percent – Actual awards 8.12 percent; and
- Historically Underutilized Business Zones Goal 3 percent –Actual awards 0 percent

In June 2018, BFS conducted an annual Government Purchase card audit review on the purchase card holder’s transactions. BFS’s results concluded that the purchases were well documented and necessary for the completion of NMB’s mission.

Travel: The NMB currently uses the Concur Government Edition (CGE) Travel Services. CGE is an electronic online system which reduces the per-ticket cost for travelers. This system provides an electronic process for authorization, vouchers, and reimbursement. The NMB continued its agreement with Duluth Travel Inc., to serve as the agency’s Travel Management Company. In September 2018, OA provided all NMB employees with the following General Service Administration (GSA) travel training course:

- Travel Basics 101
- Approving Official Responsibilities
- Attending A Conference 100
- FTR In-Depth
- Fly America Act & Open Skies Agreements

OA continues to provide all NMB travelers with the Government Credit Card Refresher training to ensure that agency meets the refresher training required by OMB in Circular A-123, Appendix B.

Sustainability: The National Mediation Board is committed to reducing greenhouse gases in accordance with Executive Order 13514 (E.O.). During 2018, 86 percent of the NMB employees regularly used public transportation. The Agency provides Alternative Work Schedules (AWS) and Telework programs to its employees to reduce the number of commuters. Currently, 28 out of 38 employees participate in the Smart Benefits program for public transportation. We also purchased new environmentally efficient copiers that generate 90 percent less waste than traditional copiers.

FY 2020 ADMINISTRATION PERFORMANCE GOALS

Administration Strategic Goal

To support the program missions of the agency and provide outstanding administrative services.

Goal 1: Provide outstanding service delivery to internal and external customers.

FY 2018 Accomplishments: The Office of Administration responded to all requests for assistance or service from internal and external customers as soon as received. In addition, new Employee Orientation training was completed for each new employee.

Goal 2: Provide timely, efficient and responsible stewardship of the NMB's fiscal resources. *

FY 2018 Accomplishments: The NMB worked with BFS to ensure that required financial reporting is prepared and submitted timely. The NMB worked with BFS to ensure that 99.1% of payments were paid timely and accurately.

Goal 3: Ensure agency spending and budgets are transparent and provide the necessary support for each of the agency's missions throughout the whole fiscal year.*

FY 2018 Accomplishments: The NMB has an agreement with BFS to handle the agency's financial management system, and the agency integrated PRISM (a web-based procurement system) into its procurement process. The NMB works with the BFS on a regular basis to ensure that the agency's quarterly apportionment is not exceeded.

Goal 4: Attract and retain a high-performing workforce with the technical and professional skills needed.

FY 2018 Accomplishments: FY 2018 Accomplishments: The NMB worked with the Department of Interior to ensure that the each vacancy announcement reflects the technical and professional skills needed.

Goal 5: Improve agency efficiency and public communications through cost effective information and communications technology improvements,

including implementing Enterprise Architecture (design, secure and document) the emerging cloud, mobile, and other mechanisms.**

FY 2018 Accomplishments: The NMB completed its transition into the cloud environment for e-mail, calendars, contacts, and records. With this change, the NMB eliminated the majority of its in-house servers and made possible a revision and reduction in price of its network support contract.

Goal 6: Continue to ensure that NMB Information is secure while maintaining a government-leading information and communication technology system.**

FY 2018 Accomplishments: The NMB ensures that all information that contains Private Personnel Information (PPI) is password protected when transmitted electronically.

*The Board's Delegation Order, dated August 6, 2018, transfers this goal to the newly created Office of Fiscal Services.

**The Board's Delegation Order, dated August 6, 2018, transfers this goal to the newly created Office of Information Services.

FY 2020 FISCAL SERVICES PERFORMANCE GOALS*

Fiscal Services Strategic Plan

To support the missions of the agency and provide outstanding financial services.

Goal 1: To provide timely, efficient, and responsible stewardship of the NMB's fiscal resources.

Goal 2: Ensure agency spending and budgets are transparent and provide the necessary support for each of the agency's missions throughout the entire fiscal year.

*New office created with Delegation Order, dated August 6, 2018.

OFFICE OF INFORMATION SERVICES

Funding (in thousands) and FTE			
FY 2018 Enacted		FY 2019 Request	
\$	FTE	\$	FTE
1,101	5	1,101	5

*The personnel compensation ted, above includes the cost for the Office Of Office of Mediation Service, Office of Administration, and Office of Information Services.

Overview of Information Services for Fiscal Year 2018

The Office of Information Services (OIS) provides information technology leadership and support for the entire agency. These services include: systems development; information technology operations; cybersecurity & information assurance; helpdesk & IT support; telecommunications; and records management.

Highlights of Administration during Fiscal Year 2018

Information Technology: In accordance with the NMB’s Capital Plan, the NMB reviewed options for its information technology equipment while taking steps to move completely into cloud computing. The NMB has implemented the transition to Google Mail, Google Drive and Google Calendar for all employees, with all records and documents stored and retrieved from secure cloud servers. This has resulted in the elimination of on-site servers, with the attendant savings in replacement and maintenance costs, and a reduced cost for network consulting services. The NMB also has moved the NMB’s Corporate Memory and Knowledge Store to a cloud platform consistent with government requirements.

Federal Agencies are required to provide annual computer security awareness training for employees and contractors. Security awareness efforts are designed to change behavior or reinforce good security practices by focusing attention on security. In September 2018, the NMB conducted its Cyber Awareness Challenge security training using a web-based training offered by KnowBe4.

NMB Knowledge Store: NMB staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and collective bargaining contracts.

Electronic Government: The NMB provides electronic access to all its policies, and the agency continues to use the NMB website to provide information to its internal and external customers. The website provides access to our internal customers by allowing them to access NMB internal forms, the Knowledge Store (providing current and historical information to the public and our external customers), and the NMB Lyceum Training Center.

NMB Corporate Memory: The NMB continues to refine its records and document management programs, improving the search engine and further integrating the records database with the agency case management system.

FY 2020 INFORMATION SERVICES PERFORMANCE GOALS*

Information Services Strategic Goal

Support the program mission of the agency and comply with intra-governmental requirements.

Goal 1: Ensure compliance with regulations from the Department of Homeland Security and the National Archives.

FY 2018 Accomplishments: The Office of Information Services (OIS) completed several actions related to Binding Operative Directive (BOD) 18-01 and BOD 19-01, as well as compliance with several actions related to the bi-annual Federal Information Security Modernization Act (FISMA) metrics. In addition, the agency records inventory was completed and a records management manual was published in FY 2018.

Goal 2: Maintain and update internal policies.

FY 2018 Accomplishments: The OIS implemented training for NMB technology and Rules of Behavior in conjunction with the distribution of new laptops. In FY 2019 additional resources will be dedicated to fully document all policies, processes and procedures.

Goal 3: Maintain hardware/software architecture and configuration.

FY 2018 Accomplishments: To improve the security and maintainability of our office network, the agency updated its network firewalls and switches beginning at the end of FY 2018 and fully completed the project in early FY 2019.

Goal 4: Fully trained and technology-literate staff.

FY 2018 Accomplishments: OIS staff completed several training activities related to IT disciplines such as cloud computing and IT Acquisitions. Additional emphasis will be placed on training in FY 2019.

Goal 5: Improve agency efficiency and public communications through cost effective information and communications technology improvements, including implementing Enterprise Architecture (design, secure and document) the emerging cloud, mobile, and other mechanisms.**

FY 2018 Accomplishments: The NMB completed its transition into the cloud environment for e-mail, calendars, contacts, and records. With this change, the NMB eliminated the majority of its in-house servers and made possible a revision and reduction in price of its network support contract.

Goal 6: Continue to ensure that NMB Information is secure while maintaining a government-leading information and communication technology system.**

FY 2018 Accomplishments: The NMB ensures that all information that contains Private Personnel Information (PPI) is password protected when transmitted electronically.

**The Board's Delegation Order, dated August 6, 2018, transfers this goal to the newly created Office of Information Services.