

**FISCAL YEAR 2017  
CONGRESSIONAL BUDGET SUBMISSION**



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## EXECUTIVE SUMMARY

The National Mediation Board (NMB) presents its justification supporting the Fiscal Year (FY) 2017 budget request of \$13,300,000. 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 \$9,051,000 for personnel compensation and benefits. This level includes full staffing along with a 1.6 percent pay increase. Included in this amount is \$1,270,000 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, and remain in compliance with prior audit 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 \$4,249,000 includes the funds set aside for Presidential Emergency Boards (\$400,000) and all the remaining object classifications for NMB operations.

The NMB has undertaken a detailed review of its operations to determine areas that can be further consolidated and improved. Recent Administration guidance has urged moving our information technology processes to the cloud and reducing the amount of equipment required for staff. The NMB has been in the vanguard of agencies moving toward a cloud-computing environment. During FY 2015, the National Mediation Board completed development of a new, cloud-based Mediation and Alternative Dispute Resolution case tracking and management system. Transition to that system is still in progress, with older cases being added to the system as the accuracy of information in the old system is audited. A full audit of the new system will be completed as soon as the transition is accomplished, and the case numbers reported in this document may be adjusted slightly to reflect the results of that audit.

The Board continues to see an increase in demand for its services, and with the anticipation of continued funding constraints, the agency is striving to find innovations to provide exceptional service to our external and internal customers.

On behalf of the NMB, we thank the Subcommittee for its support of the Board in its unique work in the airline and railroad industries.

Sincerely,



Nicholas C. Geale  
Chairman  
Attachments

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 [*\$13,230,000*] *\$13,300,000*. (Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2016).

## SALARIES AND EXPENSES

### Appropriation History

<u>Year</u>	Budget Estimate to <u>Congress</u> \$	<u>House</u> <u>Allowance</u> \$	<u>Senate</u> <u>Allowance</u> \$	<u>Appro-</u> <u>priation</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			

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.

## SUMMARY OVERVIEW

### National Mediation Board

The National Mediation Board requests \$13,300,000 for its total program for FY 2017 to continue its efforts to perform the statutory mandate of 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 2016 Request Level	\$13,230,000
Compensation and Benefits Increases	135,000
Other Current Service Level Changes	(65,000)
Fiscal Year 2017 Request Level	<u>\$13,300,000</u>

#### Personnel Summary

FY 2015 Actual – FTE <i>(Receptionist, Budget Officer, Program Support Specialist (2), Program Analyst, Public Affairs Officer and Executive Assistant)</i>	44
FY 2016 Enacted – FTE <i>(Receptionist, Budget Officer, Program Support Specialist (1), Program Analyst, Public Affairs Officer, Confidential Assistant and Executive Assistant)</i>	51
FY 2017 Request - FTE	51

National Mediation Board  
 Program and Financing Schedule  
 (In Thousands of Dollars)

Identification Code 95-2400-0-1-505	FY 2015 Actual	FY 2016 Enacted	FY 2017 Request
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Obligations by Program Activities:

0001	Mediation Services	7,765	7,789	7,914
0002	Representation Services	2,661	2,771	2,661
0003	Arbitration Services	2,401	2,270	2,325
0004	Emergency Disputes	400	400	400
1000	Total obligations	13,227	13,230	13,300

Budgetary Resources Available for Obligation:

2200	New budget authority (gross)	13,227	13,230	13,300
2395	New obligations	(13,227)	(13,230)	(13,300)
2398	Unobligated balance expiring	(0)	(0)	(0)

New Budget Authority (Gross), Detail:

4000	Appropriation	13,227	13,230	13,300
4033	Appropriation permanently reduced	0	0	0
4300	Appropriation (total discretionary)	13,227	13,230	13,300

Change in Obligated Balances:

7240	Obligated balance: start of year	1,944	1,934	1,710
7310	Total new obligations	12,279	12,296	11,590
7320	Total outlays (gross) (-)	(13,227)	(13,230)	(13,300)
7340	Adjustments in expired accounts	0	0	0
7440	Obligated balance: end of year	1,645	1,765	1,435

Net Budget Authority and Outlays:

8900	Budget Authority (net)	12,279	12,296	11,590
9000	Outlays (net)	13,227	13,230	13,300



National Mediation Board  
 Personnel Summary

	FY 2015 Actual	FY 2016 Enacted	FY 2017 Request
Total Number of Full Time Permanent Positions	51	51	51
Full Time Equivalent			
Full Time Permanent	38	45	45
Other	6	6	6
Total Employment, end of year (FTE)	44	51	51
Average GS Grade	12.71	12.71	12.71
Average GS Salary	\$107,141	\$109,126	\$111,516
Average Salary of Senior Executive Service Positions	\$162,866	\$164,478	\$164,478
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 2015 Actual	FY 2016 Enacted	FY 2017 Request
Personnel Compensation:			
Full-time Permanent	5,700	5,738	5,993
Special personnel services payments	1,270	1,270	1,270
Total Personnel Compensation	6,790	7,008	7,263
Civilian Benefits	1,901	1,908	1,888
Benefits for Former Personnel	0	0	0
Travel & Transportation of Persons	730	730	730
Transportation of Things	2	2	2
Rental Payments to GSA	1,350	1,355	1,375
Communications, Utilities, & Misc. Charges	195	170	150
Printing & Reproduction	4	2	2
Other Services	1,510	1,520	1,475
Supplies and Materials	100	75	65
Equipment	65	60	50
Subtotal Obligations	12,827	12,830	12,900
PEB Obligations	400	400	400
Total Obligations	13,227	13,230	13,300



DETAILED EXPLANATION OF CHANGES  
BY OBJECT CLASS FOR FISCAL YEAR 2017

National Mediation Board  
(In Thousands of Dollars)

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

FY '16	FY '17		Net Change
\$730	\$730		\$0
<p style="margin-left: 40px;">This category will fund the travel expenses of the Board Members, Mediators, Attorneys, Arbitration referees, and local transportation costs for the entire Agency.</p>			
<p><u>Transportation of Things</u></p>			
\$2	\$2		\$0
<p style="margin-left: 40px;">The requested amount will cover the cost of commercial courier services by the Board's staff.</p>			
<p><u>Rental Payments to GSA (Rent)</u></p>			
\$1,355	\$1,375		\$20
<p style="margin-left: 40px;">This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. The increase is based upon the estimates received by GSA. In addition, the cost of leasing the office space in Chicago for the National Railroad Adjustment Board is in this category</p>			
<p><u>Rent, Communications, and Utilities (RCU)</u></p>			
\$170	\$150		(\$20)
<p style="margin-left: 40px;">This category covers funds for the use of commercial, local and long distance telephone services, and payment to GSA for after-hour utilities.</p>			

DETAILED EXPLANATION OF CHANGES  
BY OBJECT CLASS FOR FISCAL YEAR 2017

National Mediation Board  
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '16	FY '17		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>	
\$1,520	\$1,475	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.	(\$45)

DETAILED EXPLANATION OF CHANGES  
BY OBJECT CLASS FOR FISCAL YEAR 2017

National Mediation Board  
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '16	FY '17		Net Change
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Supplies and Materials

\$75	\$65		(\$10)
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This category provides funding to purchase general office supplies, IT supplies, subscriptions, and government publications.

Equipment

\$60	\$50		(\$10)
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This category provides for the equipment needs of the agency including hardware and software for information technology requirements, telecommunication equipment as well as office furniture purchases.

Presidential Emergency Board

\$400	\$400		\$0
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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.

\$13,230 \$13,300 TOTAL FOR ALL OBJECT CLASSES

## MISSION STATEMENT

### **Railway Labor Act and NMB Functions**

The National Mediation Board (NMB) 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, colleges, and universities.

## PROGRAM DESCRIPTION

### Office of the Board

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
1,561	11	1,646	11

\*The amounts listed above reflect personnel compensation. The total cost of this program is included in the Office of Administration.

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 day-to-day oversight and administration to the Chief of Staff and the General Counsel. The Chief of Staff along with the Departmental Directors and General Counsel direct the program areas, which include: Office of Mediation and ADR Services, Office of Legal Affairs, Office of Arbitration Services, and the Office of Administration.



## **Office of Mediation and ADR Services**

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
2,469	17	2,614	17

\*The amounts listed above reflect personnel compensation. The total cost of this program is included in the Office of Administration.

### ***Overview of Mediation for Fiscal Year 2015***

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

**Mediation Highlights**

Mediation activity for collective bargaining agreements was robust in FY 2015, and in a wide range of cases. 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 mainline, regional and low cost carriers, and in the rail sector with freight and commuter lines. Challenges at the bargaining table included consolidating agreements after mergers; working with limited public funding; and dealing with health care changes.

**Settlements:** In the airline sector, settlements were reached between Alaska Airlines and AFA and at Southwest Airlines with the IAM. In the rail sector, the Long Island Railroad and Metro North Railroad reached agreements this year with their unions, as did the Grand Trunk Western Railroad and SMART, and SEPTA and the BLET.

**Pending Cases:** We continue to work with United and IBT mechanics and related classifications and United and its AFA Flight Attendants on merged collective bargaining agreements, as well as on contracts with UPS and its IPA pilots and mechanics. On the rail side, Metra, MAP, BRS, IAM, IBEW, NCFO, SMART, and several of its unions, and other, Class II Railroads continue to bargain with unions on their properties.

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 2014, FY 2015, and the five-year average, FY 2011 – FY 2015 follows:

MEDIATION CASES	FY 2014 Actual	FY 2015 Actual	FY 2011 - FY 2015 Five Year Average
Cases Pending Start	100	90*	92.6
Cases Docketed	44	36	43.8
Sum	144	126	136.4
Cases Closed	55	45	44.6
Cases Pending End	89	89	91.8

\*The Mediation Department completed a change over from a manual to an automated case management system in FY 2015. After the change over was complete, the audit revealed an error in the old system which resulted in incorrect case numbers.

## **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 facilitation, training, grievance mediation, and an online dispute resolution (ODR) program, 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 ODR 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 and ODR 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](http://www.nmb.gov).

### ***ADR Highlights***

ADR personnel continued to develop and deliver a wide range of services, including training (T cases), facilitation (F cases), grievance mediation (GM cases), facilitated problem solving (FPS) and Online Dispute Resolution (ODR). 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 pre-negotiation training and in mediation skills training for internal organization self-help use. Skill at instructing has been a by-product of the Agency's partnership with Dominican University where teaching mediation and negotiation courses turns into a learning opportunity for the mediators who teach the courses. In FY 2015, mediator teams developed and delivered three presentations on mediation models at the Association of Conflict Resolution Conference.

**Facilitation:** Mediators have been active on several properties using facilitation to help parties reach resolution to their disputes. United and AFA initially used a facilitated approach to merge their agreements, facilitation was used at CSX with the BRS to align multiple regional agreements, and at Virgin America as it negotiates an initial agreement with its TWU represented flight attendants. 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 has

helped reduce the case load in the NMB’s Arbitration Department, and serves to quicken the resolution of grievances. Grievance Mediation has served to solve problems before they become grievances, and helped to clarify issues ahead of bargaining.

**Online Dispute Resolution:** In cooperation with the Arbitration Department and the Dispute Resolution Program at Dominican University, a new Info Series is now on line that highlights areas of interest to the railroad industry. As each session is completed, it is being uploaded to the NMB’s Lyceum (online training site) accessible through the NMB website at <http://www.nmb.gov/services/nmb-lyceum-center/>. The first two sessions are now available; “Hearing Expectations of Arbitrators” and “How Arbitrators are Selected by the Parties.”

**Partnerships:** In partnership with Dominican University, the ADR staff designs and delivers trainings and presentations that provide quality training and complement employee’s and student’s career development alike. The partnership has successfully created shared value for all participants. The NMB’s Info Series on Arbitration is one example of shared value with Dominican University. The NMB provides content, and Dominican handles the video and editing. Both share use of the videos developed.

A chart reflecting the actual ADR case numbers for FY 2014, FY 2015, and the five-year average, FY 2011 – FY 2015 follows:

ADR CASES	FY 2014 Actual	FY 2015 Actual	FY 2011 - FY 2015 Five Year Average
Cases Pending Start	30	33*	26.8
Cases Docketed	70	75	52.6
Sum	100	108	79.4
Cases Closed	58	73	48.2
Cases Pending End	42	35	31.2

\*The Mediation Department completed a change over from a manual to an automated case management system in FY 2015. After the change over was complete, the audit revealed an error in the old system which resulted in incorrect case numbers.

The following charts reflect the actual case numbers for FY 2015, estimated case numbers for FY 2016 and FY 2017 for both Mediation and ADR Cases:

MEDIATION CASES	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Cases Pending Start	90	81	79
Cases Docketed	36	42	42
Cases Closed	45	44	44
Cases Pending End	81	79	77

ADR CASES	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Cases Pending Start	33	35	45
Cases Docketed	75	56	52
Cases Closed	73	46	46
Cases Pending End	35	45	51

## **FY 2017 Mediation and ADR Performance Goals**

### **Mediation & Alternative Dispute Resolution Strategic Goal**

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

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

FY 2015 Accomplishments: NMB standards applicable to processing and managing cases involving major disputes were consistently met in FY2015. Case processing benefited from introduction 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 2015 Accomplishments: New mediator training was redeveloped and enhanced during FY2015 to insure it met NMB standards. The Agency's new mediators are benefiting from a comprehensive program monitored by the senior mediators that includes orientation to the Agency, training in mediation and negotiation through the NMB's partnership with Dominican University's program in Conflict Resolution, training in Conflict Coaching, shadowing mediators as they work cases and integrating into the mediator corps through attending professional conferences and mediator meetings.

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 the bi-monthly mediator meetings. The NMB's partnership with Dominican University provided valuable and specialized training for mediators as they delivered courses in the areas of negotiation and mediation.

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

FY 2015 Accomplishments: The Agency completed a comprehensive review and update of all of its ADR programs in FY2015. It is translating its general mediation and negotiation training developed for Dominican University to industry specific training for air and rail to use for internal dispute resolution purposes. Mediators

who participate in more innovative alternative dispute resolution training return to debrief the entire mediator corps on what they have learned.

Mediators continued to refine ADR strategies and techniques that addressed the unique needs of parties in negotiations, especially in the instances of merging carriers and unions in the airline sector. In the rail sector, parties have used ADR tools to integrate multiple regional provisions into common language.

**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 2015 Accomplishments: The Agency continues to explore uses for online dispute technology and offer it to parties. Mediators make use of WebEx technology to remotely share language and discuss proposals, and electronic flip charting was effectively used by the parties to reach agreements in complex cases merging multiple agreements, to track changes in language, and to share information.

## Presidential Emergency Boards

### **Overview of Fiscal Year 2015**

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 2014, FY 2015 and the five-year average, FY 2011-2015 follows:

	FY 2014 Actual	FY 2015 Actual	FY 2011-FY 2015 Five Year Average
Emergency Board Sec. 160	0	0	.4
Emergency Board Sec. 159A	3	2	1



## ***Highlights of Fiscal Year 2015***

Two PEBs were established during fiscal year 2015. These PEBs involved the special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. PEB 247 was established under Section 9(a) to resolve a dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA) and certain of its employees. PEB 248 was established under Section 9(a) to resolve a dispute between the New Jersey Transit Rail (NJT) and certain of its employees.

Presidential Emergency Board 247. On June 14, 2014, the President created PEB 246, effective June 15, 2014, to investigate and issue a report and recommendations regarding the dispute between the SEPTA and certain of its employees represented by the International Brotherhood of Electrical Workers (IBEW) and the Brotherhood of Locomotive Engineers and Trainmen (BLET). On July 14, 2014, PEB 246 issued its Report and Recommendations to the President.

When the recommendations of PEB 246 did not result in a prompt resolution of the disputes, the NMB conducted a public hearing on August 4, 2014, at which the Organizations and SEPTA discussed their reasons for not accepting the recommendations of PEB 246. Subsequent to the public hearing, SEPTA and IBEW reached an agreement of their dispute. The dispute between SEPTA and BLET remained unresolved.

On October 7, 2014, SEPTA requested that President Obama create a second Emergency Board pursuant to Section 9a(e) of the RLA regarding its dispute with the BLET. Thereafter, on October 10, 2014, the President issued an Executive Order establishing, effective 12:01 a.m., October 13, 2014, Presidential Emergency Board 247 to recommend adoption of a final offer from those submitted by SEPTA and the BLET. The President appointed Elizabeth C. Wesman, as Chairman of the Board, and Barbara C. Deinhardt and David P. Twomey, as Members.

On October 22, 2014, BLET's members and SEPTA's Board of Directors ratified a tentative agreement. On November 6, 2014, the Board submitted its report to the President, reporting that the parties' agreement had been ratified and the dispute had been resolved.

Presidential Emergency Board 248. In April 2011, pursuant to Section 6 of the RLA, the Organizations<sup>1</sup> served on the NJT formal notices for changes in current rates of

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1 The New Jersey Transit Rail Labor Coalition ("the Coalition") represents all 4,220 unionized rail employees at NJT. The Coalition consists of the following organizations: International Brotherhood of Electrical Workers ("IBEW"), representing Electrical Workers and Supervisors; Transportation Communications International Union/IAM ("TCU/IAM"), representing Supervisors, Clericals, and Carmen; Brotherhood of Locomotive Engineers &

pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations. Applications for mediation were filed with the NMB by IBEW, on behalf of Electrical Workers, and TCU/IAM in March 2014; by BLET in June 2014; by SMART – Transportation Division (UTU) in July 2014; by IAM, BRS, and NCFO in November 2014; by SMART and ATDA in December 2014; by IBEW, on behalf of Supervisors, and BMWED in January 2015; and by IBB and TWU in February 2015.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On June 9 and 10, 2015, the NMB, in accordance with Section 5, First, of the RLA, urged the NJT and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA (“proffer of arbitration”). The proffer of arbitration specified that failure to respond by June 12, 2015 would be considered a rejection of the proffer. On June 11, 2015, NJT accepted the NMB’s proffer of arbitration, only in the event that every Organization also accepted the proffer. On June 12, 2015, TCU/IAM and BLET declined the NMB’s proffer of arbitration. None of the other Organizations responded to the proffer.

On June 15, 2015, the NMB served notices that statutory mediation had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., on Thursday, July 16, 2015.

Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an

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Trainmen (“BLET”), representing Locomotive Engineers, Assistant Engineers, and Engineer Trainees; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (UTU) (“SMART” or “UTU”), representing Yardmasters and Conductors/Trainmen; International Association of Machinists & Aerospace Workers (“IAM”), representing Machinists; Brotherhood of Railroad Signalmen (“BRS”), representing Signalmen; National Conference of Firemen & Oilers, SEIU (“NCFO”), representing Laborers; International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART”), representing Railroad, Sheet Metal, Mechanical & Engineering Workers; American Train Dispatchers Association (“ATDA”), representing Train Dispatchers; Brotherhood of Maintenance of Way Employees Division (“BMWED”), representing Maintenance of Way Employees; International Brotherhood of Boilermakers (“IBB”), representing Boilermaker Welders; and Transport Workers Union of America (“TWU”), representing Carmen and Coach Cleaners. Although each of the separate bargaining units commenced negotiations with NJT on an individual basis, they subsequently joined together as a formal Coalition to bargain collectively with NJT.

Emergency Board. On June 30, 2015, in accordance with Section 9a of the RLA, the Coalition,<sup>2</sup> on behalf of all the Organizations, requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. On July 9, 2015, NJT also requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Thereafter, on July 15, 2015, the President issued an Executive Order. Effective 12:01a.m, July 16, 2015, the Executive Order created Presidential Emergency Board 248 to investigate and report concerning the dispute between the NJT and certain of its employees represented by the Organizations. The President appointed Elizabeth C. Wesman, as Chairman of the Board, and Barbara C. Deinhardt and Ann S. Kenis as Members. The Board submitted its Report to the President on August 14, 2015.

***Forecast for FY 2016, FY 2017, 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. A second PEB was also established for the LIRR in FY2014 under the special commuter rail provisions of Section 9(a). In addition, a PEB was also established for SEPTA under Section 9(a). The second SEPTA PEB (PEB 247) was convened by President Obama on October 10, 2014 (FY2015).

The following chart reflects the actual case numbers for FY 2015 and estimated case numbers for FY 2016 and FY 2017:

	FY 2015 Actual	FY 2016 Estimated	FY 2017 Estimated
Emergency Board Sec. 160	0	1	1
Emergency Board Sec. 159A	2	1	1

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<sup>2</sup> On June 30, 2015, TCU filed an individual request for the establishment of an Emergency Board.

**Office of Legal Affairs/Representation**

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
2,708	10	2,788	10

**Overview of Fiscal Year 2015**

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 a "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](http://www.nmb.gov).]

If a showing-of-interest requirement is met, the NMB continues the investigation, usually with a secret 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 2014, FY 2015, and the five-year average, FY 2011-2015 follows:

	FY 2014 Actual	FY 2015 Actual	FY 2011 - FY 2015 Five-Year Average
Cases Pending at Start	1	3	3.2
Cases Docketed	39	33	38.6
Cases Closed	37	35	35.8
Cases Pending at End	3	8	5.2

## ***Highlights during Fiscal Year 2015***

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.

The OLA staff closed 35 cases and also docketed 33 cases during the year. With the Agency resources requested for 2016, it is estimated that 40 representation cases will be investigated and resolved in the next fiscal year.

### **CASE SUMMARIES**

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 summaries that follow are examples of the varied representation matters which were investigated and resolved by the NMB during FY 2015.

#### **AMERICAN AIRLINES/US AIRWAYS**

On January 10, 2014, pursuant to the NMB's Merger Procedures and NMB Representation Manual Section 19.3, American Airlines notified the NMB that "on December 9, 2013, American Airlines Group, Inc., (formerly known as AMR Corporation) and US Airways Group, Inc., implemented a merger agreement dated February 13, 2013, resulting in the former's acquisition of the latter, including its wholly owned subsidiary US Airways, Inc." Subsequently, in FY 2015, the NMB investigated American Airlines (American) and US Airways (collectively the New American) to determine whether they were operating as a single transportation system for representation purposes under the RLA regarding the crafts or classes of Mechanics and Related Employees, Fleet Service Employees, Stock & Stores Employees, Simulator Technicians, Instructors and Dispatchers.

##### Simulator Technicians, Instructors, and Flight Dispatchers

On July 24, 2014, the National Association of Airlines Professionals (NAAP) filed applications seeking to represent employees in the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers. Employees in the three crafts or classes covered by the application were represented by the Transport Workers Union of America, AFL-CIO at both American and US Airways. Subsequently, on January 12, 2015, TWU also filed applications alleging a representation dispute involving the crafts or classes of Simulator Technicians, Instructors and Dispatchers at the New American. The Board consolidated TWU's applications with NAAP's.

Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American

and US Airways are a single transportation system. *American Airlines, Inc./US Airways, Inc.*, 42 NMB 80, 99 (April 15, 2015). Having determined that a single transportation system existed, the Board proceeded to examine the potential representation consequences.

With regard to craft or class issues, the Simulator Engineers at US Airways were a separate craft or class at pre-merger US Airways and represented by TWU pursuant to a certification in NMB Case No. R5916. *USAir, Inc.*, 17 NMB 57 (1989). In contrast, the Simulator Technicians at pre-merger American were represented by TWU as part of the Mechanics and Related craft or class pursuant to NMB Case No. R-6872. *American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 240 (2002). For the reasons discussed more fully below, the Board found that Simulator Technicians at the New American are appropriately part of the Mechanics and Related craft or class and dismissed the applications for a separate craft or class of Simulator Technicians at the New American.

The NMB also conducted an on-site investigation to determine whether NAAP's authorization cards were tainted by the contemporaneous distribution of \$500 gift cards and cashier's checks. The Board majority found that the close timing between the distribution of the \$500 gift cards/cashier's checks and the collection of the authorization cards tainted the laboratory conditions. Noting that TWU was the certified representative of Instructors and Flight Dispatchers at both pre-merger American and US Airways and the extraordinary circumstances in this case, the Board extended TWU's certifications to cover those employee groups at the New American.

Member Geale dissented from the finding. In his view, the majority's decision inappropriately limits the freedom of association rights of the employees by subjecting them to union representation when it was clear they were unhappy with the current representative. He further disagreed with the majority determining for the first time that a union could interfere with an election through providing a benefit in the context of an organizing campaign without first providing notice of the applicable rules.

#### Mechanics and Related, Fleet Service and Stock & Stores Employees

On August 6, 2014, TWU and the International Association of Machinists and Aerospace Workers (IAM) jointly filed applications covering approximately 33,000 employees in the Mechanics and Related, Fleet Service and Stock & Stores Employee crafts or classes. Prior to filing these applications, TWU and IAM formed the TWU/IAM Mechanics Association, the TWU/IAM Fleet Association, and the TWU/IAM Stores Association for the purposes of representing these crafts or classes on the merged system. TWU represents the three craft or classes at American and IAM is the representative of the three crafts or classes at US Airways. Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American and US Airways are a single transportation system for representation purposes. *American Airlines, Inc./US Airways, Inc.*, 42 NMB 35 (April 15, 2014). Having determined that a

single transportation system exists, the Board proceeded to examine the potential representation consequences. The Board determined that Simulator Technicians should be a part of the Mechanics and Related Employees craft or class based on the current circumstances at the New American and the historical representation pattern at pre-merger American. To do otherwise, in the view of the Board's majority would unnecessarily fragment a craft or class with a long and stable collective bargaining history and lead to the instability the Act seeks to prevent.

Member Geale dissented from Board's finding with regard to Simulator Technicians, stating that this determination was a departure from recent Board precedent and overrides the free association rights of the employees.

In *American Airlines, Inc./US Airways, Inc.*, 42 NMB 127 (May 19, 2015), the Board extended the certifications of TWU and IAM as the representatives of the crafts or classes of Mechanics and Related, Fleet Service and Stock and Stores Employees at pre-merger American and US Airways to cover the merged crafts or classes at the New American with the respective TWU/IAM Associations as the certified representative. The Board found that the TWU/IAM Associations were formed by the certified representatives of Mechanics and Related Employees, Fleet Service Employees, and Stock and Stores Employees crafts or classes at the pre-merger carriers and the purpose of the TWU/Associations is to represent the employees in the respective crafts or classes to collectively bargain under the RLA at the New American. Thus the Associations clearly fall within the definition of representative under the Act and represent 100% of the three crafts or classes.

## **JURISDICTIONAL OPINIONS**

The NMB also received 4 jurisdictional referrals from the National Labor Relations Board (NLRB). In view of the National Labor Relations Act (NLRA) specific exemption of employers covered by the RLA, the NLRB follows a longstanding practice of referring cases to the NMB in instances where the jurisdictional issue is raised. In these cases, the NMB reviews the record provided by the NLRB and provides an opinion letter regarding whether the employer in question is, in the NMB's opinion, covered by the RLA.

In *Menzies Aviation, Inc.*, 42 NMB 1 (October 16, 2014), the NLRB requested the NMB's opinion regarding whether Menzies' operations and employees at Seattle-Tacoma International Airport (SeaTac) are subject to the RLA. The NMB applied its two-part jurisdictional test recently reaffirmed in *Airway Cleaners*, 41 NMB 262 (2014). Under that test, 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 employees at issue performed baggage, ramp, and aircraft servicing functions under Menzies' contract with Alaska Airlines (Alaska). The contract between Menzies and Alaska specified standards such as a 20-minute time limit for unloading baggage and allowed Alaska auditors to inspect Menzies employees' work

and identify deficiencies for Menzies to correct. Although the NMB found that the ground services work performed by Menzies under its contracts at SeaTac is work traditionally performed by employees of air carriers, the Board found that the extent to which Alaska controlled the manner in which Menzies conducts its business is no greater than that found in a typical subcontractor relationship. Alaska may report performance problems but Menzies determines the appropriate discipline following its own discipline process. In addition, Menzies is not required to terminate employees who are unacceptable to Alaska. The Board found that Menzies retains and exercises the option to utilize such employees elsewhere at SeaTac. The Board also noted that while it has in the past found jurisdiction over Menzies' operation at other locations, its jurisdictional decisions are rendered on a case-by-case basis and, based on the record in this case, the required meaningful control over personnel decisions by an air carrier was not present.

For institutional reasons, Chairman Hoglander agreed that the two-part test was correctly applied and that there was no RLA jurisdiction. Member Geale dissented. In his view, RLA jurisdiction is established by the contract language and the evidence that Alaska provides training for Menzies employees, audits their performance and removes unacceptable employees from its contracts. He also noted that the decision to decline jurisdiction threatens to substantially undermine the purpose of the RLA in limiting disruptions to interstate travel and commerce.

The Board also addressed RLA jurisdiction in a case that was not a referral from the NLRB. In *Gateway Frontline Services*, 42 NMB 146 (June 4, 2015), the Board found RLA jurisdiction based on the two-part test but dismissed that application because the applicant organization did not meet the showing of interest requirement for the system-wide craft or class of Passenger Service Employees. Gateway Employee Alliance (Alliance) alleged a representation dispute among the "Passenger Assistant and Dispatcher" employees of Gateway Frontline Services (Gateway) at McCarran International Airport (McCarran) in Las Vegas.

Gateway provides security and frontline services to airlines such as flight dispatching, baggage handling, wheelchair services and skycap services at 11 US airports, including McCarran. At McCarran, Gateway provides these services to Southwest and Delta. The Board found that the work performed by Gateway under its contracts with Southwest and Delta at McCarran is work traditionally performed by employees of air carriers. In contrast to *Menzies*, discussed above, the Board further found that Southwest and Delta exercise a sufficient amount of control to support RLA jurisdiction. The Board noted that Gateway has not only terminated employees but also hired and promoted specific individuals upon request of the carriers. Gateway also did not independently determine the appropriate discipline for its employees, acquiescing instead to the carriers' discipline requests. The Board found this acquiescence occurred even when Gateway managers recommended less severe discipline. The Board also noted that Gateway is required to forward all passenger complaints to the carriers for handling through the carriers' complaint resolution departments. Chairman Hoglander again concurred in the jurisdictional finding for institutional reasons.



Having found RLA jurisdiction, the Board reiterated its long-standing policy that the RLA's required system-wide representation is only achieved when a craft or class includes all eligible employees, regardless of their work locations. Accordingly the Board found that Gateway's McCarran operations do not constitute a separate system for representation purposes in view of its centralized labor relations and administrative functions. In addition, Gateway uses one employee handbook for all employees outside of California and it has uniform standards for hiring and recruiting nationwide.

The following chart reflects the actual case numbers for FY 2015, and the estimated case numbers for FY 2016 and FY 2017:

	FY 2015 Actual	FY 2016 Estimated	FY 2017 Estimated
Cases Pending Start	3	8	3
Cases Docketed	33	35	37
Cases Closed	28	40	39
Cases Pending End	8	3	1

## **FY 2017 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 2015 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 2015 Accomplishments: Each OLA staff member updated her or his Individual Development Plan (IDP). Each year OLA employees meet with their manager to update or develop a plan to enhance career related skills. In Fiscal Year 2015 OLA staff took classes related to the Freedom of Information Act (FOIA), government ethics, records management, procurement, the Railway Labor Act, and conflict resolution.

#### **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 2015 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, and the Association of Labor Relations Agencies. This year OLA attorneys gave presentations on the Railway Labor Act and recent Presidential Emergency Boards. OLA continued to participate in intra-governmental initiatives with other federal agencies such as the 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 Bureau of National Affairs and completed the 2015 pocket part supplement of the third edition of this treatise. OLA attorneys are active in the American Bar Association's Labor and Employment Law Section serving as Railway and Airline Labor Law Section's Diversity Liaison to the Committee and as the Public Vice Chair of the Bloomberg BNA Treatise Committee for ABA

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

FY 2015 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. OLA attorneys served as counsel to three 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 2015 Accomplishments: OLA conducted semi-annual reviews of the Representation Manual and web site, updating where appropriate.

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

FY 2015 Accomplishments: OLA conducted a test of voice recognition software for use during investigations and drafting representation determinations. OLA also researched other cost and time saving mechanisms in taking employee statements during interference investigations. OLA continues to explore procedures to use electronic delivery of voting instructions.

## **Office of Arbitration Services**

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
3,797	6	3,572	6

### ***Overview of Arbitration for Fiscal Year 2015***

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. 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.

When requested, the NMB will provide the parties with panels of potential arbitrators from which they select an individual to resolve their dispute. However, in most instances, the parties agree to allow the NMB to directly appoint an arbitrator. Interest Arbitration decisions are final and binding with very narrow grounds for judicial appeal.

## **GRIEVANCE ARBITRATION CASELOAD**

A chart reflecting the actual case numbers for FY 2014, actual numbers for FY 2015, and the estimated five-year average, (FY 2011-2015), follows:

	FY 2014 Actual	FY 2015 Actual	FY 2011 - FY 2015 Five year Average
Cases Pending at Start	3,577	5,133	3,189.6
Cases Docketed	4,313	3,816	4,4436.4
Cases Closed	2,946	2,702	3,628.6
Cases Pending at End	4,944	6,247	3,997.4

### ***Highlights of Arbitration during Fiscal Year 2015***

The Office of Arbitration Services directed its attention to promoting a more efficient Section III process, thereby fostering faster resolution of minor disputes (grievances). The NMB made a well-received move in this regard during FY 2015 by targeting the backlog of grievance arbitration cases for resolution and increasing the number of arbitrators available to hear and decide cases and introducing more technology to the administrative processing of cases with its arbitrators. The actual 6,247 cases pending at the end of FY 2015 is 1,303 more than cases pending at the end of FY 2014. The increase is attributed to the concluded national round of bargaining among the Class I freight railroads which has caused the filing of more grievances concerning the applicability of certain provisions of the agreement.

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 with the improvement of the Arbitrators' Caseload Report and the introduction of the new Waiting List Report on the NMB website.

During FY 2015, the NMB revised the Arbitrators Workspace, 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.

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 maintained the same level when compared to the activity in FY 2014. During FY 2015, the parties brought 3,816 cases to arbitration compared to 4,313 cases in FY 2014. In FY 2015, the actual number of 2,702 cases were closed compared to 2,946 in FY 2014, leaving 6, 247 cases pending at the end of FY 2015.

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. NMB efforts have been directed to facilitating a more efficient Section III 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 III 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 2015, 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 the labor organizations. During FY 2015, Arbitration Services made presentations at a meeting of Class-I freight railroads and the labor organizations. The NMB anticipates continuing this initiative during FY 2016. The NMB had several grievance mediation cases with carriers in the railroad industry during 2015.

### **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 III activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. In FY 2015, the agency posted an improved Arbitrators Caseload Report on the NMB website. 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 NRAB 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 III caseload is on the NMB website ([www.nmb.gov](http://www.nmb.gov)).

### **CONVERSION TO A PAY-PER-CASE COMPENSATION**

During this fiscal year the NMB changed its compensation and began paying the arbitrators on a per-case basis, instead of the normal per-day compensation.

### **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.

### **ARBITRATION INFO SERIES**

During FY 2015, the Office of Arbitration Services commenced a new 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.

In August, the NMB created an information segment entitled "Hearing Expectations of Arbitrators" using several well-known railroad arbitrators. The NMB also created an information segment titled "How Arbitrators are Selected by the Parties" using several rail management and labor officials. The NMB conducted a survey to determine future topics for segments which will be filmed in FY 2016.

### ***Forecast for FY 2016, FY 2017, and Beyond***

The NMB projects that the number of cases pending at the end of FY 2016 and FY 2017 will increase. This projection is driven by two assumptions: that the number of newly docketed cases will be 4,167.2 which is the five year average for new cases; and, that the number of closed cases will be 2,824 the five year average for closed cases.

The following chart reflects the actual case numbers for FY 2015 and estimated case numbers for FY 2016 and FY 2017:

	FY 2015 Actual	FY 2016 Estimated	FY 2017 Estimated
Cases Pending at Start	5,133	6,247	7,590.2
Cases Docketed	3,816	4,167.2	4,167.2
Cases Closed	2,702	2,824	2,824
Cases Pending at End	6,247	7,590.2	8,933.4



## **FY 2017 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 2015 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. Grievance mediation/arbitration was introduced to successfully resolve several aged cases at the NRAB.

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

FY 2015 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 Dominican University and several railroads and labor organizations to introduce more arbitrators to railroad arbitration

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

FY 2015 Accomplishment: The NMB met with the Arbitration Forum several times during FY 2015 to discuss innovation to improve the program. NMB also continued its review of all grievance mediation cases.

## **Office of Administration**

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
6,566	7	6,614	7

\*The amounts listed above includes the total cost for the Office of the Board, Office of Mediation/ADR Service and Office of Administration.

### ***Overview of Administration for Fiscal Year 2015***

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 2015***

#### **HUMAN CAPITAL**

As the NMB moves to take advantage of online services in the personnel arena, the agency is increasing efficiency and effectiveness, the results of which can be seen in the agency hiring process. For internal posting, the NMB routinely completes the hiring process within 30 days. In cases involving delegated examining positions, the NMB continues to show movement toward the 80 day standard process. The NMB continues to use the E-verify system to ensure that all new appointees are eligible to work. In addition, the NMB conducts three individual surveys for all new hires to assess their intake experience. The results help to improve the training and orientation process for not only the new hires but also as a refresher for our current staff.

Succession planning continues to be challenging for the NMB, 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 IDP's and the department training plans, stress 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 is working with the Office of Personnel Management and the Department of Interior to improve its human capital operations and payroll. This will continue the NMB's objective of providing all its services electronically.

## **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 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.

## **CONTINUITY OF OPERATIONS**

The NMB participated in the Eagle Horizon 2015 National Level Exercise which included a tabletop exercise to test readiness to exercise objectives related to alert and notification, communications, devolution of control and authority, and reconstitution. Eagle Horizon 2015 is an internally evaluated exercise focusing on reviewing basic continuity procedures, as well as improving understanding of devolution, extended operations, and reconstitution concepts. As part of this exercise, the NMB identified program strengths and areas for improvement.

## **FINANCIAL PERFORMANCE**

The NMB has entered into an agreement with the Bureau of Fiscal Services (BFS) to improve our financial reporting and processing by moving to a newer and more robust online platform, managed for the NMB under contract by BFS. This agreement will place at our fingertips up-to-date financial information that can be used to make efficient financial decisions. The Office of Administration 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 to audit its financial statements. For the eighteenth 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. With the lapse in funding, the deadline for the audited financial statements was revised.

## **PROCUREMENT**

With the new 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.

## **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 entered into a new agreement with Duluth Travel Inc., to serve as the agency's Travel Management Company.

## **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.

## **NMB CORPORATE MEMORY**

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

## **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. During FY 2015, the NMB completed development of a new Knowledge Store interface that speeds recovery of documents, improves the search engine, makes it possible for parties to engage in "direct deposit" of new cases, and frees the data to reside in the new cloud environment created by the agency.

## **SUSTAINABILITY**

The National Mediation Board is committed to reducing greenhouse gases in accordance with Executive Order 13514 (E.O.). During this year, 63 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, 38 out of 44 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 2017 Administration Performance Goals**

### **Administration Strategic Goal**

To support the program missions of the agency and provide outstanding

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

FY 2015 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 2015 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 98% 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 2015 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: 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 2015 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 5: Continue to ensure that NMB Information is secure while maintaining a government-leading information and communication technology system.**

FY 2015 Accomplishments: The NMB ensures that all information that contains Private Personnel Information (PPI) is password protected when transmitted electronically.