





# NATIONAL MEDIATION BOARD

## 1999 Annual Performance Report

For the Fiscal Year Ending September 30, 1999







NATIONAL MEDIATION BOARD  
Washington, DC 20572

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The President  
Speaker of the House of Representatives  
President *Pro Tempore* of the Senate

March 2000

It is an honor to submit to you the 1999 Annual Performance Report for the National Mediation Board (NMB or Board) for Fiscal Year 1999, pursuant to the provisions of Section 4 (b) of the Government Performance and Results Act, 31 U.S.C. 116 (a)-(f). The report covers programs and operations for the 12 month period ending September 30, 1999 and describes the progress of the NMB in achieving the goals in its strategic and annual performance plans.

The hard work of the agency's staff during 1999 enabled the agency to achieve outstanding results. While there were several challenging mediation disputes during the period, there were no disruptions of essential railroad or airline transportation services. The number of new mediation and alternative dispute resolution cases increased by more than 40 percent while the number of cases closed increased by almost 70 percent over FY 1998. The NMB successfully met all performance standards for its representation dispute program and remained current with its caseload throughout the fiscal year. Finally, the NMB closed 5,653 arbitration cases – almost a half-again increase over the number of cases closed the previous year.

The results in this report reflect the agency's performance under the Revised FY-1999 NMB Performance Plan. The NMB previously shared the revised plan with the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. The revision essentially rewrote the original plan, by consolidating overlapping performance goals and targets and eliminating duplication. Certain goals and targets in the original plan were moved and tracked under subordinate departmental work plans. The revision resulted in a more concise and manageable plan. The one substantive change implemented the Subcommittee's recommendation that the Board integrate its customer service standards into its annual performance plan.

*continued...*



The revised plan fully aligns with the current NMB Strategic Plan and, for the most part, served as the agency's day-to-day operating plan. The three strategic plan and annual performance plan outcome goals for NMB mediation, representation and arbitration activities appear in their respective sections of this report. The annual performance plan also included nearly one hundred other subordinate plan goals, targets, indicators and strategies for achieving the current strategic plan and annual performance plan outcome goals. The results for these subordinate areas are detailed fully in the supplement to this report.

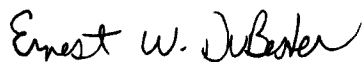
The supplement also contains tabular and narrative information, which is reported annually by the NMB and the National Railroad Adjustment Board pursuant to Section 4, Second of the Railway Labor Act.

Within the context of the agency's overarching outcome goals, the NMB set targets for mediation, representation and arbitration case processing; promoting alternative dispute resolution through training and facilitation services; enhancing recruitment, staff development and performance management; redirecting information technology to better support mediation and other program activities; and, upgrading public information and outreach services.

This report and the supplement together provide a comparison of actual and projected performance and an explanation of where the agency fell short of a performance target or standard. Performance results are used in the day-to-day operations of the agency and are considered for both current and future performance plans and in making revisions to the strategic plan.

Congress authorized \$8,400,000 and up to 52 FTE employees for the NMB to accomplish its mission and achieve the outcome goals contained in the agency's strategic plan and annual performance plan. This funding enabled the NMB to meet its statutorily mandated obligations and provide services to its airline and railroad labor, management and public customers. More than 90 percent of NMB staff participated in direct customer contact in providing the services described in this report.

Respectfully,



Ernest W. DuBester  
Chairman

CC: Congressional Committee Addressees

# Mission Statement

The National Mediation Board (NMB), established by the 1934 amendments to the Railway Labor Act (RLA) of 1926, is an independent agency which performs a central role in facilitating harmonious labor-management relations within two of the nation's key transportation sectors—the railroads and airlines. Pursuant to the RLA, the NMB's programs have provided an integrated dispute resolution process that effectively meets the statutory objective of minimizing work stoppages in the railroad and airline industries by securing voluntary agreement. The NMB's integrated processes are designed to promote three statutory goals:

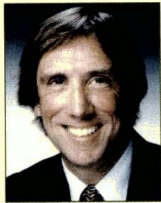
- The prompt and orderly resolution of disputes arising out of the negotiation of new or revised collective bargaining agreements,
- The effectuation of employee rights of self-organization where a representation dispute exists, and
- The prompt and orderly resolution of disputes over the interpretation or application of existing agreements.

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## NATIONAL MEDIATION BOARD

Fiscal Year 1999



Member  
Ernest W. DuBester



Chairwoman  
Magdalena G. Jacobsen



Member  
Francis J. Duggan

Chief of Staff  
Stephen E. Crable

Assistant Chief of Staff  
Jeffrey MacDonald

Director, Arbitration  
Roland Watkins

Director, Dev. & Technical Services  
James E. Armshaw

Chief Financial Officer  
June D.W. King

General Counsel  
Ronald M. Etters

Sr Hearing Officers/Legal Counselors  
Mary L. Johnson  
Sean Rogers  
Benetta Mansfield

Senior Mediators  
John J. Bavis  
Lawrence Gibbons

Mediators  
Samuel Cognata  
Rich Frey  
Richard Hanusz  
Thomas Ingles  
Jack Kane  
Gale Oppenberg

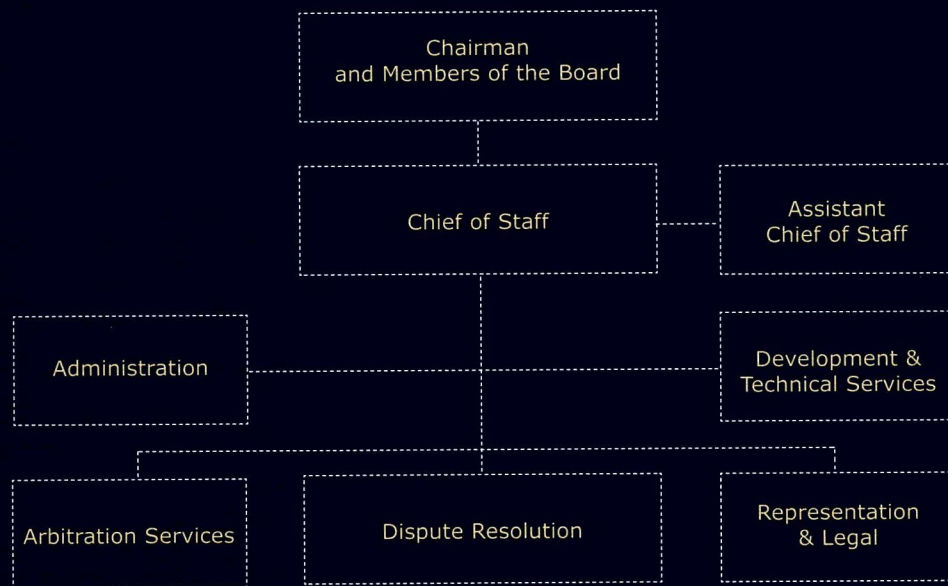
Les A. Parmelee  
Laurette Piculin  
Linda A. Puchala  
John Schrage  
Pat Sims

The Board and its Staff wish to honor the memory of former NMB Executive Director William A. Gill Jr. and Arbitration Coordinator Priscilla Compton Zeigler, both of whom passed away after many years of dedicated service to the Board.

# REGISTRY OF BOARD MEMBERS



Name	Entered Office		
Francis J. Duggan	11-22-99	Term Expires	07-01-00
Ernest W. DuBester	11-15-93	Term Expires	07-01-01
Magdalena G. Jacobsen	12-01-93	Term Expires	07-01-02
Kenneth B. Hipp	05-19-95	Resigned	12-31-98
Kimberly A. Madigan	08-20-90	Resigned	11-30-93
Patrick J. Cleary	12-04-89	Resigned	01-31-95
Joshua M. Javits	01-19-88	Resigned	11-14-93
Charles L. Woods	01-09-86	Resigned	01-15-88
Helen M. Witt	11-18-83	Resigned	09-18-88
Walter C. Wallace	10-12-82	Term Expired	07-01-90
Robert J. Brown	08-20-79	Resigned	06-01-82
Robert O. Harris	08-03-77	Resigned	07-31-84
Kay McMurray	10-05-72	Term Expired	07-01-77
Peter C. Benedict	08-09-71	Deceased	04-12-72
David H. Stowe	12-10-70	Retired	07-01-79
George S. Ives	09-19-69	Retired	09-01-81
Howard G. Gamser	03-11-63	Resigned	05-31-69
Robert O. Boyd	12-28-53	Resigned	10-14-62
Leverett Edwards	04-21-50	Resigned	07-31-70
John Thad Scott, Jr.	03-05-48	Resigned	07-31-53
Francis A. O'Neill, Jr.	04-01-47	Resigned	04-30-71
Frank P. Douglass	07-03-44	Resigned	03-01-50
William M. Leiserson	03-01-43	Resigned	05-31-44
Harry H. Schwartz	02-26-43	Term Expired	01-31-47
David J. Lewis	06-03-39	Resigned	02-05-43
George A. Cook	01-07-38	Resigned	08-01-46
Otto S. Beyer	02-11-36	Resigned	02-11-43
John M. Carmody	07-21-34	Resigned	09-30-35
James W. Carmalt	07-21-34	Deceased	12-02-37
William M. Leiserson	07-21-34	Resigned	05-31-39



## Organization and Structure

The National Mediation Board is comprised of three members appointed by the President with the advice and consent of the U.S. Senate. Terms of office are for three years with the exception of members appointed to fill a vacancy of an unexpired term. Terms are staggered so that on July 1 of each year one of the three terms expires. A member may stay in office after the expiration of his or her term until a successor has been appointed and enters office. No more than two members may be of the same political party. The Railway Labor Act requires that the Board annually designate one member to serve as its chair.

The Board is responsible for providing carriers and labor organizations with dispute resolution services in the railroad and airline industries. The Board's railroad and airline customers include more than 100 scheduled airlines, 500 railroads, and dozens of labor organizations. These carriers employ more than 900,000 employees. The Board's jurisdiction also extends to hundreds of smaller certificated air carriers, commuters, and air taxis, including ambulance, sightseeing, commercial helicopter and certain airport, air freight and related services and their employees.



# Financial Statement FY 1999

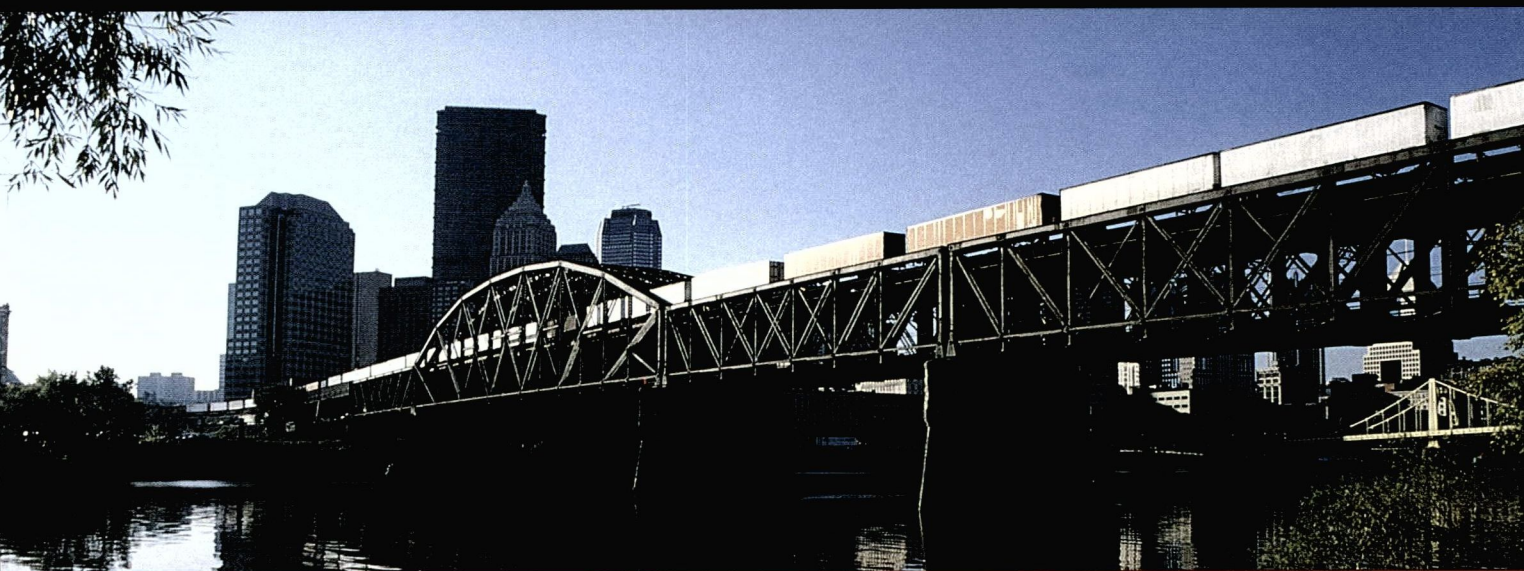
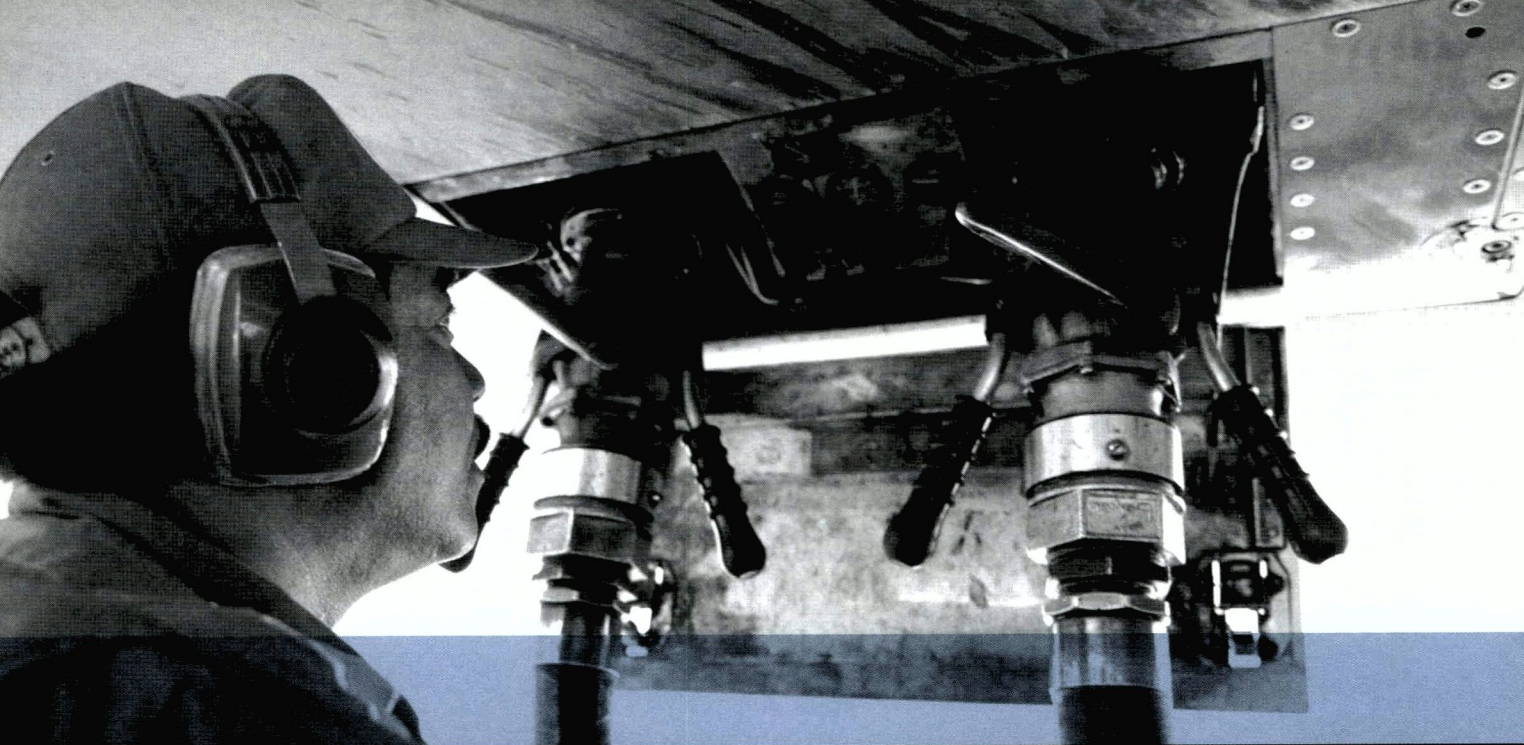
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Congress appropriated \$8,400,000 for the agency's operations during Fiscal Year 1999:

Expenses and obligations	
Personnel Compensation	\$ 4,961,631
Personnel Benefits	652,551
Benefits for Former Personnel	8,000
Travel and Transportation of Persons	501,860
Transportation of Things	6,669
Rent, Communications, Utilities	974,371
Printing and Reproduction	38,979
Other Services	446,147
Supplies and Materials	109,426
Equipment	211,492
Total	7,911,126







NMB mediators apply a variety of dispute resolution techniques, including traditional mediation, interest-based problem solving, and facilitation to resolve disputes.



# RAILWAY LABOR ACT

## and NMB Functions

The Railway Labor Act (RLA) provides a comprehensive statutory framework for the resolution of labor-management disputes in the airline and railroad industries. Enacted in 1926 as a collaborative effort of labor and management, the RLA succeeded several previous federal statutes dating back to 1888. The 1926 Act provided mandatory mediation and voluntary arbitration in contract negotiations, as well as Presidential Emergency Boards (PEBs) to enhance dispute resolution. Key amendments to the Act in 1934 established the current three-member National Mediation Board and authorized the resolution of employee representation disputes by the NMB. In 1936, Congress extended the RLA to include the airline industry. The Act's most recent substantive amendment in 1981 permitted the creation of specialized Presidential Emergency Boards for disputes at certain commuter railroads.

The RLA has five “general purposes”:

- Avoid interruptions to interstate commerce in the airline and railroad industries;
- Ensure the right of employees to freely determine whether they wish to be represented for collective bargaining purposes;
- Ensure the independence of labor and management for self-organization to carry out the purposes of the Act;
- Provide for the prompt and orderly settlement of collective bargaining disputes; and
- Provide for the prompt and orderly settlement of disputes over the interpretation of existing collective bargaining agreements.

## Mediation and Alternative Dispute Resolution

The RLA requires labor and management to make 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 bargaining between the parties must commence promptly and continue in an effort to resolve or narrow their differences. Should the parties fail to reach agreement during direct negotiations, either party, or the parties jointly, may apply\* to the Board for mediation. Following receipt of an application, the NMB will promptly assign a mediator to assist the parties in reaching an agreement. The Board is obligated under the Act to use its “best efforts” to bring about a peaceful resolution of the dispute. NMB mediators apply a variety of dispute resolution techniques, including traditional mediation, interest-based problem solving, and facilitation to resolve disputes.

If the Board determines, after its best efforts, that the dispute cannot be resolved through mediation, the NMB advises the parties of that determination and proffers arbitration to resolve the dispute. If either party rejects this proffer of arbitration, the Board promptly releases the parties from formal mediation. The release triggers a thirty-day cooling off period. During the cooling off period, the Board will continue to work with the parties to achieve a peaceful solution to the dispute. However, if an agreement has not been reached by the end of the thirty-day period, the parties are free to exercise lawful self help. Examples of lawful self-help include carrier-imposed working conditions or a strike by the union.

The RLA further permits the Board to recommend the establishment of a Presidential Emergency Board to investigate and report on the dispute where the dispute threatens “substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service.” A PEB also may be requested by any party involved in a dispute affecting a publicly funded and operated commuter railroad. While either of these emergency board processes are in progress, neither party to the dispute may exercise self-help.

In addition to traditional mediation services, the NMB also provides, as resources permit, Alternative Dispute Resolution services. ADR services\* include pre-mediation facilitation, training and grievance mediation. The purpose of the Board’s ADR program is to assist the parties in learning and applying more constructive, less confrontational methods for resolving their disputes. Another goal is to help the parties resolve more of their own disputes without outside intervention. The Board believes that its ADR services, over time, will reduce and narrow the disputes which the parties bring to mediation.

## Representation

Under the RLA, employees in the airline and railroad industries have the right to select a labor organization or individual to represent them for collective bargaining without “interference, influence or coercion” by the carrier. Employees may also decline representation. The RLA’s representation unit is a “craft or class,” which consists of the overall grouping of employees performing the particular types of related duties and functions. The selection of employee representatives for collective bargaining is accomplished on a

\*An application for the NMB’s dispute resolution services and other agency forms are available at [www.nmb.gov](http://www.nmb.gov).

systemwide basis, which includes all employees in the craft or class anywhere the carrier operates in the United States.

When a labor organization files an application\* with the NMB to represent employees, the Board assigns an investigator. The investigator assigned to the case has the responsibility to determine if the craft or class the organization seeks to represent is system-wide and otherwise valid. The NMB's election procedures require that the application must be supported by a sufficient showing of employee interest to warrant continuing the investigation. Where the employees are not represented for collective bargaining purposes, a thirty-five percent showing is required. If the craft or class covered by the application already is represented and a collective bargaining agreement is in effect, the showing of interest requirement is a majority of the craft or class.

Should the applicant meet the showing of interest requirement, the NMB will continue the investigation, usually with a secret ballot election. Only employees found eligible to vote by the NMB are permitted to participate in the election. In order for a representative to be certified, a majority of the eligible voters must cast valid ballots in support of representation. The Board is responsible for ensuring that the requirements for a fair election process have been maintained. If the employees vote to be represented, the Board issues a certification of that result which commences the carrier's statutory duty to bargain with the certified representative.

## Arbitration

The RLA provides for both grievance and interest arbitration. Grievance arbitration, involving the interpretation or application of an existing collective bargaining agreement, is mandatory under the RLA for both railroads and airlines. Arbitration decisions under the RLA are final and binding. The Board furnishes panels of prospective arbitrators\* for the parties' selection in both the airline and railroad industries. The NMB also has substantial financial management responsibilities for railroad arbitration proceedings.

Grievances in the railroad industry are arbitrated in one of three arbitration forums created by the RLA: the National Railroad Adjustment Board (NRAB), Special Boards of Adjustment (SBAs) and Public Law Boards (PLBs). The NRAB and its four divisions have statutory jurisdiction over all rail carriers and all crafts and classes of railroad employees. SBAs and PLBs are created by mutual agreement of the parties and the scope of these boards is ordinarily limited to individual railroads and unions. Grievance arbitration in the airline industry is accomplished at the various system boards of adjustment created jointly by labor and management. These boards are applicable to individual carriers and unions.

Interest arbitration is a process to establish the terms of a new or modified collective bargaining agreement through arbitration, rather than through negotiations. Although the RLA makes interest arbitration an option for resolving disputes, its use is not required by the statute. The NMB offers the parties the opportunity to use interest arbitration when the Board has determined that further mediation efforts will be unsuccessful. In situations where the parties have agreed to use interest arbitration, the arbitrator's award is final and binding.

\*An application for a representation investigation, a request to be placed on NMB's Roster of Arbitrators, and other agency forms are available at [www.nmb.gov](http://www.nmb.gov).



Strategic Plan/Performance Plan Outcome Goal:  
*NMB mediation and ADR assistance will foster the prompt and peaceful resolution of collective bargaining disputes in the airline and railroad industries.*



# MEDIATION AND ADR PERFORMANCE RESULTS

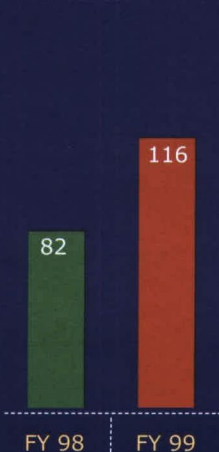
## Overview of Fiscal Year 1999

During FY 1999, the Board continued to realize significant benefits from its intense efforts over the past several years to revamp its work force, upgrade services, and expand programs. Judging from an increased demand for its services, the Board's efforts have been well received by the parties. The Board docketed 116 new mediation and alternative dispute resolution (ADR) cases, a 41 percent increase over FY 1998 (82 cases). Of this increased number, 71 cases involved traditional mediation disputes (16 percent increase over FY 1998), and 45 cases involved ADR services (114 percent increase over FY 1998).

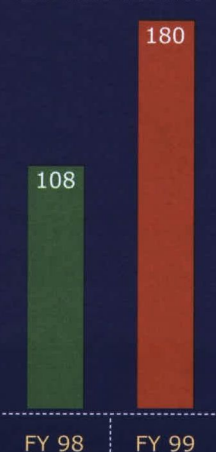
ADR cases are disputes in which the Board provides collective bargaining training, pre-mediation facilitation or grievance mediation services. ADR cases are the core of the Board's new dispute resolution initiative which formally began in FY 1997. The Board's ADR services are designed to improve the effectiveness of

### MEDIATION AND ADR CASES

New cases:



Total case closures:



## Total Cases (Mediation/ADR):

	FY 1999	FY 1998 Adjusted	FY 1994-1998 Five Year Average
Cases Pending at Start	157 (132/25)	183 (176/7)	149 (na/na)
Cases Docketed	116 (71/45)	82 (61/21)	95 (na/na)
Cases Closed	180 (124/56)	108 (105/3)	84 (na/na)
Cases Pending at End	93 (79/14)	157 (132/25)	160 (na/na)

Complete lists of new mediation cases and closed mediation cases are contained in the supplement to this report.

collective bargaining in the airline and railroad industries and reduce the number and scope of disputes that potentially disrupt the nation's transportation system.

The investment made by the Board over the past several years in recruiting new mediators and upgrading the skills of existing mediators likewise paid dividends during the fiscal year through a dramatic increase in case closures. FY 1999 saw 180 cases closed, an increase of 67 percent over the 108 cases closed in FY 1998. This is even more impressive when it is compared to the 1994-1998 average of 84 case closures per year, a 214 percent increase over the five-year average. Limiting the scan of case closures to mediation disputes, cases closed during FY 1999 increased 18 percent over FY 1998 and 48 percent over the prior five-year average.

In summary, FY 1999 was a very good year for the Board's Mediation and ADR programs. A chart reflecting the actual numbers for FY 1999, FY 1998 and the FY1994-1998 average appears above.

### Mediation Standards

The 1999 Annual Performance Plan set four timeliness standards applicable to mediation cases. These standards committed the agency to meet timeliness

goals in docketing cases, assigning mediators, setting first meeting dates and setting subsequent meeting dates. In three of the four areas, docketing, mediator assignment, and first meeting dates, the agency met its standards more than 90 percent of the time.

The Board fell short of its goal for subsequent meeting dates. In this area, the agency met its performance standard 63 percent of the time, as compared to a goal of 80 percent. This shortfall occurred, in part, because of the agency's need for more mediators. Mediator shortage is being addressed by a request for funding during FY 2000 and subsequent years which would allow the agency to expand its staff to the authorized level of 52 full time employees.

### Highlights during FY 1999

The airline industry as a whole continued to make healthy profits in FY 1999 for the third year in a row. The railroad industry also remained profitable in FY 1999. The general environment in the airline industry centered on continued growth and expansion of aircraft fleets and route structures. The railroad industry focused on consolidating operations as a result of new or existing merger agreements between and among four of the country's major freight railroads. Several themes and issues colored airline and railroad bargaining

## ERRATUM

In the Mediation and ADR Cases table on page 9, Cases Pending at Start of FY 1999 should be 154 (127/27) instead of 157 (132/25), reducing Cases Pending at End of FY 1999 to 90 (74/16).

Some numbers in this table vary from previously reported results due to case audits and changes in reporting methodology related to a new Case Management System implemented in FY 1999.



during the year and likely will impact negotiations during FY 2000 and FY 2001.

**Self-help Activities:** The general profitability of the airline and railroad industries led to aggressive and, in some cases, confrontational bargaining. Additionally, some airline bargaining during 1999 was the first round of negotiations following concessionary contracts bargained in the early 1990's at the bottom of the industry's profitability cycle. The natural tension between labor organizations' demands to restore and improve pay and benefits for its members and carriers' attempts to maintain or reduce labor costs resulted in some economic confrontations and a few narrow misses.

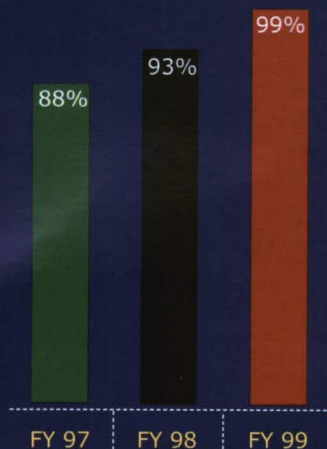
Typical of this theme was the negotiations between Northwest Airlines and the Air Line Pilots Association. Notwithstanding 100 days of mediation and the Board's best efforts to reach a settlement, Northwest Airlines' pilots struck the carrier during August-September 1998. By the start of FY 1999 and after a 15-day strike, the Board assisted the

parties in reaching a tentative agreement which the membership ratified. Notably, and in contrast with the strike by the American Airlines pilots during February 1997, the dispute was resolved by the parties without resorting to a Presidential Emergency Board.

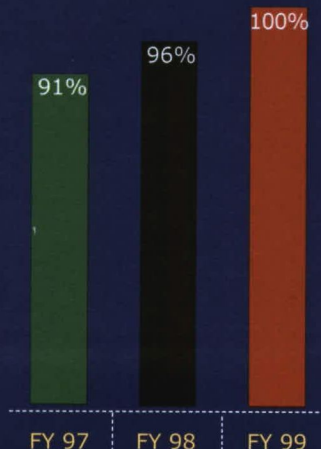
Other problematic negotiations which resulted in cooling off periods, but ended with agreements rather than strikes, included disputes between Trans World Airlines/International Association of Machinist(IAM&AW) (flight attendants, machinists and fleet/customer service employees); America West Airlines/ Association of Flight Attendants (AFA) (first agreement); British Airways/IAM (reservations, mechanics, telecommunications and passenger service); Aer Lingus/IAM (fleet/passenger service and mechanics); Mexicana Airlines/IAM (office, clerical, fleet and passenger service); TAP Air Portugal/ International Brotherhood of Teamsters (IBT) (ramp workers); Conemaugh & Black Lick Railroad/United Steel Workers(USWA) (maintenance of way and shop crafts); Patapsco & Back Rivers Co./USWA (shop

#### MEDIATION STANDARDS

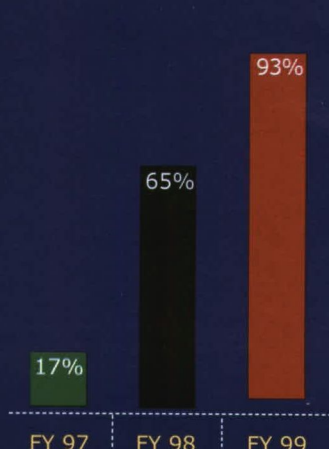
Applications Responded to within 3 business days:



Mediator Assigned within 14 business days:



First Meeting scheduled within 25 days:



crafts and maintenance of way); Philadelphia, Bethlehem & New England Railroad/USWA (maintenance of way and shop crafts); South Buffalo Railway Co./USWA (shop crafts and maintenance of way); and Wheeling & Lake Erie Railway Co./Brotherhood of Railroad Signalmen (BRS) (locomotive mechanics and signalmen).

**Rejected Tentative Agreements:** A development related to more confrontational bargaining is the increasing number of rejected tentative agreements. There appears to be a correlation between the rising profits of the airlines and rising expectations of the employees which accounts, in part, for rejected tentative agreements. Additionally, the membership ratification process employed by most unions in gaining approval of collective bargaining agreements is being revolutionized by the Internet. Instant communication, for better or worse, is becoming the norm. Internet "Bulletin Board" discussions give union members unprecedented amounts of information, sometimes accurate and sometimes not. Bulletin Boards also provide a platform for discussing contract issues, comparing benefit levels with other employee groups and advocating acceptance or rejection of tentative agreements.

During the past year, US Airways, American Airlines, Northwest Airlines, TWA, Allegheny Airlines, AIA, Continental, Continental Express, Mesa and several other airlines and their unions successfully negotiated tentative agreements, only to have them rejected by the membership. Railroads encountering this problem included Wisconsin Central; Duluth, Missabe & Iron Range; Grand Trunk Western and the Port Authority Trans Hudson.

Although rejected tentative agreements always have been a variable in the negotiations process, the increasing number of rejections adds complexity to collective bargaining. Potentially, unions become more cautious about making agreements without cooling off periods, and carriers become more conservative about placing their "best" offers on the table. Unless carriers and unions find effective ways to reasonably satisfy employee goals and at the same time reach settlements which are "affordable" to carriers, longer disputes and more confrontations may be byproducts of this trend.

**"Quiet" Successes:** Despite the publicity associated with a few, high profile cases which resulted in disruption, the Board continued to resolve most of



its mediation cases through voluntary agreements between the parties, without cooling off periods or strikes. Although not an exhaustive list, the following air cases reflect this "trend": Northwest Airlines/IAM (passenger service, fleet service, clerical); Continental and Continental Express/Independent Association of Continental Pilots (pilots); Continental and Continental Express/IBT (mechanics); America West/IBT (mechanics); Mesaba/Aircraft Mechanics Fraternal Association (AMFA) (mechanics); Alaska Airlines/AMFA (mechanics); Aloha/ALPA (pilots); Piedmont Airlines/IAM (mechanics).

Quiet successes on the railroad side include: Soo Line Railroad/BLE (engineers)/UTU (yardmasters, conductors, trainmen)/TCU-ARASA (technical engineers); Florida East Coast Railway/International Brotherhood of Electrical Workers (IBEW) (Carmen, dispatchers, clerks and roadway shop)/BME (maintenance of way); Metro North Railroad/TCU (supervisors); New Jersey Transit Rail Operations/TCU (clerks) and Bessemer & Lake Erie Railroad/UTU (engineers). In addition, AMTRAK has settled with all its Unions except the UTU and ATDD.

### **Growing Use of Board's ADR Services:**

During FY 1999, the Board made significant progress in moving parties toward more constructive dialogue through its training, facilitation and grievance mediation services. The Board provided training and facilitation services to several major airlines, railroads and the unions representing airline and railroad employees.

In several cases, the parties' commitment to a more constructive relationship and the ADR services provided by the Board resulted in tentative agree-

ments without the need for mediation. American Airlines and the Association of Professional Flight Attendants; Alaska Airlines and the Association of Flight Attendants; and DHL and the Air Line Pilots Association all reached agreements in direct negotiations using constructive bargaining techniques and the NMB facilitation services. The employees at DHL and Alaska Airlines ratified these agreements. The American flight attendants rejected their tentative agreement and returned to the table.

Other parties who availed themselves of the Board's ADR services included AIA/International Brotherhood of Teamsters (pilots); Midway Airlines/ALPA; Air Wisconsin/ALPA; Frontier Airlines/Frontier Airlines Pilots Association; Ryan Air/Airline Pilots Association; Vanguard Airlines/Vanguard Pilots Association; and Miami Air International/Miami Airlines Pilots Association. While ADR services have not yet been used with Section 6 bargaining in the railroad industry, the Board continues, through various forums, including the Wage and Work Rule panel established by the United Transportation Union and the National Carrier Conference Committee, to make inroads with the parties on the rail side of the business.

In addition to training and facilitation services associated with Section 6 bargaining, the Board provided training and grievance mediation services which resulted in a reduction in the number of cases going to arbitration. Carriers and unions involved in grievance mediation included Aloha/ALPA; Aloha/IAM; Atlantic Southeast Airlines/AFA; Airborne Express/IBT (pilots); America West/ALPA; Metro North Railroad/BRS(signalmen); and Grand Trunk Western/UTU(conductors)



Several new grievance mediation initiatives are under way which are intended to reduce and/or speed the resolution of grievance disputes under Section 3 of the Railway Labor Act. These initiatives include the Union Pacific Railroad, SEPTA, Metro North Railroad and various unions, as well as a separate grievance mediation project involving UTU and the four major freight railroads (Union Pacific, BNSF, Norfolk Southern, and CSX). This latter project is a pilot project and will result in an early evaluation, for settlement purposes, of several hundred grievances that typically would require expenditure of agency funds for arbitration of the claims, a more costly process.

**Regional Jets:** Another significant issue contributing to bargaining ferment was the rapid expansion of regional jet flying. Regional airlines that code share with major airlines continue to rapidly acquire these new passenger jet aircraft, typically seating fewer than 70 passengers. The employees at major carriers and the employees at code sharing regional carriers often disagree who should operate, staff and maintain

these airplanes. In many cases, the balancing of work is covered by complex scope clauses negotiated by the carriers and unions which specify formulas and limitations controlling the purchase and operation of regional jets.

During recent months, Northwest Airlines, Continental Airlines, Continental Express, United Airlines, Atlantic Coast Airlines, US Airways, US Airways Express carriers, Delta, and Atlantic Southeast Airlines negotiated over new or modified agreements which limit or relax restrictions on the purchase and use of regional jets.

#### **Alliances, Mergers and Acquisitions:**

The railroad industry was marked by mega consolidations. "Day 1" of Norfolk Southern and CSX's acquisition and division of Conrail came and went, seemingly with fewer operational problems than the ones encountered by Union Pacific in absorbing Southern Pacific. Union Pacific's traffic began to recover from its merger related problems of the previous year. Canadian National acquired Illinois Central and the Surface Transportation Board







approved the acquisition. As railroads seek to obtain the benefits of consolidations, disputes involving the wages, terms and conditions of merged operations abound. Carriers and unions have both approached Congress seeking or opposing legislation which would limit the circumstances under which a carrier, a New York Dock arbitrator or the Surface Transportation Board could override the terms of an existing collective bargaining agreement without first exhausting the procedures of the Railway Labor Act.

The airline industry continued to change through "alliances" both domestic and international. The alliance between American Airlines and British Air seems to have hit a permanent regulatory impasse, but the "One World" alliance involving American, British Airways and other international carriers became a reality. Similar world wide alliances such as the "Star Alliance" involving United Airlines,

Lufthansa and several other international carriers; Delta, Air France and Swiss Air; and Northwest and KLM-Continental Group. The "virtual" merger between Continental and Northwest Airlines is moving ahead, despite a law suit filed by the Justice Department to block aspects of the alliance. American Airlines acquired Reno Air and Business Express and is in the process of folding the operations of these carriers into its own flying operations.

For their part, US labor organizations are responding to globalization by coordinating with their counterparts world wide. The Airline Pilots Association (ALPA) has formed working groups with foreign pilot unions which track the various carrier alliances. Additionally, the International Transportation Workers' Federation, a global organization of transportation workers' unions, is educating its members on the effects of mega-mergers and code sharing agreements.





Strategic Plan/Performance Plan Outcome Goal:  
*Upon the request of employees of an airline or railroad, the NMB will promptly investigate representation disputes and definitively resolve the employees' representation status for collective bargaining purposes.*

# REPRESENTATION PERFORMANCE RESULTS

## Overview of Fiscal Year 1999

Collective bargaining agreements cover 85 percent of railroad employees and 65 percent of scheduled airline employees. During FY 1999, the NMB maintained its goal of remaining current with the agency's representation case load. The agency effectively eliminated its inventory of older pending cases by the end of FY 1998, and this trend continued throughout FY 1999. During FY 1999, the agency closed 96 percent of incomings (72 closed/75 received). An additional seven cases were closed during October 1999. This volume of case activity is consistent with the five-year average of case activity (FY 1994 through FY 1998). With sufficient agency resources, it is projected that case closings will continue to be investigated and resolved at this same pace over the next several fiscal years. The number of new representation cases filed in fiscal year 1999 was marginally less than the number received in FY 1998 (75 in FY 1999; 78 in FY 1998).

The NMB successfully met all of the standards set for representation cases under the 1999 Annual Performance Plan. Cases are managed through a series of five benchmarks covering the key phases of the agency's investigation: docketing, investigator assignment, showing of interest determination, timely response following ballot count and overall timely resolution. All the standards for timely case processing were fully satisfied during fiscal year 1999.

### REPRESENTATION CASES

	FY 1999	FY 1998 Adjusted	FY 1994-1998 Five Year Average
Cases Pending at Start	11	24	25
Cases Docketed	75	78	81
Cases Closed	72	91	83
Cases Pending at End	14	11	23

Complete lists of new representation cases and closed representation cases are contained in the supplement to this report.



The Board responded to representation applications within 3 business days, in 97 percent of all cases; assigned an investigator to representation cases within 5 business days, in 100 percent of all cases; determined there was a sufficient showing of interest to authorize an election or dismiss a case within 45 calendar days, in 100 percent of all cases; issued certifications or dismissals within 5 business days of ballot counts (absent a timely appeal), in 100 percent of all cases; and completed representation investigations within the 90 calendar day goal set for non-appellate cases, in 97 percent of all cases.

### Highlights during FY 1999

Under the RLA, the selection of employee representatives for collective bargaining is accomplished on a system-wide basis. Due to this requirement, and the staffing practices in the airline and railroad industries, the Board's representation cases frequently involve numerous operating stations across the nation. 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 rulings by the NMB.

Representation disputes involving large numbers of employees generally are more publicly visible. However, all cases require and receive neutral and professional investigations by the Board. 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 by the NMB during fiscal year 1999.

#### **Northwest Airlines/AMFA and IAM&AW:**

A large election among more than 10,000 Mechanics and Related employees at Northwest Airlines involved

an established incumbent, the International Association of Machinists (IAM&AW), and a challenging applicant, the Aircraft Mechanics Fraternal Association (AMFA). When the NMB's investigation commenced, the labor-management environment at Northwest included contract bargaining directly affecting the Mechanics and Related employees covered by AMFA's application, as well as several other unresolved collective bargaining disputes. After AMFA prevailed in the November 1998 ballot count, the IAM&AW promptly raised allegations of substantial election interference against AMFA. The NMB conducted an extensive investigation of these allegations, including sworn interviews of employees and AMFA officials. The Board's investigation established that although AMFA's conduct did not improperly affect the outcome of the election, the inappropriate activities by AMFA seriously violated the NMB's secret ballot process and required an agency response. Accordingly, on June 1, 1999 the NMB certified AMFA as the representative of the craft or class, but limited the certification bar period to six months, rather than the customary two-year period.

**Union Pacific/UTU & BLE:** A hard-fought inter-union contest resumed during FY 1999 at the Union Pacific Railroad (UP) between the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE). These organizations represent over 13,000 employees at the UP.

Following unsuccessful merger discussions, in May 1999 the UTU reactivated its previously filed representation application before the NMB. The UTU asserted that the UP's train and engine service employees should be represented in a single craft or class, while the BLE sought to retain the current division of two employee groups. The NMB held an evidentiary hearing with numerous witnesses in July 1999. Post hearing briefs were filed in August 1999.

1999. Should the NMB adopt the UTU's position, an election among the 13,000 employees would be held. If the BLE's position is adopted, the UTU's application would be dismissed.

**America West Airlines/TWU:** The Transport Workers Union (TWU) prevailed in an election among the Fleet Service employees of America West Airlines in January 1999. The airline subsequently filed allegations that the TWU interfered with the election by arranging to collect voters' ballot envelopes. An investigation of the allegations was conducted by the NMB, including sworn interviews with TWU officials. The NMB's investigation established that the TWU's activities had not improperly influenced the election. However, in view of the TWU's inappropriate conduct which affected the secrecy of the ballot process, the certification bar was shortened to one year.

**American Airlines/CWA:** In December 1998, the Board conducted an election among approximately 14,000 Passenger Service employees of American Airlines. The applicant, the Communications Workers of America (CWA), received approximately 5,700 votes, less than the majority

required for Board certification. CWA subsequently filed election interference charges against American on a variety of grounds. The Board investigated these charges, receiving extensive evidentiary submissions from CWA and American. In August 1999, the NMB issued a determination in the matter, finding that based on the totality of the circumstances, American had not interfered with the election. Accordingly, the Board applied the initial election results and dismissed the application.

**US Airways/CWA:** In May 1999, the U. S. Court of Appeals for the D.C. Circuit directed the NMB to set aside the results of an election among the Passenger Service employees of US Airways which the CWA had won in October of 1997. This virtually unprecedented action by the court led to another election for the approximately 8,000 employees in that craft or class during July and August of 1999. At the time the court issued its order, the NMB was providing mediation assistance to the parties. The CWA prevailed in the subsequent election and the Board promptly certified the results. Subsequently, US Airways and CWA reached a tentative agreement which the membership ratified overwhelmingly.

## REPRESENTATION STANDARDS

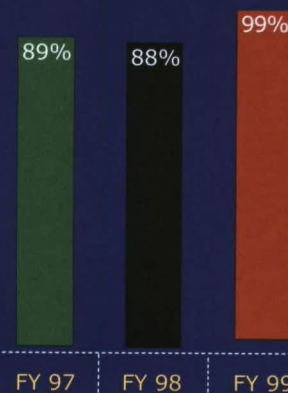
Applications Responded to within 3 days:



Assigned Investigator within 5 days:



Completed non-appellate cases within 90 days:





Strategic Plan/Performance Plan Outcome Goal:  
*The NMB will promote the prompt and orderly resolution  
of grievance disputes.*



# ARBITRATION PERFORMANCE RESULTS

## Overview of Fiscal Year 1999

During FY 1999, the NMB closed 5,653 cases compared to 3,820 last fiscal year. Several considerations drove this remarkable 48 percent increase in cases closed: \$500,000 of supplemental funding\* for Section 3 activities provided during FY 1998; improved administrative oversight by the agency of Section 3 activities; the availability of training and grievance mediation services through the agency's ADR program; and regular "encouragement" of the parties' efforts to resolve disputes themselves, without the intervention of an arbitrator.

Notwithstanding the high rate of case closures, the parties added 5,880 cases this fiscal year compared to 4,411 last fiscal year, resulting in a slightly higher number of cases pending at the end of FY 1999. While many factors contributed to the increased number of new cases, including changes associated with mergers and consolidations taking place in the railroad industry, the Board hopes this is a cyclical increase rather than a permanent trend.

A chart reflecting the actual numbers appears on the following page.

### Highlights during FY 1999

At the start of the fiscal year, the Board began a systematic review of its Section 3 caseload and administrative procedures. The Board worked with the Section 3 Committee, a group consisting of representatives of Class I freight railroads and major rail organizations, to find ways to shorten the time it takes to resolve arbitration cases and increase the number of cases resolved. The Section 3 Committee and the Board created a subcommittee intended to cooperatively explore changes in Section 3 procedures contemplated by the agency. Several new initiatives, which complement agency projects already in progress, emerged from the agency's work with the Section 3 groups.

**Annual Case Audit:** In November of 1998, the Board began a preliminary audit of all cases pending before a select group of public law boards and special boards of adjustment. The agency provided the National Railway Labor Conference and Section 3 Committee members with a list of pending cases on these boards and directed the parties to report any discrepancies between their records and the agency's record. The results of the audit

\*Due to the lead time in translating additional funding into increased case closures, the Board did not realize the full benefit of the supplemental appropriations in FY 1998 until FY 1999.

	FY 1999	FY 1998 Adjusted	FY 1994-1998 Five Year Average
Cases Pending at Start	11,011	10,420	10,272
Cases Docketed	5,880	4,411	4,893
Cases Closed	5,653	3,820	4,845
Cases Pending at End	11,238	11,011	10,320

are encouraging. In one case, the audit accounted for a 50 percent reduction in outstanding cases. In two other situations, the audit yielded a 59 percent and a 57 percent reduction in cases, respectively.

While the audit was voluntary during FY 1999, the audit will be a regular agency procedure in subsequent fiscal years. Any party failing to cooperate with the audit faces a possible restriction on Section 3 funds. Additionally, during FY 2000, the audit procedures will be extended to all Section 3 boards, including the National Railroad Adjustment Board.

#### **Arbitrator Compensation and Pilot Projects:**

During the year, carrier and labor representatives agreed to jointly seek the additional Section 3 funding needed to raise the arbitrator's daily rate paid by the Board. The current rate of \$220 per day has not been adjusted since 1982. In the event the parties succeed, the Section 3 Committee requested the Board to revise its administrative procedures in any way necessary to shorten the time needed for arbitrators to render awards. Representatives of the agency, the arbitral community and the parties currently are reviewing the NMB's arbitrator reimbursement process. The purpose of the study is to streamline and improve the efficiency of the National Mediation Board's system for compensating arbitrators and to identify any changes which

will increase the number of cases resolved each year and shorten the time period needed for resolution.

To this end, the Board assisted Norfolk Southern and BLE in creating a pilot public law board agreement, which expedited the arbitration process and compensated the arbitrator on a per case rather than the normal daily rate basis. Under the terms of this agreement, the arbitrator was obligated to hear all 11 cases assigned to the board within 60 days and render awards within thirty days from the date of the hearing. The parties' briefs were limited to 5 pages and the arbitrator's award was limited to 1 page per case. The parties selected an experienced railroad arbitrator to serve as the neutral on this pilot public law board. The Board agreed to compensate the neutral \$50 for each case heard and \$150.00 per case per decision, payable upon completion of the awards.

**The outcome:** The arbitrator took 5 days to hear the cases, review the record and write the decisions. He completed the decisions within 30 days of the hearings and received compensation of \$2,200. According to the arbitrator, using normal non-expedited procedures, the cases would have consumed 26 days in hearing and writing time and these days would have been spread over six months at a cost of \$5,728. Thus, the cases were decided more quickly using the expedited procedure. While



this procedure is not appropriate for all cases, the Board will be encouraging similar pilot projects to determine whether comparable savings of time and money can be duplicated in other cases.

**Grievance Mediation Pilot Projects:** The NMB actively promoted grievance mediation as a means to deal with grievances short of arbitration. One notable new project involves an agreement between major freight railroads and UTU, the largest user of Section 3 services, to establish a pilot project that makes grievance mediation by the UTU a routine option, which may be perused by the union before a grievance is scheduled to be heard by a public law board.

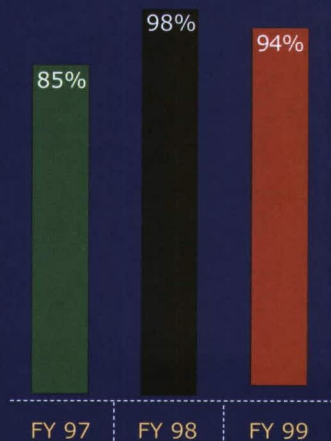
**New Case Management System and Other Administrative Improvements:** As part of an overall plan to improve its management information systems, the agency procured and installed a new

arbitration case management system. This system will allow the Board to more accurately monitor the caseload and identify trends which will be useful in assisting the parties. Over time, the system should enable the Board to help the parties prioritize case issues, evaluate existing boards, screen new cases filed, and identify grievance issues by regional location and parties involved.

Additionally, the agency continued using the NMB web site as a source for many of the forms and documents needed by arbitrators and the parties. This use of the Internet allows arbitrators, the parties and the public to obtain information and forms instantaneously and reduces the staff time which ordinarily would be required to respond to questions and requests.

**Arbitration Standard:** In FY 1999, the Arbitration and Financial Departments met the agency's arbitration performance goal by reimbursing arbitrators within 14 calendar days, in over 90 percent of all cases.

Payments to Arbitrators within 14 days of receiving voucher:



# Acronyms

ADR	Alternative Dispute Resolution
AFA	Association of Flight Attendants
AIA	American International Airways (now Kitty Hawk, Int'l)
ALPA	Air Line Pilots Association
AMFA	Aircraft Mechanics Fraternal Association
AMTRAK	National Railroad Passenger Corporation
APFA	Association of Professional Flight Attendants
ATDA	American Train Dispatchers Association
BLE	Brotherhood of Locomotive Engineers
BMWE	Brotherhood of Maintenance of Way Employees
BRS	Brotherhood of Railroad Signalmen
BNSF	Burlington Northern Santa Fe
CONRAIL	Consolidated Rail Corporation
CSX	CSX Transportation Incorporated
CWA	Communication Workers of America
DHL	DHL Worldwide Express
FTE	Full Time Equivalent
IACP	International Association of Continental Pilots
IAM&AW	International Association of Machinists & Aerospace Workers
IBEW	International Brotherhood of Electrical Workers
IBT	International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
NCCC	National Carriers' Conference Committee
NLRC	National Railway Labor Conference
NMB	National Mediation Board
NRAB	National Railroad Adjustment Board
PEB	Presidential Emergency Board
RLA	Railway Labor Act
SEPTA	Southeastern Pennsylvania Transportation Authority
STB	Surface Transportation Board
TCU	Transportation Communications International Union
TCU-ARSA	American Railway and Airline Supervisors Association, a Division of TCU
TWA	Trans World Airlines
TWU	Transport Workers Union of America
UP	Union Pacific
USWA	United Steelworkers of America
UTU	United Transportation Union





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