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National Mediation Board
Attn: Mary L. Johnson, General Counsel
1301 K Street, NW, Suite 250E
Washington, DC 20005
Email: FOIA@nmb.gov

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NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

January 19, 2020

VIA EMAIL

Re: Freedom of Information Act Request
FOIA File No. F-1777

This is in response to your correspondence dated January 1, 2021, filed pursuant to the Freedom of Information Act (FOIA), in which you request the following:

A digital/electronic copy of the transition briefing document(s) (late 2020) prepared by the National Mediation Board for the incoming Biden Administration.

Your request was received on January 1, 2020, and assigned as NMB FOIA File Number F-1777.

Your request is granted. There are no fees associated with this request. Attached you will find the document(s) which are responsive to your request.

If you are not satisfied with the response to this request, you may administratively appeal this decision by writing to Kyle Fortson, Chairman, National Mediation Board, 1301 K Street, NW, Suite 250 E, Washington, DC 20005 or legal@nmb.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.

Sincerely,

Maria-Kate Dowling
Acting General Counsel

Background Information for New Board Members



Updated December 2020

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II. The Railway Labor Act

A copy of the statute, including amendments to the Act before 2012, was supplied with this document and can be found on the NMB web site (www.nmb.gov) at https://nmb.gov/NMB_Application/wp-content/uploads/2020/04/Railway-Labor-Act-amended-Feb-14-2012.pdf

Rules governing the work of the NMB can be found on the agency web site at <http://www.nmb.gov/documents/nmbrules1099.html>

III. Board Structure

History of the Railway Labor Act (RLA)

The RLA was enacted in 1926, at which time it covered only railroad employees. By the 1920's, the railroad industry employed over 2 million workers, and railroad labor unions were well established. The Transportation Act of 1920 had created a weak framework for railroad collective bargaining, but left many critical issues unaddressed. As a result, a special committee of rail labor and management jointly drafted a proposal for a new statute to create a stronger legal framework for their relationship. The committee's effort was supported jointly by the railroad industry and its unions, so their proposal easily passed the House and Senate with no substantive changes.

The underlying philosophy of the RLA is almost total reliance on collective bargaining for the settlement of labor-management disputes. When bargaining broke down, the law provided for mandatory mediation, but arbitration only if the parties both agreed to arbitration.

The RLA contained a special provision for the creation of Presidential Emergency Boards, a process by which a panel of neutrals could make non-binding recommendations for procedures and terms upon which a dispute might settle. A list of PEB's and a set of frequently asked questions about PEB's can be found on the agency web site at <http://www.nmb.gov/mediation/pebmenu.html>. Copies of all PEB reports can be found on the agency Knowledge Store, a public data base available through the NMB web site at <http://knowledgestore.nmb.gov/ks/build.html>.

The Railway Labor Act has five basic purposes:

1. To prevent the interruption of rail and air service (and harm to interstate commerce).
2. To ensure the right of employees to organize.
3. To provide for complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of the Act
4. To assist in prompt settlement of disputes over rates of pay, work rules, or working conditions ("major" disputes).
5. To assist in the prompt settlement of disputes or grievances over interpretation or application of existing contracts ("minor" disputes).

The constitutionality of the Act was first challenged in May, 1927, when the Brotherhood of Railway Clerks presented the Texas and New Orleans Railroad with proposed wage increases. Despite the fact that the railroad had bargained with the

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Clerks for years, the railroad decided to discharge all the union members and deal with a company union. The Clerks sought an injunction to restrain the railroad from interfering with the employees' right to select their own representatives under Section 2 of the Act. The Carrier responded that the Act was unconstitutional. The Supreme Court stated:

The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of the employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds.

Texas & New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548, 570 (1930).

A set of 1934 amendments to the Act did the following:

1. Barred yellow-dog contracts and company sponsored or dominated unions. The carriers were not to influence employees in their choice of representatives and were required to bargain directly with certified representatives.
2. Established a permanent, bipartisan National Board of Adjustment (later renamed the National Railroad Adjustment Board - NRAB), to which grievances could be submitted by either party. Provision was made for neutral referees in case the partisan members of the Board could not agree and for the enforceability of Board orders in court. Under the RLA, the NMB pays for arbitration of minor disputes in the rail industry.
3. Renamed the Board of Mediation the National Mediation Board and reduced the Board from 5 to 3 members. The new Board was empowered to conduct representation elections.

In 1936, the Act was extended to air carriers, chiefly through the efforts of the Air Line Pilots Association. The air carriers and the airline unions did not opt for coverage under a National Air Transportation Adjustment Board similar to the NRAB, nor did they establish a process that called for the NMB to pay for the arbitration of minor disputes.

IV. Board Protocol and Procedures

Statutory Requirements

Section 154, First, of the Act states:

- i. That the National Mediation Board be composed of three members appointed by the President with the advice and consent of the Senate, not more than two of whom shall be of the same party.
- ii. The term of office of all members shall expire 3 years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which her or his predecessor was appointed shall be appointed only for the unexpired term.
- iii. Two members shall constitute a quorum for the transaction of business of the Board.
- iv. Upon expiration of her or his term of office a member shall continue to serve until her or his successor "is appointed and shall have qualified."
- v. A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Section 154, Second, of the Act states:

1. The Mediation Board shall annually designate a member to act as chairman.
2. The Board shall maintain its principal office in the District of Columbia.
3. The Board may designate one or more of its members to function in mediation.
4. The Board shall have a seal which shall be judicially noticed.

5. The Board shall make an annual report to Congress.¹

Section 154, third, states that the Board in accordance with civil service laws may hire employees and make expenditures.

Section 154, Fourth, authorizes the Board to assign or refer any portion of its work . . . to an employee who “shall have power and authority to act as to any of said work, business or functions so assigned or referred to him for action by the Board.”

Section 160 provides that if in the judgment of the Board, a dispute “threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board shall notify the President. . .”

Board Meetings

Meetings of the Board, wherein they jointly conduct or dispose of agency business are subject to the open meeting rules of the Government in the Sunshine Act. (See 29 CFR § 1209).

Board Staff Meetings, during which routine administrative issues are discussed, are not subject to the Sunshine Act. Board Staff Meetings are usually held every two weeks and are convened by the current Board Chairman. The agenda for the meetings is established by the Board Members

¹ All of the required reporting of NMB activity is contained in the NMB Annual Report Copies of the Annual Reports are found in the NMB Knowledge Store, and the most recent Annual Report is found on the NMB website at https://nmb.gov/NMB_Application/wp-content/uploads/2020/11/2020-NMB-Annual-Report.pdf .

V. Offices and Departments

i. Office of Information Services

Personnel

Chief Information Officer Will Fumey
IT Staff Amy Anderson
Melody Berry (Contractor)
Arnold Caldwell (Contractor)
Priscilla Dawson (Contractor)
Nathan Jones
Taha Sadeghi



William Fumey is the Chief Information Officer and Director of the Office of Information Services at the National Mediation Board (NMB). Mr. Fumey joined the NMB in January 2019. As Chief Information Officer, Mr. Fumey oversees Information Technology and its related security and management for the Board.

Mr. Fumey holds a Master of Business Administration from the George Washington University, a Bachelors of Science degree in Information Sciences and Technology from the Pennsylvania State University and a minor in Telecommunications. He is a Certified Project Management Professional (PMP), Certified Information Systems Security Professional (CISSP) and Certified Information Systems Auditor.

Office of Information Services Overview

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

Information Security

In FY 2020, the NMB took numerous actions to meet federal IT security requirements and industry best practices. NMB staff upgraded legacy applications running on obsolete software, implemented agency-wide website content filtering and anti-phishing, and performed patch upgrades to its systems and networks to ensure continuity of operations. Federal Agencies are required to provide annual computer security awareness training for employees and contractors. Security awareness efforts are designed to change behavior or reinforce good security practices by focusing attention on security. The NMB conducted comprehensive cybersecurity training to ensure its employees remained vigilant in the face of growing online security threats.

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. NMB implemented a complete rewrite and upgrade of the Knowledge Store to improve user friendliness, provide better search results and ensure the stability and reliability of the system.

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 forms and other pertinent information. NMB completed significant updates to the website to modernize the look and feel of the site, to improve reliability and to implement security measures such as automated backups and end-to-end encryption.

Arbitrator Workspace System

The NMB is in the process of a complete rewrite of the Arbitrator Workspace system. NMB is utilizing Agile Methodology to ensure the new system meets user needs and is delivered within budget. The new system leverages commercial FedRAMP approved Software-as-a-Service solutions that will improve security and reliability. The system is expected to be delivered by Q1 FY 2021.

Public Information

The Annual Report contains all of the required reporting for the agency, and a full report on the activities of the NMB, department by department. The Annual Report is published as an e-document, with hard copies supplied to Congress as required.

Outsourced Functions

Outsourced information technology functions are performed by an on-site contractor. Day-to-day supervision of the on-site contractor is performed by the Chief Information Officer.

ii. Office of Administration Services

Personnel

Director
Admin Staff

Samantha T. Jones
Bruce Conward, Jr.
Genet Kidane (Contractor)
Terran Walker



Samantha T. Jones is the **Director of the Office of Administration (OA)** at the National Mediation Board. During her tenure at the NMB, she has served in many leadership roles, including Acting Director of OA, Special Assistant to the Chief of Staff, the Assistant Chief of Staff – Administration, the Chief Financial Officer, and most recently, as the Acting Chief Financial Officer and the Acting Director of the Office of Fiscal Services.

Prior to joining the NMB in 2005, Ms. Jones was employed by the National Capital Planning Commission, where she served in many capacities providing advice and guidance to senior management officials.

Ms. Jones hold a Bachelor of Science in business management with a minor in computer studies from the University of Maryland. She also holds a Master of Arts in conflict resolution from Dominican University, a certificate in executive leadership and a certificate in high performance, both from Cornell University. At Cornell University's ILR School, the Scheinman Institute on Conflict Resolution, she received training in Mediating and

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Arbitrating in the Federal Sector. Ms. Jones also serves as NMB's principal management official on the Small Agency Council Executive Committee for Human Resources.

Office of Administration Overview

The Office of Administration (OA) provides operations, management, leadership, and support for the entire Agency. These services include: human resources management, property and space management, and office support.

Human Capital

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

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

The NMB has devoted more attention and resources to training and has provided meaningful training program opportunities for our employees. The NMB continues to provide subscriptions to Manager Advantage for supervisors and managers. Manager Advantage is an online information service for managers and supervisors. The information is based on case law, statutes, and regulations. It provides extensive federal policy and guidance for supervisors and managers. This information is obtained from the vendor LRP Publications' experience attorney editors and senior editorial staff who have gathered and then converted the information in easy-to-understand major categories, key topics, scenario-based videos and more. Manager Advantage breaks down the complexities of federal civil service law to provide managers with practical, authoritative guidance in easy-to-understand terms while also providing essential tools for developing necessary leadership and managerial skills from one definitive source. OA is working with the Office of Personnel Management (OPM) and the Department of Interior (DOI) to improve the NMB's human capital operations. OA continues to ensure that all new NMB managers, supervisors, and employees receive the Telework Fundamentals-Managers Training and the Telework Fundamentals-Employee training.

Continuity of Operations

The Federal Emergency Management Agency's (FEMA), did not conduct an Eagle Horizon 2020 (EH-2020), because of the Coronavirus Disease 2019 (COVID-19) Pandemic. Due to the lapse in appropriations, FEMA's NCP adjusted the planning construct for Eagle Horizon (EH-2019). Using a common scenario and framework provided by FEMA NCP, D/As

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conducted internal activities to test their devolution plans and communications systems and examine interdependencies prior to the full-scale NLE in 2020. The NMB was required to activate its continuity plan, deploy continuity personnel to a continuity site, and perform essential functions. At the conclusion of EH-2019, participants, planners, and evaluation teams noted their observations and identified critical issues associated with the agency's continuity plans and programs. The NMB's overall rating for the EH 2019 was "green." This was NMB's fourth overall "green".

Personnel Services

OA carries out the NMB's responsibilities to maintain a personnel security program as authorized by laws, regulations, Executive Orders, and Directives. OA administers NMB's Personnel Security and Suitability, the HSPD-12 Program Office (HSPD-12) through an agreement with the Department of Interior, Interior Business Center, (DOI) Personnel Security Department. DOI processes and adjudicates background investigations for all moderate risk and high risk public trust and national security positions for federal employees within the National Mediation Board (NMB), as well as all levels of investigations for contractors performing jobs and functions for the NMB. The DOI provides resources and facilitates requests for the NMB Human Resource office, Contracting Officers, and Contract Officers' Technical representatives that initiate background investigations. OA ensures the alignment, accountability, and transparency of NMB's personnel security, suitability, HSPD-12 programs, building access, IT access, and access to safeguarded information.

Property and Space Management

The NMB continues to track and maintain its physical inventory. Additionally, OA ensures that the NMB's physical inventory is properly recorded in NMB's cloud-based inventory system. Additionally, OA continues to maintain a close liaison with the building property management and the General Services Administration regarding NMB's space.

Sustainability

The National Mediation Board is committed to reducing greenhouse gases in accordance with Executive Order 13514. During 2020, 76 percent of the NMB employees regularly used public transportation. The Agency provides Alternative Work Schedules (AWS) and Telework programs to its employees to reduce the number of commuters. Currently, 28 out of 37 employees participate in the Smart Benefits program for public transportation.

Outsourced Functions

There are several functions with OA that are outsourced. Some human resources and procurement functions are outsourced. OA staff, Department of Interior, Interior Business Center (DOI), and the Office of Personnel Management, combine to provide the full range of HR support to the agency.

iii. Office of Fiscal Services

Personnel

Director
DC Staff

Michael Jerger
Eric Johnson
Denise Murdock



Michael Jerger is the **Chief Financial Officer** of the NMB. Michael Jerger joined the National Mediation Board in June, 2019 as the Chief Financial Officer. In this role Mr. Jerger serves as a senior advisor to the Board and staff on financial, budgetary, and resource management decisions. In addition, he directs the financial management of the NMB and provides interpretation and direction on fiscal policy and law.

Prior to joining the NMB, Mr. Jerger was the Chief Operating Officer for the Institute of Museum and Library Services (IMLS), which is the main source of federal support for libraries and museums within the United States. In this role he directed and managed the Offices of the Chief Financial Officer, Grants Administration, Human Resources, and Operations. Prior to joining the IMLS, Mr. Jerger was a Senior Global Business consultant with the IBM Corporation in New York.

Mr. Jerger holds a bachelor's degree in Accounting from the University of Maryland, College Park.

Overview of Office of Fiscal Services

The Office of Fiscal Services (OFS) provides fiscal management and leadership support for the National Mediation Board. These services include: budgeting formulation and execution, accounting and financial reporting, audit services, payroll, travel, and contracting and interagency agreement services.

Outsourced Functions

The NMB uses the Bureau of Fiscal Services (BFS) for accounting and financial reporting requirements, contracting services, and E-travel. Using a federal Financial Management Line of Business Center of Excellence has significant benefits, including reduced overhead costs and shared knowledge of financial management practices throughout the federal government. In addition, NMB uses these other federal government shared service providers for major administrative and financial services.

1. The Department of Interior Personnel, Payroll, Human Resources and Related Systems & Services.
2. General Services Administration (GSA) for agency purchase and travel credit cards.

Included in the continued partnership with BFS, the NMB utilizes the electronic contract writing system, PRISM, to create purchase requisitions and orders for contracts and interagency agreements. A more streamlined RFP process, improved bid analysis, and further transforming contracting administration are just some of the benefits the NMB gains in using this system. It also ensures compliance with all applicable rules and regulations governing contracting. In FY 2020 the NMB continued its use of the Concur Government Edition (CGE) Travel Services. Concur is a cloudbased expense and travel management software solution that provides an electronic process for travel authorizations, vouchers, and reimbursement to travelers, and reduces the overall per-ticket cost for travelers.

iv. Office of Arbitration Services

Personnel

Director	Terri Brown
DC Staff	Elijah Crayton
Chicago Staff	Linda Gathings
	Michaela Guyton



Terri Brown is the Director of the Office of Arbitration Services. She is responsible for all aspects of grievance and interest arbitration in the airline and railroad industries. Ms. Brown joined the NMB in 2002 as a Mediator and was subsequently promoted to Senior Mediator in 2010. She has more than 25 years of experience in labor relations, mediation, arbitration, and dispute resolution. During her tenure as a NMB mediator she successfully mediated many complex cases in both the airline and railroad industries. Since 2011, she has served as one of the two Ombudsmen under the NMB's internal Conflict Prevention and Resolution Policy.

Ms. Brown has an MBA from the University of Baltimore, a JD from Howard University and a BA from Chatham University.

Overview of Arbitration Services

The RLA provides for both grievance and interest arbitration. Access to grievance

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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 ground for judicial review.

Interest Arbitration

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.

Arbitration Under the RLA

Sections 153 and 154 of the Act require that a dispute about the interpretation of the application of an agreement must be resolved in arbitration.² Such disputes are labeled "minor" disputes under the Act.

The Act creates and defines the role of the NRAB, which is a federally funded arbitration service for the railroad industry. The NRAB has four divisions comprised of railroad management and labor members. Because of the constant backlog at the NRAB divisions, Congress amended the Act to state that labor and management can form "Special Boards of Adjustment (SBA)." Although there appears to be no statutory obligation, the NMB also funds the SBA arbitrations. In 1966, rail labor and management secured special statutory amendments in Section 153, Second, which gives them the option to create other arbitration boards, "Public Law Boards" which conduct arbitrations on the local properties.

² The parties may use grievance mediation because the statute makes arbitration available to the parties, but it is not required without consensual agreement.

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The NMB funds arbitrations in all three entities.

When the Act was amended to include airlines, the statute continued with the mandatory arbitration obligations, but did not create a national airline adjustment board. Therefore, the Board does not fund the arbitration of minor disputes in the airline industry. The carriers and unions have been left to create their own private arbitration systems, which are known as "System Boards of Adjustment."

60-Day, 90-Day, and 120-Day Rules

When a case is assigned to an arbitrator, within 60 days, one of the three must be initiated: (1) the case must have been decided, and the award submitted or (2) the case must be heard by an arbitrator or (3) the case must have been scheduled for a hearing. If the case is scheduled for a hearing, the scheduled date must be within 120 days of the date of assignment. Once the case has been heard, the arbitrator must render the award within 90 days of the hearing. When an arbitrator enters the AWS, the arbitrator is now notified when assigned cases have not been progressed in accordance with these rules. The arbitrator must bring those identified cases in compliance with the rules before the system will permit them to open and work on new cases.

Knowledge Store

Knowledge Store is a critical resource for parties searching for arbitration decisions to support them in their advocacy. Awards are entered into the Knowledge Store at the same time that they are distributed to the parties. Parties have the ability to enter awards into the Knowledge Store. In some instances, valid awards are entered within 24 hours of completion.

v. Office of Mediation Services

Personnel

Director	Patricia Sims
DC Staff	Nikita Raiford
Senior Mediators	John Livingood
	Kelley Gallop
Mediators	Jane Allen
	Eva Durham
	Victoria Gray
	Jim Mackenzie
	Cathy McCann
	Gerry McGuckin
	Mike Tosi



Patricia Sims is the **Director of Mediation Services**. Patricia Sims joined the NMB in 1997 as a Mediator and was promoted to a Senior Mediator in 2000, and promoted to Director of Mediation in 2018. Ms. Sims is the first woman to hold the position of Director of Mediation Services (DOMS). As the DOMS she is responsible for supervision and oversight of the mediation department services and programs. Ms. Sims brings more than 20 years of experience in mediation in both the air and rail industries. In her positions with the NMB, she has mediated major disputes with all of the legacy airlines and their unions, including legacy merger agreements, and regional airline merger

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agreements. Ms. Sims successfully mediated National Handling which includes the 5 Class I railroads and unions. Additionally, in 2002 she completed mediation with the first interest-based contract in the rail industry at CSX with their yardmasters.

Ms. Sims worked to create the Alternative Dispute Resolution (ADR) department at the NMB, which provides problem-solving training to the parties in both industries. She has been instrumental in promoting and facilitating new processes in both industries and has presented NMB programs and workshops for over 20 years.

Ms. Sims earned her BA in education from Virginia Tech and received her mediation certification at Harvard Law School, and at the Private Adjudication Program at Duke University Law School.

Overview of Mediation Services

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

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 difference. 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 website at 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 nmb.gov.

Case Docketing and Mediator Assignments

1. The Director of Mediation reviews applications as necessary to insure that they

are appropriate for docketing. Under normal circumstances, cases are docketed within 2 business days of receipt of the application.

2. Senior Mediators make recommendations to the DOMS on case assignments. Normally, cases are assigned a mediator within 5 business days of docketing.

Mediation Process

1. Case management is the mediator's responsibility, with oversight by the Senior Mediators; and the Aged cases (one year old or older) are reviewed quarterly by the Board, the Director of Mediation, and Senior Mediators. During this review, newly-designated aged cases are assigned to a Board Member and case handling strategies are discussed.
2. Information regarding mediation is distributed to the Board in several ways. The DOMS reports to the Board at bi-weekly staff meetings on newly docketed cases, tentative agreements and ratified agreements. The weekly manager's report includes a schedule of cases the mediators will be working that week, including which cases will be meeting at the NMB. Board Members have access to the Mediation Case Management System (MCMS) in which mediator reports are filed at the completion of each session for each case.
3. Senior Mediators, the, and/or Board Members may be used for strategic reasons on mediation cases, generally in case-closing activity.
4. The issuance of a Proffer of Arbitration pursuant to Section 155 of the Act is the responsibility of the Board. Typically such a decision is made after a request from one of the parties and with a recommendation and input from the Office of Mediation Services. Proffers of Arbitration are issued after notation voting. If a Proffer of Arbitration is issued and rejected by either party, the Act calls for the Board to promptly release the parties from mediation into what is commonly known as the "30 Day Cooling Off Period."
5. During the "Cooling-Off Period" the Board normally calls the parties together for final attempts to reach agreement. This is typically done toward the end of the "Cooling-Off Period" and usually involves the Mediator, Senior Mediator and/or the DOMS, and the assigned Board Member.
6. Section 160 of the Act provides for Presidential Emergency Boards (PEB's). If a dispute is not settled and self-help is available to the parties, the Board notifies the President if, in its judgment, a strike would threaten to substantially interrupt interstate commerce to a degree as to deprive any section of the country of essential transportation service. It is then at the President's discretion to create a PEB.³

³ A full set of PEB reports can be found on the NMB Knowledge Store, accessible through the main NMB website (www.nmb.gov).

7. Section 159a of the Act outlines special procedures for commuter rail service. Section 159a involves two PEB's and a total time from initial release of approximately 270 days before self-help could be initiated. If a PEB is requested by one of the parties to the dispute or the Governor of a State in which the commuter rail service operates, a PEB must be established by the President.

Alternative Dispute Resolution

At the NMB, Alternative Dispute Resolution (ADR) refers to the voluntary dispute resolution and training programs offered by the Board in addition to statutory mediation. ADR personnel develop and deliver a wide range of services, including training, facilitation, grievance mediation, facilitated problem solving and use of appropriate technology to increase efficiency. These services included training programs and facilitation efforts outside of, and in addition to, traditional grievance mediation work.

Among the services offered by the ADR program are:

1. Training: ADR Services has seen interest grow in its various training programs. NMB Mediators are skilled at instructing, and regularly trained parties as they began facilitation or grievance mediation cases, or when they encountered problems during negotiations.
2. Facilitation: Facilitation plays an important role in helping parties to reach common ground. It offers carriers and unions a way to reach agreement outside the stricter confines of traditional mediation. With each experience, the NMB's knowledge base grows, and best practices from the process increase to the parties' benefit.
3. Grievance Mediation: Interest in grievance mediation continues to grow with the parties we serve in both the air and rail sectors. Activity in the rail sector in particular has grown with the ADR Ambassador program, which pairs a Mediator with a particular rail carrier and its unions to advance alternatives to arbitration. Grievance mediation also serves to solve problems before they become grievances, and helps to clarify issues ahead of bargaining.
4. Technological Dispute Resolution: Technology continues to play an important role in resolving disputes in the air and rail industries. Especially during the pandemic when timing is critical, or when information exchange is beneficial, video conferencing technology has helped to provide virtual face-to-face meetings to allow Mediation sessions to continue.

vi. Office of Legal Affairs

Personnel

Acting General Counsel	Kate Dowling
DC Staff	Keith Hussong
Attorneys	Josie Bautista
	Norman Graber
	John Gross
	Eileen Hennessey
	Andres Yoder

Maria-Kate Dowling is **Acting General Counsel** of the National Mediation Board. Maria-Kate Dowling is General Counsel of the National Mediation Board. As General Counsel, she serves as the Chief Legal Officer of the agency and manages the Board’s representation program and a legal program which includes litigation. In this role, Ms. Dowling provides legal advice to the Board Members and agency staff. In addition, she ensures compliance with the Freedom of Information Act, Government in the Sunshine Act, and other statutes.

Ms. Dowling received a B.S. degree in Computer Science and a B.A. degree in English from the University of Maryland, where she was elected to Phi Beta Kappa. She earned a J.D. with honors from the George Washington University National Law Center. Ms. Dowling is a member of the Maryland Bar.

Office of Legal Affairs (OLA) functions

1. Processing all Representation cases
2. Litigation
3. Ethics
4. FOIA
5. Legal advice
6. Staffing PEBs

Overview of Representation

Under the Railway Labor Act (RLA), employees in the airline and railroad industries have the right to select a labor organization or individual to represent them for collective bargaining. Employees may also decline representation. An RLA representational unit is “craft or class,” which consists of the overall grouping of employees performing particular types of related duties and functions. The selection of a collective bargaining representative is accomplished on a system-wide basis, which includes all employees in the craft or class anywhere the carrier operates in the United States. Due to this

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requirement and the employment patterns in the airline and railroad industries, the Agency's representation cases frequently involve numerous operating stations across the nation. [An application for a representation investigation may be obtained from the Agency's web site at www.nmb.gov.]

If 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.

Direct Decertification

On August 26, 2019, the Board began to apply the direct decertification procedure adopted in its Final Rule, 84 FR 35977 (July 26, 2019). Under this direct decertification procedure, an employee seeking to decertify an incumbent representative must file an application asserting that a representation dispute exists among the identified craft or class. This application must be supported by a valid showing of interest from 50 percent of the craft or class. The application must be supported by authorizations that clearly and unambiguously state the employee's desire to no longer be represented by their incumbent union. NMB Representation Manual Section 3.1. Where it is clear that the petitioning employees wish to be free of the incumbent representative, the Board will authorize an election and the ballot will include the incumbent union and the no representation option, along with the write-in option. The two year election bar applies to decertification elections. 29 CFR 1206.4.

Presidential Emergency Boards

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

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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.

Representation Case Processing

1. Duties and Responsibilities
 - a. Applications filed pursuant to Section 2, Ninth of the RLA
 - b. Research Current Representation
 - c. Docket Case, assign case investigator (counsel)
2. Maintain Official Case Files
 - a. Correspondence
 - a. Authorization Wires
 - b. Authorization Delegations
 - c. Challenge and Objection Ruling and Appeal Letters
 - d. Extension Letters
 - e. Sample TEV Instruction Letters
 - f. Sample TEV Instructions
 - b. Election Process
 - a. Scheduling
 - b. Number of Employees in the Craft or Class
 - c. Status Changes
 - d. Preserving Voter Secrecy
 - e. TEV Tallies
 - f. Case investigation Results
 - a. Certifications
 - b. Dismissals including decertifications
 - c. Dismissal – Insufficient Showing of Interest
 - d. Dismissal – Withdrawn During Investigation

Standards and Goals

1. GPRA
2. Standard Goals
 - a. Written responses will be sent within one business day from the date an application for representation is received.
 - b. An Investigator will be assigned to a case within one business day from

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- receipt date of the application.
- c. A determination of whether there is a sufficient showing of interest to warrant further investigation will be made within **45** calendar days from the date of docket.
- d. A Certification or Dismissal will be issued within one **(1)** day following the tally.
- e. All non-appellate representation cases will be completed within **90** calendar days of docketing.
- f. Board decisions involving allegations of interference in appellate representation cases will be issued within **180** calendar days of docketing.
- g. Pre-docketing investigations will be completed within **120** calendar days following the Investigator's assignment to the case.
- h. Written jurisdictional opinions will be provided to the NLRB within **120** calendar days from the date an Investigator was assigned.
- i. In all cases which require a Board level decision, the Board will strive to issue a decision within **35** calendar days after receiving a staff recommendation.

Litigation - What happens when the NMB is sued?

1. Overview of Lawsuits
 - a. Representation
 - i. Election Interference
 - ii. Jurisdictional Determinations
 - iii. Exceeding Statutory Authority
 - iv. Constitutional Violations
 - b. Mediation
 - i. Versus the NMB
 1. Release from Mediation
 2. Board Acted in Excess of Authority
 - ii. Between Parties
 1. Refusal to Bargain
 2. Enjoin Unions from Engaging in self-help
 - iii. NMB may file as Amicus Curiae
 - iv. NMB may file as Intervenor
 - c. Arbitration
 - i. Individual v. Arbitrator, Adjustment Board, or NMB
 - ii. Individual v. Employers
 - iii. Unions v. NMB
 - iv. Location of Adjustment Board
 - v. Compensation for Arbitrators
 - vi. Appointment of Arbitrators and funding of boards
2. Roles and Goals of NMB Attorneys in Lawsuits with Department of Justice
 - a. NMB does not have independent litigation authority
 - b. DOJ is procedural expert

FOIA and the Privacy Act

1. History and Origin of the Statutes
 - a. FOIA enacted in the 1960's.
 - b. Privacy Act enacted in the 1970's.
 - c. Under FOIA - the requestor is entitled to all government documents, with some exceptions.
 - d. Under the Privacy Act - the requestor is entitled to almost all government documents about the requestor, without exception.
 - e. New rules to implement 2016 statutory changes to be implemented in early 2017.
2. NMB's Approach
 - a. NMB's decision to grant or to deny is always timely
 - b. Documents follow

Representation Investigations (Representation Manual)

1. Introduction
 - a. The RLA
 - b. 45 USC § 152, Ninth Elements
 - i. NMB's duty on request is to investigate
 - ii. Then certify in writing
 - a. Individual
 - b. Organization
 - c. By secret ballot, or other appropriate method
 - d. Without carrier interference, influence or coercion
 - e. NMB determines eligibility
 - f. NMB has access to Carrier books and records
2. Threshold Issues
 - a. What Is the System?
 - b. What Is the Craft or Class?
 - c. Who Is Eligible?
 - i. What Is the System?
 - a. Merger - Section 19 of the Representation
 - b. Non-Merger - Representation Application Filed
 - c. Factors Indicating a Single Transportation System
 1. Published combined schedules or routes
 2. Standardized uniforms
 3. Common marketing, markings or insignia
 4. Integrated essential operations such as scheduling or dispatching
 5. Centralized labor and personnel operations
 6. Combined or common management
 7. Combined workforce
 8. Common or overlapping ownership
 - ii. What Is the Craft or Class?
 1. Historical patterns of representation

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2. Extent of work related community of interest
3. Similarity of job functions
4. Interchangeability of jobs between employees
5. Desire of employees
6. Promotion, Demotion and Seniority practices
- c. Who Is Eligible?
 1. Working Regularly in the Craft or Class–eligible
 2. Other issues
 - a. Part-time Employees
 - b. Temporary Employees
 - c. Discharged Employees
 - d. Furloughed Employees
 - e. Leave of Absence
 - f. Probationary Employees
 - g. Working for another Carrier
 - h. Contractor Employees
 - i. Foreign based employees
 - j. Retired employees
 - k. Management officials
 - l. Employees working regularly in more than one craft or class.
3. Showing of Interest - eligibility issues may arise at showing of interest phase
 - a. Percentage of Authorizations Required- at least 50%
 - b. Additional Authorization Cards
 - i. Accept until an applicable list with signature samples submitted to Board
 - c. Age of cards
 - i. One year from date of application
 - d. Cancellation or revocation of authorizations must be done through unions
 - e. Confidentiality
4. Appeals and Challenges / Board Determinations
 - a. Investigator's Rulings may be appealed to Board
5. Telephone Electronic Voting
 - a. Telephone Voting Implemented October 1, 2002, Internet option added October 1, 2007.
 - b. Highly secure technology
 - c. Allows ease of access to voting for workers
 - d. Less expensive than traditional mail ballot elections
 - i. Prior to the Tally
 - a. Adjustments to the List of Eligible Voters
 - b. Adjustments to the Official Eligibility List
 1. Undeliverables
 2. Invalid
 3. Challenged
 4. Duplicates

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- ii. Admission and Control of Tally
 - a. Observers
 - b. Voters Identity Remains Confidential
 - iii. Void Votes
 - a. Carrier or Carrier Official
 - b. Where Voter Intent is Unclear
 - c. Votes for "self"
 - iv. Valid Votes
 - a. "No" votes
 - b. Clear Intent
 - c. Write-in votes
 - v. Report of Election Results
6. Motions for Reconsideration and Election Interference
- a. Board Determinations
 - b. Certifications and Dismissals NOT appealable

Ethics

GC is Ethics official. Due to the GC vacancy, Eileen Hennessey is currently the Acting Ethics Official.

- 1. Financial Disclosure
- 2. Prior Approval of Outside Employment
- 3. Speaking Engagements
- 4. Nominees
- 5. Annual Training
- 6. Travel and Related Expenses
- 7. Gifts

All requests for ethics opinions should be in writing.

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Appendix



NMB Telephone List					
As of Nov 23, 2020,					
Adham, Kareem (Contractor)	5038	Gross, John Cell - 214 498-3980	5067	Raiford, Nakita	5032
Allen, Jane Cell - 202 641-8010	5033	Guiden, Nancy Cell -571-268-8259	5023	Sadeghi, Taha Cell - 202 302-7933	5065
Anderson, Amy Cell - 202 819-4591	5052	Guyton, Michaela 312-751-4689		Sims, Patricia Cell - 202 302-6504	5066
Bautista, Josie Cell - 202 779-0410	5035	Hennessey, Eileen Cell - 202 525 0832	5037	Tosi, Anthony Cell - 202 306-2836	5062
Berry, Melody (Contractor)	5046	Hussong, Keith	5041	Walker, Terran	5003
Brown, Terri Cell - 202 302-1347	5069	Jerger, Michael Cell - 202-669-2766	5047	Yoder, Andres Cell - 202-738-6867	5060
Caldwell, Arnold (Contractor) Cell - 202 819-2407	5031	Johnson, Eric	5004		
Conward Jr., Bruce	5011	Jones, Nathan Cell - 202-997-5111	5043		
Crayton, Elijah Cell - 202 577-3366	5053	Jones, Samantha Cell - 202 302-2080	5006		
Dawson, Priscilla (Contractor)	5039	Kelleher, Kelsey Cell - 202 365-7275	5017		
Dowling, Maria-Kate Cell - 202 365-6712	5045	Kelliher, Michael Cell - 202 306-0751	5072		
Durham, Eva Cell - 202 641-7900	5068	Kidane, Genet (Contractor)	5002		
Fauth, Gerald Cell - 202 669-3898	5024	Livingood, John Cell - 202 306-5378	5073		
Fortson, Kyle Cell - 202 815-1647	5018	Mackenzie, James Cell - 202 309-8592	5070		
Fumey, William Cell - 202 641-8325	5048	McCann, Catherine Cell - 202 641-8012	5028		
Gallop, Kelley Cell - 202-819-4419	202-692-5027	McGuckin, Gerry Cell - 202 641-8016	5071		
Gathings, Linda Cell - 202 641-8342	312-751-4644	Murdock, Denise	5005		
Graber, Norman Cell - 202 302-0557	5061	Parker, Connor Cell - 202 815-1648	5020		
Gray, Victoria Cell - 202 302-1279	5063	Puchala, Linda Cell - 443 618-0623	5021		
+ Interns/Detailed Employees					
Department Telephone Numbers			Public Affairs Hot Line:		
Admin	5010	Mediation	5030	To Transfer a voice mail message	1514
Arbitration	5055			To transfer person to the hot line	5050
OLA	5040				
Miscellaneous Numbers:			FAX Machines:		
NMB Main	202-692-5000	Administration	202-692-5081		
Media/Public Inquiries	202-692-5050	Arbitration	202-692-5086		
NMB Toll Free	800-488-0019	Board Area	202-692-5082		
NRAB Main	312-751-4688	Conference Center	202-692-5087		
Security East Tower	202-408-3550	Copier Room 2	202-692-5083		
Security After Hours	202-371-1330	Mediation	202-692-5084		
National Travel	800-347-9779	NRAB (Chicago)	312-751-4681		
National Travel After Hours	800-347-9779	OLA (Kirksey)	202-692-5085		
Union, AFGE, John Garrett	410-965-3844	Main Copier Room	202- 692-5080		
Federal Protective Service	301-763-0040				
Board Main Numbers:			Conference Center		
Ms. Fortson,	202-692-5016	Board	3578	Regal	5079
Mr. Fauth,	202-692-5022	Executive	5075	Regent	5077
Ms. Puchala,	202-692-5019	Lincoln	3518	Rose	5078
		Memorial	5076	State	5074
NMB Telephone List					