

**FISCAL YEAR 2014
CONGRESSIONAL BUDGET SUBMISSION**



TABLE OF CONTENTS

EXECUTIVE SUMMARY FROM THE CHAIRMAN.....	- 1 -
APPROPRIATION LANGUAGE	- 1 -
APPROPRIATION HISTORY.....	- 2 -
SUMMARY OVERVIEW	- 4 -
PROGRAM AND FINANCING SCHEDULEI.....	- 5 -
PERSONNEL SUMMARY	- 6 -
OBJECT CLASSIFICATION.....	- 7 -
DETAILED EXPLNATION OF CHANGES.....	- 8 -
MISSION STATEMENT.....	-12 -
OFFICE OF THE BOARD.....	- 16 -
OFFICE OF MEDIATION & ADR SERVICES.....	- 17 -
MEDIATION & ADR PERFORMANCE GOALS.....	- 23 -
PRESEDENTIAL EMERGENCY BOARD.....	- 25 -
OFFICE OF LEGAL AFFAIRS/REPRESENTATION.....	- 29 -
REPRESENTATION PERFORMANCE GOALS.....	- 35 -
OFFICE OF ARBITRATION SERVICES.....	- 37 -
ARBITRATION PERFORMANCE GOALS.....	- 42 -
OFFICE OF ADMINISTRATION.....	- 44 -

EXECUTIVE SUMMARY

The National Mediation (NMB) presents its justification supporting the Fiscal Year (FY) 2014 budget request of \$13,347,000, which is .474 percent below the FY 2012 enacted level. The agency feels that this requested level is necessary for streamlining operations while not impeding the ability to successfully accomplish its statutory mission.

The NMB has undertaken a detailed review of its operations to determine areas that can be further consolidated. With the recent Administration guidance regarding moving information technology processes to the cloud, and reducing the amount of equipment provided to the staff by instituting "bring your own" policies, the NMB has already begun moving toward a cloud computing environment. With funding at the requested level, the NMB can and will accomplish these initiatives. The NMB is a small agency (51 FTE) with a mission to deliver critical services to approximately 150 commercial airlines and over 500 railroads. To fulfill our mission, the agency requests \$9,190,000 for personnel compensation and benefits. This level includes full staffing along with a .5 percent cost of living raise. Included in this amount is \$1,765,000 for referees who conduct statutory arbitration of minor disputes in the railroad industry. This level of funding will ensure that the NMB can maintain its obligations for arbitration under the Railway Labor Act, and remain in compliance with prior audit and GAO decisions regarding how we must account for the cost of cases once they are assigned to a referee. The remaining \$4,157,000 includes the funds set aside for Presidential Emergency Boards (\$400,000) and all the remaining object classifications for NMB operations.

After years of operating an adequate but outdated accounting system, the NMB is entering an Interagency agreement with the Bureau of Public Debt to access a full service accounting and administrative services portal. This realignment is consistent with Administration goals and will ensure efficiency of financial operations. With this move, the NMB also will streamline its travel and procurement operations.

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

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

Sincerely,



Harry R. Hoglander
Chairman

Attachments

APPROPRIATION LANGUAGE

National Mediation Board

Salaries and Expenses

For expenses necessary to carry out the provisions of the Railway Labor Act, including emergency boards appointed by the President *\$13,347,000*

Note.—A full-year 2013 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriation Resolution, 2013 (P.L. 112-175). The amounts included for 2013 reflect the annualized level provided by the continuing resolution.

SALARIES AND EXPENSES

Appropriation History

<u>Year</u>	Budget Estimate to <u>Congress</u> \$	House <u>Allowance</u> \$	Senate <u>Allowance</u> \$	Appro- priation \$
2006	11,628,000	11,628,000	11,628,000	11,511,720 <u>1/</u>
2007	11,749,000	11,749,000	12,500,000	11,595,760 <u>2/</u>
2008	12,242,000	12,992,000	12,992,000	12,685,000 <u>3/</u>
2009	12,432,000	12,992,000	12,992,000	12,992,000 <u>4/</u>
2010	13,434,000	12,992,000	13,934,000	13,463,000 <u>5/</u>
2011	13,772,000	14,972,000	13,772,000	13,436,074 <u>6/</u>
2012	13,961,000	13,436,000	13,436,000	13,410,606 <u>7/</u>
2013	13,530,000			
2014	13,347,000			

1/ Includes \$116,280 unavailable for obligation pursuant to P.L. 109-148.

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

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

SALARIES AND EXPENSES

Appropriation History Cont.

- 4/ Pursuant to the Fiscal Year 2009 Omnibus Appropriations Act, P.L. 111-8.
- 5/ Pursuant to the Fiscal Year 2010 Consolidated Appropriations Act, P.L. 111-117.
- 6/ Pursuant to the Fiscal Year 2011 Full-Year Continuing Appropriations Act, P.L. 112-10.
- 7/ Pursuant to the Fiscal Year 2012 Consolidated Appropriations Act, P.L. 112-74.

SUMMARY OVERVIEW

National Mediation Board

The National Mediation Board requests \$13,347,000 for its total program for FY 2014 to continue its efforts to perform the statutory mandate of resolving major and minor labor disputes in the airline and railroad industries. The Board continues its efforts to maintain a highly skilled workforce by recruiting, developing and retaining qualified individuals. This budget provides an overview of the Railway Labor Act (RLA) and the functions of the NMB. It also provides information on the resources needed for the Board to accomplish its strategic and performance goals.

SUMMARY OVERVIEW (FINANCIAL)

Fiscal Year 2012 Enacted Level	\$13,410,606
Compensation and Benefits Increases	347,000
Travel Increase	88,000
Other Current Service Level Changes	(498,606)
Fiscal Year 2014 Request Level	<u>\$13,347,000</u>

Personnel Summary

FY 2012 Actual – FTE <i>(Presidential Appointee, Confidential Assistant, and Mediator vacancies)</i>	48
FY 2013 Estimated – FTE	48
FY 2014 Estimated - FTE	51

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

Identification Code 95-2400-0-1-505	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
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Obligations by Program Activities:

0001 Mediation Services	6,398	6,626	6,614
0002 Representation Services	2,703	2,706	2,761
0003 Arbitration Services	3,797	3,761	3,572
0004 Emergency Disputes	118	400	400
1000 Total obligations	13,016	13,493	13,347

Budgetary Resources Available for Obligation:

2200 New budget authority (gross)	13,411	13,493	13,347
2395 New obligations	(13,016)	(13,493)	(13,347)
2398 Unobligated balance expiring	(394)	(0)	(0)

New Budget Authority (Gross), Detail:

4000 Appropriation	13,436	13,493	13,347
4033 Appropriation permanently reduced	(25)	0	0
4300 Appropriation (total discretionary)	13,411	13,493	13,347

Change in Obligated Balances:

7240 Obligated balance: start of year	2,095	2,138	1,944
7310 Total new obligations	13,016	13,493	13,347
7320 Total outlays (gross) (-)	(12,635)	(13,687)	(13,343)
7340 Adjustments in expired accounts	0	0	0
7440 Obligated balance: end of year	2,138	1,944	1,948

Net Budget Authority and Outlays:

8900 Budget Authority (net)	13,411	13,493	13,347
9000 Outlays (net)	12,635	13,687	13,343

National Mediation Board
Personnel Summary

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Total Number of Full Time Permanent Positions	51	51	51
Full Time Equivalent			
Full Time Permanent	44	44	45
Other	4	4	6
Total Employment, end of year (FTE)	48	48	51
Average GS Grade	12.68	12.92	12.95
Average GS Salary	\$100,224	\$106,310	\$106,528
Average Salary of Senior Executive Service Positions	\$159,656	\$159,656	\$159,736
Average Salary of Executive Level Positions			
Level 3, Chairman	\$165,300	\$165,300	\$166,127
Level 4, Board Members (2)	\$116,625	\$155,500*	\$156,278

*This is the average salary for two board members. The NMB is currently awaiting the appointment of a Board Member to fill the current vacancy on the Board.

National Mediation Board
Object Classification
(In Thousands of Dollars)

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Personnel Compensation:			
Full-time Permanent	5,338	5,809	5,807
Special personnel services payments	1,986	1,963	1,765
Total Personnel Compensation	7,324	7,772	7,572
Civilian Benefits	1,468	1,570	1,618
Benefits for Former Personnel	0	0	0
Travel & Transportation of Persons	640	736	734
Transportation of Things	3	5	4
Rental Payments to GSA	1,363	1,338	1,344
Communications, Utilities, & Misc. Charges	336	195	141
Printing & Reproduction	2	27	4
Other Services	1,395	1,260	1,301
Supplies and Materials	177	100	115
Equipment	190	90	114
Subtotal Obligations	12,898	13,093	12,947
PEB Obligations	118	400	400
Total Obligations	13,016	13,493	13,347

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2014

National Mediation Board

Increases and Decreases for Current Services and Request Level

FY '12	FY '14	Net Change
	<u>Personnel Compensation and Benefits</u>	
\$8,843	\$9,190	\$347

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

NMB's request of \$9,190 funds the three program areas: (1) Mediation, which includes 35 career staff across the offices of the Board, Administration, Mediation/ADR services (\$4,213); (2) Representation, which includes the General Counsel, 6 Attorneys and 3 support staff (\$1,988); and (3) Arbitration, which includes 6 career staff and the salary compensation for the arbitration referees (\$2,989).

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2014

National Mediation Board
(In Thousands of Dollars)

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

FY '12	FY '14	Net Change
\$646	\$734	\$88

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

Transportation of Things

\$4	\$4	\$0
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The requested amount will cover the cost of commercial courier services by the Board's staff.

Rental Payments to GSA (Rent)

\$1,377	\$1,344	(\$33)
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This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. The adjustment is based upon the estimates received by GSA.

Rent, Communications, and Utilities (RCU)

\$325	\$141	(\$184)
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This category covers funds for the use of commercial, local and long distance telephone services, and payment to GSA for after-hour utilities.

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2014

National Mediation Board
(In Thousands of Dollars)

Increases for Current Services and Request Level

FY '12	FY '14	Net Change
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Printing and Reproduction

\$3	\$4	\$1
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This category covers printing, reproduction, binding and related composition operations of the Board. The decrease is attributable to the NMB making more documents available electronically.

Other Services

\$1,396	\$1,301	(\$95)
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This category provides funding for a wide range of commercial and government services. These services include maintenance contracts on all general and information management equipment, commercial database access, payments for systems development and support, repairs and/or alterations to existing space, consultants and experts, agency training and conference fees for its staff. This category also provides training for the staff, funding to support services for the agency's accounting, human resources, information technology and records management activities, which are outsourced. In addition, the cost of leasing the office space in Chicago for the National Railroad Adjustment Board is in this category.

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2014

National Mediation Board
(In Thousands of Dollars)

Increases for Current Services and Request Level

FY '12	FY '14		Net Change
		<u>Supplies and Materials</u>	
\$226	\$115		(\$111)
		This category provides funding to purchase general office supplies, IT supplies, subscriptions, and government publications.	
		<u>Equipment</u>	
\$193	\$114		(\$79)
		This category provides for the equipment needs of the agency including hardware and software for information technology requirements, telecommunication equipment as well as office furniture purchases.	
		<u>Presidential Emergency Board</u>	
\$398	\$400		\$2
		This category funds the Presidential Emergency Boards (PEB) in which the NMB compensates members appointed by the President to resolve disputes. The object class breakout is determined once the board is enacted. Based upon historical knowledge, funds can be obligated in personnel compensation, travel, rent and communication and other services.	
\$13,411	\$13,347	TOTAL FOR ALL OBJECT CLASSES	(\$64)

MISSION STATEMENT

Railway Labor Act and NMB Functions

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

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

GENERAL AGENCY GOALS

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

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 conclude a new collective bargaining agreement 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 promptly assigns 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. The NMB mediators apply a variety of dispute resolution techniques, including traditional mediation, interest-based problem solving, and facilitation.

If, after such efforts, the Board determines that mediation will fail to settle the dispute, the NMB may advise the parties and offer interest arbitration as an alternative approach to resolve the remaining issues. If either party rejects this offer of arbitration, the Board may release the parties from formal mediation. This release triggers a thirty-day cooling off period. During this thirty-day period, the Board will continue to work with the parties to achieve a peaceful solution to the dispute. However, if an agreement is not 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 organization.

Under the RLA, the Board notifies the President of the United States when a dispute, in the Board's opinion, threatens "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services." The President may then establish a Presidential Emergency Board (PEB) to investigate and report on the dispute. A PEB may also be requested by any party involved in a dispute affecting a publicly funded and operated commuter railroad. The President appoints the members of the PEB. While either of these emergency board processes is in progress, neither party to the dispute may exercise self-help.

In addition to traditional mediation services, the NMB also provides Alternative Dispute Resolution (ADR) services. ADR services include facilitation, training, and grievance mediation. The purpose of the Board's ADR program is to assist the parties in learning and applying more effective, 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, over time, its ADR services 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 particular types of related duties and functions. The selection of a collective bargaining representative for employees of a carrier is accomplished on a system-wide basis, which includes all employees in the craft or class anywhere that carrier operates in the United States.

When a labor organization or individual files an application with the NMB to represent employees, the Board assigns an investigator to conduct a representation investigation. 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 application must be supported by a showing of interest from not less than 50 percent of the craft or class.

If the showing of interest requirement is met, the NMB continues the investigation, usually with telephone electronic voting and internet voting. 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 valid votes cast must support 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. 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 salaries and travel expenses of the arbitrators. Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

Interest arbitration is a process 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.

PROGRAM DESCRIPTION

Office of the Board

Funding (in thousands) and FTE			
FY 2012 Estimate		FY 2014 Estimate	
\$	FTE	\$	FTE
1,561	11	1,646	11

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

The three Members of the National Mediation Board administer the Railway Labor Act, which governs labor relations in the rail and air industries. The Board Members oversee the mediation of collective bargaining disputes, and by quorum they are responsible for determining whether and when to release the parties so that they may engage in self-help. If the Board determines that a labor dispute potentially threatens interstate commerce, the Members are responsible for notifying the President. The Members also are responsible for certifying the results of representation elections, and are responsible for all representation policy decisions, including, but not limited to, jurisdiction, merger issues, system and craft or class issues, and election interference. The Members also oversee the funding of arbitration of disputes over the interpretation of collective bargaining agreements in the rail industry. The Board Members provide overall leadership and strategic direction for the entire Agency, but the Board has delegated day-to-day oversight and administration to the Chief of Staff and the General Counsel. The Chief of Staff along with the Departmental Directors and General Counsel direct the program areas, which include: Office of Mediation and Alternative Dispute Resolution Services, Office of Legal Affairs, Office of Arbitration Services, and the Office of Administration.

Office of Mediation and ADR Services

Funding (in thousands) and FTE			
FY 2012 Estimate		FY 2014 Estimate	
\$	FTE	\$	FTE
2,469	17	2,599	17

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

Overview of Mediation for Fiscal Year 2012

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

The NMB is obligated under the Act to use its "best efforts" to bring about a peaceful resolution of the dispute. If such efforts do not settle the dispute, the NMB advises the parties and offers Interest Arbitration (proffers arbitration) as an alternative approach to resolving the remaining issues. If either party rejects this offer of binding arbitration, the NMB releases the parties from formal Mediation. This release triggers a thirty-day Cooling Off period, during which the Agency continues to work with the parties to achieve a consensual solution to the dispute. However, if an agreement is not reached by the end of the thirty-day period and the President of the United States does not establish an Emergency Board, the parties are free to exercise lawful self-help, which includes carrier-imposed working conditions or a strike by the union/organization.

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

Overview of ADR Services for Fiscal Year 2012

In addition to statutory mediation and arbitration services under Sections 6 and 3 of the RLA, the NMB provides voluntary Alternative Dispute Resolution (ADR)

services. ADR services include facilitation, training, grievance mediation, and an online dispute resolution (ODR) program, applying technology to the dispute resolution process.

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

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

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

A chart reflecting the actual case numbers for FY 2012, FY 2011, and the five-year average, FY 2007-2011 follows:

	FY 2012 Actual	FY 2011 Actual	FY 2007 - FY 2011 Five Year Average
Cases Pending Start	114	106	92.2
Cases Docketed	85	94	76
Cases Closed	75	86	71.6
Cases Pending End	124	114	96.6

Highlights of Mediation Fiscal Year 2012

In FY 2012 while mediators continued to face bargaining situations familiar from previous years, the merger of United Airlines and Continental Airlines and the bankruptcy of American Airlines provided more complex and challenging mediation environments. Settlements became more difficult as legacy air carriers continued to remake themselves through bankruptcies and mergers. Airline profits continued to be hard-earned but, profits of any size raised employee expectations at the bargaining table.

In national handling, where freight railroads bargain with unions as a group, the parties were unable to come to an agreement in the mediation process. This ultimately culminated in a release from mediation and a Presidential Emergency Board (PEB). The recommendations of the PEB became the basis for final settlements of all the cases.

Carriers and organizations, both air and rail, remained engaged in battles over higher wages and better benefits versus the ability to pay. Once again, mediation was increasingly important in assisting the parties to reach Collective Bargaining Agreements, and difficult, testing the skills of the mediator corps. Mediation and ADR cases docketed and closed are projected to fall below FY 2011 levels, but will still exceed the five-year docketed/closed averages.

Expedited Mediation. The Board introduced Expedited Mediation as a trial program during FY 2011. The program allows, for cases that meet the necessary criteria, the assignment of mediatory resources for a short defined period of time for concentrated mediation in hopes of reaching a quick settlement. In Fiscal Year 2012, the Agency successfully used the test program with two groups, Hawaiian Airlines/Association of Flight Attendants (AFA) and United Airlines/AFA.

Legacy Carriers. Mediation efforts with the Legacy Carriers continued to be complex and difficult, as noted above, due to the bankruptcy filing of American Airlines and the merger of United and Continental. Further complicating our efforts was an attempt by US Airways to merge with American Airlines. We were successful in assisting United in reaching agreements with its Flight Attendants (represented by AFA) and its mechanics (represented by the International Brotherhood of Teamsters - IBT). Additionally, an agreement in principle was reached on a combined contract between the pilots of United and Continental. At Continental, agreements were reached with the Mechanics (represented by the IBT), and at US Airways with the mechanics (represented by International Association of Machinists - IAM).

Cooling-off Periods. The five Class I Railroads and thirty-two Short Line and Regional Railroads represented by the National Carrier's Conference Committee (NCCC) and eleven of their Unions were released from mediation in late FY 2011. Self-help was available in early FY 2012; however, President Obama named a Presidential Emergency Board the actions of which helped lead to agreements in all cases.

Self-help Activity. There was no self-help activity in FY 2012.

Settlements. Several significant cases were settled in FY 2012 with assistance from NMB mediators, including: Omni Air/IBT, Air Wisconsin/IAM, PSA/AFA, CommutAir/Air Line Pilots Association (ALPA), and Southwest/Transport Workers Union (TWU). Significant rail cases that closed besides National Handling include: Still Water Central/United Transportation Union (UTU), Progressive Rail/UTU, Illinois Central/Brotherhood of Railroad Signalmen (BRS), Panhandle Northern Railroad/Brotherhood of Locomotive Engineers and Trainmen (BLET) and Wisconsin Central/BRS.

Pending Cases. Significant resources will continue to be devoted to open cases at the legacy airline carriers, which account for a significant portion of all cases in mediation. Concessions, bankruptcies, and mergers continue to solidify employee

expectations of restoration or partial recovery of wages and benefits. Other airline cases in mediation include PSA/ALPA, Piedmont/ALPA & AFA, Spirit/AFA, Express Jet/IAM & IBT & TWU, Sun Country/ALPA & IBT and American Eagle/TWU (currently in bankruptcy).

On the rail side, the Commuter Railroads are entering another round of bargaining. Currently 30 percent of the open mediation cases involve Southeastern Pennsylvania Transportation Authority (SEPTA), Long Island Railroad and Metro North Railroad. AMTRAK is also in mediation with the UTU and the Passenger Rail Labor Bargaining Coalition (PRLBC - a coalition of several unions). Additionally, several Regional and Short Line Railroads are in mediation, including PAR/BLET, Illinois Central/UTU, Transportation Communications International Union (TCU) & Brotherhood of Maintenance of Way Employees (BMWED), Grand Trunk Western/BMWED & TCU, and the Ohio Central Locomotive Roster (OHCR)/BLET.

Highlights of ADR Services Fiscal Year 2012

ADR Services continued to develop and deliver a wide range of services, including training (T cases), facilitation (F cases), grievance mediation (GM cases) and facilitated problem solving (FPS) and Online Disputer Resolution.

During FY 2012, ADR Services continued to offer special training programs and facilitation efforts outside the traditional grievance mediation and facilitation work. The promotion of the use of ODR tools and training has greatly increased demands for ADR services such as Online Workspaces for the parties, Online Video Conferencing, and pilot programs in conjunction with the Office of Arbitration including online arbitrations and "submissions only" arbitrations.

ADR Services provided grievance mediation training and services that, again in FY 2012, aided in a reduction of the number of cases going to arbitration or the bargaining table. Partnering with the Office of Arbitration Services, the staff offered expedited Grievance Mediation and Arbitration processes designed to increase the use of online technology and to move cases through the system quickly.

Also in FY 2012, NMB's online learning program, the Lyceum, was further developed and enhanced to offer online training to all parties. The NMB Lyceum allows any party, relevant practitioner, and the general public to access the training material at no cost and without having to use passwords or other identifying information. In collaboration with ALPA, the NMB staff produced a new Grievance Mediation video that shows a simulation of a grievance mediation session and provides training to all viewers on the NMB ADR process. The video is accessible on the NMB Lyceum which is accessible from the NMB website at www.nmb.gov.

Training. During FY 2012 Mediation/ADR staff continued to refine and update the standard training offered by the NMB, including Grievance Mediation training, Facilitated Problem Solving training and specialized training tailored to the parties'

needs, such as team building and System Boards of Adjustment training. In addition, special training in expedited mediation/arbitration processes was requested by the parties and delivered by ADR and Mediation staffs.

GM Facilitation and Negotiation. During FY 2012, the Mediation/ADR staff was engaged in direct delivery of dispute resolution services as facilitators in Grievance Mediation, Interest-based Contract Negotiations, and as trainers in a variety of other programs.

A special effort was made to merge grievance mediation with expedited arbitration. Successful GM/expedited projects are ongoing at Wisconsin Central with the BLET, Union Pacific with the BLET and Amtrak with the UTU and BLET. These cases help to greatly reduce the number of grievances that would normally go to Arbitration.

ODR Research and Development. The NMB continued its exploration of online tools to assist mediators, arbitrators and NMB employees in general. Additional research and development in the area of social media and social networking is being analyzed for potential use in ADR development at the NMB.

During FY 2012, online tools were used in training, drafting of agreements, preparation for face-to-face negotiations, agenda setting, and online arbitration for a variety of carriers and organizations. Negotiating parties used comprehensive online workspaces provided by the NMB to manage preparation for negotiations, and to manage information during contract negotiations or grievance mediation. Carriers and organizations actively using NMB online workspaces include: AE/ALPA, CSXT/American Train Dispatchers Association (ATDA), CSXT/UTU, World/IBT, Omni Air/IBT, and Air Wisconsin/IAMAW.

Online Arbitration. The NMB continued to develop and use its web-based video and document sharing capabilities. Virtually all executive sessions during FY 2012 for the NRAB were held using ODR technology.

Partnerships with Institutions of Higher Learning

In partnership with Dominican University and Cornell University, the Mediation/ADR staff designed and delivered a number of trainings and presentations that provided quality training and complemented the employees/students career development. The partnerships have successfully created a shared value for all participants by making high quality training available to NMB employees at no charge to the agency.

In addition to training programs, the partnerships have provided analyses, evaluations and feedback to assist the NMB in strengthening its grievance mediation promotion and marketing to railroads and their respective unions.

Finally, the partnership arrangements have enhanced the NMB's internship Program.

Forecast for FY 2013, FY 2014 and Beyond

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

In the airline industry, several key contracts are either currently open for negotiation or will become amendable between now and the end of FY 2014. These contracts include: Federal Express/ALPA, UPS/Independent Pilots Association (IPA) and Southwest/Southwest Airlines Pilots' Association (SWAPA), TWU & IBT, Alaska/ALPA & IAM. In addition to new cases, there is still work to be done wrapping up the legacy carrier cases. We continue to work with United/Continental and the IAM, IBT and AFA on merged collective bargaining agreements. Once the pending merger between US Airways and American airlines is complete, our services to assist in the parties negotiating merged agreements could be requested as well.

On the railroad side, regional railroads, commuter railroads and AMTRAK will continue to be the focus of our efforts.

The following chart reflects the actual case numbers for FY 2012, and the estimated case numbers for FY 2013 and FY 2014:

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Cases Pending Start	114	124	119
Cases Docketed	85	85	80
Cases Closed	75	90	80
Cases Pending End	124	119	119

FY 2014 Mediation and ADR Performance Goals

Strategic Plan General Goal 1: Mediation & Alternative Dispute Resolution

Mediation and ADR will continue to foster the prompt and peaceful resolution of collective bargaining disputes in the airline and railroad industries.

I. Continue to develop standard training for mediators to ensure they are kept abreast of the latest trends in mediation and gain additional industry and technical knowledge in both air and rail.

FY 2012 Accomplishment: Through the use of Individual Development plans each mediator participated in training and development that met their individual needs. In addition, training covering industry specific topics, as well as guest speakers, was conducted during the bi-monthly mediator meetings.

II. Better track the history of cases.

- Work with Arbitration and Representation to revise and improve the agency case management system.

FY 2012 Accomplishment: We continued to fine tune the capabilities of and information tracked in the case management system. New specialty reports to help in workload planning and historical research were developed and used.

III. Expand current ADR capabilities to address the changing labor environment in the airline and railroad industries and provide more varied assistance in dispute resolution both between and during contract negotiations.

- Use outreach and promotion efforts to raise the visibility of the ADR program.
- Continue to utilize partnerships with institutions of higher learning to improve and expand ADR Services.

FY 2012 Accomplishments: ADR continued to engage in outreach and promotion efforts with parties in the airline and railroad industries. The result of these efforts was a continued case-load requiring special dispute resolution efforts, and ADR/ODR presentations to carriers, organizations, and professional associations. Special concentration was given to local leadership at the railroads and rail organizations with grievance mediation overviews and presentations given to those who handle the lion's share of grievance handling. During FY 2012, marketing students in the graduate school of

Dominican University did an analysis of the NMB's grievance mediation program and presented plans for increasing the use of GM in the railroad sector. Those recommendations will be used in FY 2013 to expand the use of GM.

- Review ADR services for potential deletions, additions, or changes.

FY 2012 Accomplishments: Each year the ADR programs are reviewed, assessing existing training and service delivery. The NMB expanded the Lyceum, an online learning resource that helps reduce travel costs for GM training. Working with Arbitration, Mediation/ADR staff increased its promotion of expedited arbitration coupled with grievance mediation as an option for the parties.

IV. Pursue interagency projects, including personnel exchange programs, to enhance labor-management relations throughout the airline and railroad industries.

- Implement and develop interagency projects with other labor and transportation agencies with the goal of enhancing labor-management relations in the airline and railroad industries.

FY 2012 Accomplishments: Mediation/ADR Services continued to actively participate in the Interagency ADR Working Group to promote ADR in government. As a part of this effort, Mediation/ADR Services provided training to other government agencies such as the Federal Maritime Commission.

V. Engage in outreach and education programs to ensure that the NMB is seen as a world leader in airline and railroad labor-management issues.

- Submit proposals for presentations at dispute resolution conferences.

FY 2012 Accomplishments: Mediation/ADR staff members were involved in presentations to: the Association for Conflict Resolution, the Dispute Resolution Section of the American Bar Association, the Interagency Dispute Resolution Working Group Steering Committee, American Law Institute and American Bar Association (ALI-ABA), the International Online Dispute Resolution Forum, and numerous other dispute resolution and legal organizations.

Presidential Emergency Boards

Overview of Fiscal Year 2012

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

When the NMB determines that a collective-bargaining dispute cannot be resolved in mediation, the NMB 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 respecting such dispute.

Status-quo conditions must be maintained throughout the period that the PEB is impaneled and for 30 days following the PEB report to the President. If no agreement is reached, and there is no intervention by Congress, the parties are free to engage in self-help 30 days after the PEB report to the President.

Apart from the emergency board procedures provided by Section 160 of the RLA, Section 159A (Section 9a) provides special, multi-step emergency procedures for unresolved disputes affecting publicly funded and operated commuter railroads and its employees. If the Mediation procedures are exhausted, the parties to the dispute or the Governor of any state where the railroad operates may request that the President establish a PEB. The President is required to establish such a board if requested. If no settlement is reached within 60 days following the creation of the PEB, the NMB is required to conduct a public hearing on the dispute. If there is no settlement within 120 days after the creation of the PEB, any party or the Governor of any affected state, may request a second, final-offer PEB. No Self-Help is permitted pending the exhaustion of these emergency procedures.

A chart reflecting the actual case numbers for FY 2012, FY 2011 and the five-year average, FY 2007-2011 follows:

	FY 2012 Actual	FY 2011 Actual	FY 2007- FY 2011 Five Year Average
Emergency Board Sec. 160	1	0	.4
Emergency Board Sec. 159A	0	0	0

Highlights of Fiscal Year 2012

Presidential Emergency Board 243. In November 2009, pursuant to Section 6 of the RLA, the NCCC² served on the Organizations³ formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations; and applications were filed with the NMB by the separate crafts or classes now bargaining as the CRU in July 2010, and by the RLBC in January 2011.

² The NCCC represents all major Class I freight railroads in the United States as well as many smaller freight and passenger lines in national collective bargaining. The Carriers involved in this dispute include five Class I railroads: Union Pacific Railroad; BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and The Kansas City Southern Railway Company; and the following railroads: Alton & Southern Railway Company; The Belt Railway Company of Chicago; Brownsville and Matamoros Bridge Company; Central California Traction Company; Columbia & Cowlitz Railway Company; Consolidated Rail Corporation; Gary Railway Company; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; Manufacturers Railway Company; New Orleans Public Belt Railroad; Norfolk & Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation; Oakland Terminal Railway; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company (Canadian Pacific); South Carolina Public Railways; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Pacific Fruit Express; Western Fruit Express Company; Wichita Terminal Association; and Winston-Salem Southbound Railway Company.

³ The Brotherhood of Railroad Signalmen ("BRS") representing Signalmen; Brotherhood of Locomotive Engineers and Trainmen ("BLET") representing Engineers; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters ("BMWED") representing Maintenance of Way employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers ("IBB") representing Boilermakers; Sheet Metal Workers' International Association ("SMWIA") representing Sheet Metal Workers; and the National Conference of Firemen & Oilers ("NCFO") representing Firemen and Oilers; are bargaining together as the Rail Labor Bargaining Coalition ("RLBC").

The Transportation-Communications International Union ("TCU") representing Clerks and Carmen; American Train Dispatchers Union (ATDA) representing Train Dispatchers; International Association of Machinists and Aerospace Workers ("IAMAW") representing Machinists; International Brotherhood of Electrical Workers ("IBEW") representing Electrical Workers; and Transport Workers Union ("TWU") representing Carmen; are bargaining collectively as the Coalition of Rail Unions ("CRU").

Collectively, the organizations in the RLBC represent approximately 56,000 employees and the organizations in the CRU represent approximately 34,000 employees. All eleven Organizations will be referred to collectively hereinafter as the "Organizations."

Following the applications for mediation, representatives of all parties worked with the NMB mediators and Board Members in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On September 2, 2011, the NMB, in accordance with Section 5, First, of the RLA, urged the NCCC and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On September 2, 2011, the Organizations individually declined the NMB's proffer of arbitration and the NCCC accepted the NMB's proffer of arbitration.

On September 6, 2011, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Friday, October 7, 2011.

Following the termination of mediation services, the NMB advised President Obama, in accordance with Section 10 of the RLA, that in its judgment the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service. The President, acting within his discretionary authority, issued an Executive Order on October 6, 2011. Effective 12:01 a.m., Eastern Daylight Time, on October 7, 2011, the Executive Order created Presidential Emergency Board 243 to investigate and report concerning the disputes and triggered a "cooling off" period under the provisions of the RLA. The President appointed Ira F. Jaffe, as Chairman of the Board, and Roberta Golick, Joshua M. Javits, Gilbert H. Vernon and Arnold M. Zack, as Members. The Board submitted its Report to the President on November 5, 2011.

Forecast for FY 2013, FY 2014, and Beyond

The NMB cannot predict precisely the number of PEBs that may be created during a given fiscal year. Estimates are based, among other factors, upon prior experience and knowledge of the contentiousness of the parties in the bargaining process and mediation, the number of cases, and the degree of impact of any dispute. For example, the release of the Massachusetts Bay Commuter Railroad (MBCR) parties created a high probability of 2 PEB's during FY 2011, for which the agency appropriately prepared. In the end, the parties reached agreements during the cooling off period, with no PEB being created. In FY 2012, there was a PEB involving NCCC and multiple unions as discussed above.

The following chart reflects the actual case numbers for FY 2012 and estimated case numbers for FY 2013 and FY 2014:

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Emergency Board Sec. 160	1	1	1
Emergency Board Sec. 159A	0	1	1

Office of Legal Affairs/Representation

Funding (in thousands) and FTE			
FY 2012 Estimate		FY 2014 Estimate	
\$	FTE	\$	FTE
2,682	10	2,761	10

Overview of Fiscal Year 2012

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

If a showing-of-interest requirement is met, the NMB continues the investigation, usually with a secret Telephone/Internet election. Only such employees that are found to be eligible to vote by the NMB are permitted to participate in such an election. 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" by the carrier. 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.

Representation disputes involving large number of employees generally are more publicly visible than cases involving a small number of employees. However, all cases require and receive neutral and professional investigations by the Agency. The case summaries that follow are examples of the varied representation matters which were investigated by the NMB during FY 2012.

The following chart reflects the actual case numbers for FY 2012, FY 2011, and the five-year average:

	FY 2012 Actual	FY 2011 Actual	FY 2007 - FY 2011 Five-Year Average
Cases Pending at Start	2	9	5
Cases Docketed	42	39	45
Cases Closed	37	46	40
Cases Pending at End	7	2	10

Highlights during Fiscal Year 2012

In May 2012, the NMB published a notice of proposed rulemaking (NPRM) in the Federal Register and on the NMB website to amend existing rules for handling representation disputes, incorporating statutory language added to or amending the RLA by the Federal Aviation Administration Modernization and Reform Act of 2012. The NPRM proposed changes to the existing regulations pertaining to run-off elections, showing of interest for representation elections, and the NMB's rulemaking proceedings. The Board also held a public hearing on June 19, 2012. The Board accepted comments on the proposed rule changes until August 6, 2012.

On June 15, 2012, the Board issued a policy stating "Any hyperlinks posted at any website other than the NMB's website are strictly prohibited. To assure that no illegal hyperlinks are used, effective June 18, 2012, the Board's election administrator prohibited access to the voting website by any employee who has originated from an unauthorized hyperlink." The Board will allow participants to "continue to post hyperlinks to the Board's website, www.nmb.gov, and may provide the text address of the voting website, www.ballotpoint.com/NMB, if they wish to direct employees where to vote in an NMB election."

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

United Air Lines/IAM

On September 20, 2011, the International Association of Machinists filed an application alleging a representation dispute involving the craft or class of Passenger Service Employees of United Air Lines, MileagePlus, Inc., Continental Micronesia, and Continental Airlines (Carrier). On December 12, 2011, the Board issued a determination finding a single transportation system at the Carrier for the craft or class of Passenger Service Employees. *United Air Lines/ Continental*

Airlines, Inc., 39 NMB 229 (2011). At the time the application was filed, the IAM represented the Passenger Service Employees at United Air Lines (United) and Mileage Plus, Inc. (MPI) and the International Brotherhood of Teamsters (IBT) represented the Passenger Service Employees at Continental Micronesia (CMI). The Passenger Service Employees at Continental Airlines (Continental) were unrepresented.

The Board noted that for 35 years, it has included employees who perform Fleet Service duties in the Passenger Service craft or class and that the Investigators erred by not taking prior Board determinations into consideration when determining the eligibility of cross-utilized Customer Service Representatives (CSRs) employees. The Board stated that the Investigators' conclusion and the Carrier's contention that the Board's determination of a single transportation system compelled the Board to disregard the historic craft or class definitions was unpersuasive, especially without evidence that job duties changed due to the merger process. The Board stated that Continental and United work groups had not yet been integrated and the Carrier did not identify any changes in job duties resulting from the merger process. The Board also noted that although it was possible that changes could occur following the completion of the merger of United and Continental, the Board does not make determinations based on future changes. Finally, the Board stated that without evidence that the work groups had been integrated, the job classifications of employees at pre-merger Continental Airlines have no bearing of a determination of the appropriate craft or class for these employees.

The Board found that the Investigators correctly ruled that Station Operations Representatives (SORS) performed both Fleet Service and Passenger Service functions. However, the Board stated that the Investigators erred by relying on cases involving other carriers, thereby ignoring the fact that on United, these employees were historically considered part of the Passenger Service craft or class. The Board found that all SORS, regardless of their current job assignment, continued to perform passenger service functions during irregular operations, continued to share the same community of interest with Passenger Service Employees as they did in 1998, and continued to bid their current assignments from the same seniority list. The Board did not find any evidence that SORS job functions had changed as the result of the merger.

The Board stated that the Investigators correctly found that Air Freight Representatives (AFRs) provided customer service to cargo customers in connection with cargo service. However, the Investigators erred by relying on cases involving other carriers, thereby ignoring the fact that on United, these employees were historically considered part of the Passenger Service craft or class and "customer contact" included contact with passengers or cargo customers. Further, the Board found that the furloughed AFRs continued to share the same community of interest with Passenger Service Employees as they had for the past 35 years and remained on the seniority list. Finally, the Board did not find any evidence that AFR job functions had changed as a result of the merger.

The Board also noted that the Investigators erred in relying on preponderance evidence to determine the eligibility of the cross-utilized CSRs. The Board found that the unique circumstances that prompted it to include these cross-utilized employees in the Passenger Service Employees craft or class 35 years ago remained unchanged. The Board stated that the evidence presented by both the IAM and the Carrier demonstrated the fluidity of the job duties of the CSRs. The Board also found that the "snapshot" required by the preponderance test did not provide an accurate representation of the duties of these employees and was, therefore, not the appropriate test for making this craft or class determination under the unique circumstances presented in this case.

Finally, the Board found that at line stations, the present status and interest of the cross-utilized employees was illustrated by their work-related community of interest with the rest of the Passenger Service Employees craft or class at United. Additionally, the evidence provided by the IAM demonstrated that these employees did not have regular contact with Fleet Service employees; did not share break rooms or supervisors with the Fleet Service employees; and did not share work hours or training classes with the Fleet Service employees. The Board found that these employees did, however, share all of these with other employees in the Passenger Service craft or class; were on the same seniority list as the Passenger Service employees; and bid for vacation from that list.

The Board stated that the mere fact that a merger had occurred could not be the basis for finding these employees ineligible and denying them their right to vote. The Board also stated that in view of the unusual circumstances of this case, the Board's decision was narrowly focused on finding eligible those employees who have historically voted in the Passenger Service Employees craft or class at United.

Therefore, the Board overruled the Investigators' February 10, 2012 ruling and determined that the 706 CSRs, 152 furloughed AFRs and 117 SORs were eligible to vote in the Passenger Service election.

United Airlines, Inc./IAM/AFA, 39 NMB 385 (2012)

On January 18, 2011, the Association of Flight Attendants – CWA (AFA) filed an application requesting the NMB to investigate whether United Air Lines, Inc. (United), Continental Airlines, Inc. (Continental) and Continental Micronesia (CMI) were operating as a single transportation system for the craft or class of Flight Attendants. At the time the application was filed, the Flight Attendants on United were represented by AFA and Flight Attendants at Continental and CMI were represented by the International Association of Machinists and Aerospace Workers (IAM). The Board found United and Continental were a single transportation system known as United for the craft or class of Flight Attendants and proceeded to address the representation consequences. *United Air Lines, Inc. /Continental Airlines, Inc.*, 38 NMB 124 (2011). On April 26, 2011, the Board authorized an election in this matter with IAM and AFA on the Ballot. The Board scheduled the tally for June 29, 2011.

The June 30, 2011 Report of Election results reflected that a majority of votes were cast for AFA. The Board issued a Certification of AFA as the representative for purposes of the RLA of the craft or class of Flight Attendants. *United Air Lines, Inc. /Continental Airlines, Inc.*, 38 NMB 248 (2011).

On July 11, 2011, pursuant to the Manual Section 17.0, IAM filed allegations of election interference on the part of AFA and the Carrier. On January 9, 2012, the Board notified the participants that further investigation was necessary to determine whether the laboratory conditions had been tainted.

From February through April 2012 NMB Investigators conducted on-site investigations and interviewed management officials, randomly selected employees and AFA and IAM witnesses.

The Board found that the laboratory conditions in the election involving United's Flight Attendants were not tainted and that the Carrier did not interfere with the election. However, the investigation further established that certain actions by the AFA raised concerns about the confidentiality of the voting process. The Board stated that while AFA's actions did not rise to the level of interference, coercion or influence, the Board found that these actions jeopardized the secrecy of the NMB's ballot process. Accordingly, the Board shortened its normal bar period set forth in Section 1206.4(a) of the Board's Rules and stated that the bar period in this case would expire 18 months after the date of AFA's certification.

United Airlines, Inc. /IBT

On January 19, 2011, the International Association of Machinists and Aerospace Workers filed an application alleging a representation dispute involving the craft or class of Fleet Service Employees at the merging carriers of United, Continental, and CMI (United). Fleet Service Employees at United were represented by IAM and Fleet Service Employees at Continental and CMI were represented by the International Brotherhood of Teamsters (IBT). The Board issued its single carrier determination on April 28, 2011. *United Air Lines, Inc. /Continental Airlines, Inc.*, 38 NMB 185 (2011). The Board authorized an election with a tally scheduled for August 12, 2011 with IAM and IBT on the ballot. The Report of Election Results reflected that a majority of votes were cast for IAM. *United Air Lines, Inc. /Continental Airlines, Inc.*, 38 NMB 285 (2011).

On August 22, 2011, pursuant to Manual Section 17.0, IBT filed allegations of election interference against United and IAM, seeking a re-run election. United, IAM and the IBT filed responses. On January 18, 2012, the Board notified the participants that an investigation was necessary to determine whether laboratory conditions had been tainted. Board Investigators conducted on-site interviews and investigated at Chicago O'Hare International Airport (ORD) and Denver International Airport (DEN).

The Board found that there was some confusion over what activities were permitted, despite the instructions received by management. Management was instructed to remain neutral and generally did so. The Board stated that as the incumbent organization at ORD and DEN, IAM had more access to employees but that greater access was not sufficient to find interference by the Carrier. Additionally, isolated incidents of a carrier allowing the incumbent union access to property or equipment for activities other than official business during a campaign does not indicate a pattern of support.

The Board found that posting a hyperlink to the voting website might constitute interference and while that violation of Board policy did not rise to the level of compromising the voting process in this case, it had the potential to destroy the secrecy of the Board’s election process. Although there was no evidence that IAM intended to use the hyperlink to track votes, the hyperlink’s inclusion on IAM’s website was a violation of Board policy. The IAM’s actions did not justify setting aside the election but in view of the circumstances, the Board shortened the normal bar period on IAM’s certification as set forth in Section 1206.4(a) of the Board’s Rules and stated that the bar period would expire 18 months from the August 12, 2011 certification.

The following chart reflects the actual case numbers for FY 2012, and the estimated case numbers for FY 2013 and FY 2014:

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Cases Pending Start	2	7	5
Cases Docketed	42	53	53
Cases Closed	37	55	55
Cases Pending End	7	5	3

FY 2014 Representation Performance Goals

Strategic Plan General Goal 2: Representation

The Office of Legal Affairs (OLA) will promptly investigate representation disputes and definitively resolve representation status for collective bargaining purposes, using the most efficient and client-friendly methods available.

I. Expand the use of electronic systems to further streamline and reduce cost.

- Continue to integrate Representation data into the agency Corporate Memory.
- Work with ICT to develop electronic system for Freedom of Information Act (FOIA) requests.

FY 2012 Accomplishment: OLA primarily accepts electronic submissions in representation cases. The Office of Legal Affairs continued to reduce its use of paper documents by implementing a test program to take electronic witness statements in representation interference investigations.

II. Develop outreach opportunities in the legal, labor relations and alternative dispute resolution communities.

- Submit proposals for participation in American Bar Association (ABA) - sponsored conferences.
- Develop appropriate CLE and other training opportunities for RLA practitioners.

FY 2012 Accomplishment: OLA attorneys helped plan the agenda for the ABA Railroad and Airline Labor Law Section's Mid-winter meeting; planned and participated in the ABA's Labor and Employment Annual CLE Meeting; and contributed to a three day Continuing Legal Education seminar on the Railway Labor Act sponsored by ALI-CLE.

III. Implement and maintain concise, relevant reference materials, readily available to the public and which reduce the number of man-hours used to research and respond to inquiries.

- Update and improve the material available on the NMB web site.
- Revise NMB's Representation Manual.

FY 2012 Accomplishment: OLA Attorneys completed working on the 3rd Edition of the authoritative treatise on Railway Labor Act Law published by the Bureau of National Affairs. OLA attorneys began work on a "pocket part" supplement updating the treatise.

IV. Maintain continuous industry and agency communication at a level that provides early preparation for Presidential Emergency Board management.

- Coordinate efforts with the Office of Mediation Services to identify potential disruptions which may lead to a Presidential Emergency Board.

FY 2012 Accomplishment: The Office of Legal Affairs continually coordinates with the Office of Mediation and ADR Services to evaluate potential disruptions in the industry. OLA attorneys served as counsel to PEB 243.

Office of Arbitration Services

Funding (in thousands) and FTE			
FY 2012 Estimate		FY 2014 Estimate	
\$	FTE	\$	FTE
3,797	6	3,572	6

Overview of Arbitration for Fiscal Year 2012

Grievance Arbitration. Grievance Arbitration is a process for resolving disputes regarding the interpretation or application of an existing collective bargaining agreement. Grievances, known as “minor disputes” under the RLA, must be handled through Grievance Arbitration if not otherwise resolved, and cannot be used by the parties to trigger self-help actions.

The NMB has significant administrative responsibilities for the three types of grievance arbitration in the railroad industry. These types include those of the National Railroad Adjustment Board as well as 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 NMB furnishes panels of prospective arbitrators for the parties’ selection in both the airline and railroad industries. (A request to be placed on the NMB Roster of Arbitrators may be obtained from the Board’s web site at www.nmb.gov.) The NMB also has substantial financial responsibilities for railroad arbitration proceedings in that it pays the salaries and travel expenses of the arbitrators. Grievance Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

Interest Arbitration. 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 provides an effective process for Interest Arbitration, its use is not statutorily required.

The NMB offers the parties the opportunity to use binding Interest Arbitration when the Agency has determined that further Mediation efforts will not be successful. 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 an individual to resolve their dispute; in some instances however,

the parties agree to allow the NMB to directly appoint an arbitrator. Interest Arbitration decisions are final and binding with very narrow grounds for judicial appeal.

A chart reflecting the actual case numbers for FY 2012, FY 2011, and the five-year average, FY 2007-2011 follows:

	FY 2012 Actual	FY 2011 Actual	FY 2007 - FY 2011 Five year Average
Cases Pending at Start	2,384	2,770	4,647
Cases Docketed	3,569	3,908	4,659
Cases Closed	3,869	4,294	5,290
Cases Pending at End	2,084	2,384	4,016

Highlights of Arbitration during Fiscal Year 2012

The Office of Arbitration Services has directed its attention to promoting a more efficient Section III process, thereby fostering faster resolution of minor disputes (grievances). The NMB made a well-received move in this regard during FY 2012 by targeting the backlog of grievance arbitration cases for resolution and increasing the number of arbitrators available to hear and decide cases and introducing more technology to the administrative processing of cases with its arbitrators. The 2,084 cases pending at the end of FY 2012 is the lowest in NMB history: 300 less than FY 2011.

The NMB Arbitration program continued its efforts to modernize the processing of minor disputes. The agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. In January 2012, the NMB additionally introduced Arbitrators Workspace. The Arbitrators Workspace is a web based information system which gives each arbitrator online access to their case information. This system is used by the arbitrators to request work and submit requests for compensation for work. The Arbitrators Workspace replaced numerous hard-copy forms. The use of online dispute resolution was also successfully promoted at the National Railroad Adjustment Board.

The level of grievance activity handled through the NMB Arbitration program decreased as compared to the activity in FY 2011. During FY 2012, the parties brought 3,569 cases to arbitration compared to 3,908 cases in FY 2011. In FY 2012, 3,869 cases were closed compared to 4,294 in FY 2011, leaving only 2,084 cases pending at the end of FY 2012. This decrease is partly attributable to the successful use of grievance mediation as an alternative means for resolving grievances.

On several occasions during the fiscal year, the Agency met with representatives from the labor organizations and carriers to review its caseload. Carriers included Canadian National Railroad, Norfolk Southern Corporation, Union Pacific Railroad, Burlington Northern Santa Fe, Kansas City Southern Railway and CSX Transportation. The Office of Arbitration Services met with all of the labor organizations representing employees in the railroad industry. NMB efforts have been directed to facilitating a more efficient Section III process under the RLA, thereby reducing the backlog and furthering the RLA objective of prompt resolution of minor disputes.

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

Annual Case Audit. In March 2012, the NMB conducted an intensive audit of all cases pending before the NRAB. The results of the audit allowed the NMB to update the status of its cases pending at the NRAB.

In June 2012, the NMB conducted an intensive audit of all cases pending cases before Public Law boards and Special Boards of Adjustment. The Agency provided the Class-I freight railroads, commuter railroads, regional railroads and all labor organizations representing railroad employees with a list of cases pending on these boards. The feedback from the audit enhanced the accuracy of the NMB case management system.

Alternative Dispute Resolution in the Railroad Industry. The NMB actively promoted grievance mediation as an alternative means of dealing with grievances in the railroad industry by reaching out to the largest Class-I freight carriers and the labor organizations. During FY 2012, Arbitration Services made presentations at a meeting of all the Class-I freight railroads, the United Transportation Union, the IAM&AW and the Sheet Metal Workers International promoting grievance mediation as a means of resolving disputes. The NMB anticipates continuing this initiative during FY 2013.

Increasing Arbitrator Productivity. The NMB continued its efforts to increase arbitrator productivity through rigorous enforcement of the six-month rule. Arbitrators who have not issued a decision within six months of a hearing are contacted monthly and encouraged to issue those decisions. Consequently, approximately 93 percent of all decisions are rendered within six months of the hearing. During FY 2013, the NMB will require that arbitrators render decisions within three months of a hearing.

The Agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. The NMB used the website to keep the parties and the public informed regarding Section III activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. The agency developed an Arbitrators Caseload Report and posted a link to the Report on the NMB website. The report shows by arbitrator, grievance cases of railroad employees the parties have chosen to pursue. It also indicates whether a case is late (i.e., a decision has not been rendered within 6 months of when a case was heard by the arbitrator). The Arbitrator Caseload Report is real-time in that it has a direct link to an NMB database reflecting updates as they are made by Arbitration Services staff. The availability of information on the website reduces the staff time which ordinarily would be required to respond to questions and requests. The NMB has also placed an NMB NRAB Open Case Report on the website. This report lists all of the open cases at the NRAB. With this report and the Arbitrators Caseload Report, the NMB's entire Section III caseload is on the NMB website (www.nmb.gov).

Aged Cases. In March 2012, the Board commenced a review of all open cases on Public Law Boards and Special Boards of Adjustment which were three years and older. In previous years, the NMB reviewed cases five years and older. The Board worked with the parties to obtain the status of the cases and to encourage the parties to either settle the cases or schedule the cases for hearing. As a result, the Board was able to close the overwhelming majority of these cases and have the remaining few scheduled for hearings. With the exception of the few scheduled for hearings, the Board was able to clear its records of all cases over three years.

The Board contacted the NRAB to obtain the status of their cases over three years. This project is ongoing and will lead to the reduction of the old cases at the NRAB in fiscal year 2013.

Pay Per-case Project. The NMB expanded a project in which arbitrators were paid on a per-case basis, instead of the normal per-day compensation. The project will be evaluated during FY 2013

Case Backlog. The National Mediation Board used an increase Section III funding to further reduce the backlog of cases. The NMB defines the administrative backlog as all cases over two years. At the end of FY 2012, 80 percent of the pending cases were less than two years.

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

Forecast for FY 2013, FY 2014, and Beyond

The NMB projects that the number of cases pending at the end of FY 2013 and FY 2014 will increase. This projection is driven by two assumptions: that the number of newly docketed cases will be 4,659 which is the five year average for new cases; and, that the number of closed cases will be 3,821, the average number of cases closed for the last two fiscal years.

The following chart reflects the actual case numbers for FY 2012 and estimated case numbers for FY 2013 and FY 2014:

	FY 2012 Actual	FY 2013 Estimated	FY 2014 Estimated
Cases Pending at Start	2,384	2,084	2,922
Cases Docketed	3,569	4,659	4,659
Cases Closed	3,869	3,821	3,821
Cases Pending at End	2,084	2,922	3,760

FY 2014 Arbitration Performance Goals

Strategic Plan General Goal 3: Arbitration

Arbitration will promote the prompt and orderly resolution of grievance disputes in the railroad and industries.

I. Modernize and update procedures related to NRAB cases (Section 3) and other arbitral forums (public law boards and system boards of adjustment).

- Conduct a business process review of NRAB case handling.

FY 2012 Accomplishment: An audit was conducted of the NRAB administrative caseload processes, and procedures governing public law boards and system boards of adjustments, were reviewed with the goal of streamlining procedures.

II. Foster a "best practices" approach to managing the contract arbitrator roster.

- Move arbitrator roster information to a new case management system.
- Improve the guidelines for accepting applicants to the roster and retaining competent arbitrators.

FY 2012 Accomplishment: The NMB instituted a project to improve the Roster of Arbitrators. An NMB Arbitrators' Caseload Report was updated on the NMB website, along with the official Roster of Arbitrators.

III. Foster a "best practices" approach to managing arbitrator billing and payment.

- Investigate and develop a more equitable and efficient arbitrator billing process.

FY 2012 Accomplishment: The NMB initiated and implemented several special compensation projects, establishing more boards in which arbitrators were paid on a per-case basis with an increase in compensation for cases heard using online. These projects will be evaluated in FY 2013. NMB also implemented the Arbitrators' Workspace which improved the billing and payment process.

IV. Integrate current technology into the arbitration process.

- Continue to integrate Arbitration business processes into the NMB Corporate Memory program.
- Cooperate with Mediation, ADR, and Representation to improve the agency case management system.
- Continue to encourage the parties to use the agency's web-based video system, and the cooperative agreement with the NLRB, to reduce costs for arbitration hearings and adoption conferences.

FY 2012 Accomplishment: The NMB trained several arbitrators, railroad management officials and labor officials in the use of Online Video Conferencing, and several hearings were conducted using OVC during Fiscal Year 2012. The NMB also conducted a webinar using two well-known railroad arbitrators.

Office of Administration

Funding (in thousands) and FTE			
FY 2012 Estimate		FY 2014 Estimate	
\$	FTE	\$	FTE
6,566	7	6,614	7

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

Overview of Administration for Fiscal Year 2012

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

Highlights of Administration during Fiscal Year 2012

Human Capital. The NMB's Human Capital Management Report provides a vehicle for ensuring that established objectives are assessed and reported on, accomplished objectives are noted, and that future goals are tracked for continuous improvement. The FY 2012 results will be used to make improvements in the human resources arena.

As the NMB moves to take advantage of online services in the personnel arena, the agency is becoming more efficient and effective, the results of which can be seen in the agency the hiring process. For internal posting, the NMB hires an employee within 30 days. In the cases of delegated examining positions, the NMB continues to show movement toward the 80 day standard.

The NMB continues to use the E-verify system to ensure that all new appointees are eligible to work. In addition, we conduct three individual surveys are conducted for all new hires to assess their hiring experience. The results help to improve the training and orientation process for not only the new hires but also as a refresher for our current staff.

Information Technology. In accordance with the NMB's Capital Planning Plan, the NMB reviewed options for its information technology equipment while taking

steps to move into cloud computing. The NMB is in the process of implementing various aspects of “cloud” computing to better utilize its resources. During our movement to the cloud, the NMB Corporate Memory and Knowledge Store will also be moved to a cloud platform consistent with government requirements.

Continuity of Operations. The NMB participated in the Eagle Horizon 2012 National Level Exercise which included a cyber security incident. The exercise tested our ability to perform essential functions during a security incident. This test also allowed us to test some aspects of our cloud computing. Participation in Eagle Horizon 2012 demonstrated that the cloud computing initiatives that were in the testing phase are more than adequate to meet the needs of the agency in an emergency situation. Once fully tested, the COOP plan will be updated

Financial Performance. The NMB’s accounting system, GLOWS, meets all the current financial requirements. This system enables the agency to close its monthly financial records within one business day. The agency’s budget is spread out among three program areas which are consistent with the agency’s strategic and performance goals. The costs for all the other departments within the agency are accounted for separately in the accounting system to further provide detail accounting of program costs. The NMB is entering an agreement with the Bureau of Public Debt to improve our financial reporting and processing by moving to a newer and more robust online platform, managed for the NMB under contract by BPD. This agreement will place at our finger tips, up-to-date financial information that can be used to make efficient financial decisions.

The Office of Administration provides budget planning, budget development, and oversight of budget execution. In addition, OA is responsible for the maintenance of the Agency’s core accounting system; financial reporting to the Office of Management and Budget (OMB) and Treasury; payments to vendors for goods and services received; issuing bills; and the preparation of the Agency’s financial statements which are audited on an annual basis.

The NMB continues to work with an outside firm to audit its financial statements. For the fifteenth consecutive year, Allmond & Company reported that the financial statements were presented fairly, in all material respects, and in conformity with U.S. generally accepted accounting principles (GAAP) for Federal agencies. The FY 2012 audit report is included in this NMB Performance and Accountability Report which is posted on the agency’s website at www.nmb.gov. The material weakness identified in the FY 2011 report was reduced to a significant deficiency in the FY 2012 report. With the new processes and procedures that will guide the arbitration process, this deficiency will be eliminated.

Procurement. With the requirement for procurement certification, the NMB as part of the small agency council is working to ensure that its procurement functions meet all the new requirements. The agreement with BPD provides an automatic system which will provide electronic processing from request to award.

Travel. With 7 percent of the NMBs budget attributable to travel, the agency continues to review opportunities to aid in reducing costs. We are moving to the on-line travel agent under the GSA contract. This process reduces the per ticket cost which can reduce overall travel costs in the long run. This system will also provide an electronic process for authorization, vouchers, and reimbursement.

Electronic Government. The NMB provides electronic access to all its policies. This allows our internal customers to have quick access to them. The NMB continues to use its website to provide information to its internal and external customers. The website provides access to our internal customers by allowing them to access the NMB internal forms. Also the website and our online Knowledge Store provide current and historical information to the public and our external customers.

NMB Corporate Memory. In FY 2012, the NMB continued to refine its records and document management program, improving the search engine and further integrating the records database with the agency case management system.

NMB Knowledge Store. The NMB staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and collective bargaining contracts. During FY 2012, the NMB developed a new Knowledge Store interface that speeds recovery of documents and frees the data to reside in the new cloud environment being created by the agency.

Sustainability. We are committed to reducing greenhouse gases in accordance with Executive Order 13514 (E.O.). During this year, we noted that 63 percent of the NMB employees use public transportation. The Agency provides Alternative Work Schedules (AWS) and Telework programs to its employees. Currently, 37 out of 49 employees participate in the Smart Benefits program. We also purchased new environmentally efficient copiers that generate 90 percent less waste than traditional copiers. In addition, the agency has an aggressive telecommuting policy that routinely removes cars from the road during rush hour.