

**FISCAL YEAR 2018
CONGRESSIONAL BUDGET SUBMISSION
A NEW FOUNDATION FOR AMERICAN GREATNESS**



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EXECUTIVE SUMMARY

The National Mediation Board (NMB) presents its justification supporting the Fiscal Year (FY) 2018 budget request of \$13,205,000. The agency believes the requested level is necessary for the Board to operate efficiently while not impeding the ability to successfully accomplish its statutory mission.

The NMB is a small agency (51 FTE) with a mission to deliver critical services to approximately 150 commercial airlines and over 500 railroads and their unions. To fulfill our mission, the agency requests \$9,083,000 for personnel compensation and benefits. This level includes full staffing along with a 1.9 percent pay increase. Included in this amount is \$1,110,000 for referees who conduct statutory arbitration of minor disputes in the railroad industry. This level of funding will ensure that the NMB can maintain its obligations for arbitration under the Railway Labor Act, and remain in compliance with prior audit and Government Accountability Office (GAO) decisions regarding how we must account for the cost of cases once they are assigned to a referee. The remaining \$3,722,000 includes the funds set aside for Presidential Emergency Boards (\$400,000) and all the remaining object classifications for NMB operations.

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

The Board anticipates an increase in demand for its services from the parties, and future challenges related to proving outstanding service. We stand ready to meet those challenges.

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,



Linda A. Puchala
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 \$13,205,000.

Note: A full-year 2017 appropriation for this account was not enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 114-254). The amounts included for 2017 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 \$
2007	11,749,000	11,749,000	12,500,000	11,595,760 <u>1/</u>
2008	12,242,000	12,992,000	12,992,000	12,685,000 <u>2/</u>
2009	12,432,000	12,992,000	12,992,000	12,992,000 <u>3/</u>
2010	13,434,000	12,992,000	13,934,000	13,463,000 <u>4/</u>
2011	13,772,000	14,972,000	13,772,000	13,436,074 <u>5/</u>
2012	13,961,000	13,436,000	13,436,000	13,410,606 <u>6/</u>
2013	13,530,000	13,411,000	14,411,000	12,709,000 <u>7/</u>
2014	13,347,000		13,384,000	13,116,000 <u>8/</u>
2015	13,227,000	13,108,734	13,108,734	13,227,000 <u>9/</u>
2016	13,230,000	13,230,000	12,600,000	13,230,000 <u>10/</u>
2017	13,300,000			

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

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

SALARIES AND EXPENSES

Appropriation History Cont.

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

SUMMARY OVERVIEW

National Mediation Board

The National Mediation Board requests \$13,205,000 for its total program for FY 2018 to continue its efforts to perform the statutory mandates of managing representation issues and resolving major and minor labor disputes in the airline and railroad industries. The Board continues its efforts to maintain a highly skilled workforce by recruiting, developing, and retaining qualified individuals. This budget provides an overview of the Railway Labor Act (RLA) and the functions of the NMB. It also provides information on the resources needed for the Board to accomplish its strategic and performance goals.

SUMMARY OVERVIEW (FINANCIAL)

Fiscal Year 2017 Request Level	\$13,300,000
Compensation and Benefits Increases	
Other Current Service Level Changes	(95,000)
Fiscal Year 2018 Request Level	<u>\$13,205,000</u>

Personnel Summary

FY 2016 Actual – FTE	42
<i>(Receptionist, Budget Officer, Program Support Specialist (1), Program Analyst, Arbitration Program Specialist, Public Affairs Officer Confidential Assistant, Mediator and Executive Assistant)</i>	
FY 2017 Enacted – FTE	51
<i>(Board Member, Confidential Assistant (3), Receptionist, Budget Officer, Program Support Specialist (1), Program Analyst, Arbitration Program Specialist, Supervisory Program Management Specialist, Mediator (4) and Executive Assistant)</i>	
FY 2018 Request - FTE	51

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

Identification Code 95-2400-0-1-505	FY 2016 Actual	FY 2017 Enacted	FY 2018 Request
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Obligations by Program Activities:

0001 Mediation Services	7,700	7,914	8,049
0002 Representation Services	2,220	2,661	2,442
0003 Arbitration Services	2,910	2,325	2,314
0004 Emergency Disputes	400	400	400
1000 Total obligations	13,230	13,300	13,205

Budgetary Resources Available for Obligation:

2200 New budget authority (gross)	13,230	13,300	13,205
2395 New obligations	(13,230)	(13,300)	(13,205)
2398 Unobligated balance expiring	(0)	(0)	(0)

New Budget Authority (Gross), Detail:

4000 Appropriation	13,230	13,300	13,205
4033 Appropriation permanently reduced	0	0	0
4300 Appropriation (total discretionary)	13,230	13,300	13,205

Change in Obligated Balances:

7240 Obligated balance: start of year	3,142	2,920	1,765
7310 Total new obligations	12,753	10,380	11,440
7320 Total outlays (gross) (-)	(13,230)	(13,300)	(13,205)
7340 Adjustments in expired accounts	0	0	0
7440 Obligated balance: end of year	2,920	1,765	1,567

Net Budget Authority and Outlays:

8900 Budget Authority (net)	12,435	12,657	12,995
9000 Outlays (net)	13,230	13,300	13,205

National Mediation Board
 Personnel Summary

	FY 2016 Actual	FY 2017 Enacted	FY 2018 Request
Total Number of Full Time Permanent Positions	51	51	51
Full Time Equivalent			
Full Time Permanent	36	45	45
Other	6	6	6
Total Employment, end of year (FTE)	42	51	51
Average GS Grade	12.71	12.58	12.56
Average GS Salary	\$109,126	\$112,167	\$124,919
Average Salary of Senior Executive Service Positions	\$162,866	\$167,751	\$177,522
Average Salary of Executive Level Positions			
Level 3, Chairman	\$165,300	\$165,300	\$165,300
Level 4, Board Members	\$155,500	\$155,500	\$155,500

National Mediation Board
 Object Classification
 (In Thousands of Dollars)

	FY 2016 Actual	FY 2017 Enacted	FY 2018 Request
Personnel Compensation:			
Full-time Permanent	5,212	5,922	5,974
Special personnel services payments	1,903	1,270	1,110
Total Personnel Compensation	7,115	7,192	7,084
Civilian Benefits	1,963	1,988	1999
Benefits for Former Personnel	0	0	0
Travel & Transportation of Persons	588	630	630
Transportation of Things	0	2	2
*Rental Payments to GSA	1,438	1,351	1,358
Communications, Utilities, & Misc. Charges	71	80	90
Printing & Reproduction	0	2	2
Other Services	1,551	1,520	1,525
Supplies and Materials	127	75	65
Equipment	90	60	50
Subtotal Obligations	12,866	12,900	12,805
PEB Obligations	77	400	400
Total Obligations	12,943	13,300	13,205

*no rental expense in FY 2017 per the signed GSA lease agreement.

DETAILED EXPLANATION OF CHANGES

BY OBJECT CLASS FOR FISCAL YEAR 2018

National Mediation Board

(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '17	FY '18		Net Change
		<u>Personnel Compensation and Benefits</u>	
\$9,180	\$9,083		\$97

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

NMB's request of \$9,083 funds the three program areas: (1) Mediation, which includes 35 career staff across the offices of the Board, Administration, Mediation/ADR services; (2) Representation, which includes the General Counsel, 7 Attorneys and 3 support staff; and (3) Arbitration, which includes 6 career staff and the salary compensation for the arbitration referees.

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2018

National Mediation Board
(In Thousands of Dollars)

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

FY '17	FY '18		Net Change
\$630	\$630		\$0
<p style="margin-left: 40px;">This category will fund the travel expenses of the Board Members, Mediators, Attorneys, Arbitration referees, and local transportation costs for the entire Agency.</p>			
<p><u>Transportation of Things</u></p>			
\$2	\$2		\$0
<p style="margin-left: 40px;">The requested amount will cover the cost of commercial courier services by the Board's staff.</p>			
<p><u>Rental Payments to GSA (Rent)</u></p>			
\$1,351	\$1,358		\$7
<p style="margin-left: 40px;">This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. The increase is based upon the estimates received by GSA. In addition, the cost of leasing the office space in Chicago for the National Railroad Adjustment Board is in this category</p>			
<p><u>Rent, Communications, and Utilities (RCU)</u></p>			
\$80	\$90		\$10
<p style="margin-left: 40px;">This category covers funds for the use of commercial, local and long distance telephone services, and payment to GSA for after-hour utilities.</p>			

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2018

National Mediation Board
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '17	FY '18		Net Change
		<u>Printing and Reproduction</u>	
\$2	\$2	This category covers printing, reproduction, binding and related composition operations of the Board.	\$0
		<u>Other Services</u>	
\$1,520	\$1,525	This category provides funding for a wide range of commercial and government services. These services include maintenance contracts on all general and information management equipment, commercial database access, payments for systems development and support, repairs and/or alterations to existing space, consultants and experts, agency training and conference fees for its staff. This category also provides training for the staff, funding to support services for the agency's accounting, procurement, human resources, information technology and records management activities, which are outsourced.	\$5

DETAILED EXPLANATION OF CHANGES
BY OBJECT CLASS FOR FISCAL YEAR 2018

National Mediation Board
(In Thousands of Dollars)

Increases and Decreases for Current Services and Request Level

FY '17	FY '18	Net Change
	<u>Supplies and Materials</u>	
\$75	\$65	(\$10)
	<p style="text-align: center;">This category provides funding to purchase general office supplies, IT supplies, subscriptions, and government publications.</p>	
	<u>Equipment</u>	
\$60	\$50	(\$10)
	<p style="text-align: center;">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.</p>	
	<u>Presidential Emergency Board</u>	
\$400	\$400	\$0
	<p style="text-align: center;">This category funds the Presidential Emergency Boards (PEB) in which the NMB compensates members appointed by the President to resolve disputes. The object class breakout is determined once the board is enacted. Based upon historical knowledge, funds can be obligated in personnel compensation, travel, rent and communication and other services.</p>	

\$13,300 \$13,205 TOTAL FOR ALL OBJECT CLASSES

MISSION STATEMENT

Railway Labor Act and NMB Functions

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

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

GENERAL AGENCY GOALS

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

PROGRAM DESCRIPTION

Office of the Board

Funding (in thousands) and FTE			
FY 2017 Enacted		FY 2018 Request	
\$	FTE	\$	FTE
1,264	13	1,276	13

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

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

Office of Mediation and ADR Services

Funding (in thousands) and FTE			
FY 2017 Enacted		FY 2018 Request	
\$	FTE	\$	FTE
2,069	15	2,082	15

*The amounts listed above reflect personnel compensation.

The total cost of this program is included in the Office of Administration.

Overview of Mediation for Fiscal Year 2016

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

Mediation Overview

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

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

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

Mediation Highlights

Mediation for collective bargaining agreements was active and successful in FY 2016. Mediators effectively used their skills to assist parties in finding ways to bridge their disputes and reach agreement. Agreements were mediated in the airline sector with mainline, regional and low cost carriers, and in the rail sector with freight and commuter lines. Challenges at the bargaining table included consolidating agreements after mergers, working with limited public funding, and dealing with health care changes.

Settlements: In the airline sector, settlements were reached with United and its AFA Flight Attendants, with FedEx and its ALPA Pilots, with UPS and its IPA pilots, and LSG/SkyChefs reached agreement with its UniteHere Food Service Workers. In the rail sector, settlements were reached with Wisconsin Central, Grand Trunk Western, and Illinois Central and their UTU Yardmasters. Metra reached agreement with MAP, IAM, IBEW, NCFO, and SMART.

Pending Cases: We continue to work with ExpressJet and their Mechanics and their Flight Attendants on merged collective bargaining agreements, as well as on an agreement between Frontier and its ALPA Pilots. On the rail side, we are working with the NCCC and the labor coalitions representing their workers, as well as with PATH and its unions to reach agreements.

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

A chart reflecting the actual Mediation case numbers for FY 2016, and estimated FY 2017 case number, and the five-year average, FY 2012 – FY 2016 follows:

MEDIATION CASES	FY 2016 Actual	FY 2017 Estimated	FY 2013 - FY 2017 Five Year Average
Cases Pending Start	90	81	92
Cases Docketed	36	27	40
Sum	126	108	132
Cases Closed	45	48	46
Cases Pending End	81	60	86

ADR Overview

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

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

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

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

ADR Highlights

ADR personnel continued to develop and deliver a wide range of services, including training (T cases), facilitation (F cases), grievance mediation (GM cases), facilitated problem solving (FPS) and Online Dispute Resolution (ODR). These services included training programs and facilitation efforts outside of, and in addition to traditional grievance mediation work.

Training: ADR Services has seen interest grow in its pre-negotiation training and in mediation skills training for internal organization self-help use. Skill at instructing has been a by-product of the Agency's partnership with Dominican University where teaching mediation and negotiation courses turns into a learning opportunity for the mediators who teach the courses. In FY 2016, mediators regularly trained parties as they began facilitation or grievance mediation, when they encountered problems during negotiations and at conferences and universities.

Facilitation: Mediators have been active on several properties using facilitation to help parties reach resolution to their disputes. In FY2016, facilitation was used at CSX with the BRS, and at Hawaiian with AFA. With each experience, the NMB's knowledge base grows, and best practices from the process increase to the parties' benefit.

Grievance Mediation: Interest in grievance mediation continues to grow with the parties we serve in both the air and rail sectors. Activity in the rail sector is particularly significant in that it has helped reduce the case load in the NMB's Arbitration Department, and quickens the resolution of grievances. Grievance

mediation has served to solve problems before they become grievances, and helped to clarify issues ahead of bargaining.

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

Training: The NMB’s active partnership with Dominican University was concluded in FY 2017 after accomplishing all of the program goals established when the partnership was created. Based on work done during the partnership, the NMB ADR staff designs and delivers trainings and presentations that provide quality training and complement employee’s and student’s career development alike. The NMB’s Info Series on Arbitration is one example of shared value with Dominican University. In addition, the Mediation and Negotiation courses taught at Dominican became the basis for Mediation and Negotiation courses developed specifically for our parties.

A chart reflecting the actual ADR case numbers for FY 2016, FY 2017, and the five-year average, FY 2012 – FY 2016 follows:

ADR CASES	FY 2016 Actual	FY 2017 Estimated	FY 2012 - FY 2016 Five Year Average
Cases Pending Start	33	35	29
Cases Docketed	75	45	52
Sum	108	80	82
Cases Closed	73	41	47
Cases Pending End	35	39	34

The following charts reflect the actual case numbers for FY 2016, estimated case numbers for FY 2017 and FY 2018 for both Mediation and ADR Cases:

MEDIATION CASES	FY 2016 Actual	FY 2017 Estimate	FY 2018 Estimate
Cases Pending Start	81	60	54
Cases Docketed	27	40	40
Cases Closed	48	46	46
Cases Pending End	60	54	48

ADR CASES	FY 2016 Actual	FY 2017 Estimate	FY 2018 Estimate
Cases Pending Start	35	39	52
Cases Docketed	45	60	52
Cases Closed	41	47	47
Cases Pending End	39	52	57

FY 2018 Mediation and ADR Performance Goals

Mediation & Alternative Dispute Resolution Strategic Goal

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

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

FY 2016 Accomplishments: NMB standards applicable to processing and managing cases involving major disputes were consistently met in FY2016. Case processing benefited from enhancements to and refining of the Agency's Mediation Case Management System to track cases from application to closure. Case management was accomplished as planned with mediators utilizing appropriate techniques at the table with support from senior mediators acting in an oversight role. Quarterly reviews of cases one year old or older by Board members and senior mediation management insured that parties to the process received assistance appropriate for their case.

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

FY 2016 Accomplishments: Through the use of Individual Development Plans (IDP) each mediator participated in training and development that met her or his individual needs. In addition, training covering industry specific topics was conducted during the bi-monthly mediator meetings. The NMB's partnership with Dominican University provided valuable and specialized training for mediators as they delivered courses in the areas of negotiation and mediation. Mediators attended conferences such as the Federal Mediation and Conciliation Service's Labor Management Conference, the Association of Labor Relations Agencies annual conference, and the American Bar Association's conferences on the Railway Labor Act, Dispute Resolution and Employment and Labor Law.

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

FY 2016 Accomplishments: The Agency reworked its general mediation and negotiation training developed for Dominican University to industry specific training for air and rail parties to use for internal dispute resolution purposes and to prepare for negotiations. Mediators continued to refine ADR strategies and techniques that addressed the unique needs of parties in negotiations, and in grievance mediation.

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

FY 2016 Accomplishments: The Agency continues to explore uses for online dispute technology and offer it to parties. Mediators make use of technology to remotely share information and language, to track changes in language, and to discuss proposals. ODR technology has been helpful in continuing the mediation process when travel to meet in person with the parties is restricted.

Presidential Emergency Boards

Overview of Fiscal Year 2016

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

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

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

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

A chart reflecting the actual case numbers for FY 2016, FY 2017 and the five-year average, FY 2012-2016 follows:

	FY 2016 Actual	FY 2017 Estimated	FY 2012-FY 2016 Five Year Average
Emergency Board Sec. 160	0	0	.5

Emergency Board Sec. 159A	2	1	1
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Highlights of Fiscal Year 2016

One PEB was established during fiscal year 2016. This PEB involved the special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. PEB 249 was established under Section 9(a) to resolve a dispute between the New Jersey Transit Rail (NJT) and certain of its employees.

Presidential Emergency Board 248. On July 15, 2015, the President created PEB 248, effective July 16, 2015 to investigate and report concerning the dispute between the NJT and certain of its employees represented by the Organizations.¹ The President appointed Elizabeth C. Wesman, as Chairman of the Board, and Barbara C. Deinhardt and Ann S. Kenis as Members. The Board submitted its Report and Recommendations to the President on August 14, 2015.

When the recommendations of PEB 248 did not result in a prompt resolution of the disputes, the NMB conducted a public hearing on September 9, 2015, at which the Organizations stated their willingness to accept the recommendations of REB 248

1 The New Jersey Transit Rail Labor Coalition (“the Coalition”) represents all 4,220 unionized rail employees at NJT. The Coalition consists of the following organizations: International Brotherhood of Electrical Workers (“IBEW”), representing Electrical Workers and Supervisors; Transportation Communications International Union/IAM (“TCU/IAM”), representing Supervisors, Clericals, and Carmen; Brotherhood of Locomotive Engineers & Trainmen (“BLET”), representing Locomotive Engineers, Assistant Engineers, and Engineer Trainees; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (UTU) (“SMART” or “UTU”), representing Yardmasters and Conductors/Trainmen; International Association of Machinists & Aerospace Workers (“IAM”), representing Machinists; Brotherhood of Railroad Signalmen (“BRS”), representing Signalmen; National Conference of Firemen & Oilers, SEIU (“NCFO”), representing Laborers; International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART”), representing Railroad, Sheet Metal, Mechanical & Engineering Workers; American Train Dispatchers Association (“ATDA”), representing Train Dispatchers; Brotherhood of Maintenance of Way Employees Division (“BMWED”), representing Maintenance of Way Employees; International Brotherhood of Boilermakers (“IBB”), representing Boilermaker Welders; and Transport Workers Union of America (“TWU”), representing Carmen and Coach Cleaners. Although each of the separate bargaining units commenced negotiations with NJT on an individual basis, they subsequently joined together as a formal Coalition to bargain collectively with NJT.

and NJT discussed its reasons for not accepting the recommendations of PEB 248. On November 6, 2015, the Coalition requested that President Obama create a second Emergency Board pursuant to Section 9a(e) of the RLA regarding its dispute with the NJT. Thereafter, on November 12, 2015, the President issued an Executive Order establishing, effective 12:01 a.m. November 13, 2015, Presidential Emergency Board 249 to investigate and report concerning the dispute between the NJT and certain of its employees represented by the Organizations. The President appointed Joshua M. Javits, as Chairman of the Board, and Elizabeth Neumeier and Nancy E. Peace as Members. The Board submitted its Report to the President on January 11, 2016.

Forecast for FY 2016, FY 2017, and Beyond

The NMB cannot predict precisely the number of PEBs that may be created during a given fiscal year. Estimates are based, among other factors, upon prior experience and knowledge of the contentiousness of the parties in the bargaining process and mediation, the number of cases, and the degree of impact of any dispute. For example, activity leading up to a release and the creation of a PEB for the LIRR and multiple unions occurred in FY 2013, but the PEB was established in FY 2014. The following chart reflects the actual case numbers for FY 2016 and estimated case numbers for FY 2017 and FY 2018:

	FY 2016 Actual	FY 2017 Estimated	FY 2018 Estimated
Emergency Board Sec. 160	0	1	1
Emergency Board Sec. 159A	1	1	1

Office of Legal Affairs/Representation

Funding (in thousands) and FTE			
FY 2016 Enacted		FY 2017 Request	
\$	FTE	\$	FTE
1,869	10	1,882	10

Overview of Fiscal Year 2016

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

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

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

The following chart reflects the actual case numbers for FY 2016, FY 2017 as of May 2017, and the five-year average, FY 2012-2016 follows:

	FY 2016 Actual	FY 2017 Actual	FY 2012 - FY 2016 Five-Year Average
Cases Pending at Start	2	1	1.8
Cases Docketed	34	24	32
Cases Closed	35	14	30
Cases Pending at End	1	11	4.2

Highlights during Fiscal Year 2016

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

The OLA staff closed 30 cases and also docketed 26 cases during the year. With the Agency resources requested for 2017, it is estimated that 32 representation cases will be investigated and resolved in the next fiscal year.

CASE SUMMARIES

Representation disputes involving large numbers of employees generally are more publicly visible than cases involving a small number of employees. However, all cases require and receive neutral and professional investigations by the Agency. The NMB ensures that the employees' choices regarding representation are made without interference, influence or coercion. The case summaries that follow are examples of the varied representation matters which were investigated and resolved by the NMB during FY 2016.

ENVOY AIR

In *Envoy Air, Inc./CWA, AFL-CIO*, 43 NMB 18 (Nov. 10, 2015), the Board granted an appeal and overturned an investigator's eligibility ruling regarding cross-utilized employees. On May 12, 2015, the Communications Workers of America, AFL-CIO (CWA) filed an application seeking to represent "Passenger Service Agents (Includes Station Agents)" at Envoy Air, Inc. (Envoy). The job title "Station Agent" at Envoy includes employees who perform exclusively passenger service functions, employees who perform exclusively fleet service functions, and employees who are cross-utilized, performing both functions. Pursuant to a voluntary recognition agreement, the Transport Workers Union (TWU) represents Fleet Service employees at Envoy.

In order to determine the eligibility of cross-utilized Station Agents, the investigator performed a preponderance test and removed from the List of Eligible Voters (List) those employees who did not spend a preponderance of their time in the three months prior to the application performing passenger service duties. CWA appealed the eligibility ruling and the Board overturned the determination, stating that the Station Agents shared a community of interest with the Passenger Service Employees and had a sufficient interest in the craft or class. They were, therefore, eligible to vote with the Passenger Service Employees craft or class. The Board stated that its determination was limited to the unique facts and circumstances of

the carrier, where the preponderance of evidence did not represent the true nature of the Station Agent's duties, which often varied from day to day and seasonally.

Chairman Geale dissented, stating that the determination was a departure from Board practice and precedent. He noted that the majority ignored the NMB's Representation Manual and the results of the preponderance test to reach its decision. He also noted that the majority's decision has the effect of fragmenting the craft or class of Fleet Service personnel currently represented by TWU in violation of long standing NMB precedent and policy.

ALLEGIANT AIRLINES

In Allegiant Air, LLC, 43 NMB 45 (Jan. 6, 2016), the Board considered whether the showing of interest was invalid where some of the authorization cards submitted in support of the application were dated and executed by trainees who are outside the Railway Labor Act's (RLA) definition of employee. While noting that it is well-settled that trainees are not eligible to vote in a representation election under the RLA until they perform line work (the Initial Operating Experience or IOE), the NMB stated that the issue of the validity of authorization cards signed by trainees prior to completing training was one of first impression. Looking first to the RLA and then to the NMB's Rules, Manual and decisions, the NMB concluded that it has considered the IOE in the context of voter eligibility and not with respect to the showing of interest required to trigger a representation election. The NMB requires that carriers provide a List of Eligible Voters (List). This List contains the individual employees who have performed line work as of the cut-off date. In determining the showing of interest required to hold an election, the NMB focuses on whether cards were submitted by individuals on that List. Accordingly the NMB declined to impose a standard that is not explicitly set out in the statute, the NMB's Rules, or the Manual and that would undermine the transparency and integrity of its authorization card check process.

RAVN AIR GROUP

In Ravn Air Group, 43 NMB 59 (Feb. 18, 2016), the International Brotherhood of Teamsters (IBT) filed an application seeking to represent the Pilot craft or class at "Corvus Aviation/RAVN." The Board determined that the appropriate system for representation purposes was Corvus and two other airlines, Hageland and Frontier, which were jointly owned and held out to the public as Ravn Air Group. The three entities shared a Board of Directors and human resources, marketing, and scheduling were combined. The pilots shared a single seniority list and were able to transfer between the three airlines. In holding that the three airlines made up a single system for representation purposes, the Board stated that the fact that they

held different types of FAA operating certificates was not determinative. The application was dismissed due to lack of sufficient showing of interest.

SOUTHWEST AIRLINES

In *Southwest Airlines*, 43 NMB 146 (June 28, 2016), the Board addressed the representation consequences following its determination that Southwest and Air Tran were operating as a single transportation system for the craft or class of Flight Attendants. The Association of Flight Attendants (AFA) represented Air Tran employees pursuant to a NMB certification while the Transport Workers Union (TWU) represented the Southwest employees pursuant to a National Labor Relations Board (NLRB) certification. The Carrier reported that the current application covered 14,074 Flight Attendants with 14,070 of them being Southwest employees represented by TWU. The Board noted that, where the numbers of employees represented by the two organizations at merged carriers are not comparable, its longstanding practice is to extend one organization's certification while terminating the other organization's certification. *American Airlines, Inc./US Airways*, 41 NMB 237 (2014). The Board has also certified an organization as the representative where the numbers were not comparable and the organization represented a majority of the employees through voluntary recognition. See *Southwest Airlines*, 41 NMB 297 (2014). The Board also noted that it has long considered NLRB certifications as a basis for certifying a representative without election. See *Dobbs Int'l Serv., Inc.*, 28 NMB 7 (2000). In this case, the Board found no basis to depart from its usual practice where the numbers were not comparable, there was prior Board precedent for considering NLRB certifications a basis for RLA certification without an election, and both groups of employees had agreed to be represented by TWU as part of the terms of a seniority integration agreement. Accordingly, the Board certified TWU as the representative of the Flight Attendant craft or class on the single transportation system and extinguished AFA's certification.

FLIGHT OPTIONS

In *Flight Options, LLC/Flexjet, LLC*, 43 NMB 165 (Aug. 23, 2016), the Board found that the Carrier failed to establish a prima facie case of election interference by the union. Following its determination that Flight Options and Flexjet comprised a single transportation system for the craft or class of Pilots, *Flight Options/Flexjet*, 42 NMB 174 (2015), the Board authorized an election. *Flight Options/Flexjet*, 43 NMB 16 (2015). Following the December 15, 2015 tally, the Board certified the International Brotherhood of Teamsters (IBT) as authorized representative of the Pilot craft or class at the merged Carrier. *Flight Options/Flexjet*, 43 NMB 43 (2015). Thereafter, the Carrier filed allegations that the IBT misused private customer and employee data; engaged in a pervasive campaign of coercion, intimidation, harassment and

misrepresentation; and unlawfully provided tangible benefits to employees during the campaign. The Board majority concluded that the Carrier failed to support its allegations of misuse of customer or employee contact information. With regard to the allegations of coercion, intimidation, harassment, and misrepresentation, the Board majority found insufficient evidence to warrant an interference investigation. With regard to the alleged grant of benefits, the Board majority found that under longstanding NMB precedent, the IBT did not engage in election interference by providing legal assistance to six non-union Flexjet pilots in proceedings alleging that Flexjet unlawfully terminated three of them and harassed and intimidated the others because of their union activity

The Board majority also concluded that the creation of an on-line support fund created by the IBT and the Flexjet Pilots Organizing Committee (FJPOC) for the terminated pilots and the contributions to that fund by an IBT International representative and IBT local vice president did not rise to the level of election interference. Unlike *American/US Airways*, 42 NMB 80 (2015), where gifts of \$500 were provided to employees during the solicitation of authorization cards, the Board majority found that there was no evidence that the on-line fund was created or donations were made to induce employees to do anything. The Board noted that the donations were solicited for employees whom an arbitrator determined had been unlawfully terminated by the Carrier and the employees and members of the public, including union representatives, were free to donate or not as they saw fit.

Chairman Geale dissented in part. In his view, further investigation of the interference allegations of intimidation and coercion and cash payments to employees was warranted given that the margin of the IBT's victory was only eight votes. Chairman Geale also noted that the majority decision in part relies on the fact that carriers and labor organizations are held to different standards during elections. While acknowledging that this is long standing NMB precedent, the Chairman stated that, in his view, holding both sides to similar standards would better protect the craft or class from undue influence. Finally, Chairman Geale noted that the setting up and possible gifting of funds from IBT leadership/treasuries directly to individual employees is problematic in light of the Board's decision in *American/US Airways*, and that he saw no reason to differentiate between the \$200 and \$100 cash payments here and the \$500 dollar gift cards present in the *American/US Airways* case.

JURISDICTIONAL OPINIONS

The NMB addressed novel issues of jurisdiction in *Southern California Regional Rail Authority*, 43 NMB 71 (February 23, 2016), and *Norwegian Air Shuttle*, 43 NMB 97 (April 19, 2016).

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)

In support of its application seeking a representation election among dispatchers employed by SCCRA, the American Train Dispatchers Association (ATDA) argued that SCRRA was both a public agency and a carrier subject to the RLA because the Dispatchers in question were performing work traditionally performed by railroad employees, and providing dispatch services for freight trains and Amtrak passenger trains, in addition to the commuter trains. SCRRA contended that it was a public agency which administers and manages intrastate commuter rail service. The definition of a "carrier by railroad" under Section 1, First of the RLA includes any railroad subject to the jurisdiction of the Surface Transportation Board (STB) and is "an entity that holds itself out to the public to provide rail transportation service for compensation" but excludes rail operations solely engaged in intrastate commerce unless they are a link to interstate commerce. The Board ultimately held that SCRRA was not a carrier for purposes of the RLA through application of the State of Maine doctrine developed by the STB. The State of Maine doctrine exempts state agencies from becoming rail carriers when they have acquired active rail lines from freight carriers, through easements or operating agreements, to establish rail commuter passenger service. The investigation revealed that SCRRA uses its rail lines to provide commuter operations through Metrolink. Interstate freight service (through UPRR and BNSF) and interstate passenger service (through Amtrak) are carried out on SCRRA's Metrolink lines through operating agreements and most of the Metrolink operations are contracted out with the exception of the Train Dispatchers. While SCRRA is an entity which holds itself out to the public to provide intrastate rail commuter service and is a link in the interstate passage of freight and passengers, through its agreements with BNSF, UPRR, and Amtrak, it is exempted from RLA coverage through application of the State of Maine doctrine.

The Board also declined to find jurisdiction over SCRRA as an indirect carrier as the evidence showed that SCRRA is a California public agency entirely funded and controlled by five Southern California transportation agencies, none of which are carriers or controlled by carriers. The Board further found that SCRRA controls entirely the work of the Train Dispatchers. Finally, the Board held that consistent with its previous decisions, the fact that SCRRA's Train Dispatchers are eligible to receive benefits under the Railroad Retirement Act and Railroad Unemployment Insurance Act is not sufficient to find SCRRA a carrier under the RLA.

NORWEGIAN AIR SHUTTLE ASA

In Norwegian Air Shuttle ASA, the Board was presented with the jurisdictional issues raised when an air carrier contracts with a crew management company to provide cabin crew for the carrier. On May 28, 2015, the Norwegian Cabin Crew Association (NCCA) filed an application alleging a dispute among the Flight

Attendant craft or class at Norwegian Air Shuttle ASA (NAS). NCCA stated that the Flight Attendants at issue perform all of their work in the service of NAS and that NAS exerts extensive control through its contract with OSM Aviation, Inc. (OSM). In response to the application, NAS and its wholly-owned subsidiary Norwegian Air Holding Resources, Ltd. (NAR)(referred to collectively as "Norwegian") asserted that OSM is the sole employer of the Flight Attendants and that neither NAR nor NAS exercise control over OSM. Norwegian also stated that it lacked the "continuing authority to supervise and direct the manner in which the Cabin Crew members render their services." OSM agreed with Norwegian that it was the sole employer of the Flight Attendants but that it is neither a carrier nor a derivative carrier within the meaning of the RLA.

The Board initially noted that the RLA was enacted to limit interruptions to interstate commerce by providing a comprehensive framework for resolving labor disputes in the airline and railroad industries. *Hawaiian Airlines v. Norris*, 512 U.S. 246, 252 (1994). Turning to the facts of this case, the Board first addressed the issue of RLA jurisdiction. The Board found that NAS is a common carrier by air as defined by the RLA and had been issued a foreign air carrier permit by the United States Department of Transportation. NAR is its wholly-owned subsidiary and has been utilized to contract with staffing agencies such as OSM, to provide crew members who perform essential air transportation services integrally related NAS' business. Accordingly, the Board found NAR to be subject to NMB jurisdiction.

With regard to whether OSM was under the jurisdiction of the NMB, the Board noted that it is not a rail or air carrier but that it provides crew management services for NAS through its contract with NAS. Since the duties of the Flight Attendants constitute services traditionally performed by carrier employees, the Board examined the control exercised by Norwegian over OSM's employees. The contract between NAR and OSM states that Flight Attendants "will be assigned to Norwegian and while on duty shall be under the care, operational control, rostering and supervision of Norwegian" and that NAS retains complete control over their training and scheduling, and actively participates in the hiring process. Further, the Flight Attendants are held out to the public as Norwegian Flight Attendants wearing Norwegian uniforms, insignia, and IDs. The contract also prevents OSM from utilizing these employees for any other customer with whom it contracts. The Board found that NAS supervises and directs the day to day work activity of the Flight Attendants and NAS conceded that it in fact operationally supervises the Flight Attendants while they are engaged in revenue flying. The Flight Attendants work with and on NAS' equipment. NAS controls the manner by which the Flight Attendants carry out cabin service and operational and safety procedures. The crew planning or rostering is the sole responsibility of Norwegian. Accordingly, the Board found that the evidence clearly demonstrated that NAS, through NAR, asserted

sufficient significant control over OSM and its Flight Attendants to establish RLA jurisdiction.

Noting that Norwegian's airline operation depended on the interrelationship of NAS, NAR, and OSM, the NMB found that the joint employer concept was properly invoked in the circumstances of this case to ensure the uninterrupted flow of commerce. The Board stated that, although it has previously relied on the derivative carrier concept to sweep contractors under the jurisdiction of the RLA, this case is distinguishable since it was the first time the Board is faced with a contract for services of operational employees of an air carrier. The Board found that the nature of the control exercised by the carrier over these operational employees is different. These operational employees are essential to the air carrier's transportation of persons, property, and mail and are the face of the airline to the flying public. The NMB found that the record established that both NAS and OSM meaningfully affect matters relating to the employment relationship. The Board also made clear that it did not suggest that the parties to every contract for services are joint employers or even subject to RLA jurisdiction. Rather, the Board stated that Congress intended that all entities that provide essential transportation services by air and rail should be subject to the RLA to level the playing field and prevent interruptions to interstate commerce. Accordingly, the Board found that an air carrier cannot subcontract out every essential function performed by employees manning the aircraft and then attempt to avoid its legal obligations by stating that none of the companies providing what collectively amounts to the totality of the air operations are carriers covered by the RLA.

Subsequently, the Board found that a representation dispute existed among the Flight Attendants jointly employed by Norwegian and OSM and authorized an election. Norwegian Air Shuttle ASA, 43 NMB 140 (June 21, 2016). The Board also found that there were no extraordinary circumstances warranting changing the cut-off date for determining the showing of interest and eligibility to vote in the election. The Board found there was neither an extraordinary delay in the Board's investigation nor turnover of clearly more than half the craft or class. The Board noted that a majority of the craft or class remained eligible to vote. The Board also denied OSM's June 23, 2016 Motion for Reconsideration, finding that OSM failed to demonstrate a material error of fact made by the Board in its determination nor a single point of law that the Board overlooked or misapplied in its decision. Norwegian Air Shuttle ASA, 43 NMB 152 (July 1, 2016). On August 11, 2016, the NMB certified NCCA as the authorized representative of the Flight Attendant craft or class at Norwegian. Norwegian Air Shuttle ASA, 43 NMB 161 (2016).

The following chart reflects the actual case numbers for FY 2016, and the estimated case numbers for FY 2017 and FY 2018:

	FY 2016 Actual	FY 2017 Estimated	FY 2018 Estimated
Cases Pending Start	5	1	1
Cases Docketed	26	32	34
Cases Closed	30	32	33
Cases Pending End	1	1	2

FY 2018 Representation Performance Goals

Representation Strategic Goal

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

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

FY 2016 Accomplishments: In most cases: OLA responded to representation applications within 2 business days of receipt by the NMB; assigned an investigator within 2 business days of receipt of the application; determined showing of interest within 45 days of docketing an application; and issued a certification or dismissal the next business day after the ballot count.

Goal 2: Enhance training and development of OLA staff.

FY 2016 Accomplishments: Each OLA staff member updated their Individual Development Plan (IDP). Each year OLA employees meet with their manager to update or develop a plan to enhance career related skills. In Fiscal Year 2016 OLA staff took classes related to the Freedom of Information Act (FOIA), records management, government ethics, the Railway Labor Act, conflict resolution, and employment law.

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

FY 2016 Accomplishments: Members of the Office of Legal Affairs continue to actively participate as panelists and attendees at conferences sponsored by the American Bar Association, American Law Institute, the National Association of Railroad Referees and the Association of Labor Relations Agencies. This year OLA attorneys gave presentations on the Railway Labor Act; Ethics, Presidential Emergency Boards, recent RLA case developments, and remedies under the RLA.

OLA continued to participate in intra-governmental initiatives with other federal agencies such as the Department of Transportation, Federal Labor Relations Authority, Department of Labor, National Labor Relations Board, and the Federal Mediation and Conciliation Service. OLA attorneys serve as both Senior Editors and

Contributing Editors of the Railway Labor Act treatise published by the Bloomberg/BNA and this year completed the fourth edition of this treatise.

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

FY 2016 Accomplishments: All OLA staff members are trained on Emergency Board Procedures. OLA maintained continuous industry and agency communication at a level that provided for early preparation for potential Presidential Emergency Boards. OLA attorneys served as counsel to one Presidential Emergency Board.

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

FY 2016 Accomplishments: OLA conducts semi-annual reviews of the Representation Manual and web site, updating where appropriate. In FY 2016, OLA began the process of updating the NMB's FOIA regulations and will engage in rulemaking on this topic in FY2017. The proposed regulations include rules on the "Proactive Disclosure of Materials" including the publication of frequently requested materials on the NMB's website.

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

FY 2016 Accomplishments: OLA continued to investigate use of voice recognition software and other cost and time saving mechanisms in taking employee statements during interference investigations and drafting representation determinations.

Office of Arbitration Services

Funding (in thousands) and FTE			
FY 2017 Enacted		FY 2018 Request	
\$	FTE	\$	FTE
1,616	6	1,629	6

Overview of Arbitration for Fiscal Year 2016

The RLA provides for both grievance and interest arbitration. Access to grievance arbitration, involving the interpretation or application of an existing collective bargaining agreement, is mandatory under the RLA. The Board has significant administrative responsibilities for the three sources of grievance arbitration in the railroad industry. These sources are the National Railroad Adjustment Board established under the RLA, as well as the arbitration panels established directly by the labor-management parties at each railroad (Public Law Boards and Special Boards of Adjustment). Grievance arbitration in the airline industry is accomplished at the various System Boards of Adjustment created jointly by labor and management at the parties' expense. The Board furnishes panels of prospective arbitrators for the parties' selection in both the airline and railroad industries. The NMB has substantial financial responsibilities for railroad arbitration proceedings in that it pays the fees and travel expenses of the arbitrators. Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

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

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

GRIEVANCE ARBITRATION CASELOAD

A chart reflecting the actual case numbers for FY 2016, estimated numbers for FY 2017, and the estimated five-year average, (FY 2012-2016), follows:

	FY 2016 Actual	FY 2017 Estimate	FY 2012 - FY 2016 Five year Average
Cases Pending at Start	6,240	7,432	3,883
Cases Docketed	4,754	4,620	4,605
Cases Closed	3,562	3,708	3,482
Cases Pending at End	7,432	8,344	5,006

Arbitration Highlights

The Office of Arbitration Services directed its attention to promoting a more efficient Section III process, thereby fostering faster resolution of minor disputes (grievances). The NMB made a well-received move in this regard during FY 2016 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. It is estimated that there will be 8,344 cases pending at the end of FY 2017 compared to 7,432 cases pending at the end of FY 2016. This will result in an increase of 912 cases. The increase is attributed to the filing of more grievances concerning the applicability of certain provisions of the agreement covering the Class I freight railroads.

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

During FY 2016, the NMB revised the Arbitrators Workspace, which has been in operation for several years. The Arbitrators Workspace is a web based information system which gives arbitrators online access to their case information. This system is used by the arbitrators to request work and submit requests for compensation for work. The Arbitrators Workspace replaced numerous hard-copy forms.

Arbitrators are able to use the AWS to schedule their work on the cases. The agency added this fiscal year a section which provides update information and tips on the AWS system. A new Arbitrator Work Space System User Guide was created and placed on the NMB website.

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

The revised Arbitrators' Workspace now closes cases quicker and shortens the time for the adding of cases. The level of grievance activity handled through the NMB Arbitration program in FY 2016 exceeded its level when compared to the activity in FY 2015. During FY 2016, the parties brought an estimated 4,754 cases to arbitration compared to 3,809 cases in FY 2015. In FY 2016, an estimated 3,562 cases were closed compared to 2,702 in FY 2015, leaving 7,432 cases pending at the end of FY 2016.

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

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

ANNUAL CASE AUDIT

In June 2016, the NMB conducted an intensive audit of all pending cases before Public Law boards and Special Boards of Adjustment. The Agency provided the Class-I freight railroads, commuter railroads, regional railroads and all labor organizations representing railroad employees with a list of cases pending on these boards. The feedback from the audit enhanced the accuracy of the NMB case management system.

ALTERNATIVE DISPUTE RESOLUTION IN THE RAILROAD INDUSTRY

The NMB actively promoted grievance mediation as an alternative means of dealing with grievances in the railroad industry by reaching out to the largest Class-I freight carriers and the labor organizations. During FY 2016, Arbitration Services made presentations at a meeting of Class-I freight railroads and the labor organizations.

The NMB anticipates continuing this initiative during FY 2017. The NMB had several grievance mediation cases with carriers in the railroad industry during 2016.

ARBITRATOR PRODUCTIVITY

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

The Agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. The NMB used the website to keep the parties and the public informed regarding Section III activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. In FY 2016, the agency posted additional information on the AWS System on the NMB website. The Arbitrator Caseload Report was improved. The report shows by arbitrator, grievance cases of railroad employees the parties have chosen to pursue. It also indicates whether a case is late (i.e., a decision has not been rendered within 3 months of when a case was heard by the arbitrator). The Arbitrator Caseload Report is real-time in that it has a direct link to an NMB database reflecting updates as they are made by Arbitration Services staff. The availability of information on the website reduces the staff time which ordinarily would be required to respond to questions and requests. The NMB has also placed an NMB National Railroad Adjustment Board Open Case Report on the website. This report lists all of the open cases at the NRAB. With this report and the Arbitrators Caseload Report, the NMB's entire Section III caseload is on the NMB website (www.nmb.gov).

ESTABLISHMENT OF THE 60 DAY AND 120 DAY RULE

During this fiscal year, the NMB implemented procedures to expedite the processing of cases. When a case is assigned to an arbitrator, within 60 days the case must have been decided and the award submitted or the case heard by an arbitrator or 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.

KNOWLEDGE STORE

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

ARBITRATION INFO SERIES

During FY 2016, the Office of Arbitration Services commenced a new info series on Arbitration and Section 3 topics. Using the NMB's Lyceum, the NMB posted several

information film segments on various topics and issues in arbitration under the Railway Labor Act.

Forecast for FY 2017, FY 2018, and Beyond

The NMB projects that the number of cases pending at the end of FY 2017 and FY 2018 will increase. The estimated cases for FY 2017 are based on a projection using the current caseload. The forecast for FY 2018 is driven by two assumptions: that the number of newly docketed cases will be 4,605, which is the five year average for new cases; and, that the number of closed cases will be 3,482, the five year average for closed cases.

The following chart reflects the actual case numbers for FY 2016 and estimated case numbers for FY 2017 and FY 2018:

	FY 2016 Actual	FY 2017 Estimated	FY 2018 Estimated (based on 5 year average)
Cases Pending at Start	6,240	7,432	8,344
Cases Docketed	4,754	4,620	4,605
Cases Closed	3,562	3,708	3,482
Cases Pending at End	7,432	8,344	9,467

FY 2018 Arbitration Performance Goals

Arbitration Strategic Plan

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

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

FY 2016 Accomplishment: An audit was conducted of the administrative caseload processes, and procedures governing public law boards and system boards of adjustments were reviewed with the goal of streamlining. Procedures at the NRAB were also reviewed. Grievance mediation/arbitration was introduced to successfully resolve several aged cases at the NRAB.

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

FY 2016 Accomplishment: NMB worked with the outside professional associations to increase the diversity of its applicants for the NMB's Arbitrators roster. NMB participated in an arbitrator training program with Dominican University and several railroads and labor organizations to introduce more arbitrators to railroad arbitration

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

FY 2016 Accomplishment: The NMB met with the Arbitration Forum several times during FY 2016 to discuss innovation to improve the program. NMB also continued its review of all grievance mediation cases.

Office of Administration

Funding (in thousands) and FTE			
FY 2017 Enacted		FY 2018 Request	
\$	FTE	\$	FTE
1,092	7	1,105	7

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

Overview of Administration for Fiscal Year 2016

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

Highlights of Administration during Fiscal Year 2016

HUMAN CAPITAL

OA continues to utilize online services in the personnel arena, which increased the efficiency and effectiveness, and the results of which can be seen in the agency hiring process. For internal posting, the NMB routinely completes the hiring process within 30 days. In cases involving delegated examining positions, the NMB continues to show movement toward the 80 day standard process. The NMB continues to use the E-verify system to ensure that all new appointees are eligible to work.

With the 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, stress career development, including details and shadow assignments, as a way to broaden skills and prepare for job transitions. The agency uses internal details when possible to broaden skills and give staff exposure to a range of work possibilities within the agency.

The NMB has devoted more attention and resources to training and has provided meaningful training programs opportunity for our employees. OA worked closely with the Bureau of Fiscal Services to procure subscriptions to Manager Advantage

for the supervisor and managers. Manager Advantage is online information service for managers and supervisors. The information based on case law, statutes and regulations. It provides extensive federal policy and guidance for managers and supervisors. This information is obtained by LRP's experienced attorney editors and senior editorial staff who have gathered and then converted into the information 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 all from one definitive source. In July 2015, OA provided the all the NMB managers and supervisors Managers Advantage orientation training. OA is working with the Office of Personnel Management and the Department of Interior to improve NMB's human capital operations and payroll. This will continue the NMB's objective of providing all its services electronically.

INFORMATION TECHNOLOGY

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

Federal Agencies are required to provide annual computer security awareness training for employees and contractors. Security awareness efforts are designed to change behavior or reinforce good security practices by focusing attention on security. In November 2015, the NMB kicked off its Cyber Awareness Challenge security training using a web-based training offered by the Department of Defense.

CONTINUITY OF OPERATIONS

The NMB participated in FEMA's Eagle Horizon 2016 (EH 2016), which was conducted as part of the National Exercise Program (NEP) Capstone Exercise on May 16-17, 2016. It was a mandatory, full-scale continuity exercise for all Federal Executive Branch Departments and Agencies. 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 2016, 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 2016 was "green." This was NMB's first overall "green" rating since 2009.

FINANCIAL PERFORMANCE

The NMB has continued the agreement with the Bureau of Fiscal Services (BFS) for financial management services. This agreement affords the NMB with the ability to

have at our fingertips up-to-date financial information that can be used to make efficient financial decisions. The OA provides budget planning, budget development, and oversight of budget execution. In addition, OA is responsible for the maintenance of the Agency's core accounting system; financial reporting to the Office of Management and Budget (OMB) and Treasury; payments to vendors for goods and services received; issuing bills; and the preparation of the Agency's financial statements which are audited on an annual basis. The NMB continues to work with an outside firm (Allmond & Company) to audit its financial statements. For the nineteenth 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.

PROCUREMENT

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

In Fiscal year 2016 there were improvements substantially exceeding the Small Business Administration's Government-wide goal to ensure that small businesses get their fair share of work with the federal government by awarding the following entities:

- Small Business Goal 5 percent – Actual awards 11.97 percent
- Small Disability Business Goal 3 percent – Actual awards 10.83 percent
- Women-Owned Business Goal 5 percent – Actual awards 2.99 percent

TRAVEL

The NMB currently uses the Concur Government Edition (CGE) Travel Services. CGE is an electronic online system which reduces the per-ticket cost for travelers. This system provides an electronic process for authorization, vouchers, and reimbursement. The NMB continued its agreement with Duluth Travel Inc., to serve as the agency's Travel Management Company.

ELECTRONIC GOVERNMENT

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

NMB CORPORATE MEMORY

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

NMB KNOWLEDGE STORE

NMB staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and collective bargaining contracts. During FY 2016, the NMB completed development of a new Knowledge Store interface that speeds recovery of documents, improves the search engine, makes it possible for parties to engage in "direct deposit" of new cases, and frees the data to reside in the new cloud environment created by the agency.

SUSTAINABILITY

The National Mediation Board is committed to reducing greenhouse gases in accordance with Executive Order 13514 (E.O.). During 2016, 63 percent of the NMB employees regularly used public transportation. The Agency provides Alternative Work Schedules (AWS) and Telework programs to its employees to reduce the number of commuters. Currently, 38 out of 44 employees participate in the Smart Benefits program for public transportation. We also purchased new environmentally efficient copiers that generate 90 percent less waste than traditional copiers.

FY 2018 Administration Performance Goals

Administration Strategic Goal

To support the program missions of the agency and provide outstanding

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

FY 2016 Accomplishments: The Office of Administration responded to all requests for assistance or service from internal and external customers as soon as received. In addition, new Employee Orientation training was completed for each new employee.

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

FY 2016 Accomplishments: The NMB worked with BFS to ensure that required financial reporting is prepared and submitted timely. The NMB worked with BFS to ensure that 99.1% of payments were paid timely and accurately.

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

FY 2016 Accomplishments: The NMB has an agreement with BFS to handle the agency's financial management system, and the agency integrated PRISM (a web based procurement system) into its procurement process. The NMB works with the BFS on a regular basis to ensure that the agency's quarterly apportionment is not exceeded.

Goal 4: Improve agency efficiency and public communications through cost effective information and communications technology improvements, including implementing Enterprise Architecture (design, secure and document) the emerging cloud, mobile, and other mechanisms.

FY 2017 Accomplishments: The NMB completed its transition into the cloud environment for e-mail, calendars, contacts, and records. With this change, the NMB eliminated the majority of its in-house servers and made possible a revision and reduction in price of its network support contract.

Goal 5: Continue to ensure that NMB Information is secure while maintaining a government-leading information and communication technology system.

FY 2016 Accomplishments: The NMB ensures that all information that contains Private Personnel Information (PPI) is password protected when transmitted electronically.