

**NATIONAL MEDIATION BOARD  
FISCAL YEAR 2022  
OFFICE OF MANAGEMENT AND BUDGET SUBMISSION  
MAY 2021**



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## **EXECUTIVE SUMMARY**

The National Mediation Board (NMB) presents its justification supporting the Fiscal Year (FY) 2022 budget request of \$14,542,000. 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-micro agency (51 FTE's) 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 \$9,300,000 for personnel compensation and benefits. Included in this amount is \$1,200,000 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 (RLA), and remain in compliance with prior audits 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 \$5,242,000 includes the \$400,000 set aside for the Presidential Emergency Boards (PEB) and all the remaining object classifications for NMB operations.

The NMB continues to address previous year findings by recent GAO reports regarding NMB's information security and privacy policies, including Cloud services. The NMB has made significant progress on these findings and recommendations by GAO in FY 2020 and FY 2021, to date, including those relating to FedRAMP authorization requirements. Recently, the NMB made substantial strides in better securing its information technology by taking on numerous actions to meet Federal IT security requirements and industry best practices, and bring the Agency into compliance with existing mandates. NMB staff upgraded legacy applications running on obsolete software, implemented agency-wide website content filtering and anti-phishing, and performed patch upgrades to its systems and networks to ensure continuity of operations. NMB also rewrote and upgraded its legacy Arbitrator Workspace System to a FedRAMP approved Software as a Service solution which now includes multifactor authentication and a more scalable infrastructure. NMB is now in the process of deploying another FedRAMP solution to manage its endpoints and to ensure system configuration are secure and patches are up to date. Through these new technology upgrades NMB improved the reliability and security of its information technology to better serve the public.

In order to ensure that cases are settled in a timely manner, and to reduce the overall cost of arbitrating "minor disputes" in the railroad industry, the NMB has for the past few years encouraged the parties to take advantage of grievance mediation (GM) as a precursor to formal arbitration. The NMB GM Ambassador Program and the ongoing efforts by the Board Members and NMB staff have resulted in significant cost savings for the agency.

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 covid-19 driven pandemic telework and social distancing. NMB implemented the first all-electronic records program and was the first Federal agency to move completely to a secure cloud for all of its business systems. Use of GM and other innovative approaches to resolve minor disputes has allowed the agency to help the parties resolve outstanding disputes at a lower per-case cost than ever before. This spirit of innovation ensures that the NMB will continue 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.

Sincerely,

A handwritten signature in black ink that reads "Kyle Fortson". The signature is written in a cursive, slightly slanted style.

Kyle Fortson, Chairman

# **NMB MISSION STATEMENT**

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

The National Mediation Board 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.

## **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 *\$14,542,000*. (Department of Labor, Health and Human Services and Education, and Related Agencies Appropriations Act, 2022).

## NMB's Appropriation History

<b>Fiscal Year</b>	<b>Budget Estimate to Congress (\$)</b>	<b>House Allowance (\$)</b>	<b>Senate Allowance (\$)</b>	<b>Final Appropriation (\$)</b>	<b>Public Law Citation</b>
2008	12,242,000	12,992,000	12,992,000	12,685,000	110-161
2009	12,432,000	12,992,000	12,992,000	12,992,000	111-8
2010	13,434,000	12,992,000	13,934,000	13,463,000	111-17
2011	13,772,000	14,972,000	13,772,000	13,436,074	112-10
2012	13,961,000	13,436,000	13,436,000	13,410,606	112-74
2013	13,530,000	13,411,000	14,411,000	12,709,000	113-6
2014	13,347,000	N/A	13,384,000	13,116,000	113-32
2015	13,227,000	13,108,734	13,108,734	13,227,000	113-235
2016	13,230,000	13,230,000	12,600,000	13,230,000	114-113
2017	13,300,000	13,300,000	13,800,000	13,800,000	115-31
2018	13,205,000	13,500,000	13,800,000	13,800,000	115-141
2019	13,205,000	13,800,000	13,800,000	13,800,000	115-245
2020	13,800,000	15,800,000	N/A	14,050,000	116-94
2021	13,900,000	14,300,000	N/A	14,300,000	116-260
2022	14,542,000	TBD	TBD	TBD	TBD

# SUMMARY OVERVIEW

## National Mediation Board

The National Mediation Board requests \$14,542,000 for its total program expenses for FY 2022 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 and Personnel requests)

#### **Financial Summary**

Fiscal Year 2020 Enacted Level	\$14,050,000
Fiscal Year 2021 Enacted Level	\$14,300,000
Fiscal Year 2022 Request Level	<u>\$14,542,000</u>

#### **Personnel Summary**

FY 2020 Actual – FTE	45
FY 2021 Request – FTE	51
FY 2022 Request - FTE	51

The NMB is continuing with plans to hire the remaining critical positions in FY 2021.



**PROGRAM AND FINANCING SCHEDULE**  
(In Thousands of Dollars)

<b>Obligations by Program Activities</b>	<b>FY 2020 Actual</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
Mediation Services	\$8,529	\$8,280	\$8,380
Representation Services	\$2,207	\$2,673	\$2,773
Arbitration Services	\$2,866	\$2,947	\$2,989
Emergency Disputes	\$0	\$400	\$400
<b>Total Obligations</b>	<b>\$13,602</b>	<b>\$14,300</b>	<b>\$14,542</b>
<b>Budgetary Resources Available for Obligation</b>			
New budget authority (gross)	\$14,050	\$14,300	\$14,542
New obligations	(13,602)	(14,300)	(14,542)
Unobligated balance, expiring	\$450	\$0	\$0
<b>New Budget Authority (Gross), Detail:</b>			
Appropriation	\$14,050	\$14,300	\$14,582
Appropriation permanently reduced	0	0	0
Appropriation (total discretionary)	\$14,050	\$14,300	\$14,542
<b>Net Budget Authority and Outlays:</b>			
Budget Authority, gross	\$14,050	\$14,300	\$14,542
Actual Offsetting Collections	\$0	0	0
Recoveries of Prior Year Paid Obligations	\$0	0	0
Budget Authority (net)	\$14,050	\$14,300	\$14,542
Outlays (net)	\$12,572	\$13,350	\$13,750

### Personnel Summary

	<b>FY 2020 Actual</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
Total # of Full-Time Employees	45	51	51
Full-Time Permanent	39	45	45
Full-time Other	6	6	6
Total Employment, end of year (FTE)	45	51	51
Average GS Grade	13.7	13.8	13.9
Average GS Salary	\$127,000	\$129,000	\$132,000
Senior Executive Service (SES)	1	2	2
Average SES Salary	\$165,000	\$169,000	\$172,500
Executive Level Positions	3	3	3
<b>Average Salary of Executive Level positions</b>			
Level 3, Chairman	\$168,400	\$168,400	\$168,400
Level 4, Board Members	\$158,500	\$158,500	\$158,500

**BUDGET OBJECT CODE CLASSIFICATION**  
(In Thousands of Dollars)

	<b>FY 2020 Actual</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
<b>Personnel Compensation</b>			
Full-time permanent	\$4,750	\$5,850	\$5,950
Special personnel services payments	\$1,975	\$1,200	\$1,200
<b>Total Personnel Compensation</b>	<b>\$6,725</b>	<b>\$7,050</b>	<b>\$7,150</b>
Civilian Benefits	\$2,200	\$2,100	\$2,150
Benefits for Former Personnel	\$0	\$0	\$0
Travel & Transportation of Persons	\$50	\$140	\$250
Transportation of Things	\$2	\$2	\$2
Rental Payments to GSA	\$1,450	\$1,460	\$1,465
Communications, Utilities, and Misc. Charges	\$90	\$100	\$100
Printing & Reproduction	\$2	\$2	\$2
Other Services	\$2,938	\$2,931	\$2,848
Supplies & Materials	\$45	\$65	\$125
Equipment	\$100	\$50	\$50
<b>Subtotal, Obligations</b>	<b>\$13,602</b>	<b>\$13,900</b>	<b>\$14,142</b>
PEB	0	400	400
<b>Total Obligations</b>	<b>\$13,602</b>	<b>\$14,300</b>	<b>\$14,542</b>

**DETAILED EXPLANATION OF CHANGES  
BY OBJECT CLASS FOR FISCAL YEAR 2022**

National Mediation Board  
(In Thousands of Dollars)

**Personnel Compensation and Benefits**

FY '21	FY '22	Net Change
\$9,150	\$9,300	\$+150

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 \$9,300 includes funding for 51 career staff, and includes the proposed 2.7% pay increase in 2022. These funds support salary compensation for the Board, the three program areas (Arbitration, Mediation, and Legal Representation) and the three program support areas (Administration, Fiscal Services, and Information Services).

**Travel and Transportation of Persons**

FY '21	FY '22	Net Change
\$140	\$250	\$+110

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

**Transportation of Things**

FY '21	FY '22	Net Change
\$2	\$2	\$0

The requested amount will cover the cost of commercial courier services used by NMB staff.

**Rental Payments to GSA (Rent)**

FY '21	FY '22	Net Change
\$1,460	\$1,465	+\$5

This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. In addition, the cost of leasing the office space in Chicago for the National Railroad Adjustment Board is in this category.

**Rent, Communications, and Utilities (RCU)**

FY '21	FY '22	Net Change
\$100	\$100	\$0

This category covers funds for the use of commercial, local and long distance telephone services, and payment to GSA for after-hour utilities.

**Printing and Reproduction**

FY '21	FY '22	Net Change
\$2	\$2	\$0

This category covers printing, reproduction, binding and related composition operations of the Board.

**Other Services**

FY '21	FY '22	Net Change
\$2,931	\$2,848	\$-83

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.

**Supplies and Materials**

FY '21	FY '22	Net Change
\$65	\$125	+\$60

This category provides funding to purchase general office supplies, IT supplies, subscriptions, and government publications. Additionally, COVID-19 office supplies, etc. will be purchased.

**Equipment**

FY '21	FY '22	Net Change
\$50	\$50	\$0

This category provides for the equipment needs of the agency including hardware and software for information technology requirements, telecommunication equipment as well as office furniture purchases.

**Presidential Emergency Board**

FY '21	FY '22	Net Change
\$400	\$400	\$0

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.

**\$14,300 \$14,542 TOTAL FOR ALL OBJECT CLASSES**

## **PROGRAM DESCRIPTIONS**

### **OFFICE OF THE BOARD**

<b>Funding (in thousands) and FTE</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
\$	990	1,000
FTE	7	7

\*The amounts listed above reflect personnel compensation and benefits.

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 most of the day-to-day oversight and administration to the departmental directors and the General Counsel. The departmental directors and General Counsel direct the program areas, which include: Office of Mediation Services (OMS), Office of Legal Affairs (OLA), and Office of Arbitration Services (OAS). The departmental directors also direct the operation support offices of the Agency including, the Office of Administration (OA), the Office Fiscal Services (OFS) and Office of Information Services (OIS).



## **PRESIDENTIAL EMERGENCY BOARDS**

### ***Overview of Fiscal Year 2020***

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.

**Highlights of Fiscal Year 2020**

No PEB’s were established during fiscal year 2020.

**Forecast for FY 2021, FY 2022, 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 2020 and estimated case numbers for FY 2021 and FY 2022:

	FY 2020 Actual	FY 2021 Estimated	FY 2022 Estimated
Emergency Board Sec. 160	0	1	1
Emergency Board Sec. 159A	0	1	1

## OFFICE OF MEDIATION SERVICES

Funding (in thousands) and FTE	FY 2021 Enacted	FY 2022 Request
\$	2,150	2,200
FTE	14	14

\*The dollar amounts listed above reflect personnel compensation and benefits.

### Mediation Overview

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

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

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

A flow-chart of mediation procedures can be found in the Mediation section of the NMB website at [www.nmb.gov](http://www.nmb.gov).

## **Mediation Highlights**

Mediation for collective bargaining agreements was successful in FY 2020. 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 passenger and freight carriers, and in the rail sector with freight and commuter lines. Challenges at the bargaining table included consolidating agreements after mergers, and dealing with health care changes.

**Settlements:** Settlements were reached with American Airlines/ TWU-IAM, Mechanics and Related, Fleet Service, and Stock and Stores employees. These three cases were the last of the legacy carrier merger negotiations. Foreign-flag air carrier settlements were reached with British Airways/ IAM Customer and Passenger Service employees, and Maintenance (Engineering)employees;, and Norwegian Air /AFA Flight Attendants. Other notable airline settlements include: Air Wisconsin Airlines ALPA Pilots, and AFA Flight Attendants; Hawaiian Airlines/ AFA Flight Attendants, and Sun Country/ TWU Dispatchers. Notable railroad settlements included commuter rail agreements with SEPTA/IAM Machinists; PATH/SMART-TD Conductors, and TCU Supervisors; Keolis Commuter Services and three of its unions – BRS, IBEW, and ATDA; and Metro-North Railroad (MTA) / ACRE Locomotive Engineers. Additionally, a number of agreements were reached on regional, short line, and switching/terminal railroads such as the Terminal Railroad Association of St. Louis/SMART-TD Train and Engine Service employees.

**Pending Cases:** Fifty cases remained open at the close of FY 2020. In the airline sector, legacy carriers are reaching amendable dates with many of their unions in 2020. Due to COVID-19 and the severe repercussions to the financial condition of the airline industry, many of the expected mediation cases will be delayed due to the economic recovery efforts of the industry. Delta Air Lines / ALPA Pilots are currently in mediation. In the airline catering sector, among other cases, the NMB is working with Gate Gourmet / IBT-HERE; and LSG Sky Chefs / UNITE HERE. In the area of commuter rail, the NMB is working with PATH and eight of its unions to reach agreements, and with Metra and its unions on 13 cases.

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 2020, estimated case numbers for FY 2021, and the five-year average, FY 2017 – FY 2021 follows:

MEDIATION CASES	FY 2020 Actual	FY 2021 Estimate	FY 2017 - FY 2021 Five Year Average
Cases Pending Start	66	50	66
Cases Docketed	25	22	30
Sum	91	72	96
Cases Closed	41	30	32
Cases Pending End	50	42	60

### **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 training, facilitation, grievance mediation, and 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 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 methods would result in fewer cases progressing to statutory mediation, reducing and narrowing the issues that the parties bring to mediation, and positively affecting working relationships among the parties.

A complete description of and an application for ADR Services may be found on the Agency’s web site at [www.nmb.gov](http://www.nmb.gov).

## **ADR Highlights**

ADR personnel continued to develop and deliver a wide range of services, including training, facilitation, grievance mediation, facilitated problem solving and use of appropriate technology to increase the efficiency. 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 various training programs. NMB Mediators are skilled at instructing, and regularly train parties as they began facilitation or grievance mediation cases, or when they encountered problems during negotiations.

**Facilitation:** Facilitation plays an important role in helping parties to reach common ground. It offers carriers and unions a way to reach agreement outside the stricter confines of traditional mediation. With each experience, the NMB's knowledge base grows, and best practices from the process increase to the parties' benefit.

**Grievance Mediation:** Interest in grievance mediation continues to grow with the parties we serve in both the air and rail sectors. Activity in the rail sector in particular has grown with the ADR Ambassador program, which pairs a Mediator with a particular rail carrier and its unions to advance alternatives to arbitration. Grievance mediation also serves to solve problems before they become grievances, and helps to clarify issues ahead of bargaining.

**Technological Dispute Resolution:** Technology continues to play an important role in resolving disputes in the air and rail industries. Especially during the pandemic when timing is critical, or when information exchange is beneficial, video conferencing technology has helped to provide virtual face to face meetings to allow Mediation sessions to continue.

**Pending Cases:** The ADR component of our work includes activities such as training, facilitation, grievance mediation and outreach endeavors. Much of that case work opens and closes in quick succession, however, grievance mediation cases stay open for many years. The Agency considers that a success because it means the parties find value in the process that helps them to find resolution to the individual disputes that we work on. Mediators take on a docket of claims or grievances at each session and work them to conclusion. On any given property, one grievance may represent hundreds of claims so the resolution of one grievance can significantly reduce the number of claims and grievances that require resolution.

A chart reflecting the actual ADR case numbers for FY 2020, estimated case numbers for FY 2021, and the five-year average, FY 2017 – FY 2021 follows:

ADR CASES	FY 2020 Actual	FY 2021 Estimate	FY 2017 - FY 2021 Five Year Average
Cases Pending Start	54	57	50
Cases Docketed	29	15	36
Sum	83	72	86
Cases Closed	26	25	35
Cases Pending End	57	47	51

### **Forecast for Fiscal Year 2021 and 2022**

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, or parties may reach agreement in direct negotiations and never require NMB assistance. When they do, however, the circumstances of the dispute are often complex and the problems difficult to resolve.

The tables below indicate a slight decrease in mediation case numbers for FY 2021. In March 2020 the Pandemic caused all mediation cases to pause for a time period while everyone adjusted to this new environment. The Pandemic has brought economic devastation to the passenger airlines and passenger railroads. Survival became the focus of their business efforts. It would take several months and government financial assistance to keep these industries operating to serve the public. Both of these business sectors continue to suffer huge financial losses. Our mediation projections have been altered considerably, as many of the mediation applications we expected did not occur. The parties have been working with their employees to negotiate COVID mitigation scenarios to help their businesses and their employees. There were employee furloughs pending at all passenger airlines due to their necessary reduction in the amount of flying they were able to do. With the government assistance, furloughs were minimized at some airline and railroad companies. There were mediation cases that were already in process prior to the pandemic, and mediation did resume through the use of video conferencing. We have become very effective utilizing virtual meetings, however in most significant contract mediations it is still preferred and more effective to meet in person. The amenable date forecast remains the same for the 2021 and 2022.

The four largest airlines, Delta, American, United, and Southwest have started direct negotiations with their pilots. Together these four carriers represent more than 50,000 airline pilots. Given the size of the labor groups and the complexity of pilot agreements, we still anticipate they will be in active mediation near the end of 2021 and in 2022. These mediation cases will require extensive time and NMB resources in 2021 and continuing into 2022. Our forecasting also includes flight attendant mediation cases from American and Southwest, impacting more than 40,000 employees. In the Rail sector we anticipate mediation with National Handling which includes 32 carriers, 12 unions and 145,000 employees. In 2021 we had four commuter railroads move into mediation, each with 14-15 unions representing thousands of employees.

The tables also indicate a flattening in ADR activity and that has also been affected by the Pandemic. Cases already in Grievance mediation have proceeded as the parties appreciate the benefits it affords, and opt to meet quarterly or more often to resolve dockets of minor disputes. In the rail sector, a generational shift is occurring in the workforce that will mean new people in management and labor. Such a shift presents an opportunity to teach and train, and will contribute to the upward trend in that aspect of ADR activity in 2022. Our ADR Ambassador program has been effective in generating interest and activity in grievance mediation in the rail sector and will create new cases in FY 2021 with the expectation of additional cases in 2022.

The following charts reflect the actual case numbers for FY 2020, and estimated numbers for FY 2021 and FY 2022 for both Mediation and ADR Cases:

MEDIATION CASES	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Cases Pending Start	66	50	42
Cases Docketed	25	22	35
Cases Closed	41	30	20
Cases Pending End	50	42	57



ADR CASES	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Cases Pending Start	54	57	47
Cases Docketed	29	15	15
Cases Closed	26	25	10
Cases Pending End	57	47	52

## FY 2022 MEDIATION PERFORMANCE GOALS

### Mediation Strategic Goal

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

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

FY 2020 Accomplishments: NMB standards applicable to processing and managing cases involving major disputes were consistently met in FY2020. The NMB will continue to refine case processing with enhancements to 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 as advisors 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 cases.

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

FY 2020 Accomplishments: Through the use of Individual Development Plans (IDPs), each Mediator participated in training and development that met her or his individual needs. In addition, training covering industry-specific topics was conducted during each mediator meeting. Mediators attended virtual conferences as offered. Each of these provided targeted information and training that enhanced the skills Mediators bring to the table.

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

FY 2020 Accomplishments: The Agency continued to provide its negotiation training that was developed for air and rail parties to use to prepare for negotiations. Mediators continued to refine ADR strategies and techniques that addressed the unique needs of our parties especially in grievance mediation.

**Goal 4: Improve efficiency and effectiveness of NMB programs by utilizing technological resources.**

FY 2020 Accomplishments: The Agency continues to use technology for dispute resolution and offer its possibilities to our parties. Mediators made use of technology to remotely share information and language, and to discuss proposals. Technology has been helpful in continuing the mediation process when remote meetings are more efficient and in the best interest of the case.

## OFFICE OF LEGAL AFFAIRS / REPRESENTATION

<b>Funding (in thousands) and FTE</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
\$	1,370	1,400
FTE	9	9

\*The dollar amounts listed above reflect personnel compensation and benefits.

### ***Representation Overview***

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

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

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

The following chart reflects the actual case numbers for FY 2020, FY 2021 estimate, and FY 2022 estimate:

	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Cases Pending at Start	5	10	8
Cases Docketed	21	22	24
Cases Closed	16	24	26
Cases Pending at End	10	8	6

***Highlights during Fiscal Year 2020 and Fiscal Year 2021 to date***

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.

In FY 2020, the OLA staff closed **16** cases and also docketed **21** cases. To date in FY 2021, OLA has docketed **12** cases including a representation dispute involving approximately 14,000 employees. With the Agency resources requested for FY 2022, it is estimated that **26** 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 following case summary is an example of a system-wide representation investigation and election conducted by the NMB during FY 2020.

***ALASKA AIRLINES/VIRGIN AMERICA***

On December 30, 2016, pursuant to the NMB’s Merger procedures and NMB Representation Manual Section 19.3, Alaska Airlines and Virgin America (collectively the Carriers) notified the NMB that, on December 14, 2016, Alaska Air Group, Inc. (AAG), parent of Alaska Airlines, Alpine Acquisition Corp. (a wholly owned subsidiary of AAG), and Virgin America implemented their April 1, 2016 Agreement and Plan of merger, resulting in AAG’s acquisition of 100 percent of the outstanding shares of Virgin America.”

Subsequently, the Board investigated Alaska Airlines and Virgin America to determine whether the Carriers were operating as a single transportation system

for representation purposes under the RLA with respect to the crafts or classes of Flight Attendants, Pilots, Clerical, Office, Fleet and Passenger Service Employees and Dispatchers. See *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 24 (March 13, 2017)(Flight Attendants); *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 49 (April 6, 2017)(Clerical, Office, Fleet and Passenger Service Employees); *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 82 (May 5, 2017)(Pilots); *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 165 (June 15, 2017) (Dispatchers). These cases involved approximately 12,000 employees.

On August 15, 2019, the Aircraft Mechanics Fraternal Association (AMFA) filed an application requesting the NMB to determine whether Alaska Airlines and Virgin American were operating as a single transportation system for the craft or class of Mechanics and Related Employees. Based on the application of the NMB's well-settled single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that Alaska and Virgin America are a single transportation system with respect to the Mechanics and Related Employees craft or class. See *Alaska Airlines, Inc./Virgin America, Inc.*, 47 NMB 25 (October 24, 2019).

Following its single transportation system determination, the Board has also resolved the representation consequences with regard to the Mechanics and Related Employees craft or class. *Alaska Airlines Inc./Virgin America, Inc.*, 47 NMB 47 (December 18, 2019). After determining that the numbers of employees in the Mechanics and Related Employees craft or class at pre-merger Alaska and pre-merger Virgin America were not comparable, the Board extended AMFA's certification to cover the entire Mechanics and Related Employees craft or class on the merged carrier. This case involved approximately 1000 employees.

The Board had previously resolved the representation consequences with regard to the Flight Attendant, Clerical, Office, Fleet and Passenger Service Employees, Pilots, and Dispatchers crafts or classes. *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 63 (April 18, 2017)(Flight Attendants); *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 97 (May 8, 2017)(Clerical, Office, Fleet and Passenger Service Employees); *Alaska Airlines, Inc./Virgin America, Inc.*, 44 NMB 152 (June 5, 2017) (Pilots); *Alaska Airlines/Virgin America* 44 NMB 195 (August 24, 2017) (Dispatchers).

### ***Bristow Group, Inc. d/b/a Bristow US LLC./Era Group, Inc.***

In FY 2020-2021, the NMB also resolved two representation disputes arising out of the merger of Bristow US and Era Group, two of the largest helicopter operators providing offshore oil and gas transportation as well as search and rescue and aircraft support operations. After its services were invoked pursuant to applications filed by the Office and Professional Employees International Union (OPEIU), the NMB determined that a single transportation system existed with respect to the crafts or class of Mechanics and Related Employees and the craft or class of Pilots. *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 37 (December 2, 2020) and *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 51 (December 2, 2020). OPEIU was the certified representative of the employees in those two crafts or classes at the pre-

merger Bristow. In each of those cases, the Board determined that the number of employees in the crafts or class of Mechanics and Related Employees and the craft or class Pilots at pre-merger Bristow and pre-merger Era were comparable. Accordingly the Board authorized elections for the Pilot craft or class and the Mechanics and Related Employees craft or class at the merged carrier. *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 70 (January 27, 2021) and *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 75 (February 10, 2021). Both elections resulted in dismissals. *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 76 (March 12, 2021) and *Bristow Group, Inc./Era Group, Inc.*, 48 NMB 77 (March 26, 2021).

## **DIRECT DECERTIFICATION**

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

The Board conducted three decertification elections in FY 2020: *Kalitta Charter II*, 47 NMB 54 (January 24, 2020)(Flight Deck Crewmembers); *Brownsville & Rio Grande International Railway*, 47 NMB 70 (April 15, 2020)(Maintenance of Way); and *Brownsville & Rio Grande International Railway*, 47 NMB 74 (March 27, 2020)(Carmen). To date in FY 2021, one decertification election has been held: *Brownsville & Rio Grande International Railway*, 48 NMB 65 (December 30, 2020)(Locomotive Engineers) Each of these elections resulted in the decertification of the incumbent representative, the employees in the craft or class becoming unrepresented, and the application of the two year election bar.

On March 31, 2021, the United States District Court for the District of Columbia upheld the NMB's rulemaking. The Court found that the RLA does not prohibit the direct decertification method adopted by the NMB and that the Board's interpretation is both reasonable and the better reading of the RLA. The Court also concluded that the NMB explained the reasons for its two year election bar and adequately responded to opponents' public comments. Accordingly, the Court found that the Final Rule's two year election bar following decertification is not arbitrary and capricious. *Transportation Trades Department, AFL-CIO v. National Mediation Board*, Case No. 1:19-cv-03107-CJN (D.DC March 31, 2021).

## JURISDICTIONAL OPINIONS

In FY 2018, NMB reaffirmed its traditional two-part test for determining whether an entity is a derivate carrier subject to the RLA and its reliance on multiple factors to establish the required control by an air or rail carrier. *ABM-Onsite Services*, 45 NMB 27 (2018). In FY 2020, the NMB continued to receive a number of jurisdictional referrals from the National Labor Relations Board (NLRB). In view of the National Labor Relations Act (NLRA) specific exemption of employers covered by the RLA, the NLRB follows a longstanding practice of referring cases to the NMB in instances where the jurisdictional issue is raised. In these cases, the NMB reviews the record provided by the NLRB and provides an opinion letter regarding whether the employer in question is, in the NMB's opinion, covered by the RLA.

The following chart reflects the actual number of jurisdictional opinions issued for FY 2020, and the estimated case numbers for FY 2021 and FY 2022:

	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Jurisdictional Opinions	4	8	10



## **FY 2022 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 Board.

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

FY 2020 Accomplishments: In most cases, OLA responded to representation applications within two business days of receipt by the NMB; assigned an investigator within two 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 2020 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 2020 OLA staff took classes related to the Freedom of Information Act (FOIA), records management, government ethics, the Railway Labor Act, federal sector personnel law, 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 2020 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. OLA attorneys gave presentations on the Railway Labor Act, Ethics, 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, which completed the fourth edition of this treatise this year.

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

FY 2020 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.

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

FY 2020 Accomplishments: OLA conducts semi-annual reviews of the Representation Manual and web site, updating where appropriate.

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

FY 2020 Accomplishments: OLA continued to investigate the use of voice recognition software, and other cost-and-time-saving mechanisms for taking employee statements during interference investigations, and when drafting representation determinations.

## OFFICE OF ARBITRATION SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
\$	1,850	1,875
FTE	6	6

\*The dollar amounts listed above reflect personnel compensation and benefits, including arbitration referee expenses.

### ***Arbitration Overview***

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 (NRAB) established under the RLA, as well as the arbitration panels established directly by the labor-management parties at each railroad (Public Law Boards (PLB) and Special Boards of Adjustment (SBA). 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**

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.

**Grievance Arbitration Caseload**

A chart reflecting actual case numbers for FY 2020, and estimated numbers for FY 2021 and FY 2022.

	FY 2020 Actual	FY 2021 Estimate	FY 2022 Estimate
Cases Pending at Start	3,698	4,887	6,049
Cases Docketed	4,881	5,054	5,559
Cases Closed	3,692	3,892	3,792
Cases Pending at End	4,887	6,049	7,816

**Arbitration – Section 3 Highlights**

FY 2020 was a year marked by significant changes in the Office of Arbitration Services. There was a leadership change with the retirement of the long-tenured Director in October 2019. In March, the new Director was appointed in the midst of the pandemic. The COVID crisis shifted all operations to a virtual environment. As a consequence, the administrative process for docketing and assigning cases became entirely electronic which allows greater efficiency in processing. In April, the NRAB instituted electronic procedures for filing Notices of Intent and the NMB designed a method for the parties to utilize Google to upload their submissions to a secure Google space, with a link sent to the appropriate Arbitration Staff Assistant, who used the secure link to download the submission and related case material to the appropriate docket file.

Despite the shift to full telework, the Office of Arbitration continued its efforts in promoting a more efficient Section 3 process, and faster resolution of minor disputes (grievances). The OAS consistently monitors the backlog of grievance

arbitration cases and routinely recommends the use of alternative methods such as grievance mediation, which is done in partnership with the Office of Mediation Services.

At the beginning of FY 2020, 3,698 cases were pending in Section 3. Throughout the fiscal year, 4,881 new cases were added. At the conclusion of the fiscal year, a total of 3,692 cases were closed, while 4,887 cases remain pending.

The Office of Arbitration was successful in increasing the diversity of arbitrators available to hear and decide cases. More woman are now represented in the ranks of active arbitrators.

During FY 2020, the NMB completed the redesign of the Arbitrators Workspace (AWS), which has been in operation for several years. As a part of that process, the prototype underwent robust testing from all internal and external users. 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 new Arbitrator Workspace will have a more user friendly interface and increased functionality for both NMB staff and arbitrators.

In anticipation of the new AWS, OAS is engaged in outreach with the parties to discuss opportunities to refine case tracking and subject code data. The Subject Code Project will begin in earnest in FY 2021 and will enable the department to generate a variety of reports and highlight developing trends, which may lead to more innovative solutions for the resolution of grievances.

The NMB continued its efforts to improve the arbitration of grievances under Section 3 of the Railway Labor Act by ensuring that: (1) the parties receive timely and outstanding arbitration services from the Board's staff and its contract arbitrators; (2) the Board uses technology to maximize efficiency (3) Board procedures are improved through a process involving public input; (4) 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.

**Removal of Non-progressed and Over-aged Cases:** The NMB continues the practice of removing over-aged cases which have not been processed by the parties from the NMB's case tracking system. Cases in our case management system which are not assigned to an arbitrator constitute an ongoing unfunded liability. The NMB's previous practice was to remove all cases three years and older which had not been progressed by the parties. During FY 2020, the NMB removed all

non-progressed and over-aged cases that were two years and older. The NMB will periodically review its caseload and remove over-aged cases.

**Alternative Dispute Resolution in The Railroad Industry:** The NMB continues to advocate for the use of grievance mediation to resolve grievances that do not have significant operational impact or involve serious disciplinary matters. The parties in general are receptive to the process and many use it on a regular basis. However, this process was one of the many affected by the COVID pandemic and the abrupt switch to working remotely with a greater reliance on technology. Despite these challenges, more than 300 rail cases were resolved using grievance mediation in FY 2020.

Nevertheless, we continue to actively promote 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 labor organizations. While grievance mediation activity decreased in FY 2020 due to COVID-19, interest in the program remains high because its benefits are indisputable. Despite the pandemic, grievance mediation was used to settle more than 350 grievances in FY 2020.

The COVID crisis eliminated the ability to attend annual meetings and present the case for grievance mediation. The NMB anticipates continuing and in some instances expanding upon these initiatives during FY 2021 and FY 2022.

**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 3 activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. In FY 2020, the agency continued the posting of information on the AWS System on the NMB website. The Arbitrator Caseload Report was continued. 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 3 caseload is on the NMB website at [nmb.gov](http://nmb.gov)

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

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

### **Forecast for FY 2021 and FY 2022**

The NMB projects that the number of cases pending at the end of FY 2021 and FY 2022 will increase, in large part due to budget uncertainty. In FY 2022 the cases pending are likely to be consistent with the most recent full year budget for FY 2020. The estimate five year average for FY 2022 is 5,598, which is almost 10% higher than the estimate for FY 2021.

The following chart reflects the actual case numbers for FY 2020; the estimated case numbers for FY 2021 and 5-year average FY 2017 – FY2021:

	FY 2020 Actual	FY 2021 Estimated	FY 2017 - FY 2021 Five Year Average
Cases Pending at Start	3,698	4,887	5,918
Cases Docketed	4,881	5,054	4,727
Cases Closed	3,692	3,892	4,873
Cases Pending at End	4,887	6,049	5,772

## **FY 2022 ARBITRATION PERFORMANCE GOALS**

### **Arbitration Strategic Plan**

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

FY 2020 Accomplishments: 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. The new AWS system underwent robust testing by staff and the arbitrator community.

#### **Goal 2: Increase the diversity of active arbitrators serving the airline and railroad industries.**

FY 2020 Accomplishments: NMB increased the diversity of active arbitrators on the roster to include more woman regularly receiving assignments.

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



FY 2020 Accomplishments: The NMB worked to develop a new AWS system to enhance the process of requesting work, approving reports, and streamlining the payment process for arbitrators.

## OFFICE OF ADMINISTRATION

Funding (in thousands) and FTE	FY 2021 Enacted	FY 2022 Request
\$	485	500
FTE	4	4

\*The dollar amounts above reflect personnel compensation and benefits.

### ***Administration Overview***

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

### ***Highlights of Administration during Fiscal Year 2020***

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

With an aging workforce at the NMB, succession planning continues to be a challenge, but the Agency’s new Succession and Workforce Plan analyzes the NMB’s future staffing requirements and sets forth strategies for adequately recruiting, promoting, and retaining employees. NMB utilizes training plans, including Individual Development Plans (IDPs), departmental training plans, and career development, as a way to broaden skills and prepare for transition. The agency uses internal details when possible to broaden skills and to give staff exposure to a range of work possibilities within the Agency.

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

NMB managers, supervisors, and employees receive the Telework Fundamentals-Managers Training and the Telework Fundamentals-Employee training.

**Continuity of Operations:** The Federal Emergency Management Agency's (FEMA), did not conduct an Eagle Horizon 2020 (EH-2020), because of the Coronavirus Disease 2019 (COIVD-19) Pandemic.

Due to the lapse in appropriations, FEMA's NCP adjusted the planning construct for Eagle Horizon (EH-2019). Using a common scenario and framework provided by FEMA NCP, D/As conducted internal activities to test their devolution plans and communications systems and examine interdependencies prior to the full-scale NLE in 2020.

The NMB was required to activate its continuity plan, deploy continuity personnel to a continuity site, and perform essential functions. At the conclusion of EH-2019, participants, planners, and evaluation teams noted their observations and identified critical issues associated with the agency's continuity plans and programs. The NMB's overall rating for the EH 2019 was "green." This was NMB's fourth overall "green".

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

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

## **FY 2022 ADMINISTRATION PERFORMANCE GOALS**

### **Administration Strategic Goal**

Support the program missions of the agency and provide outstanding administrative services.

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

FY 2020 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: Attract and retain a high-performing workforce with the technical and professional skills needed.**

FY 2020 Accomplishments: The NMB worked with the Department of Interior to ensure that the each vacancy announcement reflects the technical and professional skills needed.

## OFFICE OF FISCAL SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
\$	820	840
FTE	6	6

\*The dollar amounts above reflect personnel compensation and benefits.

### **Fiscal Services Overview**

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

### ***Highlights of Fiscal Services during Fiscal Year 2020***

In FY 2020, the NMB continued to use the Bureau of Fiscal Services (BFS) for accounting and financial reporting requirements, contracting services, and E-travel. Using a federal Financial Management Line of Business Center of Excellence has significant benefits, including reduced overhead costs and shared knowledge of financial management practices throughout the Federal Government.

In addition, NMB uses these other federal government shared service providers for major administrative and financial services.

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

Included in the continued partnership with BFS, the NMB utilizes the electronic Contract Writing System, PRISM, to create purchase requisitions and orders for contracts and inter-agency agreements. A more streamlined RFP process, improved bid analysis, and further transforming contracting administration are just some of the benefits the NMB gains in using this system. It also ensures compliance with all applicable rules and regulations governing contracting.

In FY 2020 the NMB continued its use of the Concur Government Edition (CGE) Travel Services. Concur is a cloud-based expense and travel management software solution that provides an electronic process for travel authorizations, vouchers, and reimbursement to travelers, and reduces the overall per-ticket cost for travelers.

## **FY 2022 FISCAL SERVICES PERFORMANCE GOALS**

### **Fiscal Services Strategic Goal**

Support the missions of the agency and provide outstanding financial and accounting services, including payroll, audits, travel, and procurement.

#### **Goal 1: To provide timely, efficient, and responsible stewardship of the NMB's fiscal resources.**

FY 2020 Accomplishments: The NMB continues to work with the Bureau of the Fiscal Service (BFS), a bureau within the U.S. Department of Treasury, to ensure that required financial reporting is prepared and submitted timely. The NMB worked with BFS to ensure that over 99% of payments were paid timely and accurately in FY 2020, and continues on this track in FY 2021. All Office of Management and Budget financial reports and data collections in FY 2020 were submitted in a timely manner. The Office of Fiscal Services is committed to responding to timely requests from our internal and external customers. In November 2020, the NMB received another unmodified "clean" opinion on its financial statement and notes, with no significant deficiencies or material weaknesses from the Agency's independent auditor

#### **Goal 2: Ensure agency spending and budgets are transparent and provide the necessary support for each of the agency's missions throughout the entire fiscal year.**

FY 2020 Accomplishments: The NMB has an agreement with BFS to handle the agency's financial management system, and the agency integrates 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, and that all budget related reports and activities have been reported in a timely manner.

**Goal 3: Ensure agency compliance with all Office of Management and Budget (OMB) and Department of Treasury laws and regulations with respect to budget and financial reporting requirements, and implement proper internal controls.**

FY2020 Accomplishments: The NMB submitted all applicable financial reports, to date, and has continued to adhere to OMB Circulars A-11, A-123, and A-136. In FY 2020 the Agency the received another "Green" scorecard from the U.S. Department of Treasury for various reporting and reconciliation requirements and analyses.

**Goal 4: Enhance Training and Development of Fiscal Services Staff**

FY 2020 Accomplishments: Each OFS staff member updated their Individual Development Plan (IDP). Each year OFS employees meet with their manager to update or develop a plan to enhance career related skills. Training in records management and contracting courses were completed.

## OFFICE OF INFORMATION SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
\$	725	750
FTE	5	5

### ***Information Services Overview***

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

### ***Highlights of Information Services during Fiscal Year 2021***

**Arbitrator Workspace System:** The NMB replaced its legacy Arbitrator Workspace System with a new FedRAMP approved Software-as-a-Service Arbitrator Workspace System. This new system provides for robust business reports, an improved users interface, and is more secure and reliable. The new system was developed using Agile Methodology and will continue to be update as needed to ensure it continues to meet user needs.

**Information Security:** NMB made strides in better securing its information technology by taking numerous actions to meet Federal IT security requirements and industry best practices. NMB staff upgraded legacy applications running on obsolete software and completed the development of system security plans for its general support system and applications. NMB completed system security assessments and issued Authorization to Operate and Authorizations to Use for several of its systems.

**Virtual Private Network:** NMB in the process of rolling out a Virtual Private Network (VPN) solution for agency users to facilitate secure remote work. The VPN solution is in a FedRAMP approved infrastructure and provides security and scalability for NMB users. NMB has already begun deploying and training users to use this solution.



**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 now contains over 150,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and collective bargaining contracts.

**Electronic Government:** The NMB provides electronic access to all its policies, and the agency continues to use the NMB website to provide information to its internal and external customers. The website provides access to our internal customers by allowing them to access NMB forms and other pertinent information. NMB continued to update the website to improve reliability and to implement security measures.

## **FY 2022 INFORMATION SERVICES PERFORMANCE GOALS**

### **Information Services Strategic Goal**

Support the program mission of the agency and comply with intragovernmental requirements.

#### **Goal 1: Ensure compliance with regulations from the Department of Homeland Security and the National Archives.**

FY 2020/2021 Accomplishments: The Office of Information Services (OIS) completed several actions related to Cybersecurity and Infrastructure Security Agency (CISA) Emergency Directives, as well as compliance with several actions related to the bi-annual Federal Information Security Modernization Act (FISMA) metrics. In addition, the agency conducted an IT security assessment utilizing the DHS OIG Metrics. This assessment resulted in several recommendations and action items that will improve the agency's maturity in accordance with the Cybersecurity Framework.

#### **Goal 2: Maintain and update internal policies.**

FY 2020/2021 Accomplishments: NMB has begun to develop a comprehensive set of IT policies and procedures. NMB's IT Security policy is currently under review and is in the process of developing policies and procedures. NMB expects to reach a maturity level of 'Defined' in all 8 Function Domain areas as required by the Cybersecurity Framework once this work is completed.

#### **Goal 3: Maintain hardware/software architecture and configuration.**

FY 2020/2021 Accomplishments: To improve the security and maintainability of our office network, the agency implemented security patches to its network hardware and developed a secure baseline operating system image, based on Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIGs), to be deployed throughout the agency. The agency is also in the process of deploying its Virtual Private Network solution to facilitate secure remote work for its staff.

**Goal 4: Fully trained and technology-literate staff.**

FY 2020/2021 Accomplishments: OIS recruited and hired new staff to assist in meeting agency IT needs. OIS is now staffed with a fully trained and technology-literate staff.

**Goal 5: 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 2020/2021 Accomplishments: NMB rewrote and upgraded its legacy Arbitrator Workspace System to a FedRAMP approved Software as a Service solution which now includes multifactor authentication and a more scalable infrastructure. NMB is now in the process of deploying another FedRAMP solution to manage its endpoints and to ensure system configuration are secure and patches are up to date. Through these new technology upgrades NMB improved the reliability and security of its information technology to better serve the public.

**Goal 6: Continue to ensure that NMB Information is secure while maintaining a government-leading information and communication technology system.**

FY 2020/2021 Accomplishments: NMB implemented several emergency patches and upgrades to its information technology hardware and software. The NMB also completed system security plans and security assessments to issue Authorizations to Operate and is in the process of deploying technology to manage computer software upgrades and configuration baselines.

