

**NATIONAL MEDIATION BOARD  
FISCAL YEAR 2024  
CONGRESSIONAL BUDGET SUBMISSION  
MARCH 13, 2023**



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## **EXECUTIVE SUMMARY**

The National Mediation Board (NMB) presents its justification supporting the Fiscal Year (FY) 2024 budget request. This budget outlines the NMB's request of \$15,601,000.

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 first requests \$8,700,000 for personnel compensation and benefits. Additionally, the Agency requests \$1,250,000 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 \$5,651,000 includes the \$400,000 set aside for any potential Presidential Emergency Boards (PEB) and all remaining object classifications for NMB operations.

During FY 2022 and the first two quarters of FY 2023 the NMB successfully implemented nine out of the ten Government Accountability Office's (GAO) recommendations from previous years audits. These included areas of Organizational Climate Assessment, Travel Policy, Telework Policy, Rail Arbitration Backlog, Annual Appropriations Monitoring, Audit Protocols Process, and Information Technology Policies. Progress has continued with the three outstanding recommendations (Information Privacy, Information Security, and Cloud Services Authorization). The NMB will continue to prioritize these areas and allocate appropriate funding to resolve and implement any outstanding federal requirements. NMB is now in the process of deploying another FedRAMP solution for increased asset management for mobile, PC, and other devices. Through these new technology upgrades NMB improved the reliability and security of its information technology to better serve the public. In the coming months the NMB will need to build a new comprehensive system for its balloting process, an endeavor similar to the newly released Arbitrator Workspace System (AWS). Finally, in FY 2022, the NMB issued a comprehensive IT Security Policy that addressed previous GAO audit findings and brought NMB in compliance with several federal government mandates.

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 and increased telework. 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 continues to anticipate an increase in demand for its services from the parties.

Respectfully,

A handwritten signature in cursive script, appearing to read "Linda Puchala".

Linda Puchala, 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 *\$15,601,000*. (Department of Labor, Health and Human Services and Education, and Related Agencies Appropriations Act, 2024).

## NMB's Appropriation History

<b>Fiscal Year</b>	<b>Budget Request to Congress (\$)</b>	<b>House Allowance (\$)</b>	<b>Senate Allowance (\$)</b>	<b>Final Appropriation (\$)</b>	<b>Public Law Citation</b>
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	N/A	N/A	14,729,000	117-103
2023	15,113,000	15,113,000	15,113,000	15,113,000	117-328
2024	15,601,000	TBD	TBD	TBD	TBD

# **SUMMARY OVERVIEW**

## **National Mediation Board**

The National Mediation Board requests \$15,601,000, respectively, for its total program expenses for FY 2024 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 2023 Enacted Level	\$15,113,000
Fiscal Year 2024 Request Level	\$15,601,000

#### **Personnel Summary**

FY 2023 Request - FTE	51
FY 2024 Request – FTE	51

The NMB is continuing with plans to hire all vacant positions in FY 2023.



## PROGRAM AND FINANCING SCHEDULE

(In Thousands of Dollars)

<b>Obligations by Program Activities</b>	<b>FY 2023 Enacted</b>	<b>FY 2024 Request</b>
Mediation Services	\$8,850	\$9,238
Representation Services	\$2,750	\$2,800
Arbitration Services	\$3,113	\$3,163
Emergency Boards	\$400	\$400
<b>Total Obligations</b>	<b>\$15,113</b>	<b>\$15,601</b>
<b>Budgetary Resources Available for Obligation</b>		
New budget authority (gross)	\$15,113	\$15,601
New obligations	(\$15,113)	(\$15,601)
Unobligated balance, expiring	\$0	\$0
<b>New Budget Authority (Gross), Detail:</b>		
Appropriation	\$15,113	\$15,601
Appropriation permanently reduced	0	0
Appropriation (total discretionary)	\$15,113	\$15,601
<b>Net Budget Authority and Outlays:</b>		
Budget Authority, gross	\$15,113	\$15,601
Actual Offsetting Collections	0	0
Recoveries of Prior Year Paid Obligations	0	0
Budget Authority (net)	\$15,113	\$15,601
Outlays (net)	\$14,450	\$15,100

### Personnel Summary

	<b>FY 2023 Enacted</b>	<b>FY 2024 Request</b>
Total # of Full-Time Employees	51	51
Full-Time Permanent	45	45
Full-time Other	6	6
Total Employment, end of year (FTE)	51	51
Average GS Grade	13.9	13.9
Average GS Salary	\$138,000	\$145,000
Senior Executive Service (SES)	2	2
Average SES Salary	\$187,300	\$197,000
Executive Level Positions (NMB Board)	3	3
<b>Average Salary of Executive Level positions</b>		
Level 3, Chairman	\$168,400	\$168,400
Level 4, Board Members	\$158,500	\$158,500

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

	<b>FY 2023 Enacted</b>	<b>FY 2024 Request</b>
<b>Personnel Compensation</b>		
Full-time permanent	\$6,262	\$6,450
Special personnel services payments	\$1,200	\$1,250
<b>Total Personnel Compensation</b>	<b>\$7,462</b>	<b>\$7,700</b>
Civilian Benefits	\$2,235	\$2,250
Benefits for Former Personnel	\$0	\$0
Travel & Transportation of Persons	\$429	\$450
Transportation of Things	\$2	\$2
Rental Payments to GSA	\$1,485	\$1,510
Communications, Utilities, and Misc. Charges	\$100	\$100
Printing & Reproduction	\$2	\$2
Other Services	\$2,868	\$3,037
Supplies & Materials	\$80	\$75
Equipment	\$50	\$75
<b>Subtotal, Obligations</b>	<b>\$14,713</b>	<b>\$15,201</b>
PEB	\$400	\$400
<b>Total Obligations</b>	<b>\$15,113</b>	<b>\$15,601</b>

**DETAILED EXPLANATION OF CHANGES  
BY OBJECT CLASS FOR FISCAL YEAR 2024**

National Mediation Board  
(In Thousands of Dollars)

**Personnel Compensation and Benefits**

FY '23	FY '24	Net Change
\$9,697	\$9,950	\$+\$253

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.

NMB’s request of \$9,950 includes funding for 51 career staff and payments for work by the arbitration referees. 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). These funds include the proposed 5.2% pay increase for civilian employees in 2024.

**Travel and Transportation of Persons**

FY '23	FY '24	Net Change
\$429	\$450	\$+21

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. The Agency anticipates increased travel for mediation, and staff training and conferences in 2024.

**Transportation of Things**

FY '23	FY '24	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 '23	FY '24	Net Change
\$1,485	\$1,510	+\$25

This category covers the amount paid to the General Services Administration (GSA) to lease its office space in Washington, D.C. and annual taxes. 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 '23	FY '24	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 '23	FY '24	Net Change
\$2	\$2	\$0

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

**Other Services**

FY '23	FY '24	Net Change
\$2,868	\$ 3,037	\$+189

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, cybersecurity activities, commercial database access, payments for systems development and support, repairs and/or alterations to existing space, consultants and experts, diversity and inclusion, 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, and all other government interagency agreements.

**Supplies and Materials**

FY '23	FY '24	Net Change
\$80	\$75	\$-5

This category provides funding to purchase general office and cleaning supplies, IT supplies, subscriptions, and government publications.

**Equipment**

FY '23	FY '24	Net Change
\$50	\$75	+\$25

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

**Presidential Emergency Board**

FY '23	FY '24	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.

**\$15,113 / \$15,601 TOTAL FOR ALL OBJECT CLASSES**

## **PROGRAM DESCRIPTIONS**

### **OFFICE OF THE BOARD**

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	1,046	1,175
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 2022***

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.

**Overview of Fiscal Year 2022**

There was one PEB in FY 2022 (PEB #250). See Office of Legal Affairs section for more information.

**Forecast for FY 2023, 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.

The following chart reflects the actual case numbers for FY 2022 and estimated case numbers for FY 2023 and FY 2024:

	FY 2022 Actual	FY 2023 Estimated	FY 2024 Estimated
Emergency Board Sec. 160	1	1	1
Emergency Board Sec. 159A	0	1	1

## OFFICE OF MEDIATION SERVICES

Funding (in thousands) and FTE	FY 2023 Request	FY 2024 Request
\$	2,300	2,685
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 5 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 has been successful in FY 2022 and thus far in FY 2023. 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 both the severe COVID -19 related financial impact on certain carriers and dealing with health care changes.

### **Settlements:**

Settlement were reached with United Air Lines/IBT Maintenance Controllers, Piedmont Airlines/AFA Flight Attendants, A-13947 Envoy Air/TWU Fleet Service.

*In commuter rail service operations:* Three settlements on PATH with the ATDA, Dispatchers, the RITU Shop Craft employees, and BRS Signalmen; fifteen settlements were reached on Metra with the TCU/IAM Clerical employees, Supervisors, and Carmen, the BMWED Maintenance of Way workers, the IAM Machinists, the Smart-TD Conductors, Assistant Conductors, and Yardmasters, the IBEW Engineering, Mechanical, Substation, and Communications Electricians, the BLET Locomotive Engineers, the NCFO Mechanical employees, and the MAP Police; two settlements were reached on MNRR with ACRE locomotive Engineers and Conductors, Yardmasters, and Assistant Station Masters; and one agreement was reached on NJT with their TWU carmen.

*In the freight rail operations:*

Terminal Railway Alabama State Docks/BMWED, Buffalo and Pittsburgh Railroad, Inc. (GW)/ IBEW, DM&E(CP)/BLET, Illinois and Midland Railroad Inc. (G&W)/SMART-TD, Chicago, South Shore and South Bend Railroad/SMART-TD, and 2 settlements with New York, Susquehanna and Western Railway/BMWED, two settlements with York Railroad (GW)/SMART-TD, and 3 settlements with Central Maine & Quebec Railway (CP)/BMWED.

**Pending Cases:** Fifty-seven cases remained open at the close of FY 2022. COVID-19 financial repercussions continued in the airline industry, most adversely affecting catering sector of the airline industry. In the airline catering sector, the NMB is working with Gate Gourmet/IBT-HERE and LSG Sky Chefs / UNITE HERE. Delta Air Lines/ALPA Pilots continued in mediation. Four additional air carriers with their

unions entered mediation this year: Air Wisconsin Airlines Corporation/TWU, Allied Aviation Services/IAM, Air Methods Corp./OPEIU, and Silver Airways/AFA. In the area of commuter rail, the NMB is working with PATH toward settling its remaining cases. Metro North/IBEW Electricians, and LIRR/BLET Locomotive Engineers, New Jersey Transit/BLET, Engineer, Assistant Engineers, and Locomotive Engineers Trainees continue in mediation. Regarding Railroad National Handling involving the NCCC and the coalition of BMWED and SMART MD that entered mediation in 2021, they were joined by ten additional unions in 2022; all unions in National Handling requested a release from mediation and were released; and their positions and those of the NCCC were presented to PEB 250. The NCCC also entered mediation separately with three Carriers and SMART-TD involving Crew Consist. Regional and short-line carriers continued mediation and were joined in mediation by four additional Carriers and Unions, Gary Railway/SMART-TD, Soo Line (CP)/BLET, NYNJ Rail/SIU, and the Northern Missouri & Arkansas (GW)/SMART-TD.

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

The chart below reflects the actual Mediation case numbers for FY 2022, estimated case numbers for FY 2023, and the five-year average, FY 2018 – FY 2022.

MEDIATION CASES	FY 2022 Actual	FY 2023 Estimate	FY 2018 - FY 2022 Five Year Average
Cases Pending Start	57	48	58
Cases Docketed	32	33	30
Sum	89	81	88
Cases Closed	41	36	35
Cases Pending End	48	45	54

### **ADR Overview**

In addition to statutory mediation and arbitration services under Sections 3 and 5 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 may 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. 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.

The chart below reflects the actual ADR case numbers for FY 2022, estimated case numbers for FY 2023, and the five-year average, FY 2019 – FY 2023.

ADR CASES	FY 2022 Actual	FY 2023 Estimate	FY 2019 - FY 2023 Five Year Average
Cases Pending Start	46	56	53
Cases Docketed	12	32	26
Sum	58	88	79
Cases Closed	2	30	25
Cases Pending End	56	58	55

### **Forecast for Fiscal Year 2023 and 2024**

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 an increase in mediation case numbers for FY 2022. The Pandemic caused financial disruption and the resulting impact in the labor-management relations presented a very difficult environment for mediation. Both business sectors are still working to recover financially. During FY 2022 Mediation efforts have transitioned from all virtual/video conferences mediation sessions to in-

person mediation sessions and retaining virtual/video conferencing as needed. As such, our mediation projections saw a growth mediation cases (cases docketed) over FY 2021 and FY 2022 levels. By combining new technologies with the traditional in-person mediation, NMB increased its efficiency in assisting the parties in the mediation process.

Three large airlines, American, United, and Southwest are in direct negotiations with their pilots; Delta is in mediation with their pilots. Together these four carriers represent more than 50,000 airline pilots. Given the size of these labor groups and the complexity of pilot agreements, we still anticipate they will be in active mediation in 2023. These mediation cases will require extensive time and NMB resources in 2023 and continuing into 2024. Our forecasting also includes flight attendant mediation cases from American and Southwest, impacting more than 40,000 employees. In 2022 we had four commuter railroads in mediation, with multiple unions representing thousands of employees, and while many of these cases have been resolved through mediation, there are cases remaining in mediation that will still be active in 2023.

The tables also indicate a reduction in new activity; there are a number of factors contributing to this development that are viewed as temporary: pandemic-related concerns, preference for in-person meetings, and a major shift in focus on negotiations, particularly in the rail sector. With a resolution of National Handling in the rail sector, it is anticipated that ADR and, in particular, Grievance Mediation will increase. 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 2023. 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 2023 with the expectation of additional cases in 2024. We anticipate an increase in ADR case activity, specifically with training and facilitation cases in 2023 and further activity in 2024.

The following charts reflect the actual case numbers for FY 2022, and estimated numbers for FY 2023 and FY 2024 for both Mediation and ADR Cases:

MEDIATION CASES	FY 2022 Actual	FY 2023 Estimate	FY 2024 Estimate
Cases Pending Start	57	48	45



Cases Docketed	32	33	35
Cases Closed	41	36	38
Cases Pending End	48	45	42

ADR CASES	FY 2022 Actual	FY 2023 Estimate	FY 2024 Estimate
Cases Pending Start	46	56	58
Cases Docketed	12	32	34
Cases Closed	2	30	32
Cases Pending End	56	58	60

## FY 2024 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).**

Recent accomplishments: NMB standards applicable to processing and managing cases involving major disputes were consistently met in FY 2022. 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.**

Recent 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.**

Recent accomplishments: The Agency continued to provide its negotiation training, through video conferencing, 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.**

Recent 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 were the only avenue available to remain efficient and in the best interest of the case.

## OFFICE OF LEGAL AFFAIRS / REPRESENTATION

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	1,465	1,625
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 case numbers for FY 2022 actual, FY 2023 estimate, and FY 2024 estimate:

	FY 2022 Actual	FY 2023 Estimate	FY 2024 Estimate
Cases Pending at Start	14	12	8
Cases Docketed	29	30	32
Cases Closed	31	34	33
Cases Pending at End	12	8	7

### ***Highlights during Fiscal Year 2022 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 2022, the OLA staff closed **31** cases and also docketed **29** cases. With the Agency resources requested for FY 2024, it is estimated that **30** 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 2022.

In ***Philippine Airlines***, 49 NMB 12 (2021), and ***Alaska Airlines***, 49 NMB 12, the Board applied its longstanding accretion doctrine to find that the employees covered by the representation application were part of an existing craft or class. Under *Ross Aviation*, 22 NMB 89 (1994), when a labor organization submits an application to represent employees who already belong to a craft or class it is certified to represent, it is the Board’s established policy to dismiss the application on the grounds that an election is unnecessary. Instead, if the application is supported by the requisite 50 percent showing of interest, the NMB accretes the employees to the craft or class in which they belong.

The NMB also certified bargaining representatives by authorization card check in three cases: **Eulen America**, 49 NMB 67 (Fleet and Passenger Service Employees); **Eulen America**, 49 NMB 67 (Security Employees); and **Norse Atlantic Airways**, 49 NMB 139. As provided in Section 7 of the NMB's Representation Manual, the NMB will certify a representative by card check where the craft or class of employees is currently unrepresented and the labor organization and carrier agree in writing. The NMB will not accept authorization cards requesting a representation election as support for certification by card check.

The Board conducted tallies in two decertification elections to date in FY 2022: **Northern Air Cargo**, 49 NMB 135 (Dispatchers) and **Buffalo & Pittsburgh Railroad**, 49 NMB 131 (Machinists and Machinists Helpers). 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. A third decertification election is currently underway.

## **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. n FY 2022, the NMB had three pending 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 NMB also applies the two-part jurisdictional test to determine whether RLA jurisdiction exists in representation applications filed with the NMB. In **Aerostar Airport Holdings**, 49 NMB 73, the Board determined that Aerostar and its employees were not subject to the RLA. The application was filed by a labor organization, Hemandad de Empleados de Oficina, Comercio y Ramas Anexas de Puerto Rico seeking to represent the firefighter employees of Aerostar, a company with a 40-year lease to operate and maintain the Luis Munoz Marin International Airport (LMMIA). The NMB found that the record established insufficient control by any carrier over Aerostar's operations at LMMIA including how it conducts its business or how its firefighter employees perform their work. Accordingly, the NMB dismissed the application.

The following chart reflects the actual number of jurisdictional opinions issued for FY 2022 to date, and the estimated case numbers for FY 2023 and FY 20244:

	FY 2022 To Date	FY 2023 Estimate	FY 2024 Estimate
Jurisdictional Opinions	1	3	4

## **MAIL BALLOT VOTING**

On September 3, 2021, the NMB announced that it would begin conducting representation elections by mail ballot for a period of time as the agency transitions to a new electronic voting system. Mail ballots have been used historically at NMB. All parties involved in elections will receive detailed instructions and guidance from the NMB Office of Legal Affairs regarding mail ballot participation.

As part of the ongoing federal government cybersecurity evaluation process, all agency IT systems in use are examined to ensure compliance with federal standards. NMB is committed to compliance with federal information security requirements. Pursuant to this evaluation process, the NMB requested certain IT information from its electronic voting contractor. Due to the failure of the contractor to provide the requested information during this past year, the NMB decided to stop operating elections under the existing contract, which expired on September 30, 2021.

The Board shares a unified commitment to return to internet voting as soon as possible. Electronic voting has been used in hundreds of past NMB elections where thousands of rail and air employees freely determined their chosen representatives or decided to end representation and deal directly with their employer. The Board also shares a commitment to build a new safe and secure electronic voting system that totally complies with all federal security standards.

In FY2022, the NMB has conducted all of its representation election by mail balloting while soliciting bids for the construction of a new electronic voting system. A contract has been awarded to establish a new electronic voting system and work has commenced in FY 2023 on this project. After reviewing and updating the mail ballot election procedures in the NMB's Representation Manual, OLA began mail ballot elections in November 2021. In FY 2022, the Board has held 18 mail ballot tallies. An additional three elections are currently underway. The elections have ranged from 5 eligible voters to 500 eligible voters.

## **Presidential Emergency Boards**

### ***Overview of Fiscal Year 2022***

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.

One PEB, PEB 250, was established during FY2022 under Section 10 to resolve a dispute between the major freight railroads and their 125,000 unionized employees.

Presidential Emergency Board 250. Over the period between November 2019 and January 2020, the National Carriers' Conference Committee (NCCC) of the National Railway Labor Conference representing certain Class I railroads and certain other railroads<sup>1</sup> and the Organizations<sup>2</sup> representing certain of their employees served

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<sup>1</sup> The NCCC represents five Class I railroads: Union Pacific Railroad; Burlington Northern Santa Fe Railway Company; CSX Transportation, Inc.; Norfolk Southern Corporation; and Kansas City Southern Railway Company, and the following railroads: Alameda Belt Line Railway; Alton & Southern Railway Company; The Belt Railway Company of Chicago; Bessemer and Lake Erie Railroad Company; Brownsville and Matamoros Bridge Company; Cedar River Railroad Company; Central California Traction Company; Consolidated Rail Corporation; Delaware & Hudson Railroad Company; Gary Railway Company; Grand Trunk Western Railroad Company; Idaho & Sedalia Transportation Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railroad



each other with formal notices for changes in current rates of pay, rules, and working conditions. They were unable to resolve the issues in dispute in direct negotiations and by February 1, 2022, all the Organizations had filed mediation applications with the NMB.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On June 14, 2022, the NMB, in accordance with Section 5, First, of the RLA, urged the NCCC and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On June 14, 15, and 16, 2022, the Organizations individually declined the NMB's proffer of arbitration. On June 16, 2022, the NCCC accepted the NMB's proffer of arbitration.

On June 17, 2022, the NMB served notices that statutory mediation had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Standard Time, on Monday, July 18, 2022.

Following termination of mediation services, the NMB advised the President, in accordance with Section 10 of the RLA, that in its judgment the disputes threatened

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Company; Longview Switching Company; Los Angeles Junction Railway Company; New Orleans Public Belt Railroad Corporation; Norfolk & Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation; Northern Indiana Commuter Transportation District; Palmetto Railways; Port Terminal Railroad Association; Port Terminal Railroad Company; Portland Terminal Railroad Company; Soo Line Railroad Company (Canadian Pacific); Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Railroad Company; Western Fruit Express Company; Wichita Terminal Association; Winston-Salem Southbound Railway Company; and Wisconsin Central Ltd.

2 Eleven labor organizations are bargaining together as the Coordinated Bargaining Coalition (CBC) (the American Train Dispatchers Association, the Brotherhood of Railroad Signalmen; the Brotherhood of Locomotive Engineers and Trainmen; the International Association of Machinists and Aerospace Workers; the International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers; the International Brotherhood of Electrical Workers; the National Conference of Firemen & Oilers, District of Local 32BJ, SEIU; the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division; the Transportation Communications Union/IAM; the Transportation Communications Union/IAM, Brotherhood of Railway Carmen Division; and the Transport Workers Union of America, representing train dispatchers, locomotive engineers, conductors, and trainmen, signalmen, machinists, boilermakers, electrical workers, foremen and oilers, yardmasters, yardmen, brakemen, clerks and carmen. The remaining labor organizations are bargaining together as the BMWED/SMART-MD Coalition (the International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department, and the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters), representing Mechanical Engineers and Maintenance of Way Employees.

substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation services. The President, in his discretion, issued an Executive Order on July 15, 2022. Effective 12:01a.m., Eastern Daylight Time, July 18, 2022, the Executive Order created Presidential Emergency Board 250 to investigate and report concerning this dispute. The President appointed Ira F. Jaffe, as Chairman of the Board, and Barbara C. Deinhardt and David P. Twomey as members. The Board submitted its Report to the President on August 16, 2022.

***Forecast for FY 2023, FY 2024, and Beyond***

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

## **FY 2024 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.**

Recent 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. OLA has fully transitioned to mail ballot elections and has authorized 21 elections and completed 18 tallies. OLA continues to work with the NMB's Office of Information Services on the procurement and planning of a new electronic voting system.

#### **Goal 2: Enhance training and development of OLA staff.**

Recent 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 2022 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, and will continue these classes in Fiscal Year 2023 and 2024.

#### **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.**

Recent 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.**

Recent 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 Presidential Emergency Board 250 involving the freight railroads and the unions representing their employees.

**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.**

Recent accomplishments: OLA conducts semi-annual reviews of the Representation Manual and web site, updating where appropriate. In FY2022 OLA revised and updated the manual provisions applicable to mail ballot elections and developed an appeal process for situations where a voter's intent was unclear from markings on a determinative ballot.

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

Recent 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.

The NMB has initiated the process to build a comparable electronic voting system internally, working in collaboration with NMB Office of Information Services and Fiscal Services. In the interim, elections are now conducted by mail-in ballot. In response to recurrent Covid surges, OLA has leveraged web-based video conferencing to conduct mail ballot tallies.

## OFFICE OF ARBITRATION SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	1,906	2,100
FTE	5	5

\*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 airline labor and management. Airline arbitration is done entirely 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 can select an arbitrator 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 2022, and estimated numbers for FY 2023 and FY 2024.

	FY 2022 Actual	FY 2023 Estimate	FY 2024 Estimate
Cases Pending at Start	5,146	5,537	6,937
Cases Docketed	4,194	4,900	5,000
Cases Closed	3,803	3,500	3,650
Cases Pending at End	5,537	6,937	8,287

**Arbitration – Section 3 Highlights**

FY 2022 saw a continuation of both remote work and remote arbitration. Despite these challenges, productivity remained high. The NRAB continues to use 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.

The Office of Arbitration continued its efforts in promoting a more efficient Section 3 process, and faster resolution of minor disputes (grievances). The OAS 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.

The Office of Arbitration continues to work on increasing the diversity of arbitrators on the NMB roster. More women are on the roster and more of them are hearing cases. A joint labor-management committee on arbitrator training held a training program for current arbitrators in late September 2022.

The Subject Code Project began in early FY 2021 and was completed in the second quarter of FY 2021. The 28 new subject codes were implemented on July 1, 2021. The new codes now 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. Current trends suggest the discipline cases constitute approximately 60% of cases docketed for arbitration.

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 docketed but not assigned, 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:** Grievance mediation remains a key dispute resolution tool 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, grievance mediation continues to be a viable tool in the dispute resolution toolbox. While grievance mediation activity decreased due to COVID-19, interest in the program remains high because its benefits are indisputable. 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.

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 2023 and FY 2024.

**Arbitrator Productivity:** The NMB continued its efforts to increase arbitrator productivity as a result of strict adherence to the 60-90-120-day rule. Arbitrators who have not issued a decision within three months of a hearing are contacted monthly and encouraged to issue those decisions.

The NMB website continues to serve as a valuable source of information for the Section 3 community. The website is a vehicle to keep the parties and the public informed of Section 3 activities. Arbitrators, parties, and the public use the website to obtain information and forms instantaneously. The Arbitrator Caseload 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 linked to an NMB database reflecting updates as they are made in real-time. 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 can be found on the NMB website.

**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 also have the ability to enter awards into the Knowledge Store. In some instances, valid awards are entered within 24 hours of completion.

### **Forecast for FY 2023 and FY 2024**

The NMB projects that the number of cases pending at the end of FY 2023 and FY



2024 will increase, in large part due to budget uncertainty. In FY 2022 the cases pending were consistent with the most recent full year budget for FY 2021. The estimated five-year average for FY 2022 is 5,817, which is almost 10% higher than the estimate for FY 2021.

The following chart reflects the estimated case numbers for FY 2023 and FY 2024 and 5-year average FY 2019 – FY 2023:

	FY 2023 Estimate	FY 2024 Estimate	FY 2019 - FY 2023 Five Year Average
Cases Pending at Start	5,631	7,031	5,154
Cases Docketed	4,900	5,000	4,400
Cases Closed	3,500	3,650	4,276
Cases Pending at End	7,031	8,381	5,279

## **FY 2024 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.**

Recent 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 continuous improvement of service delivery.

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

Recent accomplishments: NMB is collaborating with the FMCS, AAA and NAA to discuss opportunities to partner on initiatives aimed at improving diverse representation on the arbitrator roster.

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

Recent accomplishments: A joint labor-management committee revised the NMB Subject Codes. The new codes are streamlined and reflect the current state of operations in the railroad industry. These codes will be used to provide data to the parties on the predominant issues being sent to arbitration for resolution.

## OFFICE OF ADMINISTRATION

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	425	600
FTE	4	5

\*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 2022***

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

With an aging workforce at the NMB, succession planning continues to be a challenge, but the agency's new Succession and Workforce Plan analyzes the NMB's future staffing requirements and sets forth strategies for adequately recruiting, promoting, and retaining employees. Training plans, both through the Individual Development Plan's (IDP) and the department training plans, career development, including details and shadow assignments as a way to broaden skills and prepare for job transitions. The agency uses internal details when possible to broaden skills and to give staff exposure to a range of work possibilities within the agency. NMB made good progress in FY 2022 in hiring critical vacant positions in the Office of Mediation Services.

The NMB continues to devote attention and resources to training and has provided meaningful training program opportunities for our employees, many virtually in FY 2022 due to the ongoing pandemic and advanced technology. 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.

**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. The 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. The Agency provides Alternative Work Schedules (AWS) and Telework and Remote work programs to its employees to reduce the number of commuters.

**Coronavirus Pandemic:** The NMB remained actively involved in all facets of the pandemic in FY 2022, and regularly participated in meetings with OMB and OPM. The Agency ensured that policies and procedures were adjusted and updated appropriately, and continues to follow all OMB and OPM pandemic and vaccination requirements and Executive Orders. The Agency issued a return to work plan policy in the Spring of 2022. The Policy is a two-phased approach and will be revisited at the end of September 2022.

**OPM Audit:** In 2021 the Office of Personnel Management conducted an audit of NMB's human capital programs. The audit included a review of the Agency's performance culture and talent management systems for their effectiveness and efficiency. In 2022 the NMB responded to OPM on their recommended actions and will continue to address these in FY 2023.

## FY 2024 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.**

Recent accomplishments: The Office of Administration responded to all requests for assistance or service from internal and external customers as soon as received.

#### **Goal 2: Attract and retain a high-performing workforce with the technical and professional skills needed.**

Recent accomplishments: The NMB worked with the Department of Interior to ensure that each vacancy announcement reflects the technical and professional skills needed. The Office of Administration collaborated with the Office of Mediation to hire critical Mediator positions in FY 2022, and will continue to backfill the Agency's remaining vacancies in FY 2023.

#### **Goal 3: Ensure all COVID-19 policies and procedures are followed.**

Recent accomplishments: The NMB has diligently been following all COVID-19 protocols from OMB, OPM, and the CDC. The Office of Administration ensures all Staff are properly alerted, trained, and cooperate with all Federal and building policies, protocols, and procedures.

## OFFICE OF FISCAL SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	878	815
FTE	6	5

\*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 2022***

In FY 2022, 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.

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.

In November 2022 the Agency received an unmodified “clean” audit opinion on its financial statements and notes to the statements. Additionally, in 2022 the Government Accountability Office (GAO) conducted their bi-annual audit of the NMB. To date, the NMB has able to close and address 90% of findings and recommendations from previous GAO audits.

## **FY 2024 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.**

Recent 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 2022. All Office of Management and Budget financial reports and data collections in FY 2022 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 2022, the NMB received another unmodified "clean" opinion on its financial statement and notes, 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.**

Recent 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.**

Recent 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 2022 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**

Recent 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, travel, federal financial management, and contracting courses were completed.

## OFFICE OF INFORMATION SERVICES

<b>Funding (in thousands) and FTE</b>	<b>FY 2023 Request</b>	<b>FY 2024 Request</b>
\$	900	950
FTE	6	6

### ***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 2022***

**Arbitrator Workspace System:** The NMB made enhancements to its Arbitrator Workspace System. These enhancements improved the functionality of the system and provides accurate reporting to users. NMB will continue to make enhancements in the next fiscal year.

**Phone and Voicemail System:** NMB replaced its legacy Phone and Voicemail system which had reached end-of-life. The new system is more reliable, is compliant with FISMA security requirements, and provides improved voicemail backup capabilities.

**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

applications. NMB completed system security assessments and issued Authorization to Operate and Authorizations to Use for several of its systems.

**Trusted Internet Connection (TIC)/Managed Trusted Internet Protocol Service (MTIPS):** NMB upgraded its network to be compliant with Trusted Internet Connect (TIC) requirements. Trusted Internet Connections (TIC) is a federal cybersecurity initiative intended to enhance network and data security across the Federal Government. The MTIPS Security Operations Center monitors all network traffic on NMB's network and is integrated with CISA's EINSTEIN system to detect and block cyberattacks on federal agency networks.

**Personal Identity Verification (PIV) cards / Multifactor Authentication (MFA):** OIS tested and is in the process of deploying a solution to enable NMB users to login to their laptops using their PIV cards. This will address requirements in HSPD-12 and OMB Memorandum M-19-17. OIS plans to complete the PIV MFA project by the end of FY 2022.

**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 2024 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 Cybersecurity and Infrastructure Security Agency and the National Archives.**

Recent 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 per the Cybersecurity Framework. In FY 2023, NMB will work to meet Electronic Records Management requirements. NMB will need to acquire or develop a records management system to ensure the records contain appropriate metadata and are formatted correctly for transfer to NARA per OMB Memorandum M-19-21.

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

Recent accomplishments: NMB is in the process of completing a comprehensive set of IT policies and procedures. NMB expects to reach a maturity level of 'Defined' in all 8 Function Domain areas as required by the Cybersecurity Framework in FY 2023.

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

Recent accomplishments: To improve the security and maintainability of its office network, the NMB implemented security patches to its network hardware and endpoints. The agency also completed a hardware refresh of all NMB computers using a secure baseline operating system image based on the Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIGs). The new NMB computers replaced older model that had reached end of support.

**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.**

Recent accomplishments: NMB deployed a new phone and voicemail system and made enhancements to its Arbitrator Workspace System. Through these new technology upgrades, NMB improved the reliability and security of its information technology to better serve the public. NMB will continue to ensure it is maintaining its configuration baselines on all endpoints and also manage its mobile devices and workstations.

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

Recent 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 better manage computer software upgrades and configuration baselines. NMB also upgraded its network to meet Trusted Internet Connection requirements. In FY 2023, NMB will work to ensure that all systems meet Multifactor Authentication and Zero Trust Architecture requirements as required by Executive Order 14028, "*Improving the Nation's Cybersecurity*". NMB will also work to mature and maintain a Standardized Cybersecurity Vulnerabilities and Incident Response Program per OMB Memorandum M-20-32, as well as improve its IT logging, encryption, and enterprise Identity, Credential, and Access Management (ICAM) capabilities, consistent with OMB Memorandum M-19-17.

NMB also implemented Dynamic Loss Prevention (DLP) on NMB's email system to help prevent the loss of unencrypted sensitive data. In addition, it completed an IPv6 roadmap to address Office of Management and Budget (OMB) memo M-21-07 (Completing the Transition to Internet Protocol Version 6 (IPv6)). NMB plans to complete the IPv6 transition for all systems by FY 2023.