

NMB Mediation Process

The purpose of mediation under the Railway Labor Act is to foster the prompt and orderly resolution of collective bargaining disputes in the railroad and airline industries. These disputes, referred to as "major" disputes, involve the establishment or revision of rates of pay, rules, or working conditions.

The Railway Labor Act imposes a duty on the parties "to make and maintain agreements ... and to settle all disputes ... to avoid any interruption to commerce or to the operation of any carrier ...". The parties should attempt to resolve collective bargaining disputes through direct negotiations. Failing that, either party may involve the Board's services or the Board may involve itself on its own initiative.

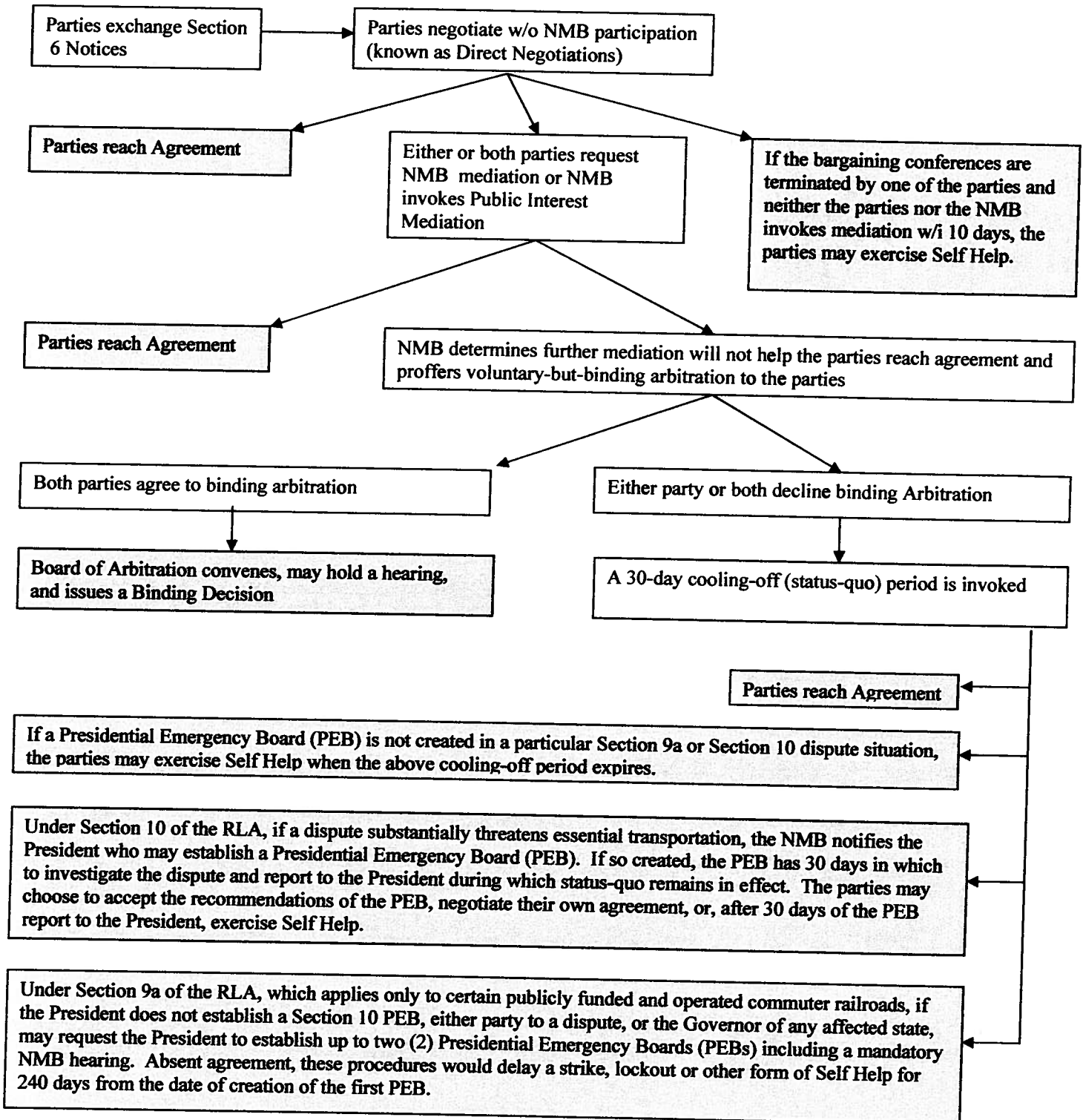
The Board will employ a variety of methods, including but not limited to, traditional mediation, interest-based problem solving, or facilitation to peacefully conclude collective bargaining. If, in the Board's expert assessment, mediation will be unsuccessful, the Board will "induce the parties to submit their [dispute] to arbitration." No changes to the status quo may be made until the Board had taken a final action.

If, in the judgement of the Board, the unresolved dispute will threaten to interrupt interstate commerce "to a degree such as to deprive any section of the country of essential transportation service", the President may create an emergency board to "investigate and report" on the dispute.

For a flow chart of the Collective Bargaining process under the Railway Labor Act, [click here](#).

Mediation Menu

Collective Bargaining Process under the Railway Labor Act (RLA)



Note: this is a synopsis of the applicable procedures; refer to the RLA itself for exact guidance.

NMB and RLA Fact Sheet

October 18, 2007

Prepared by the National Mediation Board, based on data through FY-2007

This Fact Sheet provides background information regarding the Railway Labor Act and the role of the National Mediation Board in collective-bargaining negotiations in the airline and railroad industries.

Agency Mission

The National Mediation Board (NMB), was established by the 1934 amendments to the Railway Labor Act (RLA) of 1926. The Board is an independent agency performing a central role in facilitating harmonious labor-management relations within two of the nation's key transportation sectors – the railroads and airlines. Pursuant to the RLA, NMB programs provide an integrated dispute resolution process that effectively meets the NMB's statutory mandate to minimize work stoppages in the railroad and airline industries.

The Railway Labor Act (RLA)

The Railway Labor Act provides a comprehensive statutory framework for the resolution of labor-management disputes in the airline and railroad industries. Enacted in 1926 as a collaborative effort of labor and management, the RLA succeeded several previous federal statutes dating back to 1888. The 1926 Act provided for mandatory mediation, voluntary arbitration in contract negotiations, and potential Section 10 Presidential Emergency Boards to enhance dispute resolution. Key amendments to the Act in 1934 established the current three-member structure of the National Mediation Board and authorized the resolution of employee representation disputes by the NMB. In 1936, the RLA's jurisdiction was expanded to include the airline industry. The Act's most recent substantive amendment in 1981 permitted the creation of specialized Section 9a Presidential Emergency Boards for collective bargaining disputes at certain commuter railroads.

- The Railway Labor Act is unique in that it was drafted by labor and management, then passed by the Congress without amendment.
- Beginning in 1994, the Commission on the Future of Worker-Management Relations (the "Dunlop Commission") and its subcommittees examined each of the nation's labor laws and the labor enforcement agencies. The Airline Industry Labor-Management Committee, an offshoot of the Dunlop Commission, was convened in October, 1995. In April, 1996, this body, made up of representatives from airline management and labor, offered as its first recommendation, "No Legislative Changes to the Railway Labor Act." The Committee recommended several administrative changes, all of which were subsequently adopted by the NMB.

Negotiation/Mediation Process

- The negotiation process (see attached Chart) begins with the parties engaging in direct negotiations, without the presence of the Board and its mediators. The parties control the timing of direct negotiations, with some beginning well before the amendable date of their current contracts, and some beginning very near the amendable date. The Board has no control over the parties in direct negotiations. Although some parties reach final resolution in direct negotiations, the majority of parties file for mediation with the Board for help to resolve their many open issues.
- Once in mediation, just how long it will take to help the parties complete negotiations and produce a tentative contract agreement is greatly influenced by how many unresolved issues there are. The NMB has no authority to force agreement upon the parties or to dictate the terms of settlement. Strikes, lock-outs, and other forms of self help in these industries, however, may occur only after the procedures set forth by the Railway Labor Act (RLA) have been exhausted, including a determination by the NMB that further mediation would not facilitate agreement between the parties.
- The responsibility of the NMB to work with parties in both industries to avoid disruptions to essential transportation services puts the Board in a unique position to recognize and understand the impact of potential work stoppages in both industries, for all sections of the country.
- If an agreement is not reached in direct negotiations, the dispute is required by law to be submitted to the Board for mediation as part of the contract negotiation process before either party can exercise self help, unless conferences between the parties are terminated for more than 10 days without either party having requested mediation. Application for mediation with the NMB may be made by either party or the Board may invoke public-interest mediation, at which time a mediator is assigned and the Board's active involvement begins.
- If the parties do not reach agreement, even with Board mediation, they are offered arbitration, which either party may refuse. The refusal of either party triggers a 30-day "cooling off" period, at the end of which either party may engage in self help.

Presidential Emergency Boards (PEBs)

- If the Board determines that a work stoppage would cause significant disruption to essential transportation services for any section of the country, the NMB must notify the President, who may choose to appoint a Presidential Emergency Board (PEB). PEB's have 30 days in which to recommend a settlement to the President. Either party may reject the PEB's recommendations, leading to a final cooling off period, further delaying self-help for another 30 days. Even during cooling off periods and PEB's, the Board may continue "public interest" meetings with the parties, often resulting in an agreement. Nothing in this process prevents the parties from reaching agreement on their own accord at any time.

- During the five (5) years ending in FY-2007, no airline Presidential Emergency Board was created. Only five (5) railroad PEBs were created: all on Metro North or SEPTA.
- Historically, there have numerous railroad PEBs but only three (3) airline Presidential Emergency Boards after 1966: #236 in 2002 (United/IAM), #235 in 2001 (Northwest/AMFA), and #233 in 1997 (American/APA).¹

Self Help

- During the five (5) years ending in FY-2007, there were no railroad strikes: the last railroad strike occurred in 1994.
- There were only 4 airline strikes in the last 5 years: Petroleum Helicopters (PHI) Pilots (OPEIU) in 2006, World Airways Pilots (IBT) in 2006, Polar Air Cargo Pilots (ALPA) in 2005 and Northwest Airlines Mechanics (AMFA) in 2005. No strikes in FY 2007, 2004, 2003 or 2002.

Grievances and Representation

Mediation of contract negotiations is only one major responsibility of the NMB. Others include Grievance Mediation, Grievance Arbitration and Representation as described below.

· Grievance Mediation

In addition to mediation of contract negotiations as discussed above, the NMB also offers voluntary grievance mediation to assist the parties in resolving grievance matters. Board staff provides both traditional and interest-based grievance mediation services. Using the traditional process, a Board Mediator serves as a "go between" looking for a solution that the parties may not have been able to explore directly with each other. Using an interest-based approach, a Board facilitator assists the parties in using a problem-solving model to find solutions to grievances. The Board encourages the parties to experiment with facilitation and problem solving processes because the skills-learned lessen the need for the assistance of a third-party neutral. The NMB offers the same type of problem-solving training and facilitation for grievance mediation as it does for contract bargaining.

· Grievance Arbitration

In addition to "interest" arbitration related to the collective bargaining process as noted above, the RLA provides for grievance arbitration. Grievance arbitration, involving the interpretation or application of an existing collective bargaining agreement, is mandatory under the RLA. The NMB has significant administrative responsibilities for the three

¹ The Wein Air Alaska PEB (#189 in 1979) was not RLA based; it was created by special Congressional legislation pursuant to Section 44 of the Airline Deregulation Act of 1978 (Public Law 95 504). In PEB #235, a settlement was reached by the parties before the scheduled report date.

avenues of grievance arbitration in the railroad industry: the National Railroad Adjustment Board as well as Public Law Boards and Special Boards of Adjustment established directly by the labor-management parties at each railroad. 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. Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

The NMB furnishes panels of prospective arbitrators for the parties' selection in both the airline and railroad industries. (A request to be placed on the NMB's Roster of Arbitrators may be obtained from the Board's web site at www.nmb.gov.) The NMB also has substantial financial responsibilities for railroad arbitration proceedings in that it pays the salary and travel expenses of the arbitrators.

Representation

Under the RLA, employees in the airline and railroad industries, without "interference, influence or coercion" by the carrier, have the right to select, or not, a labor organization or individual to represent them for collective bargaining.

Under the Railway Labor Act, the NMB is responsible for effectuating employee rights of self-organization where a representation dispute exists. The NMB representation process ensures that potentially disruptive disputes over who represents employees for collective bargaining purposes are resolved peacefully. Peaceful resolution of representation disputes is crucial to the airline and railroad industries because of the central role they play in the U.S. transportation system. NMB's determination of collective bargaining representation enhances the stability of the railroad and airline industries' collective bargaining process.

The primary responsibilities of the NMB regarding representation are as follows:

- I. Initial investigation of representation applications
- II. Determining and certifying representatives of employees
- III. Ensuring that the process occurs without interference, influence or coercion.

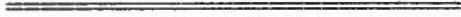
Information Resources and Contacts

A full explanation of Railway Labor Act, NMB functions and related information can be found on the NMB website (www.nmb.gov). A full copy of the RLA and agency Annual Reports can also be found on the NMB website under Knowledge Store.

If you have any questions, please call the Board's public information line (202-692-5050) and the staff will respond to specific inquiries.

Appendices

- Mediation Process Chart
- Glossary



Frequently Asked Questions: Mediation

GENERAL INFORMATION

The Railway Labor Act (RLA) (www.nmb.gov/documents/rla.html) requires labor and management to make every reasonable effort to make and maintain collective bargaining agreements within the airline and railroad industries, without disruption of airline or railroad transportation services. Mediation of collective bargaining agreements in these industries are the only disputes within the National Mediation Board's (NMB) jurisdiction.

Negotiation disputes in the non-rail and non-airline private sector are handled by the Federal Mediation and Conciliation Service (www.fmcs.gov) under the Labor Management Relations Act. Collective bargaining representation of employees in the Federal sector (United States government employees) is administered by the Federal Labor Relations Authority pursuant to the Civil Service Reform Act of 1978, Title VII. (www.flra.gov) Collective bargaining representation of other public sector employees (state, county and municipal government employees) varies and depends on whether there is a state or local law which permits collective bargaining.

One of the purposes of the RLA is to provide for the prompt and orderly settlement of collective bargaining disputes. As provided for in the RLA, the National Mediation Board (NMB) is responsible for providing mediation services to help the parties reach a settlement should the parties fail to reach an agreement during direct negotiations. If the parties are unable to reach a voluntary agreement to establish or modify a collective bargaining agreement, either party may apply for the mediation services of the NMB. Once mediation is invoked, the NMB conducts mediation meetings until an agreement is reached or until the NMB concludes no agreement can be reached despite its best mediatory efforts. If the NMB reaches this conclusion, it urges both sides to resolve their dispute through binding arbitration. Upon rejection of the proffer of arbitration by either party, the NMB releases the parties into a 30 day cooling off period. During the cooling off period, neither side can alter the status quo. At the end of 30 days, the parties either reach an agreement or engage in self help. In some situations, the parties may be required to participate in a Presidential Emergency Board (PEB) and defer any self help action until 30 days after the PEB makes its recommendation.

These questions and answers are meant to provide general guidance only. They do not provide definitive determination of any mediation matter and are not to be construed as legal opinions that may be cited in any administrative, legal, or arbitral proceeding.

1. Q: When do collective bargaining agreements expire under the RLA?

A: Under the RLA, collective bargaining agreements do not expire; instead

they become subject to change as of a specified date and upon "notices of intent" by the parties to change some or all of the elements of the agreement. Until a mutually newly negotiated agreement is accepted by both parties, the provisions of the original agreement remain in full force. This is commonly referred to as "status quo."

2. Q: How do parties initiate negotiations under the RLA

A: The parties exchange notices of intent to change or amend the existing contract. These formal notices are referred to as "Section 6" notices.

3. Q: What are "direct negotiations"?

A: Direct negotiation is the first step in contract negotiations under the RLA, during which the parties meet without the assistance of a mediator.

4. Q: How long does it normally take to negotiate agreements under the RLA?

A: The length of negotiation, including both direct and mediation varies with each case. Normally, the complexity and number of issues bargained-over are the key determinants.

5. Q: Does the NMB use methods other than traditional mediation to assist parties in reaching agreements?

A: Yes. The NMB has initiated a program to train parties in the principles of Facilitated Problem Solving. This training program is voluntary, and is offered upon the request of the parties. Facilitated Problem Solving is a negotiations method which focuses on the interests of the parties and finding mutually acceptable solutions to issues. Facilitated Problem Solving Training is a 1.5 day training program designed to illustrate problem solving approaches through interactive exercises. Should the parties decide to introduce this approach in their negotiations, the NMB will provide a Facilitator to assist the parties in implementing the process.

6. Q: If a case is in litigation, does that mean the RLA isn't working?

A: No. Under the RLA, the NMB does not have jurisdiction over circumstances such as a party's failure to bargain in good faith or failure to adhere to the status quo provisions of the RLA. Therefore, if either party feels that the other is violating the RLA, it is appropriate to seek a remedy in court.

APPLICATIONS FOR MEDIATION

7. Q: What happens if the parties cannot reach an agreement in direct negotiations?

A: If either party believes an agreement cannot be reached in direct negotiations, that party can apply for mediation with the NMB. Upon

application, the NMB will docket the application and assign a mediator to the case.

8. Q: Can the parties file a joint mediation application?

A: Yes, parties may file jointly with the NMB for mediation services.

9. Q: Do both parties have to sign the application for mediation?

A: No, only the party applying for mediation services must sign the application. The signature must be from the highest authority in the organization, i.e., an officer of either the Union or the Company. If the parties file jointly, then both parties must sign the application.

10. Q: Where do we get the mediation application?

A: Applications for mediation may be obtained through the NMB web site or from the Director of Mediation office at the NMB.
(www.nmb.gov/mediation/mapply.html)

11. Q: What happens after the application is received by the NMB?

A: The application is first reviewed to ensure that it is completed properly and appropriately, and if so, the case is then docketed.

MEDIATION PROCESS

12. Q: How are mediators assigned to cases?

A: When an application for mediation is received, the Director of Mediation and Senior Mediators consult concerning case assignment. They consider a variety of factors, including individual work loads, mediator availability, schedules, desires of the parties, the history of a given mediator with the parties, mediator background, complexity of the case, and other factors.

13. Q: What kind of background or experience do the NMB mediators have?

A: NMB mediators typically come from either Union or Company backgrounds and have extensive labor relations experience in either the rail or airline industries. Mediator biographies may be found on the NMB web site. (www.nmb.gov/directory/dirmed.html)

14. Q: During the mediation process, what is the role of the mediator?

A: The role of the mediator is to assist the parties with productive dialog on their issues. The mediator can and will use a variety of techniques to ensure this does occur.

15. Q: Can the NMB determine where the parties will meet when they are in mediation?

A: The courts have held that the NMB has the authority to establish where and when the parties will meet while in mediation. Normally, however, the meeting site and dates are mutually agreed upon among the parties and the mediator.

16. Q: Can the NMB determine when and/or how often the parties will meet when they are in mediation?

A: Again, meetings are normally established by mutual agreement among the parties and the mediator, but during mediation the NMB does have the authority to dictate when the parties will meet, for how long they will meet, and when meetings will be recessed.

17. Q: How long does mediation last?

A: There is no time limit for the mediation process. It can take just a few meetings, or it can take many months, depending upon the complexity of the negotiations and many other factors unique to each contract negotiation. The NMB has the authority to decide when and if to end mediation. Under the RLA, the NMB ceases mediation efforts when it concludes that all reasonable efforts to reach a voluntary agreement through mediation have failed.

18. Q: What does "status quo" mean?

A: "Status quo" is used to describe the terms of the contract in place at the beginning of direct negotiations. During direct negotiations, mediated negotiations, and any cooling off periods after mediated negotiations, neither party may violate the status quo by making unilateral changes in wages, benefits, or working conditions.

19. Q: Why does the NMB Recess a case during mediation?

A: Recess is one of the many tools a mediator uses in managing a Mediation case. If a case is recessed by a mediator, it is for a specific purpose related to the particular facts of the given case.

PROFFER OF ARBITRATION

20. Q: What is a "proffer of arbitration"?

A: When the NMB believes that further mediation efforts will not result in an agreement, it issues a proffer of arbitration, which is an offer to the parties to arbitrate any remaining issues.

21. Q: Why doesn't the NMB make a proffer of arbitration when one of the parties asks for it?

A: Under the RLA, the NMB is responsible for making its best efforts to help the parties reach an agreement without resorting to self-help. While it will listen to requests from the parties for a release, it is the NMB's responsibility to keep parties in mediation until it has expended all

reasonable efforts to reach an agreement.

22. Q: What happens if either party rejects the proffer of arbitration?

A: If either party rejects the proffer of arbitration, the NMB releases the parties from mediation and they enter a 30-day count down, or cooling off, period.

COOLING OFF PERIODS

23. Q: What happens during the cooling off period?

A: Normally the NMB invites the parties to meet during the cooling off period in order to further mediate an agreement. These meetings are often referred to as "public interest mediation" or "super mediation."

24. Q: What if no agreement is reached during the 30-day cooling off period?

A: If no agreement is reached by the end of the 30-day cooling off period, the parties are free to exercise "self-help." This means that the Union is free to strike or engage in other activity, and the Carrier is free to impose its last best offer or temporarily cease operations or engage in other self-help activity, unless a PEB is created.

PUBLIC INTEREST MEETINGS

25. Q: What are public interest meetings?

A: During the 30 day cooling off period the NMB will call the parties back to the table for further discussions. These meetings are referred to as public interest meetings or super mediation meetings. Generally, these meetings are called at or near the end of the count down period, but they can be called at any time during the 30 day time frame.

PRESIDENTIAL EMERGENCY BOARD (PEB)

26. Q: What is a "Presidential Emergency Board" (PEB)?

A: During the 30-day cooling off period, the NMB makes a determination regarding the impact of a strike. Pursuant to Section 160 of the RLA, the NMB "notifies" the President that in its "judgement" the dispute between a carrier and its employees cannot be adjusted and "threaten[s] substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Once the President receives such notification, the President may, "in his discretion, create a board to investigate and report on such dispute. The NMB submits a recommended list of potential neutrals to the President. The PEB usually has 30 days to develop a proposed agreement and present that agreement to the parties for consideration. After the PEB

delivers its proposed agreement, there is a further 30-day cooling off period.

27. Q: What happens if either party rejects the PEB's proposed agreement?

A: If either party rejects the PEB's proposal, the parties may, after the 30-day cooling off period, engage in self-help.

28. Q: Is there any circumstance in which the parties are constrained from engaging in self-help after rejecting a PEB's proposal?

A: Yes. It is possible for the Congress to intervene and legislatively mandate a settlement.

Mediation Menu

GLOSSARY

ADR	Alternative Dispute Resolution – a process for resolving disputes outside of the judicial system of law. In the venue of the NMB, ADR is the facilitation of interest-based or mutual-interest negotiations and grievance mediation.
Amendable Date	Under the Railway Labor Act, collective bargaining agreements do not expire as they do under the National Labor Relations Act; instead, they become subject-to-change on a certain date.
Arbitration	A type of grievance resolution process where a third-party arbitrator or neutral renders a decision to a dispute.
Mediation	A type of dispute resolution process where a third-party mediator or neutral assists the parties in reaching agreement to a dispute.
Tentative Contract	A negotiated agreement between the parties subject to ratification by a vote of the union members
Self Help	The right of a party to a collective bargaining dispute to unilaterally act in its own best interest. A carrier, for example, may lock disputing employees out of the workplace or implement changes in pay, rules and working conditions; and the union, for example, may strike or work specifically as required by its collective bargaining agreement.
Section 6	Section 156 of the RLA pertaining to the changing of wages, hours, rules and working conditions
Section 9a	Section 159a of the RLA pertaining to Presidential Emergency Boards of certain commuter railroads
Section 10	Section 160 of the RLA pertaining to airline and non-9a railroad Presidential Emergency Boards
Status Quo	Situations under the RLA in either collective bargaining or representation disputes where existing pay rates, rules and working conditions cannot be changed unilaterally, pending the resolution of the dispute in question.