

# ***NMB and RLA Fact Sheet***

*Prepared by the National Mediation Board for Fiscal Year 2012 ending on September 30, 2012*

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

## ***Agency Mission***

The National Mediation Board (NMB), an independent U.S. federal agency, was established by the 1934 amendments to the Railway Labor Act (RLA) of 1926. Pursuant to the RLA, NMB programs provide an integrated labor-management dispute resolution process that effectively meets the agency's statutory mandate to minimize work stoppages in the railroad and airline industries.

## ***The Railway Labor Act (RLA)***

The Railway Labor Act is unique in that it was drafted by labor and management, and passed by the Congress without amendment.

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 three-member structure of the National Mediation Board and authorized the resolution of employee representation disputes by the NMB. In 1936, RLA 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 Federal Aviation Administration Modernization and Reform Act of 2012 amended NMB rules for handling representation disputes.

## ***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.

- If an agreement is not reached in direct negotiations, before either party can exercise self-help, the dispute is required by law to be submitted to the Board for mediation as part of the contract negotiation process, 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.
- 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.

### ***Proffer of Arbitration***

- If the parties do not reach agreement with NMB mediation assistance, they are offered (proffered) binding arbitration. This type of collective-bargaining arbitration is generally referred to as "interest arbitration". The refusal of either party to accept a proffer triggers a 30-day "cooling off" period, at the end of which either party may engage in self help, unless delayed by the creation of a Presidential Emergency Board or an agreement is otherwise reached.

### ***Presidential Emergency Boards (PEBs)***

- If a Presidential Emergency Board (PEB) is not created in a particular Section 9a or Section 10 dispute situation, the parties may exercise Self Help when the 30-day cooling-off period expires.
- Under Section 10, 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 and delaying self-help for another 30 days, unless Congress takes action. 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.
- Under Section 9a of the RLA, which applies only to certain publicly funded and operated commuter railroads, if the President does not establish a Section 10 PEB, either party to a dispute, or the Governor of any affected state, may request the President to establish up to two (2) Presidential Emergency Boards (PEBs) including a mandatory NMB hearing. Absent

agreement, these procedures would delay Self Help for 240 days from the date of creation of the first PEB, unless Congress takes action.

- During the five (5) years ending in FY-2012, no airline Presidential Emergency Board was created. Only two (2) railroad PEBs were created, both Section 10: #242 in FY 2008 and #243 in FY 2012. Historically, there have been numerous railroad PEBs.

FY 2008	FY-2009	FY-2010	FY-2011	FY-2012
242 - Amtrak (Sec 10)	none	none	none	243 – NCCC (Sec 10)

The latest airline PEB was in FY-2002. After 1966, only three (3) airline Presidential Emergency Boards have been created: #236 in 2002 (United/IAM), #235 in 2001 (Northwest/AMFA), and #233 in 1997 (American/APA). *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.

*A complete list of PEBs is available on the NMB website in the Mediation section ([www.nmb.gov](http://www.nmb.gov)).*

***Self Help***

During the five (5) years ending in FY-2012, there were no railroad strikes: the last railroad strike occurred in 1994.

There were only two (2) airline strikes in the last 5 years: Spirit Airlines Pilots (ALPA), and AmeriJet Pilots and Flight Engineers (IBT).

FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
none	AmeriJet	Spirit	none	none

*Strike lists for airlines and railroads are available in the Mediation section of the NMB website ([www.nmb.gov](http://www.nmb.gov)).*

***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 identify issues and find solutions to grievances. The Board encourages the parties to experiment with facilitation and problem solving processes because the skills-learned decreases 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, precludes self-help by the parties on grievance issues. There are three 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. The NMB pays the salary and travel expenses of the arbitrators for railroad arbitration proceedings, when pursued in accordance with Section 153 of the RLA.

Grievance arbitration in the airline industry is accomplished at the various System Boards of Adjustment created jointly by labor and management at the parties’ expense.

The NMB furnishes panels of prospective arbitrators for the parties’ selection in both the airline and railroad industries.

*A request to be placed on the NMB’s Roster of Arbitrators may be obtained from the Board’s web site at [www.nmb.gov](http://www.nmb.gov) in the Documents/Forms section.*

Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review. Although the parties are the best and official source for such awards, the NMB facilitates access by posting many arbitration awards in the agency’s Knowledge Store, available from the home page of the NMB website ([www.nmb.gov](http://www.nmb.gov)).

So that more of the funding provided by the U.S. Congress for railroad arbitration can be applied to hearing and rendering awards instead of travel, the NMB offers online web-based video conferencing to geographically dispersed parties for use in grievance arbitration. Online conferencing is also available to carriers or unions for contract negotiation, grievance mediation, or joint problem solving.

The Board also provides to the parties free access to online workspaces where the parties can store, share and modify documents such as Action Plans, Proposals and Contract Clauses. In its Knowledge Store, the NMB provides an abundance of related information such as Collective Bargaining Agreements, agency Determinations of representation disputes, Presidential Emergency Board reports, and NMB Annual Reports.

### ***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.

The NMB representation process ensures that potentially disruptive disputes over who represents employees for collective bargaining purposes are resolved peacefully. NMB 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. Investigating representation dispute 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](http://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) or email [infoline@nmb.gov](mailto:infoline@nmb.gov). NMB staff will respond to specific inquiries.

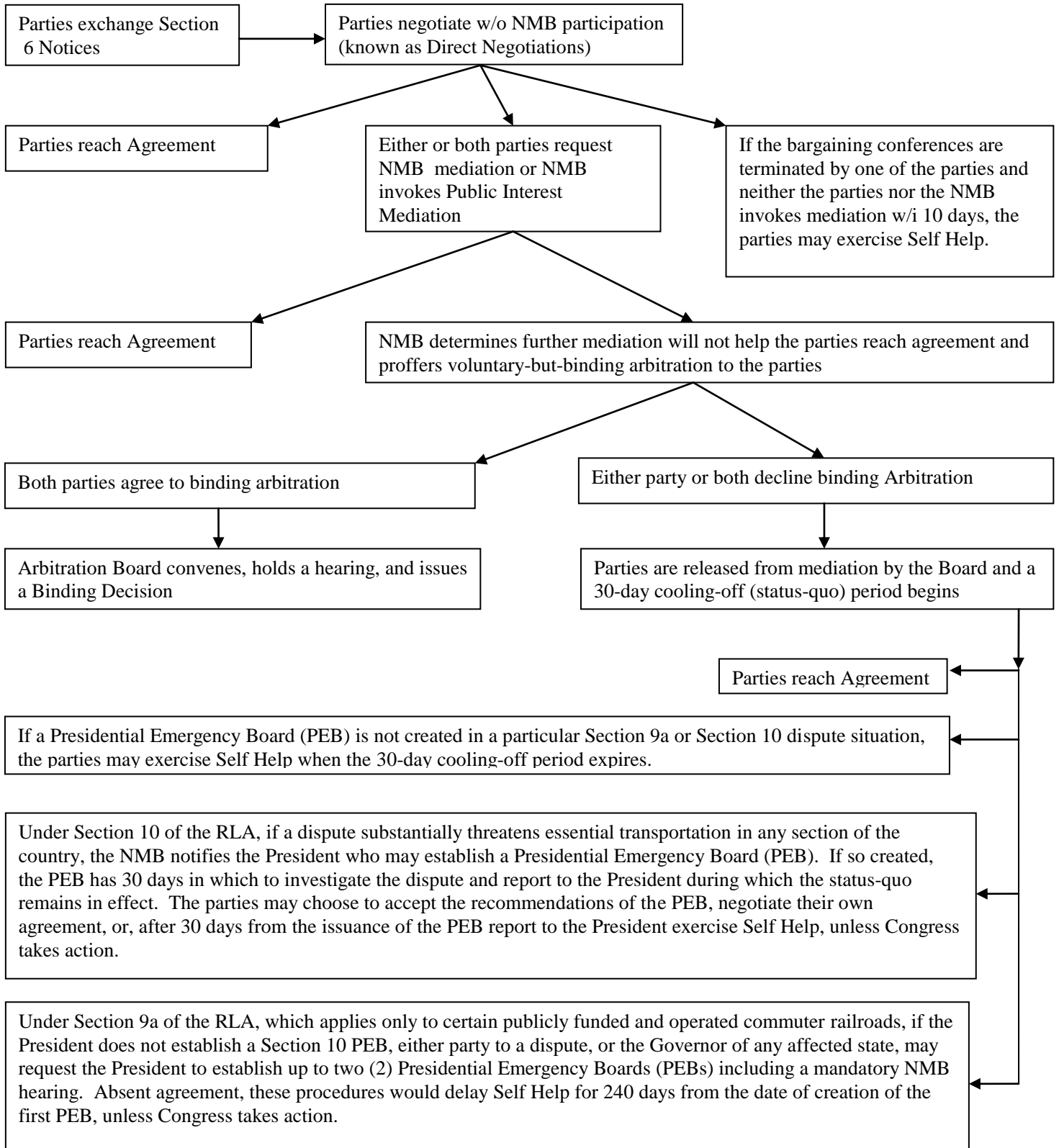
### ***Appendices***

- Mediation Process Chart
- Glossary

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# Collective Bargaining Process under the Railway Labor Act (RLA)

March 17, 2010



## **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	This is a type of grievance resolution process where a third-party arbitrator or neutral renders a decision to a dispute.
Mediation	This is 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 7	Section 157 of the RLA pertaining to Grievance Arbitration
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.