

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.

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.

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