

TED STEVENS, ALASKA, CHAIRMAN

THAD COCHRAN, MISSISSIPPI
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHRISTOPHER S. BOND, MISSOURI
MITCH McCONNELL, KENTUCKY
CONRAD BURNS, MONTANA
RICHARD C. SHELBY, ALABAMA
JUDD GREGG, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
BEN NIGHTHORSE CAMPBELL, COLORADO
LARRY CRAIG, IDAHO
KAY BAILEY HUTCHISON, TEXAS
MIKE DEWINE, OHIO
SAM BROWNBACK, KANSAS

ROBERT C. BYRD, WEST VIRGINIA
DANIEL K. INOUE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
PATRICK J. LEAHY, VERMONT
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
HERB KOHL, WISCONSIN
PATTY MURRAY, WASHINGTON
BYRON L. DORGAN, NORTH DAKOTA
DIANNE FEINSTEIN, CALIFORNIA
RICHARD J. DURBIN, ILLINOIS
TIM JOHNSON, SOUTH DAKOTA
MARY L. LANDRIEU, LOUISIANA

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
www.senate.gov/~appropriations

JAMES W. MORHARD, STAFF DIRECTOR
TERRENCE E. SAUVAIN, MINORITY STAFF DIRECTOR

September 17, 2004

Roland Watkins
Director of Arbitration Services
National Mediation Board
1301 K. St. NW
Suite 250 East
Washington, DC 20005

Attention: NMB Docket No.2003-01N

Dear Sir:

We are commenting on the proposed rule cited in 29 CFR Part 1210 regarding the institution of user fees for the arbitration services of the National Mediation Board (NMB). As the Chairman and Ranking Member of the Senate Subcommittee on Appropriations responsible for the operating expenses of the NMB, we are deeply opposed to this rule.

The National Mediation Board was created in 1934 to provide mediation and arbitration services under the Railway Labor Act. It continues to provide those services under the statutory authority in that Act and the annual budget authority obtained in the appropriations process. The proposed rule cites the general underlying agency authority in 45 U.S.C. 154 as the authority to establish and collect a user fee for the purpose of making the process of arbitration more efficient.

The statute 45 U.S.C. 154 does not contain any authority to establish and collect a user fee. Further, the user fee that is cited in the proposed regulation does not meet the criteria for the establishment of a user fee under the general government authority found in 31 U.S.C. 9701. That authority, had the proposed rule cited it, still would not give the NMB authority to proceed on this regulation because the stated purpose of the fees in the proposed rule do not qualify under 31 U.S.C. 9701. Under that authority user fees are allowed to be collected only for the purpose of offsetting the cost of services to the public. The government has no existing authority to institute a user fee for the purpose of discouraging the American public from utilizing government services or to control the flow or administration of those services.

In addition, the proposed regulation is not clear regarding the mechanism the NMB would employ to collect the user fee and to what account these receipts would be directed. The language in the rule appears to indicate that the NMB intends to use the collected fees to further the operation of the arbitration services. **Any expenditure of funds by the NMB from the collected fees would require new statutory authority from the Congress.** OMB Circular A25 requires that user fee receipts must be deposited into the General Treasury unless specified otherwise by the Congress.

Furthermore, neither 45 USC 154 nor the authority in the annual appropriation gives the NMB the authority to decline to pay referee compensation if the rules governing the arbitration are not followed. The NMB is required to employ any referees that are appointed by the parties and the NMB receives appropriated dollars annually to fulfill this statutory obligation.

Therefore, we believe this proposed rule exceeds the legal authority of the National Mediation Board and urge its withdrawal until such time as the Congress provides legislative authority for a regulation of this kind.

Regards,



Arlen Specter
Chairman
Subcommittee on Labor, Health
and Human Services and Education
Education Appropriations



Tom Harkin
Ranking Member
Subcommittee on Labor, Health
and Human Services and
Appropriations