
Management Discussion and Analysis

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**MANAGEMENT DISCUSSION
AND ANALYSIS**

CHIEF OF STAFF LETTER

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Chief of Staff Letter

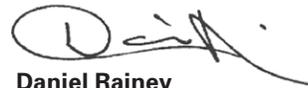
During Fiscal Year 2011, the National Mediation Board entered its 77th year as the agency responsible for promoting harmonious relations among carriers and labor organizations in the airline and railroad industries.

As Chief of Staff, I am responsible for implementing the Board's policies in all matters coming under its jurisdiction in the administration of the Railway Labor Act and managing the agency's internal programs. This includes oversight of the Mediation/ADR, Arbitration and Administrative functions of the NMB. Legal Affairs and Representation matters remain under the supervision of the agency's General Counsel.

The Chief of Staff position was created by the Board in response to a recommendation by the Dunlop Committee Reports Review Committee (Dunlop II), a group of carrier and organization experts called upon by the NMB in 2009 to review the progress the agency had made since the original report of the industry labor-management committee prompted by recommendations in a report by the Dunlop Commission of 1995. The Dunlop II reports and recommendations are available in the NMB Open Government web pages at <http://www.nmb.gov/open/collaboration.html>.

In addition to reconstituting the Office of Chief of Staff, many other recommendations from the Dunlop II Report were acted upon. (See the table on the next page.)

In short, FY 2011 was a critical year for many of the progressive programs the Board has launched. These initiatives demonstrate that the National Mediation Board continues to play an important role in managing conflict in the airline and railroad industries, and continues to lead other agencies in transparency and open government.



Daniel Rainey
Chief of Staff

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Dunlop II Responses

Recommendation	Response
Address the length of the process of mediation.	The NMB has worked with the parties to encourage better preparation, and better results in direct negotiations. In addition, the Board has instituted an "expedited mediation" program for those parties interested in shortening the length of Section 6 negotiations.
Create an improved case management system.	The NMB has improved its case management system and is in the process of rolling out a web-based system for all filings and requests for services.
Improve Mediator reports and case monitoring.	The NMB has rewritten and updated the Mediator Handbook, revising the standard mediation reports to include an initial comprehensive case plan and a report on progress after each meeting.
Assess Board Member involvement and coordination.	The NMB Board Members are now appointed earlier in the process for each case, and the assigned Board Member(s) more closely monitors each case.
Address Mediator staffing and case coverage.	For the first time in several years, the NMB is now at full strength in its mediator corps.
Identify and train other staff to assist with mediation duties.	Staff in ADR Services and Arbitration have been trained to engage in training and grievance mediation services, and a new Mediator-ADR is in place and available for training and development.
Revamp recruitment and selection.	The NMB has instituted the new USA Staffing system that streamlines and improves the hiring process. Coupled with a more assertive recruitment process, the Board has attracted highly qualified candidates for staff positions, and it has worked with the parties to diversify and improve the roster of arbitrators who routinely hear railroad cases.
Improve Mediator training.	A new mediator orientation process is in place. Training for Mediators was conducted in calendar 2010 and will be repeated in calendar 2011. This "recurrent" training is planned as an annual event, above and in addition to the routine training that is part of every Mediator's Individual Development Plan.
Engage in more outreach.	The NMB has created the Arbitrator Forum, a working group consisting of rail carrier and labor representatives, to guide improvements and developments in the Section 3 area. The NMB has also become more active in addressing industry conferences and conventions regarding its range of mediation and facilitation services.

Mediation and ADR

Larry Gibbons, Director

In the latter part of Fiscal Year 2011, the Office of Alternative Dispute Resolution Services (ADRS) was merged into the Office of Mediation Services and renamed to Office of Mediation and ADR Services (OMAS).

OMAS manages mandatory **Mediation** of collective bargaining disputes pursuant to statutory authority under "Section 6" of the Railway Labor Act (RLA), which is applicable to both the airline and railroad industries. The **ADR** component offers voluntary dispute resolution programs to the parties including facilitation, grievance mediation, training, and other dispute resolution efforts.

For this fiscal year, Mediation and ADRS are discussed separately below. Also, for the purpose of this Annual Report, no effort is made to separate from ADRS other functions that were reorganized during FY 2011.

Note A complete list of acronyms is given at the back of this annual report.

Mediation Overview

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.]

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 U.S. President 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.

For a flow-chart of Mediation procedures, see the Mediation section of the NMB website at www.nmb.gov. For more information on Emergency Boards, see the Representation and PEBs section of this Annual Report.

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Mediation Highlights

In Fiscal Year (FY) 2011 mediators faced similarities from the previous year as they continued to work in a very challenging bargaining environment anchored by a fragile economic recovery. Settlements are elusive as legacy air carriers remake themselves after bankruptcies, concessions and mergers. Airline profits have been hard earned and small, but profits of any size raise employee expectations at the bargaining table.

In national handling, where freight railroad profits are at record highs, employees rejected the carriers' proposal to modify healthcare plans even when double-digit wage increases were attached. Carriers and organizations, both air and rail alike, remained engaged in battles over higher wages and better benefits versus the ability to pay. While mediators consistently closed cases this fiscal year, mediation was increasingly important and difficult in assisting the parties to reach Collective Bargaining agreements.

In the face of many challenges, mediator productivity continues to be high in that mediators closed twenty-four percent more cases in FY 2011 than in FY 2010. Overall case intake also increased by more than ten percent over FY 2010.

Legacy Carriers The legacy carriers did not fare well this fiscal year in the area of labor relations. AA and UAL have been in mediation with some of their unions for well over 2 years. While USAirways was able to reach agreement with the TWU-represented dispatchers outside of mediation, it remains very much at odds with the flight crew unions: AFA and USAPA. Consequently, 25% of currently open NMB mediation cases involve legacy carriers.

Cooling-off Periods Massachusetts Bay Commuter Rail (MBCR) entered into a cooling off period with 12 of its unions in January 2011 which was extended by mutual agreement until March and then again until May. Tentative agreements were reached with all of them. One organization, however, refused to take the

tentative agreement out for a vote, six failed ratification, and five ratified. After a third extension of the status quo, agreements were reached with all the remaining unions.

The five Class I Railroads represented by the National Carrier's Conference Committee and eleven of their Unions were released from mediation in early September. Self-help will be available on October 7, 2011; however, the President has indicated that he would name a Presidential Emergency Board that would forestall any self-help activity.

Self-help Activity There was no self-help activity in FY 2011.

Settlements Several significant cases were settled this fiscal year with assistance from NMB mediators with Air Tran/ALPA, Air Tran/AFA, UPS/IBT, Pinnacle/ALPA, Continental/IAM, Alaska/IAM, Miami Air International/AFA and Horizon/IBT being among the airlines. Significant rail cases that closed include: MBCR and the TCU, BRS, NCFO, JCC, and IBB; South Central Florida Express/IAM; Montana Rail Link/ATDA; and Indiana South Railroad/IAM.

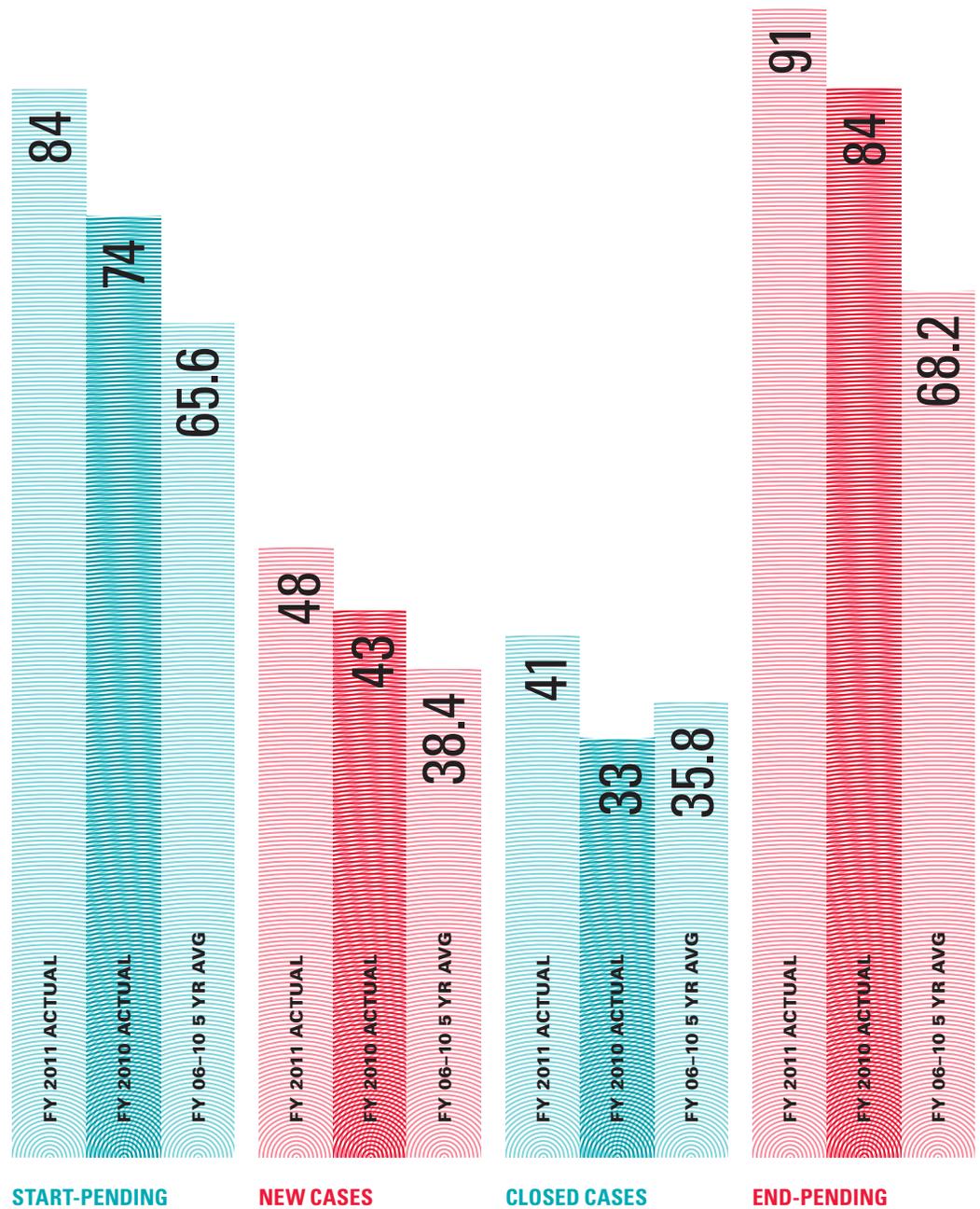
Pending Cases Significant resources will continue to be devoted to open cases at American, United and USAirways, which account for one-quarter of all cases in mediation as concessions, bankruptcies and mergers solidified employee expectations of restoration or partial recovery of wages and benefits.

Other airline cases in mediation include PSA/ALPA & AFA, Piedmont/ALPA & AFA, Spirit/AFA, SWA/TWU and American Eagle/TWU.

Beyond the Commuter Railroad cases, several Regional and Short Line Railroads are in mediation including DQ&E/ATDD, WC/BMWED, ATDD & BRS, PGR/UTU, GWR/BLET and PAR/BLET.

Mediation Cases

The following chart reflects actual case numbers for FY 2011 and FY 2010 and a five-year Average.



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ADRS Overview

In addition to statutory mediation and arbitration services under Sections 6 and 3 of the RLA, the NMB provides voluntary Alternative Dispute Resolution (ADR) services. ADR services include facilitation, training, grievance mediation, and an online dispute resolution (ODR) program, 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 ODR 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 and ODR methods would result in fewer cases progressing to statutory mediation, reduce and narrow the issues which the parties bring to mediation, and positively affect 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.

ADRS Highlights

In FY 2011 the Office of Alternative Dispute Resolution Services (ADRS), before and after being merged into the Office of Mediation Services, continued to develop and deliver a wide range of ADR services, including training (T cases), facilitation (F cases), grievance mediation (GM) and facilitated problem solving (FPS). ADRS was also actively engaged in projects related to Information Communication and Technology (ICT), Records and Document Management (RDM), and Case Management as well as development and execution of agency-wide Records Management Training. The Records Management efforts resulted in the coveted Archivist Achievement Award for "Outstanding Achievement in Records Management" from NARA (National Archives and Records Administration), the second award the NMB has received in this area in 2 years.

During FY 2011, ADRS continued to offer special training programs and facilitation efforts outside the traditional grievance mediation and facilitation work. The promotion of the use of Online Dispute Resolution (ODR) tools and training has greatly increased demands for ADRS services such as Online Workspaces for the parties, Online Video Conferencing, and pilot programs in conjunction with the Office

of Arbitration including online arbitrations and "submissions only" arbitrations.

ADRS provided grievance mediation training and services that, again in FY 2011, aided a reduction of the number of cases going to arbitration or the bargaining table. In a railroad grievance mediation case recently, for example, ADRS provided grievance mediation and training to the parties. That session began the process of addressing a handful of issues that had triggered over 300 grievances. The parties reached resolution on one of the issues that had triggered a number of grievances. The parties were extremely pleased with the outcome and have planned additional sessions to fully address the other issues.

ADRS continued a series of projects in FY 2011 in cooperation with the Office of Arbitration Services designed to increase financial-management control of arbitration processes and address the backlog of aged cases. First, ADRS led the development of an automated work request and reporting process for the arbitrators, facilitating case tracking and case auditing. Secondly, ADRS partnered with the Office of Arbitration Services (OAS) to offer an expedited Grievance Mediation and Arbitration

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process designed to increase the use of online technology and to move cases through the system in an expedited manner such as the case referenced in the above paragraph.

Also in FY 2011, ADRS further developed and enhanced NMB's online learning program, the Lyceum, to offer online training to all parties. The NMB Lyceum allows any party, relevant practitioner, and the general public to access the training material at no cost and without having to use passwords or other identifying information. Additionally, the NMB posts items of interest to the parties such as presentations and podcasts of panels and guest speakers at the 2010 Passenger Rail Conference.

Training During FY 2011 ADRS continued to refine and update the standard training offered by the NMB, including Grievance Mediation training, Facilitated Problem Solving training and specialized training tailored to the parties' needs, such as team building and System Boards of Adjustment training. In addition, special training in expedited mediation/arbitration processes was requested by the parties and delivered by ADRS and Mediation staffs.

GM Facilitation and Negotiation During FY 2011, ADRS and Mediation staff members were engaged in direct delivery of dispute resolution services as facilitators in Grievance Mediation, as facilitators in Interest-based Contract Negotiations, and as trainers in a variety of programs.

A special effort was made to merge grievance mediation with expedited arbitration. Successful GM/expedited projects were completed with New Jersey Transit/BRS and resulted in settlement rather than arbitration. Yet another case, Amtrak/UTU/BLET resulted in a multi-party facilitation/grievance mediation to settle a potential dispute between the carrier and 2 unions before grievances were generated. While work is limited but growing on the railroad side, airlines continue to be our largest user of Grievance Mediation Services.

ODR Research and Development

The NMB continued its exploration of online tools to assist mediators, arbitrators and NMB employees in general. Additional research and development in the area of social media and social networking is being analyzed for potential use in ADR development at the NMB.

During FY 2011, online tools were used in training, drafting of agreements, preparation for face-to-face negotiations, agenda setting, and online arbitration for a variety of carriers and organizations. Negotiating parties used comprehensive online workspaces provided by the NMB to manage preparation for negotiations, and to manage information during contract negotiations or grievance mediation. Carriers and organizations actively using NMB online workspaces include: AE/ALPA, CSXT/ATDA, CSXT/UTU, World/IBT, Omni Air/IBT, and Air Wisconsin/IAMAW.

Online Arbitration The NMB continued to develop and use during FY 2011 its web-based video and document sharing capabilities. The NMB online arbitration tools have positively impacted the allocation and use of funds in that monies otherwise used for arbitrator travel salaries and expenses were redirected to arbitration hearings and decision writing. Virtually all executive sessions during FY 2011 for the NRAB were held using ODR technology.

NMB Corporate Memory In FY 2011, the NMB continued to refine its records and document management program, improving the search engine and further integrating the records database with the agency case management system.

NMB Knowledge Store The ADRS staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and industry contracts. In FY 2011, the NMB expanded a pilot program to allow carrier and organizations to directly enter final, signed arbitration decisions into the Knowledge Store, ensuring rapid availability of an entire set of decisions for the entire RLA community and the public. During FY 2011, CSXT, AMTRAK, UP, the UTU and the IBEW, were enabled to engage in "direct deposit" of arbitration decisions.

NMB Case Management Systems The ADRS Staff continued to refine protocols, standard operating procedures (SOPs), and training for case management systems in Arbitration and Mediation. During FY 2010, Mediation and OLA were moved from an old case management

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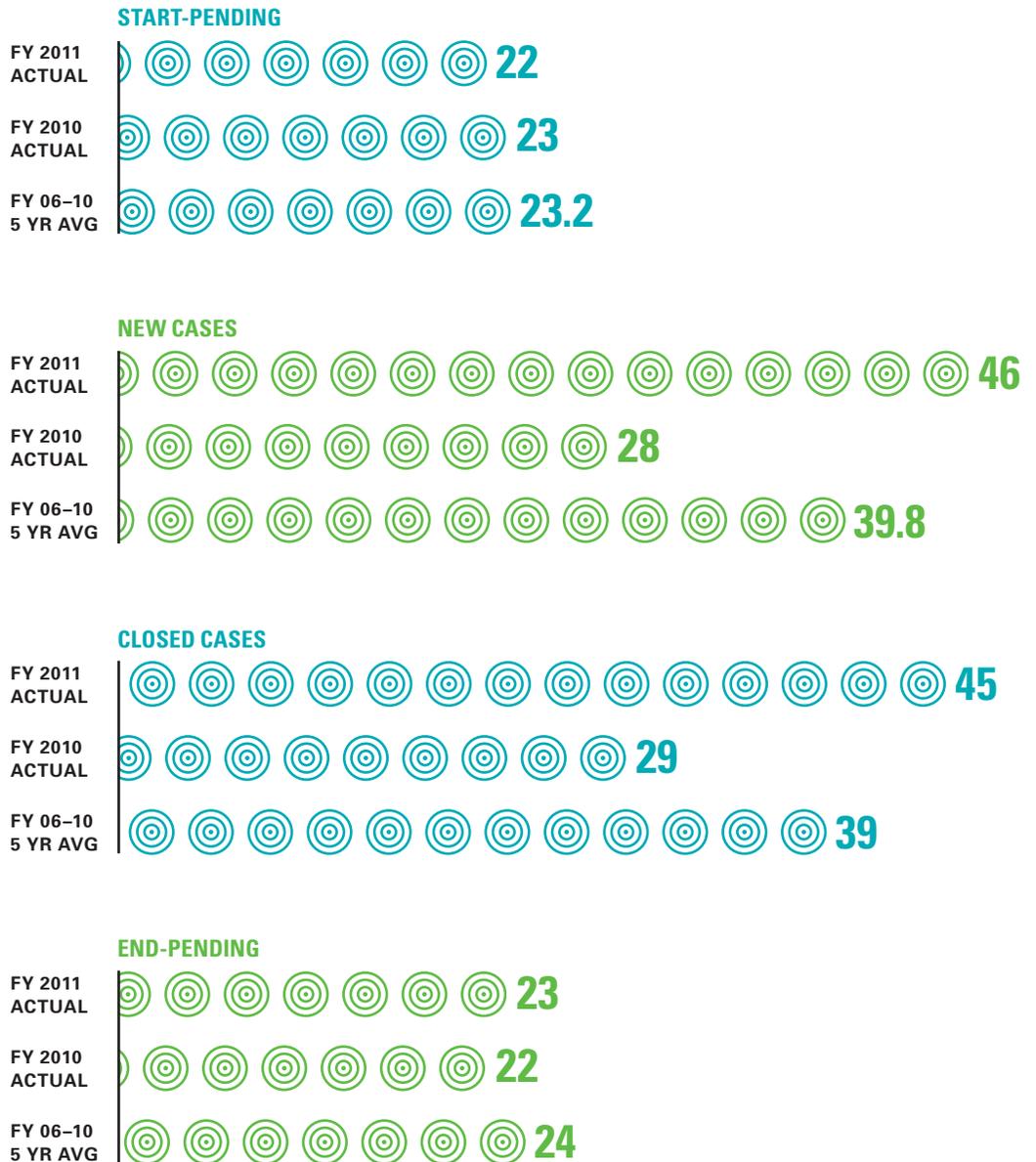
MEDIATION AND ADR

data base to a new system integrated with the agency's e-records system. In FY 2011 the system continued to be improved and refined. ADRS continued to assist the departments in

improving their business processes, and in the production of specialized reporting systems and other ad hoc requirements.

ADR Cases

The following chart reflects the actual case numbers for FY 2011 and FY 2010 and a five-year average.



Arbitration

Roland Watkins, Director

The Office of Arbitration Services manages the resolution by arbitration of grievance disputes over existing collective bargaining agreements per statutory authority under “Section 3” of the Railway Labor Act (RLA). The RLA provides for both Grievance Arbitration and Interest Arbitration.

Arbitration Overview

Grievance Arbitration Grievance Arbitration is a process for resolving disputes regarding the interpretation or application of an existing collective bargaining agreement. Grievances, known as “minor disputes” under the RLA, must be handled through Grievance Arbitration if not otherwise resolved, and cannot be used by the parties to trigger self-help actions.

The NMB has significant administrative responsibilities for the three types of grievance arbitration in the railroad industry. These types include those of the National Railroad Adjustment Board as well as arbitration panels established directly by the labor-management parties at each railroad: Public Law Boards and Special Boards of Adjustment. 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 Roster of Arbitrators may be obtained from the Board’s web site at www.nmb.gov. See Forms on the Documents page.] The NMB also has substantial financial responsibilities for railroad arbitration proceedings in

that it pays the salaries and travel expenses of the arbitrators. Grievance Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

Interest Arbitration Interest Arbitration is a process 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 binding Interest Arbitration when the Agency has determined that further Mediation efforts will not be successful. 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 select an individual to resolve their dispute; in some instances however, the parties agree to allow the NMB to directly appoint an arbitrator. Interest Arbitration decisions are final and binding with very narrow grounds for judicial appeal.

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Arbitration Highlights

The Office of Arbitration Services has directed its attention to promoting a more efficient Section-3 process, thereby fostering faster resolution of minor disputes (grievances). The NMB made a well-received move in this regard during FY 2011 by targeting the backlog of grievance arbitration cases for resolution and increasing the number of arbitrators available to hear and decide cases. Grievance Mediation was also actively promoted as an alternative to arbitration.

The number of cases pending at the end of this fiscal year – 2,384 cases – is the new lowest in NMB history. During FY 2011, the parties brought 3,908 cases to arbitration compared to 4,381 cases in FY 2010. In FY 2011, 4,294 cases were closed compared to 5,648 in FY 2010, leaving only 2,384 cases pending at the end of FY 2011.

The NMB Arbitration program completed its efforts to modernize with the new case management system at the National Railroad Adjustment Board (NRAB). Document and records management was modernized at the NRAB with the conversion of all records to an electronic system. The use of online dispute resolution was also successfully promoted at the NRAB.

On several occasions during the fiscal year, the Agency met with representatives from the labor organizations and carriers to review its caseload. Carriers included Canadian National Railroad, Norfolk Southern Corporation, Union Pacific Railroad and CSX Transportation. The Office of Arbitration Services met with all of the labor organizations representing employees in the railroad industry. NMB efforts have been directed to facilitating a more efficient Section 3 process, thereby reducing the backlog and promoting the RLA objective of prompt resolution of minor disputes.

During FY 2011, the NMB continued its efforts designed to improve the arbitration of grievances under Section 3 of the Railway Labor Act. The Board had five ambitious goals for this transformation: (1) to ensure that the parties receive timely and outstanding arbitration services from the Board's staff and its contract arbitrators; (2) to ensure that the Board uses e-business

capabilities to the maximum extent possible; (3) to ensure that Board procedures are improved through a rulemaking process involving public input; (4) to ensure that 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.

Annual Case Audit In June 2011, the NMB conducted an intensive audit of all cases pending before public law boards and special boards of adjustment. The Agency provided the Class-I freight railroads, commuter railroads, regional railroads and all labor organizations representing railroad employees with a list of cases pending on these boards. The NMB asked the parties to report any discrepancies between their records and the Agency's list. The audit was conducted electronically. The feedback from the audit enhanced the accuracy of the NMB case management system.

Alternative Dispute Resolution in the Railroad Industry The NMB actively promoted 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 the labor organizations. During FY 2011, Arbitration Services made presentations at Canadian National, the United Transportation Union and the IAM&AW promoting grievance mediation as a means of resolving disputes. The NMB anticipates continuing this initiative during FY 2012.

Increasing Arbitrator Productivity The NMB continued its efforts to increase arbitrator productivity through rigorous enforcement of the six-month rule. Arbitrators who have not issued a decision within six months of a hearing are contacted monthly and encouraged to issue those decisions. Consequently, approximately 85% of all decisions are rendered within six months of the hearing.

The Agency improved its already successful program of using the NMB website as a source for many of the forms and documents needed by arbitrators and the parties. The NMB used the website to keep the parties and the public informed regarding Section 3 activities. Arbitrators, parties, and the public use its website to

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obtain information and forms instantaneously. Last year, the agency developed an Arbitrators' Caseload Report and posted a link to the Report on the NMB website. This year the NMB placed an NRAB 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 is now available on the NMB website.

Aged Cases In March 2011 like last year, the Board conducted a review of all open cases on public law boards and special boards of adjustment which are five years and older. The Board worked with the parties to obtain the status of the cases and to encourage the parties to either settle the cases or schedule the cases for hearing. As a result, the Board was able to close the overwhelming majority of the cases and have the remaining few scheduled for hearings. With the exception of the few scheduled for hearings, the Board was able to clear its records of all cases over five years.

The Board contacted the NRAB to obtain the status of their cases over five years. This project is ongoing and will lead to the reduction of the old cases at the NRAB in fiscal year 2012.

Pay Per-case Project The NMB expanded a project in which arbitrators were paid on a per-case basis, instead of the normal per-day compensation. The project will be evaluated during the next fiscal year.

Case Backlog The National Mediation Board used the increase in Section 3 funding to further reduce the backlog of cases. The backlog of 5,551 cases that existed at the beginning of Fiscal Year 2008, has been reduced to approximately 226 cases.

Knowledge Store This year the NMB expanded its use of technology at the NRAB. All NRAB awards are entered into the Knowledge Store at the same time that they are electronically distributed to the parties. Thus awards are received by the parties in some instances, within 24 hours after they have been adopted by the NRAB.

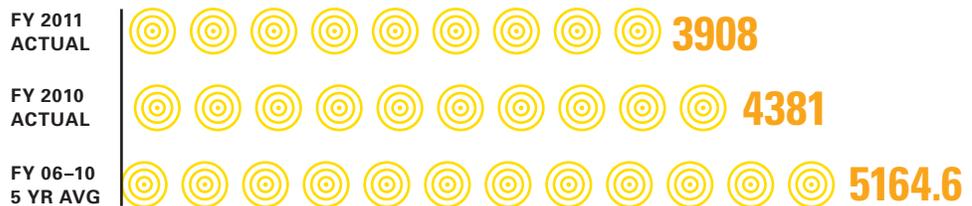
Arbitration Cases

The following chart reflects the actual case numbers for FY 2011 and FY 2010 and a five-year average.

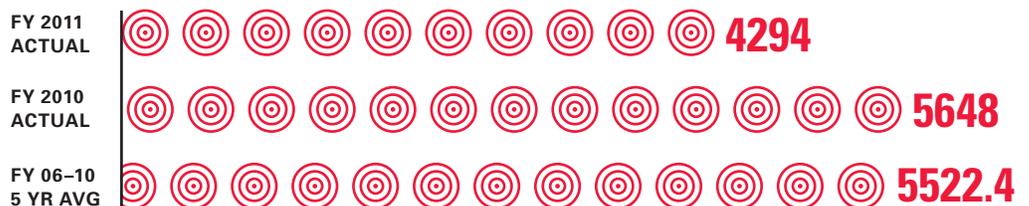
START-PENDING



NEW CASES



CLOSED CASES



END-PENDING



Administration

June D.W. King, Director

The Director of the Office of Administration (OA), along with six staff members, facilitate NMB achievement of internal strategic goals and government-wide initiatives.

Administration Overview

The Office of Administration (OA) provides operational management, leadership and support for the entire agency. These services include: strategic planning and budgeting; accounting and finance; human resources

management; procurement and contracting; information technology management and telecommunications; property and space management; and office support.

Administration Highlights

Human Capital The NMB's Human Capital Management Report provides a vehicle for ensuring that established objectives are assessed and reported on, accomplished objectives are noted, and that future goals are tracked for continuous improvement. The FY 2010 results were used to make improvements in the human resources arena during FY 2011.

With the implementation of USAStaffing system, the NMB has been able to further streamline the hiring process. We have begun initiating background investigations prior to individuals reporting for duty. In those cases, the timeline has been reduced by 10 days. Instead of 96 days, new employees come on-board within 86 days.

We continue to use the E-verify system to ensure that all new appointees are eligible to work. In addition, we conduct three individual surveys for all new hires to assess their hiring experience. The results received help to improve the training and orientation process for not only the new hires but also as a refresher for our current staff.

Information Technology In accordance with the NMB's Capital Planning Plan, the NMB will upgrade its information technology equipment which includes desktop computers and laptops. The NMB is reviewing various aspects of using "cloud" computing to better utilize its resources.

Continuity of Operations The NMB participated in the Eagle Horizon 2011 as a table-top exercise. The exercise uncovered some issues in connectivity from our COOP site that are being resolved.

Financial Performance The NMB's accounting system, GLOWS, meets all the current financial requirements. This system enables the agency to close its monthly financial records within one business day. The agency's budget is spread out among three program areas which are consistent with the agency's strategic and performance goals. The costs for all the other departments within the agency are accounted for separately in the accounting system to further provide detail accounting of program costs.

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The Office of Administration provides budget planning, budget development, and oversight of budget execution. In addition, OA is responsible for the maintenance of the Agency's core accounting system; financial reporting to the Office of Management and Budget (OMB) and Treasury; payments to vendors for goods and services received; issuing bills; and the preparation of the Agency's financial statements which are audited on an annual basis.

The NMB continues to work with an outside firm to audit its financial statements. For the fourteenth consecutive year, Allmond & Company reported that the financial statements were presented fairly, in all material respects, and in conformity with U.S. generally accepted accounting principles (GAAP) for Federal agencies. The FY 2011 audit report is included in this NMB Performance and Accountability Report which is posted on the agency's website at www.nmb.gov. The material weakness identified in last year's report is being addressed by establishing new processes and procedures that will guide the arbitration process.

Electronic Government The agency provides electronic access to all its policies. This allows our internal customers to have quick access to all agency policies at their finger tips.

The NMB continues to use its website to provide information to its internal and external customers. The website provides access to our internal customers by allowing them to access the NMB internal forms. Also the website and our online Knowledge Store provide current and historical information to the public and our external customers.

NMB Knowledge Store The NMB staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and industry contracts. In FY 2011, the NMB expanded a pilot program to allow carrier and organizations to directly enter final, signed arbitration decisions into the Knowledge Store, ensuring rapid availability of an entire set of decisions for the entire RLA community and the public. During FY 2011, CSXT, AMTRAK, UP, the UTU and the IBEW, were enabled to engage in "direct deposit" of arbitration decisions.

Sustainability We are committed to reducing green house gases in accordance with Executive Order 13514 (E.O.). During this year, we noted that 63 percent of the NMB employees use public transportation. The Agency provides Alternative Work Schedules (AWS) and Telework programs to its employees. Currently, 37 out of 49 employees participate in the Smart Benefits program. We also purchased new environmentally efficient copiers that generate 90 percent less waste than traditional copiers.

Representation and PEBS

Mary Johnson, General Counsel

The Office of Legal Affairs manages representation issues; conducts elections for the purpose of determining collective-bargaining representatives in the airline and railroad industries; and oversees post-mediation activities that lead or may lead to the establishment of Emergency Boards by the President of the United States (PEBs). The General Counsel also serves as legal counsel for the NMB.

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. [An application for a representation investigation may be obtained from the Agency's web site at www.nmb.gov.]

If a showing-of-interest requirement is met, the NMB continues the investigation, usually with a secret Telephone/Internet election. Only such employees that are found to be eligible to vote by the NMB are permitted to participate in such election. 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" by the carrier. 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.

The NMB's 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.

The OLA staff closed 48 cases and docketed 41 cases during the year. With the Agency resources requested for 2012 and 2013, it is estimated that 52-54 representation cases will be investigated and resolved in each year.

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REPRESENTATION AND PEBS

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Representation Highlights

Under the RLA, the selection of employee representatives for collective bargaining is accomplished on a system-wide basis. 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. 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.

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 case summaries that follow are examples of the varied representation matters which were investigated by the NMB during FY 2011.

United Air Lines and Continental Airlines/ AFA-CWA/IAM On January 18, 2011, the Association of Flight Attendants-CWA (AFA) filed an application alleging a representation dispute involving the craft or class of Flight Attendants and requested the Board investigate whether United Air Lines (United) and Continental Airlines (Continental) were operating as a single transportation system.

At the time the application was filed, AFA represented the Flight Attendant craft or class at United and the International Association of Machinists (IAM) represented the Flight Attendant craft or class at Continental. AFA asserted that United, Continental, and Continental Micronesia (CMI) constituted a single transportation system.

The Carriers stated that United, Continental and CMI comprised a single transportation system for the craft or class of Flight Attendants.

The IAM asserted that AFA's application was defective because it failed to include CMI as

part of the single transportation system. The IAM also asserted that the AFA application was premature because the integration of flight attendant operations at the Carriers had barely begun. Additionally, the IAM alleged that the AFA application was timed to interfere with a contract ratification vote by pre-merger Continental flight attendants on a tentative agreement to cover the transition period during which flight attendant operations would be combined.

The Board found that the Carriers were wholly-owned subsidiaries of United Continental Holdings, Inc. (UCH) and UCH had a single board of directors and a common senior management group. The Board also found: there was a single group of officers responsible for labor relations at the Carriers; personnel policies and practices were in the process of being integrated; and the Carriers had obtained approval from the FAA for a transition plan moving forward. Additionally, the Board stated that the Carriers: had been aligning schedules in markets where there were overlapping flights; had maintained a code-sharing and alliance agreement for years and had plans for further integration of flight routes and schedules through 2012; had begun the process of merging frequent flyer programs and members of both Carriers' programs were able to receive benefits while flying at either Carrier; had relocated operations to the same terminal in the two largest hubs; had adopted a new logo and the first aircraft with new livery was in operation; and had begun the process of transitioning to common uniforms.

The Board stated that its criteria for substantial integration of operations did not require total integration of operations but that plans were underway for further integration in every area where it had not yet occurred, such as reservations systems and customer service. Additionally, the Board stated that the Carriers had informed their customers of the merger through preflight announcements, both Carriers' websites, magazines, and other media outlets. Based on these steps, the Board found that there was little doubt that integration of operations would continue.

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In 1993 the Board identified “Air Micronesia” as a subsidiary of Continental in its determination that Continental and Continental Express were a single transportation system. *Continental/Continental Express*, 20 NMB 326 (1993). Air Micronesia was identified as one of the debtor corporations that merged into Continental in the bankruptcy proceedings of Continental Airline Holdings, Inc. Air Micronesia was renamed Continental Micronesia in 1993 after being acquired by Continental. Subsequently, in two cases involving the Flight Attendant craft or class, the Board treated CMI as a separate carrier without specifically analyzing whether CMI was part of a single transportation system with Continental. *Continental Airlines/Continental Micronesia*, 27 NMB 76 (1999); *Continental Micronesia*, 22 NMB 189 (1995). The Board noted that these cases pre-dated the recent combination of the CMI and Continental operating certificates.

The Board found that CMI: was managed entirely by Continental; its aircraft bore the Continental livery; its ground operations used only the Continental name and logo; and its flights were marketed through the Continental reservations office and website. As a result of the merger between United and Continental, Continental decided to seek to combine the CMI and Continental operating certificates. On December 22, 2010, the FAA granted Continental’s request and issued a new operating certificate covering both Continental and CMI. Based on these factors, the Board found that CMI was part of this single transportation finding.

Once the Board determined that a single transportation system existed, it examined the potential representation issues. The Board’s investigation established that there were approximately 15,147 Flight Attendants on the pre-merger United part of the system and approximately 9,458 on the pre-merger Continental and CMI part of the system. Since these numbers were comparable, the Board authorized an election among the craft or class of Flight Attendants.

Based on the election results, on June 30, 2011, the Board certified AFA-CWA as the representative of the Flight Attendants of United Air Lines/Continental Airlines.

On July 12, 2011, the IAM filed interference allegations.

United Air Lines and Continental Airlines/IAM On January 21, 2011, the IAM filed an application alleging a representation dispute involving the craft or class of *Stock Clerks* and requested the Board investigate whether United and Continental were operating as a single transportation system.

At the time the application was filed, the IAM represented the *Stock Clerks* craft or class at United and the CMI employees who perform stock clerks/stores functions were covered by CMI’s *Mechanics and Related Employees* collective bargaining agreement with the International Brotherhood of Teamsters (IBT).

The IAM asserted that United and Continental merged to become a single transportation system. Although the IAM’s application did not specifically mention CMI, the IAM supported the Carriers’ position that CMI was a subsidiary of Continental and also part of the single transportation system arising from the United/Continental merger.

Using the same rationale addressed in *United Air Lines and Continental Airlines*, 38 NMB 124 (2011), the Board found that United and Continental were operating as a single transportation system for representation purposes. Similarly, the Board found that CMI was part of this single transportation finding.

Once the Board determined that a single transportation system existed, it examined the potential representation issues. The Board’s investigation established that there were 1,035 *Stock Clerks* at United – 786 at pre-merger United and 249 at pre-merger Continental (including CMI).

On May 3, 2011, the IAM submitted evidence of representation of the combined craft or class and requested that the Board extend its certification in R-4844 to cover all *Stock Clerk* employees at the combined Carrier, consistent with Board precedent.

The Carrier responded on May 10, 2011, and requested that the Board conduct a representation election due to the unusual circumstances of the case. The IAM responded and argued that the Board should reject the Carrier’s request.

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On July 1, 2011, the Board extended the IAM's certification in R-4844 to include all Stock Clerks in United's single transportation system. The Board stated that it consistently extends an organization's certification to cover employees in the craft or class on the entire system when the numbers of employees on each part of the system are not comparable. The Board examined the record and found the numbers of IAM represented Stock Clerks on United were not comparable to the unrepresented Stock Clerks on Continental. Additionally the Board stated that United failed to provide any legal basis for ignoring the Board's well established comparability practice.

United Air Lines and Continental Airlines/ IAM On January 21, 2011, the IAM filed an application alleging a representation dispute involving the craft or class of Fleet Service Employees and requested the Board investigate whether United, Continental, and CMI were operating as a single transportation system.

At the time the application was filed, the IAM represented the Fleet Service Employees craft or class at United and the Fleet Service Employees at Continental and CMI were represented by the IBT. The IAM asserted that United, Continental, and CMI constituted a single transportation system. The IBT acknowledged that United and Continental would eventually become a single transportation system for labor relations purposes, but provided a list of actions the carriers needed to take before they were completely integrated according to the Board's criteria. The IBT asked the Board not to declare a single carrier until it found substantial steps towards integrations had taken place. The Carriers stated that United, Continental and CMI comprised a single transportation system for the craft or class of Fleet Service Employees.

The Board noted that it's criteria for substantial integration of operations does not require a total integration of operations. Using the same rationale addressed in *United Air Lines and Continental Airlines*, 38 NMB 124 (2011) and *United Air Lines and Continental Airlines*, 38 NMB 161 (2011), the Board found that United, Continental, and CMI were operating as a single transportation system for representation purposes.

Once the Board determined that a single transportation system existed, it examined the potential representation issues. The Board's investigation established that there were approximately 6862 Fleet Service Employees on the pre-merger United part of the system and approximately 7443 on the pre-merger Continental and CMI part of the system. Since these numbers were comparable, the Board authorized an election among the craft or class of Fleet Service Employees.

Based on the election results, on August 12, 2011, the Board certified the IAM as the representative of the Fleet Service Employees of United Air Lines/Continental Airlines.

Republic Airlines/ Shuttle America/Chautauqua Airlines/ Frontier Airlines/ Lynx Aviation and the Former Midwest Airlines/ IBT On October 4, 2010, the IBT filed an application alleging a representation dispute involving the craft or class of Pilots and requested the Board investigate whether Republic Airlines (RA), Shuttle America (Shuttle), Chautauqua Airlines (Chautauqua), Frontier Airlines (Frontier), and Lynx Aviation (Lynx) (collectively the Carriers) were operating as a single transportation system for the craft or class of Pilots. At the time the application was filed, the IBT represented the Pilots at Chautauqua (R-6199). The IBT also represented the Pilots at Republic and Shuttle through a voluntary recognition agreement. The Air Line Pilots Association (ALPA) represented the Pilots at Lynx (R-7212) and the United Transportation Union (UTU) represented the Pilots at Lynx (R-7212). The Frontier Airline Pilots Association (FAPA) represented the Pilots at Frontier (R-6630).

According to the Carriers, Republic Airways Holdings (RAH) was the holding company that owned RA, Chautauqua, Shuttle, Frontier, Lynx, and the former Midwest and operated both "fixed fee" and "branded" operations. The Carriers stated that each subsidiary carrier had its own operating certificate; however, RAH was in the process of transferring Lynx's remaining fleet to the RA operating certificate. The Carriers anticipated to be completed by early 2011, at which time RAH would surrender Lynx's operating certificate and shut down Lynx.

The Carriers stated that management was integrated, and all labor relations and personnel

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functions for the Carriers were administered by RAH. RAH stated that the single carrier comprised of Chautauqua, Shuttle, and RA would continue to exist in its current form and would be held out to the public and marketed under the brand of the applicable flying partners or the Frontier brand. Frontier (and Lynx until its closing) would continue to be held out to the public and marketed under the Frontier brand.

IBT urged the Board to find that the Carriers were operating as a single transportation system. The IBT argued that all subsidiaries were wholly owned by RAH, including Frontier and Lynx whose acquisition was finalized October 1, 2009. According to IBT, the entities were operating as a single transportation system as evidenced by substantial operational integration, common control and ownership, and combined management and labor relations.

IBT contended that Midwest ceased operations and was not a part of the single transportation system. Additionally, IBT stated that pilot recruiting for each of its subsidiaries was handled by RAH and all Pilots had been integrated into a single seniority list according to Arbitrator Dana E. Eischen's final award on February 19, 2011. IBT argued that while each of RAH's subsidiaries was a separate corporate entity with its own FAA operating certificate, their operations were all consolidated and commonly-scheduled under the Frontier brand, and they were held out as a single company of affiliates on RAH's website. Further, IBT noted that the subsidiaries were presented on a consolidated basis for both financial reporting and operating performance.

IBT noted that both ALPA and UTU agreed that Frontier was appropriately included in the single transportation system. IBT rejected FAPA's main contention that the diverse operations of Chautauqua/RA/Shuttle (fixed-fee and Frontier (branded) made a single finding inappropriate. Finally, the IBT contended that there had been significant steps towards integration of Frontier into the single transportation system since the Board's March 2010 decision regarding Flight Attendants. *Chautauqua Airlines*, 37 NMB 148 (2010).

The UTU argued that based on the integration of operations and labor relations since March 2010, the Board should find all carriers were a single carrier.

ALPA contended that all of RAH's subsidiaries were a single transportation system for the craft or class of Pilots, but argued that the Midwest Pilots were also part of the single transportation system. While ALPA acknowledged that RAH recently stopped selling services under the Midwest brand, it contended that RAH would continue to fly aircraft with Midwest livery through early 2011.

ALPA stated that since the Board's findings in *Chautauqua Airlines*, 37 NMB 148 (2010), RAH had begun to integrate Midwest and Frontier brands operationally, and was using both MWA (Republic d/b/a Midwest Airlines) and Frontier mainline planes, equipment only used in branded operations, to provide that integrated service. As Midwest's operations were integrated with and into the Frontier brand, ALPA contended that the Midwest Pilots had an interest that the Board's merger policies protect. ALPA argued that the ongoing integrations of operations had now integrated Frontier/Lynx into the single transportation system, so that the system included the Carriers "plus Midwest." ALPA believed that the intertwined nature of RAH's two types of operations made a finding of a single transportation system the only result consistent with the RLA's representation structure.

FAPA contended that Frontier was not part of the single transportation system and, therefore, the IBT's application should have been dismissed. FAPA argued that Frontier and Lynx were a separate system as they provided service exclusively for the "branded" business, while Chautauqua and RA provide both "branded" and "fixed fee" service, and Shuttle only provided "fixed fee" service.

Additionally, FAPA asserted that Frontier was a single system, and separate from RAH's other subsidiaries as it offered scheduled service only under its own brand, with its distinct livery on aircraft; had its own FAA operating certificate, and its own website, and; maintained separate day-to-day management below senior management at the holding company level. FAPA noted the Board's decision finding that Frontier was not part of the single transportation system for the craft or class of Flight Attendants. *Chautauqua Airlines*, 37 NMB 148 (2010).

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The Board found that RAH exercised sufficient common control over its subsidiaries, Chautauqua, Shuttle, RA, Frontier, and Lynx to form a single transportation system for representation purposes. The Board stated that following the multi-step transaction that integrated the former Midwest into Frontier and RA, the Carriers operated with individual operating certificates; however the other factors supported a single system finding. The Board noted that upon the effective date under the arbitrator's award, all Pilots would be working under one seniority list. The Board also found: management and Boards of Directors were overlapping; RAH had total operational control over its subsidiaries' operations; Chautauqua, Shuttle, RA, Frontier, and Lynx were held out as single carrier of affiliates on RAH's website and presented on a consolidated basis for both financial reporting and operational performance. Therefore, the Board found that the Carriers were operating as a single transportation system (Republic Airlines et al./Frontier) for the craft or class of Pilots.

On April 11, 2011, FAPA filed a Motion for Reconsideration requesting the Board reconsider its April 7, 2011 decision finding that RA, Shuttle, Chautauqua, Frontier and Lynx were operating as a single transportation system. The UTU and the IBT filed submissions in opposition to the Motion for Reconsideration. RAH did not take a position on whether the Motion should be granted or denied and ALPA did not submit a position statement.

FAPA contended that the Board's conclusion was in error primarily because it failed to address certain arguments advanced by FAPA, namely: 1) other crafts or classes at Frontier, like the Flight Attendants, remained separate, and no rationale was articulated for why the Board found the Frontier Pilots part of the Republic system; 2) RAH took no formal position on the single transportation system issue here in contrast to the Flight Attendant decision, *See, Chautauqua Airlines*, 37 NMB 148 (2010), where it urged a single transportation system finding; 3) the Board overlooked relevant cases cited by FAPA; 4) the decision failed to indicate that Chautauqua and RA operating on the Frontier brand had markings noting they were operating on a code-share basis; and finally, 5) the Board improperly relied on Arbitrator Eischen's integrated seniority list.

The IBT asserted that FAPA's Motion for Reconsideration merely reasserted arguments previously asserted to the Board and failed to show a material error of law or fact in the Board's conclusion.

The UTU stated that the Board properly relied upon existing precedent in determining that RA, Shuttle, Chautauqua, Frontier and Lynx were operating as a single transportation system for the craft or class of Pilots, and that Midwest Pilots were included in this system. The UTU asserted that FAPA's Motion should be denied.

The Board found that FAPA failed to demonstrate a material error of law or fact or circumstances in which the Board's exercise of discretion to modify the decision was important to the public interest. Furthermore, the Board found that FAPA failed to show that the prior decision was fundamentally inconsistent with the proper execution of the Board's responsibilities under the Railway Labor Act, 45 U.S.C. § 151, *et seq.*

Once the Board determined that a single transportation system existed, it examined the potential representation issues. The Board's investigation established that there were approximately 1986 Pilots on the pre-merger RA, Shuttle, Chautauqua part of the system, and 1139 Pilots on the other parts of the pre-merger system. Since these numbers were comparable, the Board authorized an election among the craft or class of Pilots, employees of Republic Airlines et al./Frontier.

On June 22, 2011, RAH requested the Board postpone the tally scheduled for June 27, 2011, while it considered whether a corporate restructuring and planned divestiture of majority ownership of Frontier affected the Board's determination that Frontier was part of the single transportation system with the RAH operating subsidiaries. According to RAH, it entered into a Letter of Agreement with FAPA, effective date June 17, 2011, and fully ratified by the Frontier Pilots, "detailing the Frontier restructuring effort and reflecting the Company's changed business strategy to have Frontier ultimately operate as a separate corporate entity." In exchange for FAPA's agreement to modify its collective bargaining agreement and agree to significant labor cuts, RAH agreed to: maintain separate Frontier websites for all sales,

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operational and recruitment purposes; further separate the Frontier management structure to include appointing a separate Frontier Chief Operating Officer and an independent Director of Labor Relations for Frontier; create separate Frontier Human Resources and Payroll functions; maintain a separate and unique Frontier Employee Handbook; and document arms-length agreements with any RAH subsidiary that operates on behalf of Frontier. RAH further agreed to divest itself of its majority equity stake in frontier no later than December 31, 2014, after which a separate Frontier Board of Directors would be established.

The IBT contended that RAH's request should be denied as it was unsupported by any citation to authority, contrary to well-established Board principle that representation elections should be conducted on the present system, not a future system; and, completely without merit. The IBT also stated that it might later pursue allegations of election interference in this matter.

The Board noted that Section 13.302 of the Board's Representation Manual allows participants to request a postponement of the Tally by filing a request supported by substantive evidence. The Board also noted that it only considers granting such requests in extraordinary circumstances. The Board found that postponing the ongoing election would be at odds with its statutory mandate to resolve representation disputes as expeditiously as possible and that RAH failed to cite any Board precedent in support of its request. Therefore, the Board denied RAH's request to postpone the Tally and ordered that the Tally proceed as scheduled.

Based on the election results, on June 28, 2011, the Board certified the IBT as the representative of the Pilots of Republic Airlines et al./Frontier.

Delta Air Lines, Inc./AFA On July 1, 2010, the AFA filed an application requesting the Board to investigate whether Delta Air Lines, Inc. (Delta) and Northwest Airlines (Northwest) were operating as a single transportation system for the craft or class of Flight Attendants. The Board found Delta and Northwest were a single transportation system known as Delta for the craft or class of Flight Attendants. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 323 (2010). On September 1, 2010, the Board authorized an election among the 20,000 Flight Attendants. The Board scheduled the tally for November 3, 2010.

In October, AFA filed allegations of election interference, stating that Delta interfered with employee free choice through the use of "pop-up" messages related to the election on its internal password-protected network, DeltaNet, and the inclusion of a hyperlink to the NMB's website in those pop-up messages.

The Board did not find extraordinary circumstances requiring action during the election period and stated that it would address any allegations regarding conduct during the election period at the end of the voting period.

Based on the results of the election, the Board dismissed AFA's application. *Delta Air Lines, Inc.*, 38 NMB 20 (2010).

On November 23, 2010, AFA filed allegations of election interference. Delta responded. Delta responded on December 21, 2010. AFA filed an additional response on January 14, 2011 and Delta replied on February 10, 2011. In its filings, Delta raised allegations about AFA's conduct during the election.

After reviewing the submissions provided by AFA and Delta, the General Counsel found that in order for the Board to determine whether the laboratory conditions were tainted, further investigation was needed. The Board is currently conducting interviews and an on-site investigation in this matter.

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Delta Air Lines, Inc./IAM In September, the Board found that Delta and Northwest were operating as a single transportation system and ordered an investigation to address the representation consequences for the craft or class of Stock and Stores Employees. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 397 (2010). On September 27, 2010, the Board authorized an election among the 673 Stock and Stores Employees. The Board scheduled the tally for November 22, 2010.

The November 22, 2010 Report of Election results reflected that a majority of votes cast was for no representation. Therefore, the Board issued a Dismissal. *Delta Air Lines, Inc.*, 38 NMB 33 (2010).

On December 9, 2010, IAM filed allegations of election interference. Delta responded on January 25, 2011. In its response, Delta raised questions about IAM's conduct during the election. IAM filed an additional response on March 8, 2011 and Delta replied on March 21, 2011.

After reviewing the submissions provided by IAM and Delta, the General Counsel found that in order for the Board to determine whether the laboratory conditions were tainted, further investigation was needed. The Board is currently conducting interviews and an on-site investigation in this matter.

Delta Air Lines, Inc./IAM In September, the Board found that Delta and Northwest were operating as a single transportation system and ordered an investigation to address the representation consequences for the craft or class of Passenger Service Employees. *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 382 (2010). On October 7, 2010, the Board authorized an election among the 15,436 Passenger Service Employees. The Board scheduled the tally for December 7, 2010.

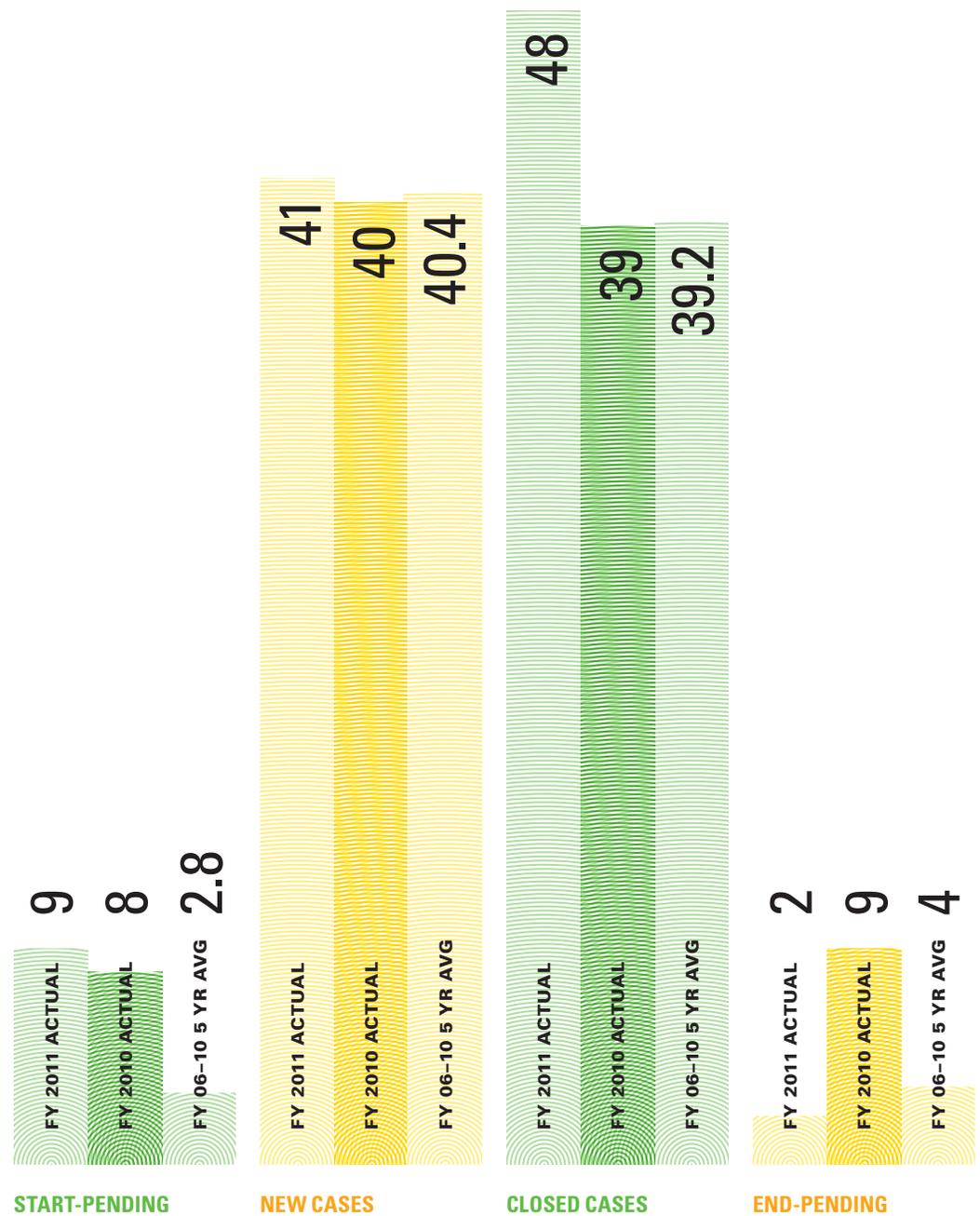
The December 7, 2010 Report of Election results reflected that a majority of votes cast was for no representation. Therefore, the Board issued a Dismissal. *Delta Air Lines, Inc.*, 38 NMB 35 (2010).

On December 16, 2010, IAM filed allegations of election interference. Delta responded on January 25, 2011. In its response, Delta raised questions about IAM's conduct during the election. IAM filed an additional response on March 15, 2011 and Delta replied on April 15, 2011.

After reviewing the submissions provided by IAM and Delta, the General Counsel found that in order for the Board to determine whether the laboratory conditions were tainted, further investigation was needed. The Board is currently conducting interviews and an on-site investigation in this matter.

Representation Cases

The following chart reflects the actual case numbers for FY 2011 and FY 2010 and a five-year average.



Presidential Emergency Boards (PEBs) Overview

Section 159A (Section 9a) of the Railway Labor Act (RLA) provides special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting publicly funded and operated commuter railroads and its employees. Section 160 (Section 10) of the RLA covers all other railroads and airlines.

When the National Mediation Board (NMB) determines that a collective-bargaining dispute cannot be resolved in mediation, the NMB 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 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 respecting 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 report to the President.

Apart from the emergency board procedures provided by Section 160 of the RLA, Section 159A (Section 9a) provides special, multi-step emergency procedures for unresolved disputes affecting publicly funded and operated commuter railroads and its employees. 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.

PEB Highlights

During fiscal year 2011, there were no Presidential Emergency Boards.

Performance Plan and Results(GPRA)

This report contains FY 2011 Accomplishments of the National Mediation Board relating to goals and objectives for Mediation/ADR, Representation, and Arbitration. These accomplishments enabled the NMB to meet its statutory obligations and provide services to its airline and railroad labor, management and public customers.

Strategic Plan General Goal 1

Mediation and Alternative Dispute Resolution

Mediation and Alternative Dispute Resolution (ADR) will continue to foster the prompt and peaceful resolution of collective bargaining disputes in the airline and railroad industries.

Mediation

- I. **Continue to develop standard training for mediators to ensure they are kept abreast of the latest trends in mediation and gain additional industry and technical knowledge in both air and rail.**

FY-2011 Accomplishment: Through the use of Individual Development plans each mediator participated in training and development that met their individual needs. In addition, training covering industry specific topics, as well as guest speakers, was conducted during the bi-monthly mediator meetings.

- II. **Better track the history of cases. Work with Arbitration and Representation to revise and improve the agency case management system.**

FY-2011 Accomplishment: We continued to fine tune the capabilities of and information tracked in the case management system. Specialty reports to help in workload planning and historical research were developed and used.

ADR

- I. **Expand current ADR capabilities to address the changing labor environment in the airline and railroad industries and provide more varied assistance in dispute resolution both between and during contract negotiations.**

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- **Use outreach and promotion efforts to raise the visibility of the ADR program.**

FY-2011 Accomplishment: ADR continued to engage in outreach and promotion efforts with parties in the airline and railroad industries. The result of these efforts was a continued case load in special dispute resolution efforts, and ADR/ODR presentations to carriers, organizations, and professional associations. Special concentration was given to local leadership at the railroads and rail organizations with grievance mediation overviews and presentations given to those who handle the lion's share of grievance handling.

- **Review ADR services for potential deletions, additions, or changes.**

FY-2011 Accomplishment: Each year ADRS does reviews of its programs, assessing existing training and service delivery. ADRS created the NMB Lyceum, an online learning resource that helps reduce travel costs for GM training. Working with Arbitration, ADRS increased its promotion of expedited arbitration coupled with grievance mediation as an option for the parties. Also, ADRS continued conversion of the basic arbitration work processes to an automated system developed in conjunction with the Arbitration Services office.

- II. Implement and develop interagency projects with other labor and transportation agencies with the goal of enhancing labor-management relations in the airline and railroad industries.**

FY-2011 Accomplishment: ADR offered consultation to the Surface Transportation Board, National Archives and Records Administration, and the Congress on the application of ODR technology to open government and e-government initiatives.

- III. Engage in outreach and education programs to ensure that the NMB is seen as a world leader in airline and railroad labor-management issues and submit proposals for presentations at dispute resolution conferences.**

FY-2011 Accomplishment: ADR staff members were involved in presentations to: the Association for Conflict Resolution, the Dispute Resolution Section of the American Bar Association, the Interagency Dispute Resolution Working Group Steering Committee, American Law Institute and American Bar Association (ALI-ABA) and numerous dispute resolution and legal organizations.

Strategic Plan General Goal 2

Representation

The Office of Legal Affairs (OLA) will promptly investigate representation disputes and definitively resolve representation status for collective bargaining purposes, using the most efficient and client-friendly methods available.

- I. Expand the use of electronic systems to further streamline and reduce cost; continue to integrate Representation data into the agency Corporate Memory; and work with ADR to implement electronic filing system for OLA.**

FY-2011 Accomplishment: OLA primarily accepts electronically submissions in representation cases. The Office of Legal Affairs continued to reduce its use of paper documents by implementing a test program to take electronic witness statements in representation interference investigations.

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II. Develop outreach opportunities in the legal, labor relations and alternative dispute resolution communities. Submit proposals for participation in conferences sponsored by the American Bar Association (ABA). Develop appropriate CLE and other training opportunities for RLA practitioners.

FY-2011 Accomplishment: OLA continued its outreach to the legal, labor relations and alternative dispute resolution communities. OLA attorneys helped plan the agenda for and were panelists at the ABA Railroad and Airline Labor Law Section's Mid-winter meeting as well as the ABA's Labor and Employment Annual CLE Meeting, and a three day Continuing Legal Education seminar on the Railway Labor Act sponsored by ALI-ABA.

III. Implement and maintain concise, relevant reference materials, readily available to the public and which reduce the number of man-hours used to research and respond to inquiries; update and improve the material available on the NMB web site; and revise NMB's Representation Manual.

FY-2011 Accomplishment: OLA Attorneys are working on the 3rd Edition of the authoritative treatise on Railway Labor Act Law published by the Bureau of National Affairs. OLA attorneys assisted in the development of one of the NMB Lyceum's initial on-line course offerings, NMB 101.

IV. Maintain continuous industry and agency communication at a level that provides early preparation for Presidential Emergency Board management, and coordinate efforts with the Office of Mediation Services to identify potential disruptions which may lead to a Presidential Emergency Board.

FY-2011 Accomplishment: The Office of Legal Affairs continually coordinates with the Office of Mediation Services to evaluate potential disruptions in the industry.

Strategic Plan General Goal 3

Arbitration

Arbitration will promote the prompt and orderly resolution of grievance disputes in the railroad and airline industries.

I. Modernize and update procedures related to NRAB Section-3 cases and other arbitral forums (public law boards and system boards of adjustment). Conduct a business process review of NRAB case handling.

FY-2011 Accomplishment: NRAB administrative processes, as well as the procedures governing public law boards and system boards of adjustments, were reviewed with the goal of streamlining procedures.

II. Foster a "best practices" approach to managing the contract-arbitrator roster. Move arbitrator roster information to a new case management system. Improve the guidelines for accepting applicants to the roster.

FY-2011 Accomplishment: The NMB instituted several projects to help the parties better utilize the NMB Roster of Arbitrators. One project involved CSX Transportation. Another project involved the Canadian National Railroad. An NMB Arbitrators' Caseload Report was updated on the NMB website, along with the official Roster of Arbitrators.

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III. Foster a “best practices” approach to managing arbitrator billing and payment. Investigate and develop a more equitable and efficient arbitrator billing process.

FY-2011 Accomplishment: The NMB initiated and implemented several special compensation projects, establishing more boards in which arbitrators were paid on a per-case basis with an increase in compensation for cases heard using the NMB Online Video Conferencing Center (WebEx). These projects will be evaluated in FY 2012.

IV. Integrate current technology into the arbitration process. Continue to integrate Arbitration business processes into the NMB Corporate Memory program. Cooperate with Mediation, ADR, and Representation to improve the agency case-management system. Continue to encourage the parties to use the agency’s web-based video-conferencing system (WebEx) to reduce costs for arbitration hearings and adoption conferences.

FY-2011 Accomplishment: The NMB trained several arbitrators, railroad management officials and labor officials in the use of Online Video Conferencing, and several hearings were conducted using OVC during Fiscal Year 2011. OVC was used repeatedly at the National Railroad Adjustment Board.