REPRESENTATION & PRESIDENTIAL EMERGENCY BOARDS

29 Representation
33 Presidential Emergency Boards

REPRESENTATION CASES

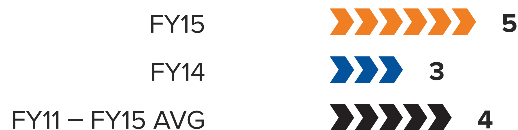
START PENDING

NEW

SUM

CLOSED

END-PENDING



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 a "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. 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. [An application for a representation investigation may be obtained from the Agency's website 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 employees found to be eligible to vote by the NMB are permitted to participate in elections. 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." 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. 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 HIGHLIGHTS

The NMB 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 29 cases and also docketed 31 cases during the year. With the Agency resources requested for 2016, it is estimated that 40 representation cases will be investigated and resolved in the next fiscal year.

Case Summaries

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 and resolved by the NMB during FY 2015.

American Airlines/US Airways

On January 10, 2014, pursuant to the NMB's Merger Procedures and NMB Representation Manual Section 19.3, American Airlines notified the NMB that "on December 9, 2013, American Airlines Group, Inc., (formerly known as AMR Corporation) and US Airways Group, Inc., implemented a merger agreement dated February 13, 2013, resulting in the former's acquisition of the latter, including its wholly owned subsidiary US Airways, Inc." Subsequently, in FY 2015, the NMB investigated American Airlines (American) and US Airways (collectively the New American) to determine whether they were operating as a single transportation system for representation purposes under the RLA regarding the crafts or classes of Mechanics and Related Employees, Fleet Service Employees, Stock & Stores Employees, Simulator Technicians, Instructors and Dispatchers.

Simulator Technicians, Instructors, and Flight Dispatchers

On July 24, 2014, the National Association of Airlines Professionals (NAAP) filed applications seeking to represent employees in the crafts or classes of Simulator Technicians, Instructors, and Flight Dispatchers. Employees in the three crafts or classes covered by the application were represented by the Transport Workers Union of America, AFL-CIO at both American and US Airways. Subsequently, on January 12, 2015, TWU also filed applications alleging a representation dispute involving the crafts or classes of Simulator Technicians, Instructors and Dispatchers at the New American. The Board consolidated TWU's applications with NAAP's.

Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American and US Airways are a single transportation system. *American Airlines, Inc./US Airways, Inc., 42 NMB 80, 99 (April 15, 2015)*. Having determined that a single transportation system existed, the Board proceeded to examine the potential representation consequences.

With regard to craft or class issues, the Simulator Engineers at US Airways were a separate craft or class at pre-merger US Airways and represented by TWU pursuant to a certification in NMB Case No. R5916. *USAir, Inc., 17 NMB 57 (1989)*. In contrast, the Simulator Technicians at pre-merger American were represented by TWU as part of the Mechanics and Related craft or class pursuant to NMB Case No. R-6872. *American Airlines, Inc./Trans World Airlines, LLC, 29 NMB 240 (2002)*. For the reasons discussed more fully below, the Board found that Simulator Technicians at the New American are appropriately part of the Mechanics and Related craft or class and dismissed the applications for a separate craft or class of Simulator Technicians at the New American.

The NMB also conducted an on-site investigation to determine whether NAAP's authorization cards were tainted by the contemporaneous distribution of $500 gift cards and cashier's checks. The Board majority found that the close timing between the distribution of the $500 gift cards/cashier's checks and the collection of the authorization cards tainted the laboratory conditions. Noting that TWU was the certified representative of Instructors and Flight Dispatchers at both pre-merger American and US Airways and the extraordinary circumstances in this case, the Board extended TWU's certifications to cover those employee groups at the New American.

Member Geale dissented from the finding. In his view, the majority's decision inappropriately limits the freedom of association rights of the employees by subjecting them to union representation when it was clear they were unhappy with the current representative. He further disagreed with the majority determining for the first time that a union could interfere with an election through providing a benefit in the context of an organizing campaign without first providing notice of the applicable rules.

Mechanics and Related, Fleet Service and Stock & Stores Employees

On August 6, 2014, TWU and the International Association of Machinists and Aerospace Workers (IAM) jointly filed applications covering approximately 33,000 employees in the Mechanics and Related, Fleet Service and Stock & Stores Employee crafts or classes. Prior to filing these applications, TWU and IAM formed the TWU/IAM Mechanics Association, the TWU/IAM Fleet Association, and the TWU/IAM Stores Association for the purposes of representing these crafts or classes on the merged system. TWU represents the three craft or classes at American and IAM is the representative of the three crafts or classes at US Airways. Based on the applications of its single carrier criteria to the facts disclosed by the investigation, the Board determined that there was substantial integration of operations, financial control, and labor and personnel functions and that American and US Airways are a single transportation system for representation purposes. American Airlines, Inc./US Airways, Inc., 42 NMB 35 (April 15, 2014). Having determined that a single transportation system exists, the Board proceeded to examine the potential representation consequences. The Board determined that Simulator Technicians should be a part of the Mechanics and Related Employees craft or class based on the current circumstances at the New American and the historical representation pattern at pre-merger American. To do otherwise, in the view of the Board's majority would unnecessarily fragment a craft or class with a long and stable collective bargaining history and lead to the instability the Act seeks to prevent.

Member Geale dissented from Board's finding with regard to Simulator Technicians, stating that this determination was a departure from recent Board precedent and overrides the free association rights of the employees.

In American Airlines, Inc./US Airways, Inc., 42 NMB 127 (May 19, 2015), the Board extended the certifications of TWU and IAM as the representatives of the crafts or classes of Mechanics and Related, Fleet Service and Stock and Stores Employees at pre-merger American and US Airways to cover the merged crafts or classes at the New American with the respective TWU/IAM Associations as the certified representative. The Board found that the TWU/IAM Associations were formed by the certified representatives of Mechanics and Related Employees, Fleet Service Employees, and Stock and Stores Employees crafts or classes at the pre-merger carriers and the purpose of the TWU/Associations is to represent the employees in the respective crafts or classes to collectively bargain under the RLA at the New American. Thus the Associations clearly fall within the definition of representative under the Act and represent 100% of the three crafts or classes.

REPRESENTATION HIGHLIGHTS

Jurisdictional Opinions

The NMB also received 4 jurisdictional referrals from the National Labor Relations Board (NLRB). In view of the National Labor Relations Act (NLRA) specific exemption of employers covered by the RLA, the NLRB follows a longstanding practice of referring cases to the NMB in instances where the jurisdictional issue is raised. In these cases, the NMB reviews the record provided by the NLRB and provides an opinion letter regarding whether the employer in question is, in the NMB's opinion, covered by the RLA.

In Menzies Aviation, Inc., 42 NMB 1(October 16, 2014), the NLRB requested the NMB's opinion regarding whether Menzies' operations and employees at Seattle-Tacoma International Airport (SeaTac) are subject to the RLA. The NMB applied its two-part jurisdictional test recently reaffirmed in Airway Cleaners, 41 NMB 262 (2014). Under that test, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction.

The employees at issue performed baggage, ramp, and aircraft servicing functions under Menzies' contract with Alaska Airlines (Alaska). The contract between Menzies and Alaska specified standards such as a 20-minute time limit for unloading baggage and allowed Alaska auditors to inspect Menzies employees' work and identify deficiencies for Menzies to correct. Although the NMB found that the ground services work performed by Menzies under its contracts at SeaTac is work traditionally performed by employees of air carriers, the Board found that the extent to which Alaska controlled the manner in which Menzies conducts its business is no greater than that found in a typical subcontractor relationship. Alaska may report performance problems but Menzies determines the appropriate discipline following its own discipline process. In addition, Menzies is not required to terminate employees who are unacceptable to Alaska. The Board found that Menzies retains and exercises the option to utilize such employees elsewhere at SeaTac. The Board also noted that while it has in the past found jurisdiction over Menzies' operation at other locations, its jurisdictional decision are rendered on a case-by-case basis and, based on the record in this case, the required meaningful control over personnel decisions by an air carrier was not present.

For institutional reasons, Chairman Hoglander agreed that the two-part test was correctly applied and that there was no RLA jurisdiction. Member Geale dissented. In his view, RLA jurisdiction is established by the contract language and the evidence that Alaska provides training for Menzies employees, audits their performance and removes unacceptable employees from its contracts. He also noted that the decision to decline jurisdiction threatens to substantially undermine the purpose of the RLA in limiting disruptions to interstate travel and commerce.

The Board also addressed RLA jurisdiction in a case that was not a referral from the NLRB. In Gateway Frontline Services, 42 NMB 146 (June 4, 2015), the Board found RLA jurisdiction based on the two-part test but dismissed that application because the applicant organization did not meet the showing of interest requirement for the system-wide craft or class of Passenger Service Employees. Gateway Employee Alliance (Alliance) alleged a representation dispute among the "Passenger Assistant and Dispatcher" employees of Gateway Frontline Services (Gateway) at McCarran International Airport (McCarran) in Las Vegas.

Gateway provides security and frontline services to airlines such as flight dispatching, baggage handling, wheelchair services and skycap services at 11 US airports, including McCarran. At McCarran, Gateway provides these services to Southwest and Delta. The Board found that the work performed by Gateway under its contracts with Southwest and Delta at McCarran is work traditionally performed by employees of air carriers. In contrast to Menzies, discussed above, the Board further found that Southwest and Delta exercise a sufficient amount of control to support RLA jurisdiction. The Board noted that Gateway has not only terminated employees but also hired and promoted specific individuals upon request of the carriers. Gateway also did not independently determine the appropriate discipline for its employees, acquiescing instead to the carriers' discipline requests. The Board found this acquiescence occurred even when Gateway managers recommended less severe discipline. The Board also noted that Gateway is required to forward all passenger complaints to the carriers for handling through the carriers' complaint resolution departments. Chairman Hoglander again concurred in the jurisdictional finding for institutional reasons.

Having found RLA jurisdiction, the Board reiterated its long-standing policy that the RLA's required system-wide representation is only achieved when a craft or class includes all eligible employees, regardless of their work locations. Accordingly the Board found that Gateway's McCarran operations do not constitute a separate system for representation purposes in view of its centralized labor relations and administrative functions. In addition, Gateway uses one employee handbook for all employees outside of California and it has uniform standards for hiring and recruiting nationwide.

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 employees on publicly funded and operated commuter railroads. Section 160 (Section 10) of the RLA covers all other railroads and airlines.

When the National Mediation Board determines that a collective-bargaining dispute cannot be resolved in mediation, the agency 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 (PEB) 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 upon 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 reports to the President.

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

A chart reflecting the actual case numbers for FY 2014, FY 2015 and the five-year average, FY 2011-2015 follows:

	FY 2014 Actual	FY 2015 Actual	FY 2011-FY 2015 Five Year Average
Emergency Board Sec. 160	0	0	.4
Emergency Board Sec. 159A	0	2	1

PEB HIGHLIGHTS

Two PEBs were established during fiscal year 2015. These PEBs involved the special, multi-step emergency procedures for unresolved collective-bargaining disputes affecting employees on publicly funded and operated commuter railroads. PEB 247 was established under Section 9(A) to resolve a dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA) and certain of its employees. PEB 248 was established under Section 9(A) to resolve a dispute between the New Jersey Transit Rail (NJT) and certain of its employees.

Presidential Emergency Board 247

On June 14, 2014, the President created PEB 246, effective June 15, 2014, to investigate and issue a report and recommendations regarding the dispute between the SEPTA and certain of its employees represented by the International Brotherhood of Electrical Workers (IBEW) and the Brotherhood of Locomotive Engineers and Trainmen (BLET). On July 14, 2014, PEB 246 issued its Report and Recommendations to the President.

When the recommendations of PEB 246 did not result in a prompt resolution of the disputes, the NMB conducted a public hearing on August 4, 2014, at which the Organizations and SEPTA discussed their reasons for not accepting the recommendations of PEB 246. Subsequent to the public hearing, SEPTA and IBEW reached an agreement of their dispute. The dispute between SEPTA and BLET remained unresolved.

On October 7, 2014, SEPTA requested that President Obama create a second Emergency Board pursuant to Section 9A(E) of the RLA regarding its dispute with the BLET. Thereafter, on October 10, 2014, the President issued an Executive Order establishing, effective 12:01 a.m., October 13, 2014, Presidential Emergency Board 247 to recommend adoption of a final offer from those submitted by SEPTA and BLET. The President appointed Elizabeth C. Wesman, as Chairman of the Board, and Barbara C. Deinhardt and David P. Twomey, as Members.

On October 22, 2014, BLET's members and SEPTA's Board of Directors ratified a tentative agreement. On November 6, 2014, the Board submitted its report to the President, reporting that the parties' agreement had been ratified and the dispute had been resolved.

Presidential Emergency Board 248

In April 2011, pursuant to Section 6 of the RLA, the Organizations[1] served on the NJT formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations. Applications for mediation were filed with the NMB by IBEW, on behalf of Electrical Workers, and TCU/IAM in March 2014; by BLET in June 2014; by SMART – Transportation Division (UTU) in July 2014; by IAM, BRS, and NCFO in November 2014; by SMART and ATDA in December 2014; by IBEW, on behalf of Supervisors, and BMWED in January 2015; and by IBB and TWU in February 2015.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On June 9 and 10, 2015, the NMB, in accordance with Section 5, first, of the RLA, urged the LIRR and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). The proffer of arbitration specified that failure to respond by June 12, 2015 would be considered a rejection of the proffer. On June 11, 2015, NJT accepted the NMB's proffer of arbitration, only in the event that every Organization also accepted the proffer. On June 12, 2015, TCU/IAM and BLET declined the NMB's proffer of arbitration. None of the other Organizations responded to the proffer.

1. The New Jersey Transit Rail Labor Coalition ("the Coalition") represents all 4,220 unionized rail employees at NJT. The Coalition consists of the following organizations: International Brotherhood of Electrical Workers ("IBEW"), representing Electrical Workers and Supervisors; Transportation Communications International Union/IAM ("TCU/IAM"), representing Supervisors, Clericals, and Carmen; Brotherhood of Locomotive Engineers & Trainmen ("BLET"), representing Locomotive Engineers, Assistant Engineers, and Engineer Trainees; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (UTU) ("SMART" or "UTU"), representing Yardmasters and Conductors/Trainmen; International Association of Machinists & Aerospace Workers ("IAM"), representing Machinists; Brotherhood of Railroad Signalmen ("BRS"), representing Signalmen; National Conference of Firemen & Oilers, SEIU ("NCFO"), representing Laborers; International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART"), representing Railroad, Sheet Metal, Mechanical & Engineering Workers; American Train Dispatchers Association ("ATDA"), representing Train Dispatchers; Brotherhood of Maintenance of Way Employees Division ("BMWED"), representing Maintenance of Way Employees; International Brotherhood of Boilermakers ("IBB"), representing Boilermaker Welders; and Transport Workers Union of America ("TWU"), representing Carmen and Coach Cleaners. Although each of the separate bargaining units commenced negotiations with NJT on an individual basis, they subsequently joined together as a formal Coalition to bargain collectively with NJT.

On June 15, 2015, the NMB served notices that statutory mediation had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., on Thursday, July 16, 2015.

Section 9A(C)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. On June 30, 2015, in accordance with Section 9A of the RLA, the Coalition[2], on behalf of all the Organizations, requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. On July 9, 2015, NJT also requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Thereafter, on July 15, 2015, the President issued an Executive Order. Effective 12:01a.m, July 16, 2015, the Executive Order created Presidential Emergency Board 248 to investigate and report concerning the dispute between the NJT and certain of its employees represented by the Organizations. The President appointed Elizabeth C. Wesman, as Chairman of the Board, and Barbara C. Deinhardt and Ann S. Kenis as Members. The Board submitted its Report to the President on August 14, 2015.

Forecast for FY 2016, FY 2017, and Beyond

The NMB cannot predict precisely the number of PEBs that may be created during a given fiscal year. Estimates are based, among other factors, upon prior experience and knowledge of the contentiousness of the parties in the bargaining process and mediation, the number of cases, and the degree of impact of any dispute. For example, activity leading up to a release and the creation of a PEB for the LIRR and multiple unions occurred in FY 2013, but the PEB was established in FY 2014. A second PEB was also established for the LIRR in FY 2014 under the special commuter rail provisions of Section 9(A). In addition, a PEB was also established for SEPTA under Section 9(A). The second SEPTA PEB (PEB 247) was convened by President Obama on October 10, 2014 (FY 2015).

2. On June 30, 2015, TCU filed an individual request for the establishment of an Emergency Board.