

**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:

	<b>FY 2014 Actual</b>	<b>FY 2015 Actual</b>	<b>FY 2011-FY 2015 Five Year Average</b>
<b>Emergency Board Sec. 160</b>	0	0	.4
<b>Emergency Board Sec. 159A</b>	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<sup>1</sup> 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<sup>2</sup>, 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.