James M. Harrell & Associates
Human Resources and Labor Relations Consulting

James M. Harrell
President
1745 S. Naperville Road
Suite 101
Wheaton, IL 60187

Phone: 630.510.1700
Fax: 630.510.1766
E-mail: JHarrell@Harrellconsultants.com

September 17, 2004

Mr. Rowland Watkins
Director of Arbitration Services
National Mediation Board
1301 K Street, N.W., Ste. 250E
Washington, D.C. 20005-7011

Dear Mr. Watkins:

This has reference to the News Release dated August 12, 2004, concerning the NMB request for public comments on the Proposed Rule Changes Governing Grievance Arbitration in the Railroad Industry.

I am pleased to offer comments on behalf of Jeff Monahan, an associate in my firm, and me. Between the two of us, we have well over 50 years experience as labor relations officers and practitioners at all levels of Class I railroads (Santa Fe, Union Pacific, Illinois Central and Canadian National). Over the past four years, we have represented over 70 regional and short line railroads in the labor relations area. I also handle labor relations under the NLRA for Knight Industries, a manufacturing company of which I am an owner. Based on our experience, we hope to add meaningful comments to the NMB's proposed rule changes.

We will offer our comments in the order of the proposals:

We have no comments on Sections 1210.1 through 1210.8.

1210.9 Consolidation of cases: This is a very important rule change that we fully support. In our experience, both rail management and labor have "plugged" the system by taking repeatedly the same type of case to arbitration. Carriers do this by paying a single case they may lose in arbitration but then refuse to apply the award to other cases identical in nature. Conversely, Organizations will accept a denial of the particular grievance but then refuse to withdraw other similar and like cases based on the logic of the award. Whether or not the Director of Arbitration Services would ever have to exercise this right, having said right would be a powerful influence on the parties to consolidate cases, thereby providing a less congested and more efficient use of the arbitration process.

1210.10 Decision and award: This rule simply provides a very reasonable time frame for the parties and neutral to get about the business of resolving cases. We have witnessed unreasonable delay from both labor and management as well as excessive time in the rendering of decisions by arbitrators. Clear guidelines that are reasonable do nothing less than keep the process running smoothly. The Director of Arbitration Services must have the authority to withhold payment for arbitration in order to ensure the parties comply with the guidelines. Other time frames in the past have been largely ignored. We also point out a constructive criticism of the NMB in this regard. We have learned that arbitrators decisions are given to the NRAB and are not processed and given to the parties, sometimes for several months. This has happened with out-of-service (dismissal) cases, much to the peril of both the claimant and railroad. This should be addressed as well.

1210.11 Reports: We have no comment on this section.

1210.12 Fees: This proposed rule is an excellent step in the right direction. The NMB is well aware of our position that railroad arbitration should be "parties pay", just like it is in the rest of American industry. An even better approach would be "losing party pay" arbitration. At one of our manufacturing facilities the contract has a no-strike provision and losing party pay arbitration. The labor relations is sound and amicable, and there has not been a single grievance progressed to arbitration in the three years of plant ownership. Requiring the parties to pay processing fees engenders a degree of responsibility that is currently lacking. It also helps the American taxpayer by supporting the arbitration framework in the railroad industry. Finally, it may actually reduce the amount of frivolous cases sent to either the NRAB or listed on PLB's.

In conclusion, the NMB's proposed rules are sound and logical. They address the current issues in a reasonable and measured approach, even though they fall short of the optimal parties pay approach. In our view the NMB's rules should be implemented. Please feel free to contact me if you have any questions or require clarification.

Yours truly,

James M. Harrell