United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510–6300

September 20, 2004

Roland Watkins
Director of Arbitration/NRAB Administrator
National Mediation Board
1301 K Street, NW, Suite 250-East
Washington, D.C. 20005

Re: NMB Docket No. 2003-01

By facsimile - (202) 692-5086

Dear Mr. Watkins:

I'm writing to comment on the proposed rules changes published by the National Mediation Board (NMB) for comment in the Federal Register on August 9, 2004. I commend the NMB's efforts to promote timely resolution of employee grievances, but I believe that adoption of the proposed rules will violate the letter and spirit of the Railway Labor Act and undermine the NMB's effectiveness in fulfilling its statutory role. I urge NMB to reconsider the proposed rules, and in keeping with the Act's history, work with the parties to reach a consensus on any new procedures for the arbitration of labor-management disputes in the railroad industry.

I'm concerned that the proposed rules, particularly those imposing filing fees for mediation and arbitration services, are at odds with the history and purpose of the Railway Labor Act. The Act was jointly drafted and broadly supported by representatives of rail carriers and labor unions. Its primary purpose is to prevent interruption in the nation's interstate commerce and encourage the prompt and orderly settlement of labor-management disputes through mediation and binding arbitration. 45 U.S.C. §151a.

The Act sets forth a comprehensive, exclusive system of binding arbitration for resolution of labor-management disputes, including employee grievances. The strength and effectiveness of this system was made possible by the unions' agreement to limit their right to strike over employee grievances, in return for federally financed arbitration of the grievances. A principal author of the 1934 amendments strengthening the arbitration system characterized this major concession by labor as the most important part of the bill. *Testimony of Joseph Eastman, Federal Coordinator of Transportation, Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 7650*, 73rd Cong. 2d Sess. 47, 58, 60 (1934).

When Congress amended the statute in 1966, it specifically refused to accept the proposal by the then-Chairman of the National Railway Labor Conference to require the parties to pay the

expenses of the arbitrator (or "referee," as the statute reads). *Testimony of J.E. Wolfe, Hearings Before the House Committee on Interstate and Foreign Commerce, on H.R. 702 and related H.R. 706,* 89th Cong., 1st Sess. 198 (1965).

The fees provisions in the proposed rules should be rejected now. Imposing fees on the parties is directly at odds with the Act's intent to provide a federally funded system of binding arbitration for employee grievances, in return for the unions' agreement to limit their right to strike. The Act explicitly requires the NMB to pay the expenses of referees. 45 U.S.C. §153, Second. Although NMB does not actually propose to require parties to pay referees' expenses, the proposal would compel them to pay a variety of filing fees in order to obtain the referees' services, as a way of by-passing the requirements of the statute.

Federal law generally permits agencies to charge "user fees" for their services. 31 U.S.C. § 9701. But it is unfair for agencies to impose such fees when the services of the agency benefit the public as a whole, and not just the immediate recipients of the services. The Act's federally-financed system of binding arbitration for labor-management disputes in the rail industry is explicitly designed to prevent the disruption of interstate commerce.

The "Section 3 Committee" formed in 1985 by labor and management representatives to make recommendations for a more efficient arbitration system has succeeded in significantly reducing the backlog of pending employee grievances. The NMB should rely on that Committee's work and similar initiatives, rather than issuing new rules that clearly contradict the long-standing and productive labor-management partnership that characterizes the RLA's history.

I urge the NMB to resume its work with labor and management representatives to reach a consensus on streamlining the processing of grievance cases in accord with the plain meaning, legislative history and spirit of the Railway Labor Act. Doing so will reaffirm the nation's continuing commitment to resolve labor-management differences through mutually beneficial bargaining and negotiation, and I am confident that the public will continue to benefit as well.

Respectfully submitted,

Edward M. Kennedy