

Future of Aviation Advisory Committee
Labor and World-class Workforce Subcommittee
Record of Meeting
October 1, 2010
Communication Workers of America
Washington, DC

PUBLIC ANNOUNCEMENT

The U.S. Department of Transportation (DOT), Office of the Secretary of Transportation, told the public of this Future of Aviation Advisory Committee (FAAC) Labor and World-class Workforce Subcommittee meeting in a Federal Register notice published September 21, 2010 (75 FR 57545) and revised October 1, 2010 (75 FR 60856).

SUBCOMMITTEE MEMBERS IN ATTENDANCE

Name	Affiliation(s)	
Patricia A. Friend (<i>Subcommittee Chair</i>)	International President	Association of Flight Attendants (AFA)–Communications Workers of America (CWA), American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)
David Barger	President and Chief Executive Officer	JetBlue Airways Corporation (JetBlue)
John Conley	International Administrative Vice President and Air Transport Division Director	Transport Workers Union of America (TWU), AFL–CIO
Cynthia M. Egnotovich	Segment President, Nacelles and Interior Systems	Goodrich Company (Goodrich)
Robert L. Lekites	President	United Parcel Service (UPS) Airlines
Ana McAhrn-Schulz	Director of Economic and Financial Analysis	Air Line Pilots Association, International (ALPA)

SUBCOMMITTEE MEMBERS NOT IN ATTENDANCE

Name	Affiliation(s)	
Thella F. Bowens	President and Chief Executive Officer	San Diego County Regional Airport Authority

OTHER OFFICIALS PRESENT

Name	Affiliation(s)	
Terri Williams (<i>Designated Federal Official (DFO)</i>)	Director, Center for Organizational Excellence	Federal Aviation Administration (FAA)
Regis Milan (<i>Alternate DFO</i>)	Associate Director and Special Assistant to the Deputy Assistant Secretary for Aviation and International Affairs	U.S. Department of Transportation (DOT)

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OTHER PERSONS PRESENT

Name	Affiliation(s)
Jan (Jay) Aul	FAA
Emily Dziedzic	PAI Consulting
Jeffrey Goodell	JetBlue
Krista Holliday	Goodrich
Dean Hubbard	TWU
Joshua Javits	Dispute Resolution Services

BACKGROUND AND WELCOMING REMARKS

This is the record of the fourth meeting of the Labor and World-class Workforce Subcommittee of the FAAC, a Federal advisory committee formed pursuant to and subject to the requirements of the Federal Advisory Committee Act (FACA).

Ms. Patricia Friend, Subcommittee Chair, AFA-CWA, called the meeting to order at 1:00 p.m. She welcomed the subcommittee members and members of the public in attendance.

Ms. Friend introduced Ms. Terri Williams, FAA, the DFO for the meeting, and asked her to summarize FACA requirements. Ms. Williams noted the meeting is conducted under FACA and outlined her responsibilities as DFO, including maintaining adherence to the agenda, keeping accurate minutes, and adjourning the meeting if necessary.

Ms. Williams noted meetings of the subcommittee are accessible to the public and stated interested people have the opportunity to submit comments before each meeting either by email at faac@dot.gov or by submission to the regulatory docket at www.regulations.gov. She added the minutes of each meeting will be made available both in the regulatory docket and on the FAAC Web site at <http://www.dot.gov/faac>.

Ms. Williams read the formal statement required under FACA. She noted although the meeting was open to the public and members of the public were attending the meeting, participation in the meeting was limited to subcommittee members, their alternates, and Federal officials. She added that only subcommittee members and their alternates were entitled to vote on subcommittee business. Ms. Williams then turned the meeting back over to Ms. Friend to open substantive discussion.

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DISCUSSION

Ms. Friend introduced Mr. Joshua Javits, Dispute Resolution Services. Mr. Javits thanked the subcommittee for the opportunity to speak and acknowledged the importance of the tasking of the subcommittee.

Mr. Javits stated labor relations are a vital part of the air carrier industry because of the service nature of the business. He stated approximately 70 percent of labor is unionized, which is higher than most public sectors. He added, in the aviation industry, relations between labor and management is essential.

Mr. Javits noted he has three points to make in his presentation. The first is the National Mediation Board (NMB) needs a push by the Administration to encourage more effective negotiations. He stated the NMB created a Dunlop II committee in 2009 to look at all Federal labor relations laws and issued a report in April 2009 (see appendix A). He also noted the NMB is trying to adopt Dunlop II. Mr. Javits explained that Dunlop II has been endorsed by both labor and management and he believes this movement will go a long way to help labor management relations. He stated prolonged mediation is bad for employees and lack of deadlines causes mediation to take longer than necessary. Mr. Javits favors adopting Dunlop II and believes the subcommittee should encourage the NMB to continue efforts to adopt it.

Mr. Javits explained the second point focuses on current events. He stated the NMB currently has several major air carrier disputes involving bankruptcy. He noted bankruptcy is used to aggregate contracts. Mr. Javits stated it is advisable for the Administration to consider labor and transportation policies to determine whether intervention is appropriate in cases of prolonged negotiation. He stated there must be (1) coordination between the NMB and the White House and (2) an executive order for emergency boards that should be ready for action.

Mr. Javits stated the third point is to focus on long-term concerns. He noted the parties involved in negotiation have system boards of adjustments to solve grievances, and the aviation industry's boards are a combination of private and public interests. He stated the Secretary of Transportation needs to endorse communications so these boards can work together to improve labor/management relations.

Mr. Javits also noted the negotiation process should be simplified and there should be some dispute resolution procedures in place before bankruptcy. This will allow companies to obtain concessions where needed. He added adjustments must be made if a contract reflects that a company has no funds; parties must be able to adjust to current economic situations. Mr. Javits also stated there needs to be a compromise between the current stratified collective bargaining process and monthly negotiations to enable parties to change and adapt to a company's circumstances and the economy. He added the current bargaining process may be a thing of the past.

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Ms. Friend asked the subcommittee if they had any questions for Mr. Javits. Mr. John Conley, TWU, asked for clarification about the adoption of Dunlop II. Mr. Javits stated the NMB has adopted parts of Dunlop II, but not all of it. He stated there are some pieces still under consideration, but it is critical for the NMB to implement the entire document.

Ms. Friend stated the subcommittee should propose to the Secretary of Transportation that both the NMB and parties involved in negotiation endorse and adopt all provisions of Dunlop II.

Ms. Ana McAhrn-Schulz, ALPA, stated the subcommittee must come up with recommendations the DOT can implement. She stated one proposal is to ensure the NMB has proper resources to streamline negotiation, and a second proposal is to endorse Dunlop II. She acknowledged encouraging parties to work better together is difficult to implement. Mr. Javits agreed and stated endorsing Dunlop II will allow deadlines to be implemented and encourage effectiveness in the bargaining process.

Mr. Robert Lekites, UPS, stated he would like to endorse Dunlop II as a recommendation and have the DOT support additional funding needed at the NMB. He stated when parties enter into negotiations, the process can be prolonged by a lack of resources to address issues. He added negotiations can also be prolonged when companies enter the negotiation process unprepared and inexperienced. He suggested proper training of industry professionals will allow for a smoother interaction with the NMB.

Mr. Javits agreed with Mr. Lekites. Mr. Javits stated the lack of negotiation deadlines creates difficulty because only about 10 percent of the time is spent in negotiation, while the other 90 percent of the time is wasted. He stated the NMB and the parties involved need to get together, focus, and complete the negotiation.

Mr. Lekites stated a large part of the problem deals with trust. He commented parties must treat each other with dignity and respect for the best interest of the employees. He stated the trust factor works well and allows for the process to be expedited.

Mr. Javits stated the NMB has the power to release parties, but the Administration must understand the process and push for an earlier agreement. Mr. Javits stated it is possible to reach negotiation in 6 months rather than 2 years.

Mr. Conley stated the need to concentrate on relationships. He also stated resources are necessary for the NMB to operate effectively. Mr. Javits commented the NMB's travel budget needs help. In addition, he stated the NMB needs more aggressive mediators and better training so it can be more effective.

Ms. Friend stated the subcommittee is discussing a proposal for institutionalizing an annual labor management meeting called by the Secretary of Transportation. She asked Mr. Javits, if this proposal is accepted, what are his thoughts on what the agenda and measurable outcomes should be on an annual basis?

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Mr. Javits stated there are plenty of issues to discuss and a summit is a great forum to discuss these issues. However, for the summit to be effective, the Secretary of Transportation must endorse it. Mr. Lekites stated a summit would be effective, but it might be difficult for the air carriers and leadership to get together. He noted it would be beneficial for the Secretary to sit down with companies and unions to assess current workplace situations.

Mr. Conley stated there are many business model examples outside of the air carrier industry, and he is interested in finding out which of these models are successful. He stated all industry executives would benefit from listening to those stories. In addition, he stated the endorsement from the Secretary of the U.S. Department of Labor or the Secretary of Transportation will encourage companies to see the value in discussing problems and finding solutions.

Ms. McAhron-Schulz stated the need to discuss best practices. She brought up the Flightcrew Member Duty and Rest Requirements; Notice of Proposed Rulemaking (75 FR 55853, September 14, 2010) that will affect current contracts. She stated the summit is a perfect arena to discuss these issues. Ms. McAhron-Schulz also acknowledged the benefit of conversations between people about to enter negotiations with people who just completed negotiations.

Ms. Friend inquired if companies would be hesitant to have open discussions for competitive reasons. Mr. David Barger, JetBlue, stated he did not think it would be a challenge to remain transparent, especially if the Government is involved.

Ms. Friend expressed concern because companies do not want to compete on a safety record. She asked which areas may be considered too competitive to discuss in an open forum. Mr. Lekites responded this is an issue of trust. He stated each company will operate in its own way, with many variables, allowing for the continuance of competition. Mr. Barger added that, in the spirit of transparency, companies can remove their logos in a public debate, thereby raising the safety bar. He stated a forum with the Secretary of Transportation is an appropriate arena for these debates.

Mr. Barger asked Mr. Javits if the Staggers Rail Act of 1980 offers any lessons for the air carrier industry. Mr. Javits stated in terms of labor relations, the aviation industry and the rail industry are polar opposites. He stated the rail industry has 12 unions nationally that negotiate together. He noted work issues are dealt with locally, and the high pay level for low skilled workers usually solves most issues. Mr. Javits stated, with the merging nature of the aviation industry, the Staggers Rail Act would not be effective. He stated the impact of a strike at a national level would result in action by emergency boards and the involvement of political parties.

Ms. Friend thanked Mr. Javits for his time and for his presentation. She stated his presentation helped her focus on the proposal to endorse and adopt Dunlop II and formulate ideas for an annual summit. She released Mr. Javits so the subcommittee could continue discussions about the proposals.

Mr. Conley suggested the subcommittee review the Dunlop II document to ensure all members want to push that proposal through.

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Ms. Friend reminded the subcommittee the next FAAC meeting on October 20, 2010, in Los Angeles, California, is designed to discuss proposals on identified issues. She stated there is a focus area form that must be used for proposals.

Ms. Friend stated the non-consensus issues would serve as topics for summits. She stated the topics of foreign repair stations, outsourcing, and joint ventures could be included in the labor management summit proposal, so these issues are not forgotten. She commented the concept of the forum could be ongoing discussion of the non-consensus items. Mr. Conley agreed these issues will not get solved by ignoring them and the summit serves as a great forum for discussion.

Ms. Friend stated she will talk to the DOT for suggestions on how to format the proposal so it continues beyond the tenure of the current Secretary of Transportation.

Mr. Regis Milan, DOT, stated the subcommittee should craft their language in the proposals to reflect an apolitical stance. This will ensure the summit concept extends beyond changes in the Administration and the Secretary of Transportation.

Ms. Friend stated the task of the FAAC is to stabilize the aviation industry. She stated the Labor and World-class Workforce Subcommittee is responsible for helping create an environment where people want to come to work. She stated the proposals, which will be presented at the October 20, 2010, FAAC meeting in Los Angeles, California, focus on recruitment and retention.

Ms. Friend stated the proposals need to be revised to fit the FAAC template. She suggested the subcommittee use a one-page format for non-consensus issues, including a workforce view and an industry view. She stated these non-consensus papers will be attached to the annual summit proposal as subject suggestions. Ms. Friend recognized the subcommittee will be able to defer discussion of these topics to the annual summit, therefore, the discussion will continue beyond the FAAC timeline.

CLOSING REMARKS AND ADMINISTRATIVE MATTERS

The subcommittee members delegated the work and agreed to send non-consensus papers to Ms. Friend before October 11, 2010. Ms. Friend stated the next FAAC meeting will be on October 20, 2010, in Los Angeles, California. She stated the non-consensus papers will be circulated to subcommittee members before the Los Angeles, California, meeting.

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ADJOURNMENT

Ms. Williams solicited a motion for adjournment. On motion, duly seconded and approved by the majority of the subcommittee members present, the meeting was adjourned.

The meeting adjourned at 2:44 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Approved by: *Terri Williams*
Terri Williams, Designated Federal Official

Dated: *Nov 15, 2010*

Ratified on: *Nov 15, 2010*

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**Report of the Dunlop II Committee
to the National Mediation Board**

April 16, 2010

Committee Members:
Robert DeLucia
Seth Rosen
Kenneth Gradia
Joel Parker

Facilitator:
Joshua Javits

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DUNLOP II REPORT

I. Establishment of the Committee

On September 11, 2009, the National Mediation Board (NMB), Elizabeth Dougherty, Chairman, Harry Hoglander, Member, Linda Puchala, Member, formed an independent joint labor management committee, ("Dunlop Committee Reports Review Committee", hereinafter "Dunlop II") to examine the internal functions, policies and procedures of the NMB [and] to report to the Board its recommendations for agency improvement, in particular, for improving the mediation process and delivery of mediation.

The initial Dunlop Commission ("Commission on the Future of Worker Management Relations," hereinafter "Dunlop I") was established in 1994 by President William Clinton to review the state of labor relations and the effectiveness of federal labor laws and relevant government agencies including the Railway Labor Act (RLA) and the NMB.

Dunlop I recommended the creation of two labor management committees, one airline and one railroad, to examine the NMB's administration of the RLA including its mediation functions. Both Committees met with air and rail labor and management and made recommendations, including those on NMB administration, functions, representation process, and grievance arbitration. The NMB then issued a report regarding the Committees' recommendations in which it adopted many of those recommendations, including that:

1. Mediators should be based in DC;
2. Additional training for mediators was needed;
3. Mediators should specialize in either representation cases or mediation cases (subsequently the Legal Department took over all representation case handling);

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4. There should be rigorous supervision, guidance and evaluation of the mediators. (The Board created the new positions of director of mediation and two senior mediators who were to act as "troubleshooters", as needed);
5. The mediators should be more active (the Board created a case tracking system);
6. More intensive and expeditious mediation should be provided (the Board established "Customer Service" goals for completing cases);
7. Mediation agreements, including timelines, should be respected by the Board, but it should nonetheless exercise its independent statutory authority to proffer arbitration; Board mediation should not repeat the work of private mediators.

The Board also endorsed the recommendations the Committees directed to the parties to:

- A. Provide negotiators with authority;
- B. Avoid premature invocation of mediation;
- C. Limit the number of issues brought to mediation; and
- D. Provide more accurate critiques of mediator performance.

Dunlop II is composed of four (4) representatives constituting each constituent group subject to the RLA and NMB jurisdiction:

Airline Management: Robert DeLucia, Airline Industrial Relations Conference

Airline Labor: Seth Rosen, International Pilot Services Corporation

Railroad Management: Kenneth Gradia, Chairman, National Carriers' Conference Committee

Railroad Labor: Joel Parker, Transportation Communications Union/IAM

In addition, the Board appointed as Facilitator, Joshua Javits, former NMB Member and currently an arbitrator and mediator.

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The Board also appointed five advisors and one special consultant to the Committee:

Dennis Boston, Brotherhood of Railroad Signalmen
Clare Burt, Association of Flight Attendants – CWA
Clint Miller, United Transportation Union and Special Consultant
Roland Wilder, representing the International Brotherhood of
Teamsters/Brotherhood of Locomotive Engineers and Trainmen
Jerrold Glass, HR Solutions Group
Claude Sullivan, Ford & Harrison, LLP

The Committee met directly with over 25 representatives of the two industries as well as experts, current NMB Members and Senior Staff Members of the NMB. Members of the Committee also solicited the views of other Railroad and Airline management and labor leaders.¹

¹ The Committee as a whole met with the following individuals:

UNIONS:

Dennis Boston, BRS and Labor Advisor
Clare Burt (AFA and Advisor)
Laura Glading, and Denise Pointer, APFA
Roland Wilder, IBT/BLET
Bruce York and Art Luby, ALPA
Lloyd Hill (et al), APA
Clint Miller, UTU

MANAGEMENT:

Steve Crable, CSX Transportation, Inc., and former NMB Chief of Staff
Claude Sullivan, Ford & Harrison, LLP

NMB:

Mary Johnson, General Counsel
Larry Gibbons, Director of Mediation
Daniel Rainey, Director of ADR

June King, Director of Administration
Board Members

EXPERTS:

Tom Kochan, Professor, Sloan School of Business, MIT

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The Committee issued an Interim Report, dated December 2, 2009. That Report recommended the reestablishment of a chief executive officer in order to enhance Board cohesion and effectiveness in the delivery of its services (Attachment 1). The Committee believed this to be a pressing need and noted the strong support of the parties in its Interim Report.

II. Summary of Recommendations

Almost all long term observers of the Board concurred on one key theme: after the Dunlop I Report was issued in 1996, the NMB evolved into a better managed agency with a professional staff that functioned more effectively. The Board's decision to commission the Dunlop II Report – without prompting by outsiders – speaks volumes to the agency's continuing commitment to reexamine its functions and improve its mediation services to the RLA community. In keeping with that spirit, this Committee focused on improvements to the mediation process and the delivery of mediation services that would not require changes to the Railway Labor Act, that could be effectively implemented by the Board, and that would have broad support from the stakeholders.

The last decade was marked by very difficult rounds of negotiations in the airline and railroad industries. Many stakeholders expressed concern and frustration with the Board's delivery of mediation services. The overarching criticism voiced to the Committee was that the mediation process – in too many cases - is insufficiently focused, coordinated and managed. In some instances, these shortcomings start with the parties' actions or inactions. However, the Board sometimes fails to forcefully and effectively manage the process.

When available resources are not optimally utilized, then negotiations unnecessarily drift and stall, and frustration and uncertainty take hold. As a result, it is often too lengthy a process, characterized by a lack of direction, with an inordinate length of time spent without making real progress towards reaching agreements. This

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was particularly evident during the last decade when many thought there was little credible threat of a release from mediation being issued by the Board. These are serious but not insuperable problems, and the Committee believes that the recommendations set forth herein will help address these issues and result in a more effective and productive mediation program that consistently achieves the goals and policies of the Act and of the NMB.

The Committee recommends implementation of the following measures:

1. A New Case Management System: A case management system should be put in place that would require development of a plan for each mediation case that would address issues in dispute in a timely and methodical manner and establish a framework for reaching resolution of the mediation case. The parties as well as all levels of the Board should be involved in developing and implementing each mediation plan.
2. The Role of the Mediator: Mediators should be provided with comprehensive training, continual education on the parties' issues and emerging developments in the air and rail industries, and the tools to make them more effective and active participants in the mediation process.
3. NMB General Administration: The multiple resources of the Board, including Senior Staff and Board Members, should be utilized and applied in a coordinated way to further the mediation effort.
4. Outreach to the Parties: The Board should establish more effective lines of communication and outreach to and between all the constituent groups through, for instance, industry conferences, joint working groups on issues of broad concern, and presentations to the users on different subjects by the parties as well as experts.

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III. The Industry Context

The NMB oversees two key transportation sectors that have an enormous impact on the overall U.S. economy. The RLA provides a comprehensive framework for the resolution of labor management disputes concerning negotiations in the Airline and Railroad industries. The importance of these industries underscores the delicate balance that the Board needs to maintain in endeavoring to prevent or minimize disruptions of service and assisting in the prompt settlement of disputes over rates of pay, work rules and working conditions.

Freight rail service is an integral part of the nation's transportation infrastructure and plays a critical role in our economic well being that affects everyone from manufacturers and distributors down to retailers and consumers. Railroads haul a significant portion of freight vital to everyday commerce and generate nearly \$265 billion in total annual economic activity. Railroads directly or indirectly support 1.2 million jobs throughout the economy—some 4.5 jobs for every freight rail job.

Intercity and local/commuter passenger rail service also plays a vital and growing role in fulfilling the nation's transportation needs. The volume of traffic carried by commuter and passenger rail in 2009 was enormous. For example, there were 452 million commuter rail trips and Amtrak carried 27 million passengers last year.

As with the railroad industry, the economic impact of the US aviation industry is hard to overstate. In 2008, the airline industry moved 741 million passengers (over two million per day), transported 18 million tons of cargo, operated over 11 million flights, and generated \$185 billion in revenues. On a broader scale, the Federal Aviation Authority's 2009 Report, *The Economic Impact of Civil Aviation on the US Economy*, estimated that civil aviation activity was responsible for 12 million jobs and \$1.3 trillion in economic activity.

At the same time, the economic shocks of the past decade have significantly affected employees and employment levels. During the last decade, for example, over

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170,000 airline employees lost their jobs while many of the rest suffered substantial reductions in wages, working conditions, benefits and job security. Yet these are two of the most heavily unionized industries with over 500,000 airline industry employees and some 213,000 railroad industry employees.

Accordingly, it is in the public interest and squarely consistent with the goals and purpose of the Railway Labor Act for the National Mediation Board to make every effort to ensure that its labor dispute resolution resources are designed and utilized to foster stable labor relations and promote timely, peaceful, and effective resolutions of the negotiations that come before it.

IV. Delivery of Mediation Services

A. Length of Process

The greatest concern heard by the Committee was frustration concerning the lack of real and timely progress made in mediation. While only the parties can agree on contract provisions, there are many things that the Board can do to structure the delivery of mediation services to facilitate a more constructive and effective collective bargaining process.

The perception that the process is inordinately long is strongly held by many parties. This certainly extends to less complex cases which should be handled more expeditiously. For FY 2004 – 08 the average length for a case in mediation was 758 calendar days. Delay can have a major impact on the parties' approach, attitude and culture with regard to collective bargaining.

Collective bargaining under the RLA is a two-step process which begins with direct negotiations and generally moves into the mediation phase. One problem noted is that a party may prematurely file for mediation. This may be motivated by a desire to "get on the clock" to establish an early start date in order to more persuasively argue later for a release. Unfortunately, this approach leads to a mediation process

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cluttered with numerous proposals which can and should be resolved by the parties in direct negotiation.

A separate but contentious issue is whether, as some have argued, there should be explicit time limits on mediation. The Committee believes that the variations and distinctions between the multiplicity of bargaining disputes that come before the Board make it impractical to establish hard and fast rules on how long a mediation should last. Any such rule may encourage surface bargaining or other delaying tactics by one side or another that perceives advantage in not reaching agreement before the known end point to mediation.

That said, the Committee agrees that the Act's structure and policies fairly contemplate that the Board have and utilize the power to conclude that a true impasse exists and, under all of the relevant circumstances, a release from mediation is warranted. Mediation was not envisioned to be an endless process, with one more meeting always on the horizon. The Board needs to maintain and enforce guidelines on the length of the case and the number of mediation sessions to be utilized in the evaluation of the case, balanced by due consideration for the specific facts and circumstances involved in that dispute and the impact on the public. At the end of the day, the judicious threat (or use) of a proffer is essential to maintaining the integrity and effectiveness of the mediation process. The Board must be seen as able and willing to use all available tools in its arsenal to accomplish its mission of enabling the parties to reach resolution of their disputes.

B. A Case Management System

Each case is different and should be initially analyzed by the Board concerning its complexity, impact, and staffing requirements. If possible, the parties should first meet beforehand and attempt to reach consensus on process and procedural matters relating to the mediation. Then the parties should meet with the Board to develop a plan for processing the case, which would include the resolution of

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procedural and substantive issues, including locations, frequency of meetings and setting orderly agendas.

Other available resources and techniques should also be addressed. These may include utilization of other Board resources such as the Director of Mediation Services, senior mediators, Board members and/or Chief of Staff, and ADR services. The use of subcommittees to address specific areas in dispute (e.g. healthcare, technical issues, resolution of outstanding grievances) may also be addressed. In this way the expectations of the parties and the Board are established at the outset and accountability can be established for handling the mediation case thereafter.

C. Mediator Reports and Case Monitoring

Next, the Board should engage in more active and timely reviews and oversight of cases. Currently, mediators are generally on their own, handling cases in the field that sometimes last for up to several years, with modest and irregular direct oversight. They submit mediator reports to the Director of Mediation and senior mediators. The Committee recommends that these mediator reports be enhanced to provide sufficient detail to enable the Board to more closely and effectively monitor cases. For instance, the reports could include, as appropriate: the amendable date; docketing date; date of commencement of mediation; dates of mediation, including number of hours of mediation each day; agendas; proposals, (tentative agreements or other signs of progress or lack thereof); next steps; other communications with the parties; strategic ideas for progress; and the need for other Board resources. Of course, it is essential that the confidentiality of the mediator report be maintained.

Currently, the Mediation Department conducts quarterly reviews with the Board Members on the status of mediation cases. The Director of Mediation also meets with the Board on a weekly basis to discuss "watch list" cases. Since each case is to be benchmarked with specific dates for review, status reports should be made at these key junctures, as well. The Board should meet with the mediators as well as the Mediation Department's senior staff as needed. This kind of full coordination between the

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mediators, the senior mediators, and the Board should facilitate consistency and accountability in all phases of the Board's mediatory functions. Of course, with the anticipated reinstitution of a Chief of Staff position, another vital resource should be integrated into the team.

D. Board Member Involvement and Coordination

The judicious involvement of Board Members during mediation is a time-honored and effective tool in the Board's arsenal. At the "end" stage of mediation, a Board Member's involvement is vital as it provides maximum leverage to successfully complete the negotiation. Moreover, as the responsible officials, the Board Members need to know the details of the issues in the case in order to determine whether mediation has been "unsuccessful." At this point, the Board's ultimate weapon remains the doubt and uncertainty as to the Board's execution of the release from mediation. Board member involvement may sometimes be useful at an earlier stage in a negotiation. For instance, if the parties are "stuck" on a vital issue or if one or both are "drifting" or not working diligently, the involvement of a Board Member can help to move negotiations forward.

It is essential, however, that Board Member involvement be managed in a way to avoid undermining of the authority of the mediator at the bargaining table or creating the perception of "deals" being made by a party going directly to a Board Member. Coordination between Board Members themselves and between Board Members, Chief of Staff, and the Mediation Department is equally essential. Thus, if Board assignments are to be made, they should be made with the understanding that all communications relative to a particular case should be transparent between Board Members. The Committee recommends that the Board work out an internal protocol for the monitoring and handling of mediation cases.

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E. The Parties

It is critically important for the parties to understand the mediation process and the legal and policy framework within which it operates. Often the parties have limited understandings about these matters. The necessary education should be standardized and provided to the parties (as warranted) at the outset of a mediation by the NMB. The process is intricate and the lack of understanding often leads to misperceptions and frustration aimed at the Board, the parties, and the process.

Furthermore, the parties can contribute to making mediation more effective in several basic ways.

1. Invoking mediation services only when the dispute is genuinely ripe for mediation.
2. Sending negotiators to the negotiating table who are empowered to make agreements (subject to ratification).
3. Providing more accurate critiques of a mediator's performance.

F. Membership Ratification

One major change since Dunlop I on the airline side has been the expansion of the use of membership ratification, especially by airline pilot groups. Obviously the dispute is not resolved until it is ratified by the membership. More attention needs to be paid by the Board and the parties to this important step in the process to insure a successful outcome.

A failed ratification vote has many negative consequences. It usually results in considerable frustration and a substantial delay in the process. Again each case is different but the Board needs to assess the situation and provide the resources and assistance necessary to complete the ratification process successfully. The Board needs to take this step into account in its case management.

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G. Presidential Emergency Boards (PEBs)

The Committee heard comments and concerns about the composition of Presidential Emergency Boards. PEBs play an integral role in the final resolution of complicated and high profile bargaining disputes that can profoundly affect our nation's economy and well being. Accordingly, it is imperative that PEB members possess the neutrality, expertise, qualifications, and experience equal to the responsibilities placed upon them. A PEB's mission is to develop recommendations for resolution of the dispute before it. The acceptability of those recommendations rests in large measure upon the credibility, objectivity, and creativity of the PEB members. The Committee believes that these are core principles.

H. Mediation and the Role of the Mediator

1. Mediation Sessions

One of the major concerns expressed by many of the parties was the productivity of mediation sessions and how to make the mediation session more effective and meaningful. For example, making sure that the parties are ready and prepared at the outset of the mediation session, minimizing the impact of travel on the actual time spent in mediation and scheduling extended sessions (back-to-back weeks) at the right time are the type of things that could produce more substantive results and expedite the mediation process.

There should be some flexibility built into the process since many of the parties are not full-time negotiators. Nonetheless, given the lengthy mediation process as it currently exists, the Committee recommends longer mediation sessions when the parties do meet. Given the challenge and expense to bring large groups of people together for mediation and the importance of the endeavor, when mediation sessions are finally arranged, available time should be maximized.

The mediator needs to actively control the process rather than be swept along. This does not mean that he or she should supplant or direct the parties'

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activities, but rather that the mediator's central task is to ensure steady progress and adherence to the mediation plan and the progress of mediation. Mediators should have the authority to call a party "on the carpet" as needed—for example, taking appropriate measures to deal with parties that are clearly delaying or obstructing the process. They should have the freedom to creatively address problems that may arise. Thus, for instance, if the mediator feels he/she should meet with only one side, even if for a whole week, this may be the best use of their time. The number of mediation sessions and the length of time in mediation does not necessarily correlate with results. Intensive, productive mediation sessions are much more important than a mere time-clock measurement of progress.

2. Mediator Activities outside Mediation Sessions

While the sheer amount of time devoted to mediation is one necessary element to making progress, others are important as well. First, the mediator should be active when he/she is not mediating. In addition, planning, research, and discussions with other experienced mediators, including the senior mediators, the Director of Mediation, the Chief of Staff as well as the Board Members are useful in exploring ideas and options.

Second, mediators should assure that the parties come to the table prepared to negotiate. If proposals are to be made on a given issue, they should be prepared in the week or weeks prior to the mediation sessions, rather than using the first day or two of the mediation week to caucus and prepare proposals. If subcommittees are to meet between sessions, the mediator should make sure that this occurs and that the parties are making progress on the matters for which they are responsible. The mediator should be in regular and constant contact with the parties, always "advancing the ball."

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V. NMB General Administration

A. Mediator Staffing and Case Coverage

Another concern expressed was the sufficiency of the Board's resources devoted to mediation. Some parties observed that only 20 percent of the Board's staff is devoted to mediation, yet mediation is the Board's central function. The heart of the Agency is its mediation function. The delivery of that service is entrusted to its cadre of mediators. The number, quality and availability of the mediators are thus the sine qua non of the Agency's effectiveness. Currently, the Agency is authorized to have ten ("10") full-time mediators, two senior mediators and a Director of Mediation Services. Three mediators were hired only in the last two years, and there are currently three mediator vacancies.

The number of pending mediation cases can vary widely over time. The concern that these cycles of demand should not determine mediator staffing levels at any one time makes sense. The zenith of demand would support a high number of mediators on staff, while the nadir of the cycle suggests a lower staffing number. Flexibility in staffing is clearly essential. The Committee recommends several alternatives to meet the demand for mediators without locking the Board into overstaffing and potential inefficiency.

1. The senior mediators should be assigned to handle their own cases in times of great demand, particularly more complex cases. Since there will be a new Chief of Staff position, there should be some alleviation of managerial responsibilities for these three positions (two senior mediators and the Director of Mediation Services) allowing them additional time to handle more complex cases that come before the Board.

2. The Board should encourage voluntary use of private mediators. This practice has been utilized principally in the airline industry. Private mediators could assist the parties in many ways, e.g., resolving issues in the earlier stages of

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negotiations, addressing the numerous and time consuming smaller issues or addressing complex provisions that are obstacles to agreement. These matters could be handled by recognized, experienced and knowledgeable private mediators. Such efforts can and should be structured to augment, not supplant, Board mediatory work.

3. The NMB should utilize other staff at the NMB who are qualified and could be trained to be mediators, as needed. They should be identified and trained to be ready to step into the mediator role when the caseload of the Board is at its height.

4. As stated above, the NMB needs to increase the average number of days per month that mediators are expected to actively mediate cases.

B. Mediator Recruitment and Selection

It is in the public interest for the Board to strive to broaden the pool of potential mediators. The Board should try to identify future candidates who come to the attention of the Board and its mediators as parties or negotiating committee members. Mediators and Board Members work with numerous people from the airline and railroad industries who are involved in labor relations. Without regard to the location of a mediator, the primary objective is to attract the best qualified candidates to ensure the effective delivery of mediation services by the Board.

In terms of skills, the central quality sought in a mediator should be that of a "problem solver." This is a unique characteristic which is hard to identify without actively working with the individual. If mediation is both an art and a science, potential mediators should demonstrate creativity, people and leadership skills, and the ability to methodically move the process along towards successful conclusion.

C. Mediator Training

There was consensus that the mediators would benefit from more standardized, comprehensive, and regular training. Currently, the new mediators receive an overview from each NMB department about their functions. New mediators

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may "second seat" experienced mediators and are informally mentored by them. In addition, mediators take at least two training or educational courses of their choosing per year to meet the agency's educational requirements, which are included as an element of their job performance evaluations. However, the entire budget for mediator training last year was only about \$8,200.00.

The current level of initial and recurring training is inadequate. The Committee recommends that when new mediators are hired, they be provided with comprehensive training in mediation skills. Virtually all mediators have had airline or railroad labor relations experience. But they are rarely prepared for their new role as mediators. Generally, they have been advocates, not neutrals, and they have not focused on dispute resolution and dispute resolution techniques. A comprehensive standardized program for developing mediation skills is essential. The mediators need to learn about all the techniques available to enable them, for example, to move the parties when stuck, deal with "push back" from the parties, and to keep the process moving forward to conclusion.

The Federal Mediation and Conciliation Service provides a 40-hour program in collective bargaining mediation for its new mediators. Cornell's ILR School also provides such training. It may be that the Board can develop its own training fashioned by mediators who have attended some of these programs. Specialized training in Interest Based Bargaining (IBB) and facilitation should be part of such a program.

Specific training in the Railway Labor Act (RLA) itself is essential for new mediators. The parties are often unfamiliar with the Act, its structure, purpose, process and requirements, and a strong grounding in the Act is essential to a mediator's success.

Although the mediators are scheduled to meet once per quarter, many of these meetings are used for internal discussions rather than education and training. In

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addition, they do not appear to be inviolate. The Committee recommends that the mediators meet more frequently in person.

Mediator meetings should regularly include segments on educational training, in addition to opportunities for discussions on current issues and experiences and review of active mediation cases with the Board members and Senior Staff. These meetings should include training on particularly complex and vital areas such as pensions, health care, crew scheduling, and federal regulations on matters such as duty time and in service time. Experts in the airline and railroad industries should be periodically invited to give presentations on current issues.

Finally the Committee also believes the Board Members could benefit from both the initial comprehensive and specialized mediator training. Many Board Members come to the Board without prior exposure to negotiations in either the railroad or airline industries and would benefit from such training.

D. Chief of Staff

In its Interim Report dated December 2, 2009, the Committee recommended re-creation of a Chief of Staff position. A copy of that Report is appended as Attachment 1.

VI. Outreach Program

In the latest NMB Strategic Plan (2005-2010) the Board members emphasized the importance of an outreach program to achieve the agency's strategic goals. The Committee agrees that the Board should establish more effective lines of communication and outreach to and between all the constituent groups through, for instance, industry conferences, joint working groups on issues of broad concern, and presentations to the constituents on different subjects by the parties as well as experts.

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In the past, the Board was instrumental in organizing two highly successful airline labor relations conferences, including one on globalization, which anticipated many current issues in the industry. Several commuter railroad conferences were held by the Board more recently. These conferences were unique opportunities for the Board to bring the parties together to discuss the negotiating process and subjects of common concern, to generate new problem-solving approaches and to foster the development of relationships and understandings so essential to working constructively in negotiations.

The goal of the outreach program should be to establish or encourage a constructive dialogue between labor, management and the government in the railroad and airline industries. The Board is uniquely situated to take the lead role in creating meetings and conferences in which the parties can address issues and concerns outside the negotiations setting. This initiative has great promise for improving agency services and providing a much needed forum for the stakeholders to engage in a constructive dialogue that could facilitate improved labor-management relations.

Where new or troublesome issues arise that warrant the creation of a smaller group of management and union representatives to address the matter, the Board should take the initiative to establish and facilitate such an effort. Sometimes negotiations are not suited to such discussions, especially with regard to industry-wide issues, and establishing an alternative forum is more conducive to broad ranging discussion of ideas. The Board could also help facilitate presentations on particularly complicated or technical, operational, legal or other matters that may underlie difficult issues in negotiations, such as health care, FMLA, etc.

In conclusion, the Committee recommends that the Board should develop a plan to implement the type of outreach program described above.

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VII. Conclusion

The NMB oversees two key transportation modes that have a major impact on the overall US economy. The establishment of this Committee by the NMB provided a timely and useful opportunity to review the Agency's core function, the delivery of mediation services, and, on a consensual basis, make recommendations to the Board on ways to improve its mediation services to the railroad and airline industries. As discussed above, the Committee concluded that there were a number of recommended changes in the Board's delivery of mediation services that could be effectively implemented without statutory change and should have broad support from the stakeholders. The Committee believes implementation of these recommendations will provide the foundation for a more focused and coordinated mediation process and result in a more prompt and successful resolution of mediation cases in the future.

Finally, the Committee wants to express its appreciation to the Board for its leadership in establishing this Committee and its assistance and cooperation in this undertaking. The Committee stands ready to assist the Board further in this endeavor as it deems appropriate.

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Appendix 1 – Section 3

There is a rich history of collaborative efforts by railroad labor, management, and the NMB to study and address mutual concerns relating to grievance handling in the railroad industry, dating back to the establishment in 1985 of a bi-partisan labor-management committee known as the Section 3 Committee. The specific issues, initiatives, and problems have varied over time, but the value and effectiveness of a joint and bi-partisan problem-solving approach to Section 3 issues has been consistently demonstrated.

In the course of this undertaking, the Committee heard concerns from some railroad parties that the spirit of open communication and collaboration that has long characterized the parties' dealings with the NMB in the Section 3 arena has waned and should be reinvigorated. At the Committee's request, a bi-partisan report was prepared and submitted to us that details those concerns and makes recommendations for improvements in the Section 3 area. That report is appended.

The Committee recommends that the Board review that report and schedule an informal meeting with the interested parties to discuss those recommendations and any further actions that are deemed appropriate.

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Dated this 16th day of April, 2010.

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