

§ 901.4

Federal Mediation and Conciliation Service on all aspects of bargaining in the construction industry and to see that critical disputes are brought to the attention of the appropriate International Union and the national offices of an appropriate contractor association.

**§901.4 Handling of disputes by Commission.**

The Commission will determine the particular method of dispute handling appropriate for each dispute. Section 5(a) of the Executive order states,

The Commission or a panel designated by the Commission may, with the assistance of national labor organizations and national contractor associations where appropriate, seek to mediate such dispute, or make an investigation of the facts of the dispute and make such recommendations to the parties for the resolution thereof as it determines appropriate.

**§901.5 Agreement to refrain from strike or lockout.**

As part of its conditions for entering the dispute, the Commission may re-

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quest the parties to continue the terms or conditions of employment without the occurrence of a strike or lockout for a 30-day period, as set forth in section 5(a) of the Executive Order, to enhance the functions of mediation and other related activities.

**§901.6 Authority of Executive Director.**

The Commission delegates authority to the Executive Director to accept or reject requests for Commission involvement in those instances where a Commission meeting would not occur in sufficient time prior to a contract expiration date to permit such involvement.

**§901.7 Inquiries and correspondence with Commission.**

Inquiries to the Commission about the status of disputes or other matters should be directed as follows:

Executive Director, Construction Industry Collective Bargaining Commission, room 5220, Department of Labor Building, 14th and Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 961-3736.

## CHAPTER X—NATIONAL MEDIATION BOARD

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Abbreviation: The following abbreviation is used in this chapter:

NMB=*National Mediation Board.*

**PART 1200—MINIMUM STANDARDS OF CONDUCT FOR EMPLOYEES OF THE NATIONAL MEDIATION BOARD**

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1200.735-48 Confidentiality of employees' statements.

1200.735-49 Effect of employees' statements on other requirements.

1200.735-50 Specific provisions of Board regulations for special Government employees.

AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

SOURCE: 32 FR 15827, Nov. 17, 1967, unless otherwise noted.

**Subpart A—Introduction**

**§ 1200.735-1 General.**

(a) The promulgation of these minimum standards of ethical conduct for employees and special Government employees of the National Mediation Board has as its objective the maintaining and reaffirming of the public's confidence in the activities of their Government. The regulations in this part are intended to act as the board moral and ethical guideposts for employees of the Board and to supplement and verbalize the individual ethic and integrity of the employees affected. The avoidance of misconduct and conflict of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards.

(b) The elimination of conflicts of interests in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict-of-interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent.

(c) The failure of an employee to observe the basic principles of good conduct, ethics, and integrity will result in immediate adverse or disciplinary action of a severity in keeping with the offense committed and in accordance with equitable administrative practice.

(d) These standards are established in conformity with part 735 of title 5 of the Code of Federal Regulations.

**§ 1200.735-2 Interpretation and advisory service.**

It shall be the practice of the National Mediation Board to appoint as counselor for the agency one of the members of the Board itself. Based upon the experience, usually legal, and position of such individual, employees of the Board will more naturally express complete personal confidence in such a counselor. This individual shall coordinate the Board's counseling services, which services shall be brought to the attention of the Board's employees and special Government employees within 90 days after the approval of the agency's regulations by the Commission. In the case of new employees, notification of the availability of counseling services shall be effected upon their entrance on duty.

**§ 1200.735-3 Reviewing statements and reporting conflicts of interest.**

(a) When a statement submitted or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Government, and when the conflict or appearance of conflict is not resolved at a lower level, the information concerning the conflict or appearance of the conflict shall be reported to the Board through the counselor for the Board.

(b) The employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

**§ 1200.735-4 Disciplinary and other remedial action.**

(a) A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When after consideration of the explanation of the employee or special Government employee the Board decides that remedial action is required, immediate action shall be taken to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

- (1) Change in assigned duties;

- (2) Divestment by the employee or special Government employee of his conflicting interest;

- (3) Disciplinary action; or

- (4) Disqualification for a particular assignment.

(c) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

**Subpart B—Ethical Conduct and Responsibilities of Employees****§ 1200.735-20 Proscribed actions.**

(a) An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in or create the appearance of:

- (1) Using public office for private gain;

- (2) Giving preferential treatment to any person;

- (3) Impeding Government efficiency or economy;

- (4) Losing complete independence or impartiality;

- (5) Making a Government decision outside of official channels; or

- (6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) [Reserved]

**§ 1200.735-21 Gifts, entertainment, and favors.**

(a) An employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

- (1) Has, or is seeking to obtain, contractual or other business of financial relations with the Board;

- (2) Conducts operations or activities that are regulated by the Board; or

- (3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

- (1) Obvious family or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or during an investigation where an employee may be properly in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) [Reserved]

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(e) An employee shall not accept a gift, present, decoration, or other things from a foreign government unless authorized by Congress as provided by the Constitution and in Public Law 89-673, 80 Stat. 952.

(f) Neither this section nor § 1200.735-22 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Board orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

**§ 1200.735-22 Outside employment and other activity.**

(a) An employee shall not engage in outside employment or other outside

activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government.

(c) Employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, the Executive Order, or the Board regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Board gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Board, or which draws substantially on official data or ideas which have not become part of the body of public information.

[32 FR 15827, Nov. 17, 1967, as amended at 33 FR 11816, Aug. 21, 1968]

**§ 1200.735-23 Financial interests.**

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his governmental duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) An employee is not precluded from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive Order or the Board regulations in this part.

**§ 1200.735-24 Use of Government property.**

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

**§ 1200.735-25 Misuse of information.**

For the purpose of furthering a private interest, an employee shall not, directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

**§ 1200.735-26 Indebtedness.**

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Board determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, the Board is not required to determine the validity or amount of the disputed debt.

**§ 1200.735-27 Gambling, betting, and lotteries.**

An employee shall not participate, while on Government owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

**§ 1200.735-28 General conduct prejudicial to the Government.**

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

**§ 1200.735-29 Miscellaneous statutory provisions.**

Each employee shall acquaint himself with each status that relates to his ethical and other conduct as an employee of the Board and of the Government. The following statutory provisions are to be noted:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of the title 18, U.S.C., relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783), and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provisions relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination of personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against prescribed political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

**Subpart C—Board Regulations Governing Ethical and Other Conduct and Responsibilities of Special Government Employees**

**§ 1200.735-30 Special provisions of Board regulations.**

Special Government employees, including those individuals categorized as WAE (When as employed), shall be put on actual notice regarding section 5, Third (a), and 7, Third (d) of the Railway Labor Act, 45 U.S.C. chapter 8, which provide that arbitrators appointed by the Board shall be impartial without bias and disinterested. These Board appointed arbitrators or neutrals shall be further notified of the intent of Executive Order 11222 govern-

ing conflict of interests and ethical standards of Government employees.

**§ 1200.735-31 Use of Government employment.**

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

**§ 1200.735-32 Outside activities of special Government employees.**

Special Government employees may teach, lecture, or write in a manner not inconsistent with § 1200.735-22(c) governing other employees.

**§ 1200.735-33 Use of inside information.**

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, *inside information* means information obtained under Government authority which has not become part of the body of public information.

**§ 1200.735-34 Coercion.**

A special Government employee shall not use his Government employment to coerce or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

**§ 1200.735-35 Gifts, entertainment, and favors.**

(a) A special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business or financial ties.

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(b) The exceptions enumerated under § 1200.735-21(b) are applicable to special Government employees.

### Subpart D—Board Regulations Governing Statements of Employment and Financial Interests

#### § 1200.735-40 Form and content of statements.

The statements of employment and financial interests required for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Commission in the Federal Personnel Manual.

#### § 1200.735-41 Employees required to submit statements.

The Board shall require statements of employment and financial interests from the following employees: Board's Executive Secretary.

#### § 1200.735-41a Employee's complaint on filing requirement.

Any employee required to submit statements pursuant to § 1200.735-41, who believes his inclusion under Board regulations is improper, may file a complaint directed to the Ethical Conduct Counselor of the National Mediation Board.

#### § 1200.735-42 Employees not required to submit statements.

A statement of employment and financial interests is not required of Board members. These Board members are subject to separate reporting requirements under section 401 of Executive Order 11222.

#### § 1200.735-43 Time and place for submission of employees' statements.

An employee required to submit a statement of employment and financial interests under the regulations in this part shall submit that statement to the Counselor of Ethical Standards not later than:

(a) Ninety days after the effective date of the Board regulations in this part if employed on or before that effective date; or

(b) Thirty days after his entrance on duty, but not earlier than 90 days after

the effective date, if appointed after that effective date.

#### § 1200.735-44 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when the Civil Service Commission authorizes a different date on a showing by the Board of necessity therefor. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or subpart B of this part.

#### § 1200.735-45 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, *member of an employee's immediate household* means those blood relations who are residents of the employee's household.

#### § 1200.735-46 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

#### § 1200.735-47 Information prohibited.

This section does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with or interest in, professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization

or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

**§ 1200.735-48 Confidentiality of employees' statements.**

The Board shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality, the Board shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Board shall not disclose information from a statement except as the Civil Service Commission or the Board may determine for good cause shown.

**§ 1200.735-49 Effect of employees' statements on other requirements.**

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a manner in which his or the other person's participation is prohibited by law, order, or regulations.

**§ 1200.735-50 Specific provisions of Board regulations for special Government employees.**

(a) Each special Government employee appointed by the National Mediation Board shall file a statement of employment and financial interests on a form to be furnished by the Board. However, the following special Government employees are not required to file a statement of employment and finan-

cial interests: Neutrals, referees, and arbitrators, who are exempted due to the fact that the duties of the positions held by these employees are of such a nature and at such a level of responsibility that the submission of such a statement is not necessary to protect the integrity of the Government.

(b) It shall be the duty of the National Mediation Board to notify each of its special Government employees of the specific requirements of the Railway Labor Act and Executive Order 11222 concerning impartiality, integrity, and conflicts of interest.

(c) The statement of employment and financial interests required in this section shall be submitted not later than the time of employment of the special Government employee as provided in the Board's regulations in this part. Each special Government employee shall keep his statement current throughout his employment with the Board by the submission of supplementary statements.

**PART 1201—DEFINITIONS**

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- 1201.1 Carrier.
- 1201.2 Exceptions.
- 1201.3 Determination as to electric lines.
- 1201.4 Employee.
- 1201.5 Exceptions.
- 1201.6 Representatives.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

**§ 1201.1 Carrier.**

The term *carrier* includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act (24 Stat. 379, as amended; 49 U.S.C. 1 *et seq.*), and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee,

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or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier."

### § 1201.2 Exceptions.

(a) The term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

(b) The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor or any of such activities.

### § 1201.3 Determination as to electric lines.

The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any part interested to determine after hearing whether any line operated by electric power falls within the terms of this part.

### § 1201.4 Employee.

The term *employee* as used in this part includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

### § 1201.5 Exceptions.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

### § 1201.6 Representatives.

The term *representative* means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

## PART 1202—RULES OF PROCEDURE

Sec.

- 1202.1 Mediation.
- 1202.2 Interpretation of mediation agreements.
- 1202.3 Representation disputes.
- 1202.4 Secret ballot.
- 1202.5 Rules to govern elections.
- 1202.6 Access to carrier records.
- 1202.7 Who may participate in elections.
- 1202.8 Hearings on craft or class.
- 1202.9 Appointment of arbitrators.
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- 1202.11 Emergency boards.
- 1202.12 National Air Transport Adjustment Board.
- 1202.13 Air carriers.
- 1202.14 Labor members of Adjustment Board.
- 1202.15 Length of briefs in NMB hearing proceedings.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

### § 1202.1 Mediation.

The mediation services of the Board may be invoked by the parties, or either party, to a dispute between an employee or group of employees and a carrier concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference; also, concerning a dispute not referable to the National Railroad Adjustment Board or appropriate airline adjustment board, when not adjusted in conference between the parties, or where

conferences are refused. The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

**§ 1202.2 Interpretation of mediation agreements.**

Under section 5, Second, of title I of the Railway Labor Act, in any case in which a controversy arises over the meaning or application of any agreement reached through mediation, either party to said agreement, or both, may apply to the National Mediation Board for an interpretation of the meaning or application of such agreement. Upon receipt of such request, the Board shall, after a hearing of both sides, give its interpretation within 30 days.

**§ 1202.3 Representation disputes.**

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, it is the duty of the Board, upon request of either party to the dispute, to investigate such dispute and certify to both parties, in writing, the name or names of individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and to certify the same to the carrier.

**§ 1202.4 Secret ballot.**

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

**§ 1202.5 Rules to govern elections.**

In the conduct of a representation election, the Board shall designate who may participate in the election, which may include a public hearing on craft or class, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days des-

ignate the employees who may participate in the election.

**§ 1202.6 Access to carrier records.**

Under the Railway Labor Act the Board has access to and has power to make copies of the books and records of the carriers to obtain and utilize such information as may be necessary to fulfill its duties with respect to representatives of carrier employees.

**§ 1202.7 Who may participate in elections.**

As mentioned in § 1202.3, when disputes arise between parties to a representation dispute, the National Mediation Board is authorized by the Act to determine who may participate in the selection of employees representatives.

**§ 1202.8 Hearings on craft or class.**

In the event the contesting parties or organizations are unable to agree on the employees eligible to participate in the selection of representatives, and either party makes application by letter for a formal hearing before the Board to determine the dispute, the Board may in its discretion hold a public hearing, at which all parties interested may present their contentions and argument, and at which the carrier concerned is usually invited to present factual information. At the conclusion of such hearings the Board customarily invites all interested parties to submit briefs supporting their views, and after considering the evidence and briefs, the Board makes a determination or finding, specifying the craft or class of employees eligible to participate in the designation of representatives.

**§ 1202.9 Appointment of arbitrators.**

Section 5, Third, (a) of the Railway Labor Act provides in the event mediation of a dispute is unsuccessful, the Board endeavors to induce the parties to submit their controversy to arbitration. If the parties so agree, and the arbitrators named by the parties are unable to agree upon the neutral arbitrator or arbitrators, as provided in section 7 of the Railway Labor Act, it becomes the duty of the Board to name such neutral arbitrators and fix the

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compensation for such service. In performing this duty, the Board is required to appoint only those whom it deems wholly disinterested in the controversy, and to be impartial and without bias as between the parties thereto.

### **§ 1202.10 Appointment of referees.**

Section 3, Third, (e) title I of the act makes it the duty of the National Mediation Board to appoint and fix the compensation for service a neutral person known as a "referee" in any case where a division of the National Railroad Adjustment Board becomes deadlocked on an award, such referee to sit with the division and make an award. The National Mediation Board in appointing referees is bound by the same requirements that apply in the appointment of neutral arbitrators as outlined in § 1202.9

### **§ 1202.11 Emergency boards.**

Under the terms of section 10 of the Railway Labor Act, if a dispute between a carrier and its employees is not adjusted through mediation or the other procedures prescribed by the act, and should, in the judgment of the National Mediation Board, threaten to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board shall notify the President, who may thereupon, in his discretion, create an emergency board to investigate and report to him respecting such dispute. An emergency board may be composed of such number of persons as the President designates, and persons so designated shall not be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of emergency board members is fixed by the President. An emergency board is created separately in each instance, and is required to investigate the facts as to the dispute and report thereon to the President within 30 days from the date of its creation.

### **§ 1202.12 National Air Transport Adjustment Board.**

Under section 205, title II, of the Railway Labor Act, when in the judgment of the National Mediation Board it becomes necessary to establish a per-

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manent national board of adjustment for the air carriers subject to the act to provide for the prompt and orderly settlement of disputes between the employees and the carriers growing out of grievances, or out of the application or interpretation of working agreements, the Board is empowered by its order made, published, and served, to direct the air carriers and labor organizations, national in scope, to select and designate four representatives to constitute a Board known as the National Air Transport Adjustment Board. Two members each shall be selected by the air carriers and the labor organizations of their employees. Up to the present time, it has not been considered necessary to establish the National Air Transport Adjustment Board.

### **§ 1202.13 Air carriers.**

By the terms of title II of the Railway Labor Act, which was approved April 10, 1936, all of title I, except section 3, which relates to the National Railroad Adjustment Board, was extended to cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and to all employees or subordinate officials of such air carriers.

### **§ 1202.14 Labor members of Adjustment Board.**

Section 3, First, (f) of title I of the Railway Labor Act relating to the settlement of disputes among labor organizations as to the qualification of any such organization to participate in the selection of labor members of the Adjustment Board, places certain duties upon the National Mediation Board. This section of the act is quoted below:

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the secretary shall notify the Mediation Board accordingly, and within 10 days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this

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section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within 30 days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2, hereof, and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

### **§ 1202.15 Length of briefs in NMB hearing proceedings.**

(a) In the event briefs are authorized by the Board or the assigned Hearing Officer, principal briefs shall not exceed fifty (50) pages in length and reply briefs, if permitted, shall not exceed twenty-five (25) pages in length unless the participant desiring to submit a brief in excess of such limitation requests a waiver of such limitation from the Board which is received within five (5) days of the date on which the briefs were ordered or, in the case of a reply brief, within five (5) days of receipt of the principal brief, and in such cases the Board may require the filing of a summary of argument, suitably paragraphed which should be a succinct, but accurate and clear, condensation of the argument actually made in the brief.

(b) The page limitations provided by this section (§ 1202.15) are exclusive of those pages containing the table of contents, tables of citations and any copies of administrative or court decisions which have been cited in the brief. All briefs shall be submitted on standard 8½ x 11 inch paper with double spaced type.

(c) Briefs not complying with this section (§ 1202.15) will be returned promptly to their initiators.

[44 FR 10601, Feb. 22, 1979]

## **PART 1203—APPLICATIONS FOR SERVICE**

Sec.

1203.1 Mediation services.

1203.2 Investigation of representation disputes.

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1203.3 Interpretation of mediation agreements.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

### **§ 1203.1 Mediation services.**

Applications for the mediation services of the National Mediation Board under section 5, First, of the Railway Labor Act, may be made on printed forms N.M.B. 2, copies of which may be secured from the Board's Secretary. Such applications and all correspondence connected therewith should be submitted in duplicate. The application should show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, if any, date and copy of notice served by the invoking party to the other and date of final conference between the parties. Application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act, or by the chief executive of the labor organization, whichever party files the application. These applications, after preliminary investigation in the Board's office, are given docket number in series "A" and the cases are assigned for mediation to Board members or to mediators on the Board's staff.

[11 FR 177A–923, Sept. 11, 1946. Redesignated at 13 FR 8740, Dec. 30, 1948]

### **§ 1203.2 Investigation of representation disputes.**

Applications for the services of the National Mediation Board under section 2, ninth, of the Railway Labor Act to investigate representation disputes among carriers' employees may be made on printed forms NMB-3, copies of which may be secured from the Board's Executive Secretary. Such applications and all correspondence connected therewith should be filed in duplicate and the applications should be accompanied by signed authorization cards from the employees composing the craft or class involved in the dispute. The applications should show specifically the name or description of the craft or class of employees involved, the name of the invoking organization, the name of the organization currently

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representing the employees, if any, and the estimated number of employees in each craft or class involved. The applications should be signed by the chief executive of the invoking organization, or other authorized officer of the organization. These disputes are given docket numbers in series "R".

[43 FR 30053, July 13, 1978]

### § 1203.3 Interpretation of mediation agreements.

(a) Applications may be filed with the Board's Secretary under section 5, Second, of the Railway Labor Act, for the interpretation of agreements reached in mediation under section 5, First. Such applications may be made by letter from either party to the mediation agreement stating the specific question on which an interpretation is desired.

(b) This function of the National Mediation Board is not intended to conflict with the provisions of section 3 of the Railway Labor Act. Providing for interpretation of agreements by the National Railroad Adjustment Board. Many complete working agreements are revised with the aid of the Board's mediating services, and it has been the Board's policy that disputes involving the interpretation or application of such agreements should be handled by the Adjustment Board. Under this section of the law the Board when called upon may only consider and render an interpretation on the specific terms of an agreement actually signed in mediation, and not for matters incident or corollary thereto.

[11 FR 177A-923, Sept. 11, 1946. Redesignated at 13 FR 8740, Dec. 30, 1948]

## PART 1204—LABOR CONTRACTS

Sec.

1204.1 Making and maintaining contracts.

1204.2 Arbitrary changing of contracts.

1204.3 Filing of contracts.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-924, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

### § 1204.1 Making and maintaining contracts.

It is the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain contracts covering rates of pay, rules, and working conditions.

### § 1204.2 Arbitrary changing of contracts.

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of the Railway Labor Act.

### § 1204.3 Filing of contracts.

Section 5, Third, (e) of the Railway Labor Act requires all carriers to file with the National Mediation Board copies of all contracts in effect with organizations representing their employees, covering rates of pay, rules, and working conditions. Several thousand of such contracts are on file in the Board's Washington office and are available for inspection by interested parties.

## PART 1205—NOTICES IN RE: RAILWAY LABOR ACT

Sec.

1205.1 Handling of disputes.

1205.2 Employees' Bill of Rights.

1205.3 General Order No. 1.

1205.4 Substantive rules.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-924, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

### § 1205.1 Handling of disputes.

Section 2, Eighth, of the Railway Labor Act provides that every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by order of the Mediation Board and requires that all disputes between a carrier and its employees will be handled in accordance with the requirements of the act. In such notices there must be printed verbatim, in large type, the third, fourth, and fifth paragraphs of

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said section 2, Eighth, of the Railway Labor Act.

### § 1205.2 Employees' Bill of Rights.

The provisions of the third, fourth, and fifth paragraphs of section 2 are by law made a part of the contract of employment between the carrier and each employee and shall be binding upon the parties regardless of any other express or implied agreements between them. Under these provisions the employees are guaranteed the right to organize without interference of management, the right to determine who shall represent them, and the right to bargain collectively through such representatives. This section makes it unlawful for any carrier to require any person seeking employment to sign any contract promising to join or not to join a labor organization. Violation of the foregoing provisions is a misdemeanor under the law and subjects the offender to punishment.

### § 1205.3 General Order No. 1.

General Order No. 1, issued August 14, 1934, is the only order the Board has issued since its creation in 1934. This order sent to the President of each carrier coming under the act transmitted a sample copy of the Mediation Board's Form MB-1 known as "Notice in re: Railway Labor Act." The order prescribes that such notices are to be standard as to contents, dimensions of sheet, and size of type and that they shall be posted promptly and maintained continuously in readable condition on all the usual and customary bulletin boards giving information to employees and at such other places as may be necessary to make them accessible to all employees. Such notices must not be hidden by other papers or otherwise obscured from view.

### § 1205.4 Substantive rules.

The only substantive rules issued by the National Mediation Board are those authorized under section 2, Ninth, of the Railway Labor Acts to

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implement the procedure of determining employee representation.

[12 FR 2451, April 16, 1947. Redesignated at 13 FR 8740, Dec. 30, 1948]

## PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

Sec.

1206.1 Run-off elections.

1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.

1206.3 Age of authorization cards.

1206.4 Time limits on applications.

1206.5 Necessary evidence of intervenor's interest in a representation dispute.

1206.6 Eligibility of dismissed employees to vote.

1206.7 Construction of this part.

1206.8 Amendment or rescission of rules in this part.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 12 FR 3083, May 10, 1947, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

### § 1206.1 Run-off elections.

(a) If in an election among any craft or class no organization or individual receives a majority of the legal votes cast, or in the event of a tie vote, a second or run-off election shall be held forthwith: *Provided*, That a written request by an individual or organization entitled to appear on the run-off ballot is submitted to the Board within ten (10) days after the date of the report of results of the first election.

(b) In the event a run-off election is authorized by the Board, the names of the two individuals or organizations which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which votes may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except (1) those employees whose employment relationship has terminated, and (2) those employees

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who are no longer employed in the craft or class.

### **§ 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.**

(a) Where the employees involved in a representation dispute are represented by an individual or labor organization, either local or national in scope and are covered by a valid existing contract between such representative and the carrier a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least a majority of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

(b) Where the employees involved in a representation dispute are unrepresented, a showing of proved authorizations from at least thirty-five (35) percent of the employees in the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

### **§ 1206.3 Age of authorization cards.**

Authorizations must be signed and dated in the employee's own handwriting or witnessed mark. No authorizations will be accepted by the National Mediation Board in any employee representation dispute which bear a date prior to one year before the date of the application for the investigation of such dispute.

### **§ 1206.4 Time limits on applications.**

Except in unusual or extraordinary circumstances, the National Mediation Board will not accept an application for investigation of a representation dispute among employees of a carrier:

(a) For a period of two (2) years from the date of a certification covering the same craft or class of employees on the same carrier, and

(b) For a period of one (1) year from the date on which:

(1) The Board dismissed a docketed application after having conducted an election among the same craft or class of employees on the same carrier and less than a majority of eligible voters participated in the election; or

(2) The Board dismissed a docketed application covering the same craft or class of employees on the same carrier because no dispute existed as defined in § 1206.2 of these rules; or

(3) The Board dismissed a docketed application after the applicant withdrew an application covering the same craft or class of employees on the same carrier after the application was docketed by the Board.

[44 FR 10602, Feb. 22, 1979]

### **§ 1206.5 Necessary evidence of intervenor's interest in a representation dispute.**

In any representation dispute under the provisions of section 2, Ninth, of the Railway Labor Act, an intervening individual or organization must produce proved authorization from at least thirty-five (35) percent of the craft or class of employees involved to warrant placing the name of the intervenor on the ballot.

### **§ 1206.6 Eligibility of dismissed employees to vote.**

Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities, which includes the National Railroad Adjustment Board or other appropriate adjustment board, are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal. This does not include dismissed employees whose guilt has been determined, and who are seeking reinstatement on a leniency basis.

### **§ 1206.7 Construction of this part.**

The rules and regulations in this part shall be liberally construed to effectuate the purposes and provisions of the act.

### **§ 1206.8 Amendment or rescission of rules in this part.**

(a) Any rule or regulation in this part may be amended or rescinded by the Board at any time.

(b) Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation in this part. An original and three copies of such petition shall be filed with the Board in Washington, DC, and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

(c) Upon the filing of such petition, the Board shall consider the same, and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon and make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory.

## PART 1207—ESTABLISHMENT OF SPECIAL ADJUSTMENT BOARDS

Sec.

1207.1 Establishment of special adjustment boards (PL Boards).

1207.2 Requests for Mediation Board action.

1207.3 Compensation of neutrals.

1207.4 Designation of PL Boards, filing of agreements, and disposition of records.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 31 FR 14644, Nov. 17, 1966, unless otherwise noted.

### § 1207.1 Establishment of special adjustment boards (PL Boards).

Public Law 89-456 (80 Stat. 208) governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards, hereinafter referred to as PL Boards. Public Law 89-456 requires action by the National Mediation Board in the following circumstances:

(a) *Designation of party member of PL Board.* Public Law 89-456 provides that within thirty (30) days from the date a written request is made by an employee representative upon a carrier, or by a carrier upon an employee representative, for the establishment of a PL Board, an agreement establishing such a Board shall be made. If, however, one party fails to designate a member of the Board, the party mak-

ing the request may ask the Mediation Board to designate a member on behalf of the other party. Upon receipt of such request, the Mediation Board will notify the party which failed to designate a partisan member for the establishment of a PL Board of the receipt of the request. The Mediation Board will then designate a representative on behalf of the party upon whom the request was made. This representative will be an individual associated in interest with the party he is to represent. The designee, together with the member appointed by the party requesting the establishment of the PL Board, shall constitute the Board.

(b) *Appointment of a neutral to determine matters concerning the establishment and/or jurisdiction of a PL Board.* (1) When the members of a PL Board constituted in accordance with paragraph (a) of this section, for the purpose of resolving questions concerning the establishment of the Board and/or its jurisdiction, are unable to resolve these matters, then and in that event, either party may ten (10) days thereafter request the Mediation Board to appoint a neutral member to determine these procedural issues.

(2) Upon receipt of this request, the Mediation Board will notify the other party to the PL Board. The Mediation Board will then designate a neutral member to sit with the PL Board and resolve the procedural issues in dispute. When the neutral has determined the procedural issues in dispute, he shall cease to be a member of the PL Board.

(c) *Appointment of neutral to sit with PL Boards and dispose of disputes.* (1) When the members of a PL Board constituted by agreement of the parties, or by the appointment of a party member by the Mediation Board, as described in paragraph (a) of this section, are unable within ten (10) days after their failure to agree upon an award to agree upon the selection of a neutral person, either member of the Board may request the Mediation Board to appoint such neutral person and upon receipt of such request, the Mediation Board shall promptly make such appointment.

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(2) A request for the appointment of a neutral under paragraph (b) of this section or this paragraph (c) shall;

(i) Show the authority for the request—Public Law 89-456, and

(ii) Define and list the proposed specific issues or disputes to be heard.

### § 1207.2 Requests for Mediation Board action.

(a) Requests for the National Mediation Board to appoint neutrals or party representatives should be made on NMB Form 5.

(b) Those authorized to sign request on behalf on parties:

(1) The “representative of any craft or class of employees of a carrier,” as referred to in Public Law 89-456, making request for Mediation Board action, shall be either the General Chairman, Grand Lodge Officer (or corresponding officer of equivalent rank), or the Chief Executive of the representative involved. A request signed by a General Chairman or Grand Lodge Officer (or corresponding officer of equivalent rank) shall bear the approval of the Chief Executive of the employee representative.

(2) The “carrier representative” making such a request for the Mediation Board’s action shall be the highest carrier officer designated to handle matters arising under the Railway Labor Act.

(c) Docketing of PL Board agreements: The National Mediation Board will docket agreements establishing PL Board, which agreements meet the requirements of coverage as specified in Public Law 89-456. No neutral will be appointed under §1207.1(c) until the agreement establishing the PL Board has been docketed by the Mediation Board.

### § 1207.3 Compensation of neutrals.

(a) *Neutrals appointed by the National Mediation Board.* All neutral persons appointed by the National Mediation Board under the provisions of §1207.1 (b) and (c) will be compensated by the Mediation Board in accordance with legislative authority. Certificates of appointment will be issued by the Mediation Board in each instance.

(b) *Neutrals selected by the parties.* (1) In cases where the party members of a PL Board created under Public Law 89-

456 mutually agree upon a neutral person to be a member of the Board, the party members will jointly so notify the Mediation Board, which Board will then issue a certificate of appointment to the neutral and arrange to compensate him as under paragraph (a) of this section.

(2) The same procedure will apply in cases where carrier and employee representatives are unable to agree upon the establishment and jurisdiction of a PL Board, and mutually agree upon a procedural neutral person to sit with them as a member and determine such issues.

### § 1207.4 Designation of PL Boards, filing of agreements, and disposition of records.

(a) *Designation of PL Boards.* All special adjustment boards created under Public Law 89-456 will be designated PL Boards, and will be numbered serially, commencing with No. 1, in the order of their docketing by the National Mediation Board.

(b) *Filing of agreements.* The original agreement creating the PL Board under Public Law 89-456 shall be filed with the National Mediation Board at the time it is executed by the parties. A copy of such agreement shall be filed by the parties with the Administrative Officer of the National Railroad Adjustment Board, Chicago, Ill.

(c) *Disposition of records.* Since the provisions of section 2(a) of Public Law 89-456 apply also to the awards of PL Boards created under this Act, two copies of all awards made by the PL Boards, together with the record of proceedings upon which such awards are based, shall be forwarded by the neutrals who are members of such Boards, or by the parties in case of disposition of disputes by PL Boards without participation of neutrals, to the Administrative Officer of the National Railroad Adjustment Board, Chicago, Ill., for filing, safekeeping, and handling under the provisions of section 2(q), as may be required.

## PART 1208—AVAILABILITY OF INFORMATION

Sec.

1208.1 Purpose.

1208.2 Production or disclosure of material or information.

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- 1208.3 General policy.
- 1208.4 Material relating to representation function.
- 1208.5 Material relating to mediation function—confidential.
- 1208.6 Fees—duplication costs and search.
- 1208.7 Compliance with subpoenas.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 39 FR 1751, Jan. 14, 1974, unless otherwise noted.

### § 1208.1 Purpose.

The purpose of this part is to set forth the basic policies of the National Mediation Board and the National Railroad Adjustment Board in regard to the availability and disclosure of information in the possession of the NMB and the NRAB.

### § 1208.2 Production or disclosure of material or information.

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing the request or delivering it to the Executive Secretary, National Mediation Board, Washington, DC 20572, except that requests for records of the National Railroad Adjustment Board shall be in writing and addressed to the Administrative Officer, National Railroad Adjustment Board, 220 South State Street, Chicago, Illinois 60604.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for records the Executive Secretary shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon,

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the date any records are subsequently furnished, the number of staff hours and grade levels of persons who spent time responding to the request and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, DC, except for requests directed to the National Railroad Adjustment Board pursuant to § 1208.2(a)(1) in which case the time limit shall commence when the request is received at the NRAB's office in Chicago.

(i) An oral request for records shall not begin any time requirement.

(b) *Processing the initial request.* (1) Time limitations. Within 10 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Executive Secretary shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

(ii) The name or names and positions of the person or persons, other than the Executive Secretary, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, DC 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Extension of time.* In unusual circumstances as specified in this paragraph, the Executive Secretary may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five

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days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph “unusual circumstances” means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal, in accordance with § 1208.2(c). When no determination can be dispatched within the applicable time limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with § 1208.2(c) and he may ask the requester to forego appeal until a determination is made.

(c) *Appeals to the Chairman of the Board.* (1) When a request for records has been denied in whole or in part by the Executive Secretary or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, DC 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and legal public holidays) of its receipt unless an extension is made under paragraph (c)(3) of this section.

(3) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 1208.2(b)(3). Such extension shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph “unusual circumstances” means, but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the

United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* (1) The National Mediation Board at its office in Washington, DC will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(i) A copy of such index shall be available at cost from the National Mediation Board, Washington, DC 20572.

(ii) [Reserved]

(2) The National Railroad Adjustment Board at its offices in Chicago, Illinois will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

[42 FR 43627, Aug. 30, 1977]

**§ 1208.3 General policy.**

(a) Public policy and the successful effectuation of the NMB's mission require that Board members and the employees of the NMB maintain a reputation for impartiality and integrity. Labor and management and other interested parties participating in mediation efforts must have assurance, as must labor organizations and individuals involved in questions of representation, that confidential information disclosed to Board members and employees of the NMB will not be divulged, voluntarily or by compulsion.

(b) Notwithstanding this general policy, the Board will under all circumstances endeavor to make public as much information as can be allowed.

**§ 1208.4 Material relating to representation function.**

(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, orders, stenographic reports of the hearings, briefs, exhibits, findings upon investigation, determinations of craft or class, interpretations, dismissals, withdrawals, and certifications, are matters of official record and are available for inspection and examination during the usual business hours at the Board's offices in Washington.

(b) This part notwithstanding, the Board will treat as confidential the evidence submitted in connection with a representation dispute and the investigatory file pertaining to the representation function.

**§ 1208.5 Material relating to mediation function—confidential.**

(a) All files, reports, letters, memoranda, documents, and papers (hereinafter referred to as confidential documents) relating to the mediation function of the NMB, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under any applicable section of the Railway Labor Act of 1926, as amended, are hereby declared to be confidential. No such confidential documents or the material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any agent of such person or his representative without the explicit consent of the NMB.

(b) However, the following specific documents: Invocation or proffer of mediation, the reply or replies of the parties, the proffer of arbitration and replies thereto, and the notice of failure of mediatory efforts in cases under section 5, First of the Railway Labor Act, as amended, are matters of official record and are available for inspection and examination.

(c) Interpretations of mediation agreements by the NMB, arising out of section 5, Second, of the Railway Labor Act, as amended, are public records and are therefore open for public inspection and examination.

**§ 1208.6 Fees—duplication costs and search.**

(a)(1) Unless waived in accordance with the provisions of § 1208.62, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(i) *Copying of records.* Fifteen cents per copy of each page.

(ii) *Copying of microfilm.* Fifty cents per microfilm frame.

(iii) *Clerical searches.* \$1.80 for each one quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(iv) *Non-clerical searches.* \$4.10 for each one quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(v) *Certification or authentication of records.* \$1.00 per certification or authentication.

(vi) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(2)(i) No charge shall be assessed for time spent in resolving legal or policy questions relating to the documents or in examining records for the purpose of deleting nondisclosable portions thereof.

(ii) No charge shall be assessed for time spent in monitoring an individual who examines documents at the Board's offices.

(3) Payment shall be made by check or money order payable to "United States Treasury."

(b)(1) No fee shall be charged for disclosure of records pursuant to this part where:

(i) The cost of providing the records is less than \$5.00.

(ii) The records are requested by a congressional committee or subcommittee, a Federal court, a Federal department or agency, or the General Accounting Office.

(2)(i) The Executive Secretary may waive payment of fees, in whole or in part, when he determines that the person making the request is indigent.

(ii) A person seeking such a determination shall petition the Executive Secretary in writing stating the reasons therefore.

(iii) Determinations made pursuant to this provision will be made within the discretion of the agency.

(3)(i) The Executive Secretary may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(ii) Determinations pursuant to this provision shall be made within the discretion of the agency.

(4) No fee shall be charged if a record requested is not found or for any record that is determined to be totally exempt from disclosure.

[42 FR 43628, Aug. 30, 1977]

**§ 1208.7 Compliance with subpoenas.**

(a) No person connected in any official way with the NMB shall produce or present any confidential records of the Board or testify on behalf of any party to any cause pending in any court, or before any board, commission, committee, tribunal, investigatory body, or administrative agency of the U.S. Government, or any State or Territory of the United States, or the District of Columbia, or any municipality with respect to matters coming to his knowledge in his official capacity or with respect to any information contained in confidential documents of the NMB, whether in answer to any order, subpoena, subpoena duces tecum, or otherwise without the express written consent of the Board.

(b) Whenever any subpoena or subpoena duces tecum calling for confidential documents, or the information contained therein, or testimony as described above shall have been served on any such person, he will appear in answer thereto, and unless otherwise expressly permitted by the Board, respectfully decline, by reason of this section, to produce or present such confidential documents or to give such testimony.

**PART 1209—PUBLIC OBSERVATION  
OF NATIONAL MEDIATION  
BOARD MEETINGS**

Sec.  
1209.01 Scope and purpose.

## § 1209.01

- 1209.02 Definitions.
- 1209.03 Conduct of National Mediation Board business.
- 1209.04 Open meetings.
- 1209.05 Closing of meetings; reasons therefor.
- 1209.06 Action necessary to close meetings; record of votes.
- 1209.07 Notice of meetings; public announcement and publication.
- 1209.08 Transcripts, recordings or minutes of closed meetings; retention; public availability.
- 1209.09 Requests for records under Freedom of Information Act.
- 1209.10 Capacity of public observers.

AUTHORITY: 5 U.S.C. 552b(g), 44 Stat. 577, as amended (45 U.S.C. 151 *et seq.*).

SOURCE: 42 FR 60739, Nov. 29, 1977, unless otherwise noted.

### § 1209.01 Scope and purpose.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) It is the policy of the National Mediation Board that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

### § 1209.02 Definitions.

For purposes of this part:

(a) The terms *Board* or *Agency* mean the National Mediation Board, a collegial body composed of three members appointed by the President with the advice and consent of the Senate.

(b) The term *meeting* means the deliberations of at least two members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted or with respect to any information proposed to be withheld under by 5 U.S.C. 552b(d) or (e)/5 U.S.C. 552b(c).

### § 1209.03 Conduct of National Mediation Board business.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part.

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### § 1209.04 Open meetings.

Every portion of every Board meeting shall be open to public observation except as otherwise provided by § 1209.05 of this part.

### § 1209.05 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of any matter involving a determination on the record after opportunity for a hearing, or any court proceeding collateral or ancillary thereto.

(b) Except where the Board determines that the public interest requires otherwise, the Board also may close meetings, or portions thereof, when the deliberations concern matters or information falling within the scope of 5 U.S.C. 552b (c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (trade secrets and commercial or financial information obtained from a person and privileged or confidential); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

### § 1209.06 Action necessary to close meetings; record of votes.

A meeting shall be closed to public observation under § 1209.05, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 1209.05(a), the Board members shall vote at the beginning of the meeting, or portion

thereof, on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concerns matters specified in §1209.05(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where subsequent meetings in the series are scheduled to be held within one day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting upon request of any one member of the Board, shall vote on whether to close such meeting, or any portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting, shall be kept and made available to the public within one day after the vote is taken.

(d) After public announcement of a meeting as provided in §1209.07 of this part, a meeting, or portion thereof, announced as closed may be opened or a meeting, or portion thereof, announced

as open may be closed, only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to §1209.05 the General Counsel of the Board shall certify that in his or her opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. The certification shall be retained by the agency and made publicly available as soon as practicable.

**§ 1209.07 Notice of meetings; public announcement and publication.**

(a) A public announcement setting forth the time, place and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of §1209.05(a) of this part, shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of §1209.05(a) of this part, the agency shall make public announcement of each meeting at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address and phone number of an agency official designated to respond to requests for information about the meeting. The 7 day period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcement shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of §1209.05(b) of this part, the agency shall

make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after a public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement of such changes shall be made at the earliest practicable time. The subject matter of the meeting may be changed after public announcement thereof only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereof issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to the provisions of §1209.06(d), shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcement of meeting made pursuant to the provisions of this section shall be posted on a bulletin board maintained for such purpose at the Board's offices, 1425 K Street, NW., Washington, DC. Interested individuals or organizations may request the Executive Secretary, National Mediation Board, Washington, DC 20572 to place them on a mailing list for receipt of such announcements.

**§1209.08 Transcripts, recordings or minutes of closed meetings; retention; public availability.**

(a) For every meeting or portion thereof closed under the provisions of §1209.05, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting or portion thereof there also shall be maintained a complete transcript or electronic recording of the

proceedings, except that for meetings closed pursuant to §1209.05(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reason therefor and views thereof, documents considered, and the members' vote on each roll call vote.

(b) The agency shall maintain a complete verbatim transcript, a complete electronic recording, or a complete set of minutes for each meeting or portion thereof closed to public observation, for a period of at least one year after the close of the agency proceeding of which the meeting was a part, but in no event for a period of less than two years after such meeting.

(c) The agency shall make promptly available to the public copies of transcripts, electronic recordings or minutes maintained as provided in paragraphs (a) and (b) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c).

(d) Upon request in accordance with the provisions of this paragraph and except to the extent they contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c), copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall be furnished subject to the payment of duplication costs in accordance with the schedule of fees set forth in §1208.06 of the Board's Rules, and the actual cost of transcription. Requests for copies of transcripts or minutes, or transcriptions of electronic recordings of Board meetings shall be directed to the Executive Secretary, National Mediation Board, Washington, DC 20572. Such requests shall reasonably identify the records sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount. The Board may determine to require prepayment of such costs.

National Mediation Board

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**§ 1209.09 Requests for records under Freedom of Information Act.**

Requests to review or obtain copies of agency records other than notices or records prepared under this part may be pursued in accordance with the Freedom of Information Act (5 U.S.C. 552). Part 1208 of the Board's Rules addresses the requisite procedures under that Act.

**§ 1209.10 Capacity of public observers.**

The public may attend open Board meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited or otherwise interfere with the conduct and disposition of agency business. When a portion of a meeting is closed to the public, observers will leave the meeting room upon request to enable discussion of the exempt matter therein under consideration.