COMMENTS OF THE NATIONAL ASSOCIATION OF RAILROAD REFEREES

BEFORE
NATIONAL MEDIATION BOARD

NOTICE OF PROPOSED RULEMAKING
NMB Docket No. 2003-01

January 11, 2005

The National Association of Railroad Referees ("NARR" or the "Association") appreciates the opportunity afforded by the National Mediation Board ("NMB" or the "Board") to comment on its proposal to begin charging fees for certain arbitration services.

NARR is an association of professional arbitrators ("referees") who hear and decide disputes arising under Section 3 of the Railway Labor Act, 45 U.S.C. § 151, et seq. ("RLA" or the "Act.") Founded in 1990, the Association's 83 dues-paying members in 2003-04 represent a majority of referees who hear and decide labor-management disputes in the rail industry. The Association and its members have a professional interest and professional expertise in the proper and effective functioning of Section 3. NARR's Annual Meeting in September has become, with the support of Carriers, Organizations and the NMB, a major source of education and training related to Section 3 activities. Adjunct to its objectives of educating its members and improving the quality of the services they provide, the Association works to promote the broader interests of railroad arbitration by conducting ongoing liaison with the parties and the Board. In the interest of fostering the mutual exchange of ideas and information on railroad dispute resolution, among other programs the NARR maintains a web-site (http://www.rr-referees.org) and a periodic newsletter (the NARRator).

To promote "the resolution of minor disputes on a more timely and expeditious basis," the NMB previously proposed sweeping change in the administration of its Section 3 responsibilities. NARR previously addressed those proposed changes; our comments today will be limited to the Board's proposal to establish fee payments for a variety of administrative duties it has historically provided to the parties at no cost. 69 Fed. Reg. At 48177, Proposed § 1210.12. The NARR continues to share the Board's interest in improving the Section 3 arbitration process. We have, for example, supported recent initiatives involving videoconferencing and electronic voucher submissions. The Association stands ready to continue that cooperation in the future.

While the NARR applauds the NMB's overall goals and has worked with the Board toward those goals, we believe the proposed rules relating to fees exceed the scope of authority granted to the NMB by Congress, frustrate both the spirit of the Act and the stated intent behind the proposal, and are fundamentally unfair. Accordingly, we urge non-adoption of the proposed regulations. The Association perceives no linkage between the NMB's statutory mandate and the fee schedule under consideration. Indeed, NARR is persuaded that the imposition of the fees set forth under Proposed § 1210.12 would have a material adverse effect on the structure and functioning of the Section 3 arbitration process.

From the time the RLA was amended in 1934 to provide for compulsory arbitration, labor and management have relied on the administrative staff of the NMB to supply panels of referees, confirm the establishment of Public Law Boards and provide other ministerial services as a routine aspect of the Board's statutory obligations in administering the Act. That Congressionally established system has been well accepted and understood by rail labor and management alike and has functioned essentially intact since adopted. For the reasons stated below, the Association believes that now shifting some costs of resolving rail labor-management disputes to the parties and claimants could alter the nature of the arbitration process in ways that would significantly diminish their rights.

NARR notes that the railroad industry has undergone significant technological and economic change in recent years. Those changes – which are likely to continue into the future – have impacted heavily on the manner in which railroads conduct their business and have resulted in significant restructuring of the terms and conditions of employment for rail employees. As a result, serious pressures on collective bargaining relationships have been brought to bear.

While the changes noted have been taking place, the courts have been narrowing the scope of Section 6 bargaining. The results has been that many issues which might otherwise have been topics for negotiation have been diverted by the courts to Section 3 arbitration. Arbitration is an extension of collective bargaining, and the carriers and organizations have expended significant resources to address claims filed to test the transformative adjustments resulting from those changes, as well as to determine the rights and obligations of the parties and claimants under the agreements. NARR respectfully suggests that erecting impediments to the use of arbitration under such circumstances would be misguided policy. A change to now require individual parties to spend their resources to maintain the statutory system could, when resources are scarce, force stark choices between which claims to take to arbitration. The imposition of such fees will inevitably have a dampening effect on the claims that can be processed, resulting in more, not less, tension, pressure and friction among the parties. If disputes cannot be resolved through bargaining and are restricted in arbitration, how will they be resolved? In the NARR's view, the use of restrictive fees is not a formula for either improving rail labor-management relations or advancing the statutory purpose of avoiding interruptions to interstate rail commerce.

Some who have examined Section 3 activities have implied that a large volume of frivolous or duplicative claims are being arbitrated, possibly prompting the consideration of fee assessments. While we understand that the view of advocates may differ, an informal survey of railroad industry arbitrators provides little support that assumption. My own experience in recent years does not bear out that assumption. On the contrary, NARR believes the parties are doing a better job screening and resolving claims than previously, and that the number of marginal claims in general has declined significantly. However, even if large numbers of disputes are pending at any one time, the submission of such claims is not proof of process problems calling for regulatory responses such as those proposed. Other, less sweeping alternatives may be available to address specific situations. The association will continue to be willing to work with the Board in the regard.

NARR notes that pending disputes, even those which may appear to be duplicative, may serve

valid and important purposes, sometimes enabling the parties to focus or deflect politically-charged issues, and often functioning as symbolic actions to signal important bargaining issues. Many such cases are never intended to reach arbitration; relatively few do. Thus, NARR believes, the imposition of fees to reduce grievance backlogs is unnecessary and, as indicated, may be destructive of the broader system of dispute resolution in the industry.

NARR defers to the parties to voice their specific concerns, if any, regarding the actual costs which would result from adoption of the proposed rules, as the fees charged would presumably be paid by them. But the Association is strongly of the view that, in the absence of demonstrated abuse by the parties, significant cost savings to the Board or material enhancement of the effectiveness of the arbitration process, the charges envisioned, including charging fees to establish new Public and Special Law Boards, will distort and disserve the process. We thus conclude that extreme caution should be exercised before imposing such potentially far-reaching changes.

NARR appreciates the opportunity to share our view with the Board on this important subject. Should the Board have questions, Mr. Conway and I will be pleased to respond. Thank you for your consideration.

Respectfully submitted,

M. David Vaughn
President

James E. Conway
Vice-President