

NATIONAL MEDIATION BOARD

NMB DOCKET No. 2003-01N

NOTICE OF PROPOSED RULE MAKING

DECLARATION OF WILLIAM R. MILLER

1. I have been employed full time by the Transportation Communications International Union (TCU) since April 1, 1976, and part time since 1970.

2. Since June 1984, I have been the Labor Representative to Division 3 of the National Railroad Adjustment Board (NRAB) and have been Chairman or Vice Chairman of the Third Division and the full Board since 1987.

3. Since February 1994, I have been TCU's Executive Director of the Industrial Relations Department. In that capacity I review and approve, on behalf of TCU's International President, all submissions to Public Law Boards, Special Boards of Adjustment and Public Law Boards.

4. Since it was established in 1985, I have been a representative to and actively participated in the deliberations of the so-called "Section 3" Committee, and have been the Chairman of the Subcommittee which is made up from representatives of various unions and carriers. The mission of this Committee has been to improve the Section 3 grievance process.

5. The Section 3 Committee has periodically made recommendations which have then been adopted by the NRAB. These procedural changes are also generally adopted by Public Law Boards (PLB's) and Special Boards of Adjustment (SBA's). In June 2003 the NRAB revised the Uniform Rules of Procedure to permit the electronic filing of submissions. A copy of these revised rules is attached hereto as Exhibit A.

6. I testified at the NMB's December 19, 2003 hearing that, as a result of the work of the Section 3 Committee and the cooperation of the parties, cases pending arbitration have been markedly reduced between fiscal year 1985 and 2004, as indicated by the chart shown below:

	<u>Fiscal Year 1985</u>	<u>Fiscal Year 2004</u>
	<u>Pending Cases</u>	<u>Pending Cases</u>
NRAB	2,036	1,509
PLB	16,759	3,151
SBA	<u>3,378</u>	<u>476</u>
Total	22,173	5,136

	<u>1985</u>	<u>2004</u>
Total Unionized Employment	373,000	200,000

New cases received 8,425, which equates to 23 grievances per 1000 employees being filed on an Annual Basis.

New cases received 906, which equates to 4.5 grievances per 1000 employees being filed on an Annual Basis.

Source: NMB Annual Report 1985 and 2004.

7. The Section 3 Committee established a Consolidation Committee that was working with the NMB and had actively engaged in discussions on adopting rules for the consolidation of cases.

This Consolidation Committee was, in my judgment, very close to reaching an agreement on such rules when, in April 2004, the NMB consolidated certain cases involving CSX, resulting in pending litigation and the termination of any further discussions of consolidation among the Committee.

8. The NMB has never in my personal experience of 34 years claimed that it had the authority to issue procedural rules for the NRAB, nor has the NMB ever claimed that it could decline to pay referee compensation because of a failure to comply with such rules.

9. During informal discussions with the Section 3 Committee, over the years, various NMB members have recognized that it lacked the authority to issue rules governing the NMB. See, e.g., Minutes of Section III Committee, June 3, 1999, at p. 3 (copy attached as Exhibit B).

10. Many of the proposed fees are related to the NMB meeting its statutory obligation to pay referee compensation for cases at the NRAB, PLB and SBA. Moreover, many of the functions for which fees are proposed to be charged are ministerial acts involving de minimus time by NMB staff.

11. For example, after the partisan members of the NRAB agreed upon a docket of cases to be heard by a referee, the

partisan members alternate in preparing a letter requesting the NMB to issue a "Certificate of Selection" to a referee to hear a docket of cases. (See Exhibit C) The "Certificate of Selection" letter subsequently issued by the NMB is a form letter. (See Exhibit D)

12. The ANPRM fails to establish any relationship between the costs incurred by the NMB and the fees being charged. It appears that the fees are often in excess of any cost.

13. In many instances it will be difficult to allocate fees among many different parties before the NRAB. For example, recently NMB Director or Arbitration Roland Watkins certified Referee G. Wallin to hear 38 cases involving four labor organizations and five carriers as follows:

<u>Labor Organizations</u>	<u>Carriers</u>
ATDA - 5 Cases	UP - 22 Cases
BMWE - 11 Cases	BNSF - 10 Cases
BRS - 12 Cases	Soo (CMSTPP) - 1 Case
TCU - 10 Cases	PP&U - 1 Case
	CSXT - 4 Cases
TOTAL - 38 Cases	TOTAL - 38 Cases

See Exhibit C.

14. My experience is that the partisan members of the NRAB rarely fail to agree upon a referee, and that it is very unusual for the partisan members of a PLB or SBA to fail to agree on a referee.

15. While proposed Rule 1210.10(b)(2) states that submissions by the parties "shall" be filed with the NRAB within sixty (60) days of the Director of Arbitration Services' letter acknowledging the Notice of Intent, the NRAB's Rules of Procedure state that the parties have a seventy-five (75) day period from the date of the NRAB acknowledging receipt of the Notice of Intent to file submissions (Exhibit A, Rule 1(a)). The NRAB rules also provide that the Chairman and Vice Chairman of the appropriate Division may jointly grant an additional ten (10) day extension for filing submissions to one or both parties.

16. Parties taking the full period permissible for filing submissions under the NRAB's Rules of Procedure will run the risk of non-compliance with the NMB's proposed rules. Such non-compliance may, under the proposed rules, cause the NMB to decline to pay referee compensation.

17. Under proposed Rule 1210.10(b)(3), the partisan members "shall" be given thirty (30) days after receipt of submissions to

review the case with intent to resolve, and failing resolution, the case will be considered deadlocked.

18. NRAB Rules of Procedure provide that third parties and individual employees are to be provided thirty (30) days after the filing of the parties' submissions to file submissions of their own.

19. If the thirty (30) day period for the partisan members to resolve a dispute under proposed Rule 1210.10(3) begins to run after receipt of the parties' submissions, partisan members wishing to comply with the new NMB procedures will be required to meet to resolve prior to receipt of submissions from third parties and individual employees potentially affected by seniority disputes, contrary to the NRAB's practices and own rules.

20. Delays in hearing cases often result because the carriers have insufficient advocates available for such purposes. Delays both in hearing cases and the issuance of decisions are often caused by the NMB directing the referees to cease working on cases because of a lack of funds.

21. Virtually all grievances are filed by individual employees or their labor organizations claiming that the carrier violated the collective bargaining agreement. Carriers will

generally have little incentive to comply with the time limits in proposed Rule 1210.10.

22. As acknowledged in proposed Rule 1210.2(c), the NMB "does not directly participate in the substantive decision making process" involving the arbitration of minor disputes. The NMB has, to my knowledge, never involved itself with the substance of referee awards. Its role has been limited to paying referee compensation.

23. The NMB has neither experience nor expertise in the substance of arbitration. The decision whether it is appropriate to consolidate cases requires such expertise, in order to be able to evaluate complex facts and rules.

24. Given the NMB's lack of experience or expertise, in my opinion, it is reasonable to anticipate that the NMB will inappropriately consolidate cases under proposed Rule 1210.9. The NRAB has dismissed claims which it has found were inappropriately consolidated. (See, First Division Award 24530 and Third Division Award 31456.)

25. In my opinion, it is also reasonable to anticipate that the inappropriate consolidation of cases by the NMB under proposed Rule 1210.9 will inevitably lead to confusion, delay and expense.

DECLARATION PURSUANT TO 28 U.S.C. SECTION 1746

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of September, 2004.

WILLIAM R. MILLER