July 20 , 2017

Fellow Pilots,

Earlier this week, your union made the decision to file for mediation with the National Mediation Board (NMB). By now, you should have read the communication from your MEC Officers explaining why this decision was reached. The full support of ALPA and your MEC is behind the decision to take this next step in the bargaining process.

As we utilize established RLA processes to avoid a labor dispute, please review the below FAQ for answers to the most common questions on mediation. Additionally, please contact your elected representative, a member of the Pilot-to-Pilot committee (look for the red badge backers & pins), or any union volunteer with your questions. If they don't know the answer, they will find out for you.

MEDIATION FREQUENTLY ASKED QUESTIONS

How does mediation get started under the Railway Labor Act (RLA)?
If either the carrier or the union or both are dissatisfied with the progress of direct negotiations, the party or parties can apply to the National Mediation Board (NMB) for assignment of a mediator. The RLA requires the NMB to "promptly put itself in communication with the parties" and to "use its best efforts, by mediation, to bring them to agreement." That means the Board administratively dockets the case and reaches out to the parties to understand the issues.

Has the MEC targeted a date or timeframe to expect a contract?
No. *Artificial deadlines favor management, not the Association*. Stall and delay is a typical management tactic. JetBlue management is counting on our group to become impatient, and to accept a deal on the management's terms.

What is the National Mediation Board?
The National Mediation Board (NMB) is an agency of the federal government established under the Railway Labor Act to oversee collective bargaining and representation disputes in the rail and air industries.

Who are the NMB's Board members?
The NMB consists of three members appointed by the President and confirmed by the Senate for three-year terms. No more than two members of the NMB may

be of the same political party and the one-year term of chairman rotates among the three members. The NMB employs staff mediators and other agents to assist in its work. Because of the change in administrations, the Board presently has only two members.

	Mr. Hoglander was recently appointed Chairman of the NMB and is the most senior member of the Board, appointed in 2002. He currently serves in his fourth term as NMB chair. A former lieutenant colonel in the U.S. Air Force, Mr. Hoglander is a pilot who flew for Trans World Airlines, served as the TWA MEC chairman, and was an ALPA executive vice president. A four-time NMB chair, Mr. Hoglander is also an attorney who has worked as a congressional staffer.
	Ms. Puchala joined the NMB in 2009 and has served as NMB chair twice. She formerly was international president of the Association of Flight Attendants. Read ALPA's interview with Puchala here.

Who are the mediators, and how are they selected?
The NMB employs approximately 12-15 staff mediators, who are selected for their experience and knowledge in labor relations and dispute settlement. The Board selects a mediator(s) for a particular case based on availability of the mediators and complexity and importance of the case.

Can we continue to negotiate while we wait for a mediator to be assigned?
Yes. If both parties agree to continue to bargain, that can happen, but either side has the option of only negotiating in mediated sessions. JetBlue management has exercised this right and cancelled the July and August direct

negotiating sessions that were previously scheduled. At any time, should both parties choose, bargaining outside of mediated negotiations is permitted.

How does a mediator help the parties reach agreement?
All skilled mediators share the ability to suggest solutions to difficult issues. They also know how to enable parties to test ideas on each other anonymously or without commitment, by trying "what ifs" through the mediator. The NMB also has power in mediation beyond the standard mediator's skills. The Board decides whether and when to terminate mediation and thus release the parties to engage in self-help.

Unless both parties wish to be released at the same time, the Board's power to release — or delay the release — can be applied as a form of pressure on both sides to induce movement toward an agreement.

How long does the NMB keep parties in mediation?
There is no rule that dictates how long mediation will last in any particular case. The Board has discretion to decide whether and when to terminate mediation. Some mediation cases have lasted several weeks, others several years.

Who decides to end mediation before the parties conclude an agreement?
The mediator alone doesn't make the call. The full Board makes the decision based upon a mediator's report and sometimes based upon discussions between a Board member and the parties. The NMB makes a judgment about how productive continued mediation will be in comparison to releasing the parties into a cooling-off period, and setting up a strike deadline.

What is the "status-quo obligation"?
"Status quo" is a phrase that was developed by the courts to describe the period starting with the initiation of direct negotiations and includes the period of mediation under the auspices of the NMB. Status quo typically applies to Section 6 negotiations when a collective bargaining agreement is already in place between the parties. The Railway Labor Act (RLA) states that from the start of direct negotiations until agreement is reached or until the end of the statutory negotiating process (i.e., through the end of the "cooling-off period") the carrier cannot alter rates of pay, rules, or working conditions — the status quo. The courts have interpreted this obligation to apply to both carriers and unions. The status quo as it applies to unions has been interpreted to mean that a union or groups of employees cannot sponsor a "slowdown," sickout, refusal to work overtime or similar job action campaign. The status-quo obligation also applies while a contract is in effect.

Can a party engage in "self-help" during the status-quo period?
"Self-help" generally includes changes in the established terms and conditions of employment that are intended to bring economic pressure on the other side. So, as a matter of definition, the status-quo obligation prevents either side from engaging in self- help until that obligation terminates.

Not all activity during the status-quo period constitutes unlawful self-help. Informational picketing is a clear example of appropriate activity if it is not prohibited by the collective bargaining agreement or intended to divert business from the operation during the status- quo period. Other similar non-disruptive activities may also be permissible. If such activities are considered, the question to be decided is whether the activity constitutes unlawful self-help versus lawful exercise of rights under a collective bargaining agreement or under the law.

What type of conduct does the status quo prohibit?
Generally, any conduct that is designed to cause economic injury to the other is prohibited. For example, the Company may not impose different contract terms or conditions, or "lock-out" employees during the period. A union may not take collective, concerted activity like slowing down the operation or striking during the period.

What type of conduct is permissible despite the status quo?
Either party has the right to engage in lawful, non-disruptive activity designed to educate and inform its constituency or the public of its position, such as informational picketing, or displaying buttons and stickers.

Does the NMB terminate mediation if one of the parties is stalling or failing to bargain in good faith?
The U.S. Supreme Court has held that the NMB does not have the jurisdiction to decide whether a party has engaged in good-faith bargaining. That means the NMB may release the parties even when one of the parties is not bargaining in good faith. For the most part, however, the NMB is usually inclined to discourage bad faith tactics. The mediator may slow the mediation if one of the parties is trying to rush through the process without making a real effort to reach agreement. Again, this is not a requirement under the RLA, and a slow pace in mediation does not necessarily reflect that the mediator has observed “bad-faith bargaining” by one of the parties.

How much notice does the NMB provide prior to ending mediation?
There is no specific timeframe for this. When the mediator feels that mediation should not continue, he or she recesses the mediation in order to make a report to the Board. At times, a Board member enters the mediation for a final mediation effort prior to the cooling-off period. The mediator or NMB member usually advises the parties that mediation is about to end.

What does the NMB do to end mediation?
The RLA states that if the Board’s “efforts to bring about an amicable settlement through mediation shall be unsuccessful,” the Board will try to “induce the parties to submit their controversy to arbitration.” In reality, the Board doesn’t try to “induce” parties to accept arbitration. The term “proffer” means that the Board is offering arbitration as an alternative to self-help.

What happens when the Board proffers arbitration?
The “proffer” of arbitration is the Board’s offer of the opportunity to submit the remaining open issues to an arbitrator for a final determination. There are several possible outcomes after this offer is made:

a) If either party refuses to arbitrate the dispute, the Board's services officially end and the 30-day cooling-off countdown to self-help (the cooling-off period) begins. The Board issues a notice to this effect defining the precise moment at midnight Eastern Time, 30 days later, when the status-quo obligation terminates.

b) If neither party responds to the proffer of arbitration, no countdown starts, but the mediation does not officially continue. This leaves the status quo in place and the parties continue to be under a duty to "exert every reasonable effort" to reach agreement. The NMB is under no obligation to participate further, but may assist from time to time. At some later point, a party might then reject the proffer of arbitration, starting the 30-day countdown. Or at a delayed date, both parties might decide to accept the proffer, which will then bring about arbitration. Of course, the parties could also end the whole process by reaching an agreement.

c) If one party accepts arbitration, but the other does not respond, no countdown starts (see b).

d) If both parties accept arbitration, then the open issues in the dispute will be submitted to a board of arbitrators selected under procedures established by the RLA.

Is there any obligation to accept the Board's proffer of arbitration?
There is no legal obligation for either party to accept a proffer of arbitration, but refusal might impair the ability to seek judicial relief from the courts at a later time.

If the parties accept the proffer of arbitration, what is arbitrated?
The parties decide what issues to arbitrate. If the parties cannot agree on the issues to arbitrate, they may be considered to have rejected the proffer of arbitration. The parties may also agree to submit to "final offer" arbitration in which the arbitration board is required to select the "final offer" of one side or the other.

What is the "30-day cooling-off period"?
This is an informal name for the 30-day period following the termination of mediation. The RLA doesn't use the phrase "cooling-off period." Instead, the RLA requires the parties to maintain the status quo during the 30-day period. The "cooling off" phrase is derived from the concept that after the parties reached impasse despite mediation, they would have 30 days to cool down and rethink their positions. During this period, the parties continue to be under the duty to try to reach agreement.

Does mediation continue during this 30-day period?
The RLA doesn't provide for mediation to continue. But, at some point during the period, a member of the NMB typically contacts the parties to schedule "public interest" meetings with the mediator and Board member. These meetings can continue all through the period up to and beyond the end of the

countdown period. The Board member usually continues to work on the case even if the parties are engaged in self-help.

Does self-help always start at the end of the 30-day countdown?
It can but does not have to. Sometimes the parties agree to continue to bargain without either party engaging in self-help. Also, the NMB can extend the status-quo obligation by initiating a procedure for a Presidential Emergency Board. It is also possible for a union or carrier to obtain an injunction to block the right to use self-help. This could occur if the plaintiff can demonstrate that the other side failed to negotiate in good faith, even if the NMB issued a release. That is, if proved, the court can order the parties back into direct negotiations or mediation. Cases of this type are very unusual, but they do create an incentive to the parties to bargain in good faith.

If the 30-day countdown following mediation ends without a new collective bargaining agreement, may the carrier implement an imposed contract?
No. There is no such thing as an imposed contract. Even if the carrier continues the terms and conditions from the previous agreement, this does not constitute a contract.

What are the union's self-help rights if the 30-day countdown ends without an agreement?
The union and its members have the right to withdraw their services (strike) and to appeal to the public by picketing and other peaceful means to take their business elsewhere. They can engage in informational picketing, which simply brings the facts of the dispute to the public's attention. They can also in some circumstances engage in picketing of other carriers that do business with the primary carrier.

If the parties don't reach an agreement before the end of the 30-day countdown, may the carrier lock out the employees until they agree to the carrier's terms?
Probably not, although there has not been any clear decision by a court on this issue. However, the carrier might take actions that seem to some to be the same as a lockout. For example, even if there is no strike, a carrier could downsize on the grounds that business has been depleted due to the threat of a dispute. This would seem like a lockout but might be justified on economic grounds rather than by the threat of self-help. The question of whether a carrier may lockout in defense against partial or intermittent strikes has not been presented to a court.

What is a Presidential Emergency Board, and what effect does it have upon self- help?
A Presidential Emergency Board (PEB) is a Board of labor arbitrators or other labor relations professionals appointed by the President who hold hearings and make a recommendation as to open issues. Neither party is obligated to accept any of the recommendations of the PEB.

By law, a PEB is appointed in the following way: First, the NMB decides that a dispute threatens "substantially to interrupt interstate commerce to a degree

such as to deprive any section of the country of essential transportation service." Next, the NMB notifies the President of this judgment. Then the President decides whether to appoint a PEB.

In the past, we have seen several PEBs, including the Northwest AMFA case in 2001, the United IAM case in 2002, and the American pilots in 1997. Prior to these cases, the only emergency board that has convened since 1966 was appointed by virtue of a congressional enactment included in the Airline Deregulation Act (Wien Airlines/ALPA dispute 1978). The status-quo obligation continues from the appointment of the PEB until 30 days after the PEB makes its report to the President.

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