



# *Railway Labor Act*

Understanding the process of collective  
Bargaining in accordance with the  
Railway Labor Act



February 2012

Fellow Comair Flight Attendants,

Protecting your interests as a professional flight attendant is Local 513's fundamental responsibility. As such, your Union has made the commitments that will ensure the Comair Flight Attendants have the resources necessary to reach a collective bargaining agreement (CBA) through Section 6 negotiations. Indeed, your Union's Negotiating Committee has at its disposal volunteers, consultants and attorneys who each have several decades of experience—and many impressive successes—in the field of aviation labor relations. This, coupled with the **solidarity** of the flight attendant group, will ultimately ensure our CBA will be an agreement in which we can maintain our industry leading pay and work rules.

As we move toward achieving that goal, we want to ensure that each of you understand the process in which we are engaged. As many of you are aware, negotiations between an air carrier, like Comair, and its employee groups must be conducted in accordance with the Railway Labor Act (RLA), which is the federal law that governs labor relations in the rail and air carrier industries.

Because the process of collective bargaining is not a frequent process for our flight attendants, the Negotiating Committee, in cooperation with the Local Union 513, has prepared this publication called *The RLA Primer*. This document details the collective bargaining process and the guidelines for eventually engaging in self-help, should that become necessary. More specifically, it provides explanation and guidance regarding the process of mediation and arbitration, as well as the concept and procedures for maintaining the “status quo” and convening a Presidential Emergency Board.

Each Comair Flight Attendant is strongly encouraged to take the time to review this information, as it will give you a deeper understanding of the process. Should you have questions or comments about the contents of this publication or negotiations, please do not hesitate to send an e-mail to [facontract@teamsterslocal513.org](mailto:facontract@teamsterslocal513.org). Relevant information is also provided on the Union Message board at [www.teamsterslocal513.org](http://www.teamsterslocal513.org) or the hotline 800-428.8345.

Fraternally,

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## YOUR UNION AT YOUR SERVICE

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As Section 6 negotiations continue, Local 513 maintains a number of resources to ensure each Comair flight attendant has access to timely, relevant information as well as the ability to communicate freely and directly with Union leaders and committee volunteers. Please review the information provided below to better familiarize yourself with the tools at your disposal.

### **The Negotiating Committee**

The Comair Flight Attendant Negotiating Committee has been engaged in Section 6 negotiations since February, 2012. Union negotiators meet with their management counterparts for several days each month to work toward reaching a Tentative Agreement (TA). The Negotiating Committee will report regularly on the progress of the bargaining sessions.

## **The Union Website**

Local 513 recently updated its website, [www.teamsterslocal513.org](http://www.teamsterslocal513.org), to be an even greater resource to its members. The website includes all recently released announcements, committee news, negotiating updates and contact information for Union leaders, base representatives, volunteers and staff. The website is also the portal to access the Union's message boards. All Comair flight attendants are encouraged to visit this website more frequently now to stay abreast of what is happening in your local.

## **E-mail Communication**

The Local 513 frequently utilizes a mass e-mail distribution system and texting to communicate with flight attendants. If you are not receiving these important updates, please sign-up at [www.teamsterslocal513.org](http://www.teamsterslocal513.org).

## THE RLA: THE PURPOSE OF THE ACT

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First of the RLA requires both labor and management “to exert every reasonable effort to make and maintain agreements ... and to settle all disputes ... in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute ...” This requirement is often called the “heart” of this particular labor law. Congress intended that the processes of the RLA should be “interminable,” meaning any major labor dispute in the rail and, subsequently, the air carrier industries should be a rare occurrence; they intended that trains and planes should run on time without extraneous interference due to labor/management issues! That intent partially explains why negotiations seem to drag on for lengthy periods of time.

For those flight attendants who might be interested, we recommend a bit of Internet research into the labor unrest, riots and resultant violence that centered on the railroads in the United States in the early part of the 20th Century. That research will help to explain the genesis of the RLA and its unusual provisions. A recitation of that history is beyond the scope of this document.

## THE RLA: DEFINITIONS

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### **Direct Negotiations**

Negotiations conducted by the carrier and union without the assistance of a mediator or other National Mediation Board (NMB) involvement.

### **Cooling Off Period**

If the NMB concludes the parties are at impasse and continued mediation will not assist in bringing the parties to agreement, it may proffer arbitration. If either party declines the proffer, the 30-day countdown to “self-help,” more commonly referred to as the “cooling off” period, begins. During the cooling off period the “status quo” must be maintained and neither party may resort to self-help.

### **Impasse**

Generally, an impasse exists when progress is not being made in negotiations. Typically, the carrier or union invokes the mediation process after an impasse occurs. The carrier and union may file an application for mediation individually or jointly. Under certain circumstances, the NMB may invoke mediation on its own.

### **Mediation**

Mediation refers to negotiations conducted with an NMB-appointed mediator after the parties have failed to reach an agreement in direct negotiations.

### **National Mediation Board (NMB)**

The NMB is an independent federal agency that performs a central role in facilitating harmonious labor-management relations within two of the nation’s key transportation modes: the rail and air carrier industries. The RLA gives the NMB a high degree of discretion to control labor-management relations in those two industries in an effort to avoid interruptions to interstate commerce.

## THE RLA: DEFINITIONS (CONTINUED)

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### **On the Shelf/On Ice/Recessed**

“On the shelf,” “on ice” or recessed are unofficial terms used to describe an NMB decision to postpone any additional mediatory efforts for a specific period of time while declining to release the parties. At this point, the self-help options available to a carrier and union are indefinitely frozen.

### **Railway Labor Act**

The Railway Labor Act (RLA) is the federal statute governing collective bargaining, representation and grievance processing in the rail and air carrier industries. When originally enacted in 1926, the RLA only covered railroads. The 1934 amendment to the RLA brought air carriers under its auspices.

### **Section 6**

“Section 6” refers to the provision of the RLA obligating carriers and unions of to provide timely notice of intended changes to rates of pay, rules and working conditions. A timely Section 6 “Notice of Intended Change” by one party triggers both parties’ obligation to commence direct negotiations.

### **Self-Help**

Once released by the NMB and only at that time, either or both parties may resort to “self-help,” which refers to their ability to exert economic power on each other in order to secure their respective desired changes in rates of pay, rules and working conditions. Examples of self-help by management include cessation of operations, lockouts or the hiring of permanent replacement workers. Unions may engage in strikes, slowdowns or other methods of hampering the carrier’s ability to continue operations.

## THE RLA: DEFINITIONS (CONTINUED)

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### **Status Quo**

The “status quo” is comprised of those rates of pay, rules and working conditions in effect at the time of direct negotiations and ending once an agreement has been reached, or when the statutory negotiation process is exhausted at the end of the 30-day “cooling off” period.

## THE RLA: NMB BASICS

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### **What is the NMB?**

Established by the 1934 amendments to the Railway Labor Act, the National Mediation Board (NMB) is an independent federal agency that performs a central role in facilitating harmonious labor-management relations within two of the nation's key transportation modes—the rail and air carrier industries. The NMB mediates negotiations, assists with grievance resolution and resolves representation disputes through employee elections. The NMB's integrated processes are specifically designed to promote three statutory goals:

1. The prompt and orderly resolution of disputes resulting from the negotiation of new or revised collective bargaining agreements;
2. The effectuation of employee rights of self-organization where a representation dispute exists; and,
3. The prompt and orderly resolution of disputes regarding the interpretation or application of existing agreements.

### **Who are NMB members?**

The NMB consists of three members appointed by the president of the United States and confirmed by the Senate to serve a three-year term. No more than two members of the NMB may be of the same political party. A member may continue to serve while a replacement appointment or reappointment is pending. The NMB also employs staff mediators and other specialists to assist it in its work.

## THE RLA: MEDIATION

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Mediation serves to foster the prompt and orderly resolution of collective bargaining disputes in the rail and air carrier industries. These disputes, referred to as “major” disputes, involve the establishment of or changes to rates of pay, rules and working conditions.

In its mediatory role, the NMB may employ a variety of methods, including traditional mediation, interest-based problem solving or other types of facilitation.

NMB mediators often play an active role in the negotiation process, including determining the frequency, times, dates and locations for negotiations.

Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruption to public service. Since 1980 only slightly more than one percent of cases have involved a service disruption.

### **How does mediation get started under the RLA?**

If the carrier, the union or both are dissatisfied with the progress of direct negotiations, either or both parties may apply to the NMB for the assignment of a mediator. In such cases, 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.”

### **How are mediators selected?**

The NMB employs several staff mediators who are typically selected for their experience and knowledge in labor-management relations and dispute resolution in the rail and air carrier industries. The NMB selects a mediator for a particular case based on mediator availability, knowledge and experience, without regard to past management or union affiliation.

### **How long does the NMB keep parties in mediation?**

There is no rule for how long mediation will last in any particular case. The NMB has the discretion to decide whether and when to terminate mediation. Some mediation cases have lasted several weeks while others have lasted several years.

## THE RLA: MEDIATION (CONTINUED)

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### **How does a mediator help parties reach agreement?**

Mediators cannot require the parties to reach an agreement. However, skilled mediators often suggest practical solutions to difficult issues. They have been trained in techniques that serve to engage the parties and to foster compromise, and ultimately, progress in bargaining.

The NMB supervises the mediator and retains the authority to decide when and if mediation should be terminated, thereby releasing the parties to engage in self-help measures. The NMB uses its authority to release or to delay the release as a form of pressure on both sides to induce movement toward an agreement.

### **Are the carrier and union legally obligated to reach an agreement in direct negotiations or mediation?**

The RLA requires carriers and unions to “exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions.” However, this provision does not compel either party to accept any particular proposal and the courts generally do not question the parties’ bargaining positions.

### **Who can decide to end mediation?**

The mediator, alone, cannot end mediation. Rather, the NMB will make a determination based upon the mediator’s report, and sometimes, based on discussion between NMB members and the negotiating parties.

Does the NMB terminate mediation if one of the parties appears to be using mediation as a means of moving closer to the cooling off period and/or the ability to engage in self-help?

The NMB does not have the jurisdiction to decide whether a party has engaged in good faith bargaining. Such determinations are reserved to the federal courts. However, the NMB, preferring not to reward bargaining strategies undertaken to avoid agreement, may request the mediator slow the pace of mediation if he or she observes one or both parties attempting to rush the process rather than genuinely working to reach agreement.

It should be noted that slow-paced mediation does not necessarily indicate the mediator has observed bad-faith bargaining by either party.

## THE RLA: MEDIATION (CONTINUED)

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### **How much notice does the NMB provide prior to ending mediation?**

When the mediator determines mediation should not continue, he or she temporarily suspends mediation so he or she can report to the NMB. At that time, a NMB member may enter mediated negotiations in a final effort to convince the parties to continue talks rather than to release them into the cooling-off period. However, if progress cannot be made, either the mediator or NMB member may advise the parties that mediation will soon conclude. The NMB also has the power to recess negotiations as an alternative to release.

### **What does the NMB do to end mediation?**

The RLA states that if the NMB's "efforts to bring about an amicable settlement through mediation shall be unsuccessful," the NMB will attempt to "induce the parties to submit their controversy to arbitration." In practice, the NMB extends a proffer of arbitration, which would put the parties' outstanding contractual issues before an arbitrator for resolution.

### **Can the NMB place mediated negotiations "on the shelf," "on ice" or recess them rather than releasing the parties?**

Yes. The NMB has the authority to slow mediation down or even suspend it as a way of putting pressure on the parties to reexamine their positions and to work toward an agreement. When the NMB acts in this manner, a release from mediation, which is the pre-condition for exerting economic power to secure changes in rates of pay, rules and working conditions, is not available to the parties until and unless the NMB later releases the parties and the 30-day "cooling off" period has expired.

(End Mediation)

## THE RLA: STATUS QUO

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### **What is the “status quo” obligation?**

The “status quo” is comprised of those rates of pay, rules and working conditions in effect at the time of direct negotiations and ending once an agreement has been reached, or when the statutory negotiation process is exhausted at the end of the 30-day “cooling off” period. During the period of the status quo obligation, carriers are prohibited from changing rates of pay, rules and working conditions except as provided for in agreements. Unions are prohibited from engaging in any form of self-help against the carrier for the purpose affecting negotiations. The question of whether the carrier’s obligation to refrain from making changes to the status quo during negotiations over an initial agreement is unsettled in the courts.

### **What type of conduct does the status quo obligation prohibit?**

Generally, any conduct designed to cause economic injury to the other is prohibited, including carrier-initiated changes to rates of pay, rules and working conditions, and employee sick outs, maintenance write-up campaigns and strikes.

### **What type of conduct is permissible during the status quo period?**

Either party has the right to engage in lawful activity designed to educate and inform its constituency or the public of its position. A good example of permissible conduct is informational picketing or leafleting.

(End Status Quo)

## THE RLA: ARBITRATION

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### **What happens when the NMB proffers arbitration?**

The proffer of arbitration is the NMB's offer to arbitrate the remaining contract disputes. The proffer officially terminates the NMB's mediation role. One of several scenarios will result from the offer:

#### **Scenario 1:**

If either party refuses to arbitrate the dispute, the NMB's mediation services officially end and the 30-day countdown to self-help, more commonly referred to as the "cooling off" period, begins. The NMB will issue a notice to this effect delineating the precise moment when the status quo obligation terminates.

#### **Scenario 2:**

If neither party responds to the proffer of arbitration, the countdown does not start and the mediator is no longer obligated to "exert every reasonable effort" to assist the parties in reaching agreement. However, the NMB may attempt to move the process forward from time to time. If, at a later date, either party officially rejects the proffer of arbitration, the 30-day countdown will begin. Conversely, if the parties accept the proffer, arbitration will commence.

#### **Scenario 3:**

If one party accepts arbitration, but the other does not respond, the countdown does not begin.

#### **Scenario 4:**

If both parties accept arbitration, the open or disputed issues will be submitted to a Board of Arbitration selected in accordance with procedures established by the RLA. The decision of the Board of Arbitration is final and binding on both parties.

### **Is there any obligation to accept the NMB's proffer of arbitration?**

No. The RLA does not compel the parties to submit their negotiation disputes to arbitration.

## THE RLA: ARBITRATION (CONTINUED)

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### **If the parties accept the proffer of arbitration, what is arbitrated?**

The parties retain sole discretion regarding what issues to arbitrate. If, however, the parties cannot agree on the issues, they may be considered to have rejected the proffer of arbitration.

The RLA requires the parties to agree in writing on the precise issues to be submitted to arbitration for decision. Once an arbitration agreement has been signed, it may not be unilaterally modified or revoked. The Board of Arbitration will conduct interest arbitration, although final-offer arbitration, commonly referred to as “baseball arbitration,” is permissible if both parties agree.

### **What is the 30-day cooling off period?**

If either party refuses the proffer of arbitration, the NMB must immediately notify both parties that mediation has failed. For 30 days thereafter the status quo must be maintained and no changes may be made to rates of pay, rules, working conditions or established practices. The written notice is known as a “release” from mediation. The 30-day period following the release is commonly known as the 30-day “cooling off” period. During the 30-day cooling off period, the NMB may actively encourage the parties to meet and attempt to resolve their dispute through negotiations. At the end of the 30-day cooling off period, the parties may engage in self-help, subject to the establishment of a Presidential Emergency Board (PEB).

(End Arbitration)

## THE RLA: PRESIDENTIAL EMERGENCY BOARD

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### **What is the Presidential Emergency Board (PEB)?**

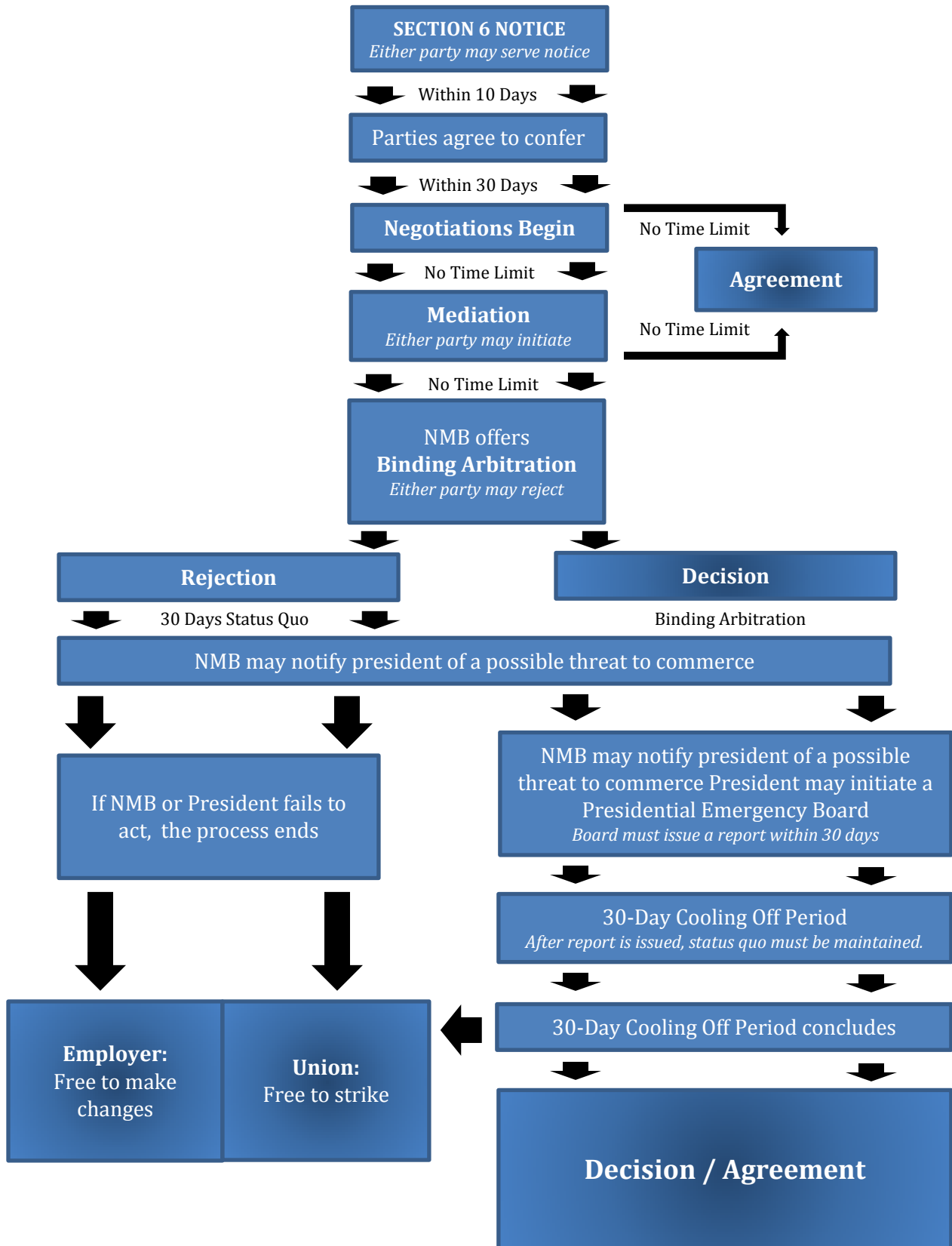
In rare situations, when a dispute “threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country essential transportation service,” the NMB may recommend to the president of the United States that he or she create a Presidential Emergency Board (PEB) to investigate the dispute and make recommendations for resolution. Once convened, a PEB temporarily extends the obligation to maintain the status quo.

### **How does the PEB work?**

Creation of a PEB stops a strike, lockout, or other form of self-help, generally, for 60 days. The PEB has 30 days to issue a report, which typically includes recommendations for settling the dispute; the president may extend this period. After the PEB reports to the president, the parties are released into another 30-day cooling off period to consider the PEB’s recommendations as the potential basis for an agreement. If an agreement cannot be reached by the conclusion of the second cooling-off period, the parties are free to engage in self-help, including strikes, lock outs, and unilateral changes in terms and conditions of employment, absent legislative action by Congress to the contrary.

(End PEB)

# COLLECTIVE BARGAINING & THE RLA





# ***The Railway Labor Act Primer***

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