OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 25-09   **July 29, 2025**

TO: Regional Directors, Officers-in-Charge,
                 and Resident Officers

FROM: William B. Cowen, Acting General Counsel

SUBJECT: Guidance for Sending Cases to the National Mediation Board

This memorandum sets forth guidance for cases that raise jurisdictional questions as to whether an employer is subject to the Railway Labor Act (RLA). The Board's jurisdiction under the Act is mutually exclusive of the National Mediation Board's (NMB) jurisdiction under the RLA. Where a dispute arises over which agency should properly assert jurisdiction, prompt resolution of the jurisdictional issue is vital to maintaining industrial stability and assuring that the underlying labor disputes are timely resolved. Accordingly, when a Region investigating an unfair labor practice charge is presented with arguments or evidence revealing a question as to whether an employer is within NLRA jurisdiction, the Region will forthwith refer the matter to the NMB for an advisory opinion consistent with internal guidelines. Section 2(2) of the Act excludes from the definition of employer "any person subject to the Railway Labor Act," and thus exempts such employers from NLRB jurisdiction. The Board generally will refer a case to the NMB for its advisory opinion as to jurisdiction when the answer to the jurisdictional question is unclear.[1] Although the Board is not statutorily obligated to seek the NMB's opinion on jurisdictional matters, its policy nonetheless is to seek the NMB's views "whenever the issue is not entirely clear."[2]

Historically, the Board has followed a policy of referring jurisdictional questions concerning the RLA, recognizing the NMB has exclusive authority to determine its own jurisdiction.[3] Consistent with this policy, the Casehandling Manual describes the process that Regions employ when faced with a jurisdictional question.[4] If the Board clearly has jurisdiction, the Region continues processing the case; conversely, if the NMB clearly has jurisdiction, the Region refers the parties to the NMB and dismisses the charge or petition, absent withdrawal.[5] In cases of arguable or doubtful RLA jurisdiction, the Region refers the case to the NMB for an advisory opinion.[6]

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[1] *See, e.g., Chelsea Catering Corp.*, 309 NLRB 822 (1992).
[2] *See Federal Express Corp.*, 323 NLRB 871, 872 (1997) (citing *Federal Express Corp.*, 317 NLRB 1155 (1995) and agreeing with NMB decision that employer was within its jurisdiction).
[3] *See, e.g., Pan Am. World Airways*, 115 NLRB 493 (1956); *Northwest Airlines, Inc.*, 47 NLRB 498 (1943).
[4] *See* NLRB CASEHANDLING MANUAL, PT. 1, Unfair Labor Practice Proceedings (ULP MANUAL), Sec. 11711 (Jan. 2025).
[5] ULP MANUAL, Sec. 11711.1
[6] ULP MANUAL, Sec. 11711.2

Recently, however, almost no cases of questionable jurisdiction have been referred to the NMB. Instead, when the jurisdictional question is arguable or doubtful, Regions simply have determined the jurisdictional question without referral and proceeded with case processing in accordance with its own determination. This approach fails to respect the significant role of the RLA in maintaining stability in the transportation industry.

The RLA and the NLRA share similar purposes: both were enacted to protect interstate commerce while protecting the freedom of association and self-organization among employees. The RLA seeks to protect the transportation industry from "any interruption to commerce,"[7] through highly structured bargaining and dispute resolution processes governed by the NMB.[8] When the RLA's statutory processes are usurped by reflexive decisions to assert jurisdiction under the NLRA, our shared purposes of industrial stability, the free flow of commerce, and employee free choice are hindered or thwarted.

For these reasons, a Region investigating a case in which jurisdiction is unclear should hold the case in abeyance and refer it to the NMB. Cases presenting difficult questions or unique circumstances should be submitted to Advice.

/s/
W.C.B.

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[7] 45 U.S.C. § 151(a)
[8] *See, e.g.*, 45 U.S.C. § 155