§ 1208.3 General policy.  
(a) Public policy and the successful effectuation of the NMB’s mission require that Board members and the employees of the NMB maintain a reputation for impartiality and integrity. Labor and management and other interested parties participating in mediation efforts must have assurance, as must labor organizations and individuals involved in questions of representation, that confidential information disclosed to Board members and employees of the NMB will not be divulged, voluntarily or by compulsion.  
(b) Notwithstanding this general policy, the Board will under all circumstances endeavor to make public as much information as can be allowed.

§ 1208.4 Material relating to representation function.  
(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, orders, stenographic reports of the hearings, briefs, exhibits, findings upon investigation, determinations of craft or class, interpretations, dismissals, withdrawals, and certifications, are matters of official record and are available for inspection and examination during the usual business hours at the Board’s offices in Washington.  
(b) This part notwithstanding, the Board will treat as confidential the evidence submitted in connection with a representation dispute and the investigatory file pertaining to the representation function.

§ 1208.5 Material relating to mediation function—confidential.  
(a) All files, reports, letters, memoranda, documents, and papers (herein after referred to as confidential documents) relating to the mediation function of the NMB, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under any applicable section of the Railway Labor Act of 1926, as amended, are hereby declared to be confidential. No such confidential documents or the material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any
agent of such person or his representa-
tive without the explicit consent of the
NMB.

(b) However, the following specific
documents: Invocation or proffer of
mediation, the reply or replies of the
parties, the proffer of arbitration and
replies thereto, and the notice of fail-
ure of mediatory efforts in cases under
section 5, First of the Railway Labor
Act, as amended, are matters of official
record and are available for inspection
and examination.

(c) Interpretations of mediation
agreements by the NMB, arising out of
section 5, Second, of the Railway Labor
Act, as amended, are public records and
are therefore open for public inspection
and examination.

§ 1208.6 Schedule of fees and methods
 of payment for services rendered.

(a) Definitions. For the purposes of
this section the following definitions
apply:

(1) Direct costs means those expendi-
tures which the National Mediation
Board actually incurs in searching for,
duplicating, and, in the case of com-
mercial requesters, reviewing docu-
ments to respond to a FOIA request.
For example, direct costs include the
salary of the employee performing the
work (the basic rate of pay for the em-
ployee plus sixteen percent of the rate
to cover benefits) and the cost of oper-
ating duplicating machinery. Not in-
cluded in direct costs are overhead ex-
penses such as costs of space and heat-
ing or lighting the facility in which the
records are stored.

(2) Search includes all time spent
looking for material that is responsive
to a request, including page-by-page
and line-by-line identification of mate-
rial within documents. Searches may
be done manually or by computer using
existing programming.

(3) Duplication refers to the process
of making a copy of a document nec-
necessary to respond to a FOIA request.
Such copies can take the form of paper
copy, microfilm, audiovisual materials,
or machine readable documentation
(e.g., magnetic tape or disk), among
others.

(4) Review refers to the process of ex-
amining documents located in response
to a commercial use request (see para-
graph (a)(5) of this section) to deter-
mine whether any portion of any docu-
ment located is permitted to be with-
held. It also includes processing any
documents for disclosure, e.g., doing all
that is necessary to excise them and
otherwise prepare them for release.
Review does not include time spent re-
solving general legal or policy issues
regarding the application of exemp-
tions.

(5) Commercial use request refers to a
request from or on behalf of one who
seeks information for a use or purpose
that furthers the commercial, trade, or
profit interests of the requester or the
person on whose behalf the request is
made. In determining whether a re-
quester properly belongs in this cat-
egory, the NMB will look first to the
use which a requester will put the doc-
ument requested. Where the NMB has
reasonable cause to doubt the use is
not clear from the request itself, the
National Mediation Board may seek
additional clarification before assign-
ing the request to a specific category.

(6) Educational institution refers to a
preschool, a public or private elemen-
tary or secondary school, an institu-
tion of graduate higher education, an
institution of undergraduate higher
education, an institution of profes-
sional education and an institution of
vocational education, which operates a
program or programs of scholarly re-
search.

(7) Non-commercial scientific institution
refers to an institution that is not op-
ereated on a commercial basis as that
term is defined in paragraph (a)(5) of
this section, and which is operated
solely for the purpose of conducting
scientific research the results of which
are not intended to promote any par-
ticular product or industry.

(8) Representative of the news media re-
fers to any person actively gathering
news for an entity that is organized
and operated to publish or broadcast
news to the public. The term “news”
means information that is about cur-
rent events or that would be of current
interest to the public. These examples
are not intended to be all inclusive. In
the case of “freelance” journalists,
they may be regarded as working for a
news organization if they demonstrate
a solid basis for expecting publication