B.C.D. 01-29

MAR 2 8 2001

EMPLOYER STATUS DETERMINATION
Railway Independent Transit Union

This is the determination of the Railroad Retirement Board concerning the status of the Railway Independent Transit Union (Transit Union) as an employer under the Railroad Retirement Act (45 U.S.C. 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

Information regarding the Transit Union was provided by Joseph Dominiczak, General President of the Transit Union. The Transit Union came into existence on June 16, 2000, and on November 7, 2000, was certified by the National Mediation Board to represent carmen, machinists, and electricians of the Port Authority Trans Hudson Corporation, an employer under the Acts (B.A. No. 5219). The Port Authority employs the entire membership of the Transit Union, approximately 180 members.

Section 1(a)(v) of the Railroad Retirement Act of 1974 provides that the term "employer" includes any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act. Section 1(a) of the Railroad Unemployment Insurance Act contains a substantially similar definition.

Section 202.15 of the Board's regulations establishes the criteria used in determining whether an organization is a railway labor organization which is national in scope within the terms of sections 1(a)(v) and 1(a) of the Acts. Section 202.15(a) states that an organization will be presumed to be a labor organization national in scope and formed in accordance with the Railway Labor Act if that organization has a right to participate in the selection of the labor members of the National Railroad Adjustment Board. Coverage begins with the date on which a right to participate has been established. For purposes of a determination under section 202.15(a), a right of participation may be established if:

> (1) It has in fact participated in the selection of labor members of the National Railroad Adjustment Board and has continued to participate in such selection; or
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> (2) It has been found, under section 3 "First" (f) of the Railway Labor Act, as amended [citation omitted], to be qualified to participate in the selection of labor members of the National Railroad Adjustment Board; or
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> (3) It is recognized by all organizations, qualified under paragraphs (a)(1) or (2) of this section, as having the right to participate in the selection of labor members of the National Railroad Adjustment Board.

As a new labor organization, the Transit Union has not yet participated in the selection of labor members of the National Railroad Adjustment Board and has not been formally recognized by other labor organizations as having such right. However, in his letter to the Board's Office of Audit and Compliance, Mr. Dominiczak states that as a result of the Transit Union's exclusive

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use of Special Boards of Adjustment to settle disputes, it has not participated in the selection process for the labor members of the National Railroad Adjustment Board, but that if the Transit Union invoked its right to be covered by the National Railroad Adjustment Board, it would petition the National Mediation Board to participate in that process. Consistent with our decision in B.C.D. 00-29, regarding the Association of Commuter Rail Employees, decided August 7, 2000, we find that the Transit Union has established that it would have the right to participate in selection of labor members of the National Railroad Adjustment Board.

Accordingly, it is determined that the Transit Union is an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective with date it came into existence, June 16, 2000.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever