B.C.D. 02-7

JAN 2 8 2002

EMPLOYER STATUS DETERMINATION
Rio Grande Employees Hospital Association

This is the determination of the Railroad Retirement Board concerning the status of Rio Grande Employees Hospital Association 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.).

The Association maintains a national network of medical providers for its members, who are employees or former employees of the Union Pacific Railroad Company (B.A. No. 1713), the Utah Railway (B.A. No. 2746), and Amtrak (B.A. No. 8301). The Association began providing benefits in January 1883 and was incorporated in 1968. It currently has 3,012 members. The provision of medical services is financed by payments from the employees and from their rail employers.

The Association is controlled by a Board of Directors, the members of which are selected by an Advisory Committee from members of the Committee[1]. The Committee is made up of "present members from the former DRGW/SP [Denver and Rio Grande Western Railroad and Southern Pacific Transportation Company] rail labor organizations." There is no evidence that the Fund is controlled by or under common control with a railroad carrier or a railroad carrier affiliate.

The term "employer" under section 1(a)(1) of the Railroad Retirement Act includes:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;
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> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision,

[1] The Articles of Incorporation of the Association provide that the "seventh member of the [seven-person] Board of Directors shall be appointed by [The] Denver and Rio Grande Western Railroad Company."

> and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;
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> (iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;
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> (iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and
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> (v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization. 45 U.S.C. § 231(a)(1).

Pursuant to the above-quoted provisions of the Railroad Retirement Act, covered railroad employers include carriers and their affiliates which provide railroad-related services; designated operators of carriers; associations controlled by carriers and employers under paragraphs (i), (ii), or (iii), and railroad unions and their local lodges. The Association is not a rail carrier or affiliated with a rail carrier. The

Rio Grande Employees Hospital Association

Association does not meet the definition in paragraph (v) as a labor organization employer. The only paragraph of section 1(a)(l) that might apply to the Association is paragraph (iv). The evidence in the record is that the Association is controlled by a Board of Directors comprised of seven members. Of the seven members, one is appointed by a rail carrier. The other members are appointed by rail labor organizations. The evidence does not support a finding that the Association is wholly or principally controlled and maintained by two or more employers under paragraphs (i), (ii), and (iii) of section 1(a)(l) of the RRA. Accordingly, the Board finds that the Association is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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