B.C.D. 05-1

JAN 18 2005

**EMPLOYER STATUS DETERMINATION**
**Mutual Aid Society of Employees of the Grand Trunk Western Railroad**

This is the determination of the Railroad Retirement Board concerning the status of the Mutual Aid Society of Employees of the Grand Trunk Western Railroad (MAS) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA). The status of this Society has not previously been considered by the Board.

According to the MAS's Constitution and Bylaws, last revised April 1995, MAS's objective is to, ". . . aid employees, who, by sickness or accident, are incapacitated for work; and in the event of the death of a member, to pay a benefit to their spouse or heirs. . . ." According to the Constitution, any employee of the Grand Trunk Western Railroad (GTWR) (B.A. No. 1208) over the age of eighteen and under the age of 50, and in good health may apply to become a dues paying member. Dues are paid on a monthly basis and are deducted from the employee's wages received through GTWR. According to the Bylaws, a MAS member will receive $50.00 per week, but not more than $1,250.00 in a year if he/she is unable to work due to sickness. In the event of the death of a member, MAS will pay a death benefit in the amount of $300.00 to the decedent's legal representative. The Bylaws further state that the affairs of MAS are administered by the Board of Management, which can consist of no more than five members. The Board of Management is responsible for the general supervision of MAS's interest, including investment of MAS's funds. Three members of the Board are elected by MAS members and serve for a term of three years. The remaining positions on the Board shall be appointed by the Board of Management. The Bylaws further state that the Board of

Management elects the President, Secretary, Treasurer, and Auditor, to server as MAS's officers.

Information regarding MAS was provided by Mr. Kenneth J. Siemen, secretary and treasurer for MAS. According to Mr. Siemen, MAS is an unincorporated association owned by its members since it was organized on March 27, 1868. Mr. Siemen stated that MAS provides a supplemental monetary benefit to its members during the period they are unable to work due to an injury or extended illness. He stated that membership in MAS is open to all GTWR employees. He stated that MAS has two employees and currently has 120 members. He stated that MAS does not provide service to GTWR nor does MAS receive funds or financial assistance from GTWR. He stated that GTWR only withholds dues from MAS members' payroll and then forwards the dues to MAS on a monthly basis. Mr. Siemen also stated that GTWR does not have any officers or directors that also serve on the MAS Board, nor does GTWR pay any expenses or salaries of MAS officials. He also stated that MAS services are not performed on GTWR property.

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;
>
> (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, 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;

(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;

(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

(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. MAS is not a rail carrier and is not a company affiliated with a rail carrier. MAS does not meet the definition in paragraph (v) as a rail labor organization employer or the definition of employer in subparagraph (iii) above. The only paragraph of section 1(a)(l) that might apply to MAS is paragraph (iv). The evidence in the record is that MAS is controlled by its members and MAS business is handled by its elected officials that serve on its Board of Management. As stated earlier, three of the five members of the Board are elected by the membership, and the remaining two members are appointed by the Board of Management. The evidence does not support a finding that the Mutual Aid Society of Employees of the Grand Trunk Western Railroad is wholly or principally controlled and maintained by two or more employers within the definition set out in paragraph (iv) of section 1(a)(l) of the RRA. Accordingly, the Board finds that the Mutual Aid Society of Employees of the Grand Trunk Western Railroad is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever