B.C.D. 05-14

APR 18 2005

EMPLOYER STATUS DETERMINATION
Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters

This is the determination of the Railroad Retirement Board concerning the status of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED), 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.) and of the continuing status of the Brotherhood of Maintenance of Way Employes (BMWE).

The Brotherhood of Maintenance of Way Employes, a covered employer under the Acts (B.A. No. 8916), merged with the International Brotherhood of Teamsters on January 1, 2005. Mr. Donald F. Griffin has advised the Board that a division of the International Brotherhood of Teamsters, the Brotherhood of Maintenance of Way Employes Division, is the successor to the Brotherhood of Maintenance of Way Employes. Mr. Griffin is the Director for Strategic Coordination & Research of the BMWED. Specifically, Mr. Griffin advised that the BMWED, as an autonomous craft division within the International Brotherhood of Teamsters, continues to participate in the selection of the labor members of the National Railroad Adjustment Board. On October 27, 2004, the membership of the BMWE voted to merge the BMWE with the International Brotherhood of Teamsters and at the same time voted to adopt new bylaws applicable to BMWED once it became a division of the International Brotherhood of Teamsters. Mr. Griffin advised that BMWE is a railway labor organization that represents the same employees and performs essentially the same collective bargaining duties that the BMWED performed prior to January 1, 2005. He provided a copy of the merger and the new by laws to support the information in his letter of March 3, 2005.

Section 1(a)(1)(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 definitions set out in sections 1(a)(1)(v) and 1(a) of the Acts. Section 202.15(a) provides in pertinent part 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), an organization will have established 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.

After the merger, the Brotherhood of Maintenance of Way Employes continues in existence as a division of the International Brotherhood of Teamsters, and ceased to exist as an independent union. The information of record thus indicates that the new Division retains the right to select labor members of the National Railroad Adjustment Board, and therefore became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective as the date of the merger, January 1, 2005.

With respect to the status of the BMWE, we note that section 202.11 of the Board's regulations provides that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

Because of the merger, the BMWE has ceased to exist and therefore has lost the characteristics essential to the existence of an employer status. Its status under the Acts as an employer terminated effective January 1, 2005.

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