

**EMPLOYER STATUS DETERMINATION****Michigan State Trust for Railway Preservation, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Michigan State Trust for Railway Preservation, Inc. (MSTRP) 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 about MSTRP was provided by Matthew R. Folland, the previous Executive Director of MSTRP as well as Mr. T.J. Gaffney, the current Executive Director and Mr. Thomas A. Grace, President/CEO of MSTRP. MSTRP was incorporated as a 501(c)(3) non-profit organization<sup>1</sup> "with the aim of educating the public about America's steam railroading heritage through the operation and preservation of historic railroad equipment". According to the MSTRP website, the mission of MSTRP is "to educate the public about steam era railroad technology and its impact on our culture and economy". MSTRP is located on a 7-acre facility in Owosso, Michigan, and operates primarily over trackage owned by the State of Michigan and leased to the Tuscola & Saginaw Bay Railway Co. (TSBY)<sup>2</sup> between Owosso and Chesaning, Michigan (12 miles), with annual passenger excursions to Cadillac, Michigan (90 miles). In his letter of December 21, 2005, Mr. Folland stated that future operations were anticipated to be of a similar nature under a trackage-rights agreement with TSBY. MSTRP operates weekend passenger excursions between Memorial Day and Labor Day, with added weekends at other times of the year for special excursions. MSTRP also regularly operates in the months of November and December for holiday excursion trains. In 2005, Mr. Folland expected total passenger ridership to exceed 20,000 annually.

According to Mr. Folland's 2005 letter, MSTRP has three full-time employees<sup>3</sup> - the Executive Director, who oversees the MSTRP operation including restoration, maintenance and operation of rolling stock and motive power, as well as overseeing spending, budgeting, marketing and other business aspects of MSTRP; the Roundhouse Foreman, who is responsible for the safe operation and maintenance of all MSTRP rolling stock, motive power and trackage, as well as training new locomotive crews, managing all FRA documentation, operating

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<sup>1</sup> According to Mr. Folland's letter of December 21, 2005, MSTRP was incorporated in July 1979; in an undated letter received October 24, 2006, Mr. Folland stated MSTRP was incorporated in 1981.

<sup>2</sup> TSBY was an employer covered under the Acts from October 1, 1997 through August 25, 2006, at which time it changed its name to the Great Lakes Central Railroad, and is still an employer under the Acts (B.A. No. 3243).

<sup>3</sup> These employees started in May 1999, June 2002, and October 2003.

the locomotives during railroad operations<sup>4</sup>, inspecting the track and supervising maintenance workers on both track and rolling stock; and the Visitor Services Coordinator, who handles event planning and customer service inquiries and assists with managing the MSTRP office.

With respect to its educational efforts, Mr. Folland explained that MSTRP hosts numerous school groups, and offers guided tours of the museum facility, the 7-acre grounds, and the MSTRP's working backshop. The students "get up close to vintage equipment and are instructed as to the operation and maintenance practices of the steam era". The tours for both school groups and museum visitors are conducted by MSTRP volunteer docents<sup>5</sup>. Mr. Folland explained that the Roundhouse Foreman has "very limited" time with these tours; in a nine-month period the Foreman has only done tours twice, resulting in "no more than eight hours of his time spent in educational arenas".

All of the MSTRP passenger operations are round trips. During the summer months, MSTRP operates 45-minute roundtrips on weekends, with three departures per day. MSTRP also operates larger and longer distance passenger excursions across the state of Michigan, relying "heavily" on the trackage of the Great Lakes Central. MSTRP operates trains from its home base in Owosso, Michigan, to Cadillac, Clare, and Chesaning. In 2005, MSTRP operated between Bay City and Grayling, over the Lakes State Railway (B.A. No. 3289). In 2007, it is anticipated MSTRP will operate summer weekend excursions to Grayling, Alma, Mt. Pleasant, and Chesaning, reaching "approximately 1500 passenger train miles".

On occasion MSTRP will move cars of the TSBY at their request, but such movement is infrequent and performed without compensation.

Mr. Grace also explained that all of MSTRP's locomotive engineers are employed by other railroads and are volunteers, with the exception of Mr. Byron Gramling, the Chief Mechanical Officer, who is employed directly by MSTRP.

Information submitted by Mr. Gaffney indicates that when the MSTRP runs on railroads other than TSBY (such as Rail America (Huron & Eastern) and Lakes State Railway, MSTRP is issued temporary trackage warrants. These are issued on a daily basis, and are paid for as they are issued. MSTRP did not file for an exemption to operate from the Surface Transportation Board (STB) as it "has always operated as a non-profit organization".

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<sup>4</sup> He is a certified locomotive engineer.

<sup>5</sup> Many of the docents are retired educators.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," to include:

(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 \* \* \*.

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) & (b)).

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

\* \* \* transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The evidence of record indicates that the primary purpose of MSTRP is to educate the public about America's steam railroading heritage through the operation and preservation of historic railroad equipment. The rail service regularly provided by MSTRP may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are transported solely within one state, under section 10501(a)(2)(A), above, MSTRP would not be subject to Surface Transportation Board jurisdiction and would therefore also not fall within the definition of "employer" set out in section 1(a)(1)(i) of the Railroad Retirement Act.

The Board therefore finds that Michigan State Trust for Railway Preservation, Inc. is not an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

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