

B.C.D. 16-23

September 19, 2016

EMPLOYER DETERMINATION

Sheet Metal Workers' International Association

United Transportation Union

International Association of Sheet Metal,

Air, Rail and Transportation Workers (SMART)

This is a determination of the Railroad Retirement Board concerning the continued status of Sheet Metal Workers' International Association (SMWIA) (B.A. No. 8911) and the United Transportation Union, (UTU)(B.A. No. 8936) as employers 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). SMWIA has been an employer, with service creditable from January 25, 1888. UTU has been an employer, with the service creditable from January 1, 1969.

This determination is also concerning the status of International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) 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).

Sheet Metal Workers' International Association

United Transportation Union

Information regarding SMWIA and UTU was provided by Mr. Art Taylor, Deputy Controller of SMART. Mr. Taylor advised that SMWIA and UTU merged and formed SMART. He stated that the original merger agreement was signed in August 2007 and that enforcement of the Merger Agreement required arbitration opinion and award. The arbitration opinion and award occurred in October 2011. On December 6, 2012, a document entitled "Effective Date of the Merger" was executed. The Effective Date Agreement stated that if 75% of the Council members voted and approved the Merger Agreement's proposed effective date change, the Merger Agreement would become effective January 1, 2012. Mr. Taylor verified that 100% of the Council members voted to change the effective date of the merger to January 1, 2012.

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.

Based on the information provided by Mr. Taylor, SMWIA and UTU ceased being covered rail organizations once both entities merged and became SMART. Therefore, it is the determination of the Railroad Retirement Board that Sheet Metal Workers' International Association and the United Transportation Union ceased being employers under the RRA and the RUIA on January 1, 2012, the effective date of the Merger.

**International Association of Sheet Metal,
Air, Rail and Transportation Workers (SMART)**

The Sheet Metal Workers International Association, AFL-CIO, CLC (SMWIA) and the United Transportation Union, AFL-CIO, CLC (UTU) agreed to merge their separate organizations into a consolidated labor organization to be known as the International Association of Sheet Metal, Air, Rail and Transportation Workers (hereinafter "SMART"). SMART was created as an unincorporated association under the laws of the District of Columbia, effective January 1, 2008.¹ The effective date of the merger after the General Executive Council Members voted, was January 1, 2012. The General Executive Council Members are comprised of the seventeen (17) General Vice Presidents. SMART's headquarters is located in Washington, D.C. area.

SMART has a General President and a General Secretary-Treasurer. SMART has 17 General Vice-Presidents, Assistant President, General Secretary and Treasurer, a National Legislative Director, and two senior Vice Presidents. The position of the Assistant President and General Secretary and Treasurer were subject to attrition, and afterward, the next senior Vice President became SMART General Vice President. As explained above, the 17 General Vice Presidents constitutes the SMART General Executive Council.

SMART created a Transportation Division.² All former UTU vice presidents elected at the 2007 convention were designated to serve as SMART's International Representatives and Organizers. The former UTU International President's new title with SMART is "President, Transportation Division." After the effective date of the Merger Agreement, these positions will be filled by elections as prescribed by the Merger Agreement. With respect to local unions, joint boards and other

¹ However, the Merger agreement stated "UTU Insurance Association, an affiliation, is not an affiliate within the meaning of this Agreement and shall remain a separate, independent organization and shall not be a part of SMART."

² The Transportation Division includes the bus department, yardmasters department and airlines department.

chartered bodies, each chartered body of either SMWIA or UTU, became a chartered body of SMART. Former SMWIA and UTU employees who are employed by SMART shall be credited with the service and vacation time they performed for SMWIA and UTU. All members of SMWIA and UTU became members of SMART. All SMWIA and UTU's property, rights, titles, interest, monies, funds, trademarks, copyrights, labels, claims and debts, pursuant to the merger, were transferred and vested to SMART. According to the Merger Agreement, the separate constitutions of SMWIA and UTU continued in effect after the effective date of the Merger Agreement, for the limited purpose of completing the Merger Agreement and the SMART constitution. The Audit & Compliance section of the Board received confirmation that SMART has the right to select the labor members of the National Railroad Adjustment Board.

Section 1(a)(1)(v) of the Railroad Retirement Act of 1974 (45 U.S.C. §231(a)(1)(v)) 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 (20 CFR § 202.15) 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)(1)(v) and 1(a) of the Acts (45 U.S.C. § 231(a)(1)(v) and § 231(a)). 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

(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

(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.

Section 202.15(b) provides that a labor organization which is found to be national in scope will be determined to be a “railway” labor organization based on factors including the extent to which it is and has been recognized as the representative of crafts or classes of employees in the railroad industry, and the extent to which its purposes and business are and have been to promote the interests of railroad industry employees.

Based on the information provided, the Board finds that SMART is a labor organization which is national in scope because of its right to participate in the selection of the labor members of the National Railroad Adjustment Board. The Board further finds that the purpose of SMART is to promote the interest of railroad employees. Pursuant to the governing provisions of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, International Association of Sheet Metal, Air, Rail and Transportation Workers is an employer effective January 1, 2012, the effective date of the merger.

Original signed by:

Walter A. Barrows

Steven J. Anthony