B.C.D. 00-29

EMPLOYER STATUS DETERMINATION AUG 07 2000
Association of Commuter Rail Employees (ACRE)

This is the determination of the Railroad Retirement Board concerning the status of the Association of Commuter Rail Employees (ACRE) 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 Association as an employer under the Acts has not been previously determined.

Information in response to a coverage investigation regarding ACRE was obtained in May, 2000 from Mr. John Gaines, Acting Director of ACRE. According to the information submitted by Mr. Gaines, ACRE was organized March 1, 2000 and was established for the purpose of promoting the interests of passenger railroad employees. ACRE is comprised of an Executive Board and subordinate locals. Mr. Gaines stated that ACRE represents approximately 744 Conductors and Assistant Conductors, 300 Engineers, 71 Rail Traffic Controllers/Dispatchers, 37 Yardmasters, and 20 Power Supervisors. At this time, all members of ACRE are employed by MTA Metro North Railroad, and all members are active, full-time employees in the railroad industry. Mr. Gaines stated that presently, ACRE governs contracts covering working conditions and wages of all of its members. Lastly, Mr. Gaines stated that there are no imminent plans to expand ACRE's representation to other carriers. Mr. Gaines provided copies of ACRE's constitution, as well as Certifications by the National Mediation Board finding ACRE to be the representative of the classes/crafts of Metro-North employees identified above.

The evidence obtained reflects that ACRE was organized March 1, 2000, pursuant to the provisions of the Railway Labor Act (45 U.S.C. §151 et seq.). The business of ACRE includes making and maintaining agreements covering rates of pay and working rules and conditions for its members, and settling disputes arising from grievances or interpretation or application of collective bargaining agreements. ACRE currently represents approximately 1200 members. The National Mediation Board has recognized ACRE as representative of the crafts of locomotive engineers (27 N.M.B. No. 49), conductors (27 N.M.B. No. 47), dispatchers (27 N.M.B. No. 50), yardmasters (27 N.M.B. No. 67), and power supervisors/directors (27 N.M.B. No. 66).

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

> (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 [45 U.S.C.A. §151 et seq.], 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)(v)].

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. §351(a)) contains essentially the same definition.

Section 202.15 of the Board's regulations establishes the criteria used to determine whether an organization is a "railway labor" organization which is "national in scope" within the terms of section 1(a)(1)(v) and 1(a) of the Acts. 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 labor members of the National Railroad Adjustment Board. Coverage commences 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:

(i) the organization has in fact participated in such selection;

(ii) the organization has been found pursuant to section 3 "First" (f) of the Railway Labor Act (45 U.S.C. §153 "First" (f)) to be eligible to participate in such selection; or

(iii) the organization is recognized by all other eligible organizations as having the right to participate in such selection.

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.

As a brand new labor organization, ACRE has not yet participated in the selection of labor members of the National Railroad Adjustment Board and has not been formally recognized by other labor organizations as having such right. However, in his letter to the Board's Office of Audit and Compliance, Mr. Gaines expressed ACRE's belief that it would be found under the provisions of the Railway Labor Act to have the right to participate in the selection of labor members of the National Railroad Adjustment Board. In addition, the Board notes that ACRE's Constitution states that membership is open to all employees of commuter railroads. There are commuter railroads nationwide, whose employees thus would be eligible for membership in ACRE. In addition, the National Mediation Board has recognized ACRE as the representative of five classes of railroad employees. Further, as the membership of ACRE appears to consist exclusively of railroad employees, its primary purpose may be said to be promotion of the interests of railroad industry employees. The Board therefore finds that ACRE is a railway labor organization national in scope within the meaning of section 1(a)(1)(v) of the RRA and the corresponding section of the RUIA.

For the reasons explained above, the Board finds that the evidence of record establishes that the Association of Commuter Rail Employees has the essential characteristics of a railway labor organization and meets the definition of an "employer" under the Railroad Retirement and Railroad Unemployment Insurance Acts effective March 1, 2000, the date on which the organization was formed.

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