

EMPLOYER STATUS DETERMINATION
GPB Consulting, LLC

This is the determination of the Railroad Retirement Board concerning the status of GPB Consulting, LLC (GPB) 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). Information about GPB was furnished by Stacy M. Spencer of the Accounting Division of GPB, by G. Pete Bell, one of the owners of GPB, and by Clifford Steele, Chief Financial Officer of C&NC Railroad. In addition, Gail Bennett and Tony Lowhorn, GPB employees, provided statements describing the services they each perform through GPB.

A Certificate of Organization establishing GPB as a limited liability company in the State of Indiana became effective January 16, 2007. GPB began operation and first compensated its three employees April 1, 2007. The owners of GPB are G. Pete Bell, who owns 90%, and Spencer Wendelin, who owns 10%.

GPB's business consists of providing train dispatching, locomotive engineers, and supervision for three covered rail carrier employers. More specifically, GPB provides 25% of its services for and derives 25% of its revenue from C&NC Railroad (B. A. No. 2374). GPB provides 30% of its services for and derives 30% of its revenues from Wabash Central Railroad (B. A. No. 2376). GPB provides 45% of its services for and derives 45% of its revenue from Maumee & Western Railroad (B. A. No. 2375).

Mr. G. Pete Bell has performed the job of Operations Manager for the three railroads named in the preceding paragraph since December 19, 1997, which is the first date each of them became a covered rail carrier employer under the RRA and the RUIA. (See Board Coverage Decision Nos. 98-7, 98-9, and 98-11.) As Operations Manager, Mr. Bell is responsible for all railroad operations, which also include supervision of both railroad employees and the employees of GPB who provide services to the listed railroads. Mr. Bell provides training and instruction to GPB and railroad employees. The Pocket List of Railroad Officials for the Third Quarter of 2008 lists Mr. Bell as a contact for each of these railroads.¹ Mr. Spencer Wendelin is listed as the "CEC" of C&NC Railroad Corporation and of Maumee & Western Railroad.

¹ Mr. Bell is listed as the General Manager of C&NC Railroad Corporation and as the "COC" of both the Wabash Central Railroad and Maumee & Western Railroad. Although the abbreviation "COC" is not explained, it may refer to "Chief Operating Consultant".

Information provided by Mr. Clifford Steele about Mr. Bell's work is consistent with Mr. Bell's own description. Mr. Steele stated that Mr. Bell acts as Operations Manager for the C&NC, Maumee and Western, and Wabash Central and that Mr. Bell has been in charge of operations for the three railroads since December 19, 1997. Mr. Bell supervises both the employees of the railroads and of GPB. Mr. Bell is responsible for assigning tasks, schedules and work priorities, and all work is performed to his approval. He is also responsible for reporting any work accidents to the Federal Railroad Administration.

Mr. Steele also described the work performed by the other two employees of GPB. He advised that Ms. Gail Bennett acts as Rail Agent for all three railroads, providing 40 or more hours of service per week to the railroads. Mr. Steele stated that Mr. Tony Lowhorn is an engineer and track inspector for all three railroads, having served as an engineer for the C&NC since December 19, 1997, and, like Ms. Bennett, providing 40 or more hours of service per week to the railroads. The work hours of both Ms. Bennett and Mr. Lowhorn follow the scheduled operations of the railroads as instructed by Mr. Bell.

Prior to April 1, 2007, Mr. Bell indicated that he was paid for his services as an employee of the three railroads; beginning April 1, 2007, Mr. Bell has been paid as an employee of GPB. Mr. Bell advised that "The changeover of employment from the railroads to GPB was done to make the personnel and accounting functions more efficient. My day-to-day duties with the railroads are exactly the same as before the initiation of GPB."

Mr. Bell's statement in the preceding paragraph is consistent with information provided by Mr. Steele that the three railroads have entered into management service agreements with GPB. Pursuant to the agreements, GPB will provide the services of a full-time Rail Agent, locomotive engineer and track inspector, and full operations management and oversight. Mr. Steele added that "All services provided by GPB are intended to integrate fully with each railroad's ongoing operations, and be subject to each railroad's rules and procedures."

Section 1(a)(1) of the RRA 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;
- (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.

Section 1 of the RUIA contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act.

It is clear from the record in this case that GPB is not a rail carrier employer under section 1(a)(1)(i) of the RRA and section 1 of the RUIA. Turning to the definition in subparagraph 1(a)(1)(ii), we find that GPB is under common control with C&NC Railroad, Wabash Central Railroad, and Maumee & Western Railroad because the owner of the major portion of GPB and the Operations Manager of each of the three railroads is the same person. Mr. Bell owns 90% of GPB. In addition, since December 19, 1997, Mr. Bell has been the Operations Manager of each of the three railroads for which GPB provides service. Although Mr. Bell is now on the payroll of GPB, he has continued to provide the same management services to each of the railroads since the commencement of operations by GPB.

According to further information provided by GPB in a supplemental disclosure dated September 8, 2008, it is clear that ownership and leadership of C&NC Railroad, Wabash Central Railroad, and Maumee & Western Railroad is fully intermingled. Each railroad shares the same treasurer. Mr. Steele holds three offices for two of the railroads. Eleven individuals have a concurrent ownership stake in all three railroads. Additionally, all three railroads continue to share the same Senior Operations Manager (Mr. Pete Bell), the same Rail Agent (Ms. G. Bennett), the same Track Inspector (Mr. T. Lowhorn) and intermingle their engineers and conductors to the extent that "any particular employee can be assigned to any one of the three railroads on any particular day." The supplemental response further stresses that GPB was formed "to be the common paymaster for these railroads." The supplemental response provides direct evidence, as explained further below, that employees of GPB are fully integrated and intermingled within the direct business of each of the three covered railroads and that GPB is under common control with the three railroads.

We find further that GPB provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA because GPB was established to

centralize functions formerly performed by individual employees of the railroads. Specifically, Mr. Bell directs the operations of each of the three railroads. Mr. Lowhorn works as an engineer and track inspector as necessary, and Ms. Bennett serves as the Rail Agent for each of the railroads. Ms. Bennett advised that her work consists of doing computer entry for all rail car moves, providing customer notifications, troubleshooting customer problems, and maintaining files for each of the three railroads.

Pursuant to the direct evidence provided by GPB, we find that GPB is under common control with the three railroads for which it provides services and that those services constitute "service in connection with railroad transportation" within the affiliate definition of an employer. We find that GPB Consulting, LLC became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective April 1, 2007, the date GPB began operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever