

OCT 29 1948

L-48 743

The Director of Wage and Service Records

The General Counsel

Mechanical Department Association, New Haven Railroad System

Brotherhood of Railroad Shop Crafts of America, System Unit
No. 4 (New York, New Haven & Hartford Railroad)

In response to your request dated May 13, 1948, I submit
herein my opinion with regard to the following:

QUESTION

Is service to the organization originally known as
the Mechanical Department Association, New Haven
Railroad System, and known after September 6, 1934,
as the Brotherhood of Railroad Shop Crafts of America,
System Unit No. 4, creditable under the Railroad Re-
tirement Act as "employee representative" service?

OPINION

From its formation on August 11, 1922, until January
13, 1936, this was not, but beginning with the latter
date it was, an organization to which "employee repre-
sentative" service could be rendered.

FACTS AND DISCUSSION

The organization originally known as the Mechanical Depart-
ment Association, New Haven Railroad System, was formed on August 11,
1922. From the information furnished me it appears that this organiza-
tion became System Unit No. 4 of the Brotherhood of Railroad Shop Crafts
of America when the Brotherhood was founded on September 6, 1934. The
information submitted to me also indicates that membership in the or-
ganization was at all times limited to employees of the New York, New
Haven and Hartford Railroad Company (hereinafter referred to as the
Company) and that collective bargaining with regard to wages, hours,
and working conditions was a part of the purposes and business of the

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organization. There is nothing to indicate that the organization itself ever established a right to participate in the selection of labor members of the National Railroad Adjustment Board, or that it was ever a subordinate unit of an organization which did establish such a right. It appears, therefore, that this was the kind of organization to which "employee representative" service could be rendered, if "interference, influence, or coercion" by the carrier was not a factor in the designation of the organization as a representative of the Company's employees. General Counsel's Opinion No. L-47-514 in the case of the Association of Colored Railroad Employees.

According to the reply made by the New York, New Haven and Hartford Railroad Company to former Federal Coordinator of Transportation Eastman's "Company Union Questionnaire" of September 7, 1933, the Mechanical Department Association, New Haven Railroad System, came into existence during the strike of the Federated Shop Crafts, which had theretofore represented the Company's Mechanical Department employees. Although the Company claimed in its reply that it had not requested its employees to form the Association, it admitted that representatives of its Legal Department "did consider and pass on the legality of the phraseology" of the Association's original Constitution and By-Laws. Included in the Association's Constitution and By-Laws^{1/} were provisions to the effect that initiation fees and dues were to be deducted by the Company, and that the form of application for membership in the Association was to contain an authorization of payroll deductions of the Association's fees and dues; that the management was to provide ballot boxes and booths on its property for use in the Association's elections, and was to render such other assistance in the elections as the Association might desire; that before the submission of election ballots to the employees these ballots were to be submitted to the System Joint Adjustment Board, composed of six representatives of the management and six representatives of the Association, for that Board's "consideration and approval as to form"; that the management was to be furnished with a copy of the minutes of each meeting of the Association's General Board, a body composed of representatives elected by the various Locals; that only members of the Association were eligible for the group insurance provided by the Company; that discharge from the service was "in order" for any individual who engaged in a suspension of work because of a pending grievance or an adverse decision on a grievance; and that the management was to be furnished a copy of the final decision on appeal in Association proceedings growing out of the trial of a member "for violations of duties and obligations". Moreover, the management was given control over changes in this Constitution through a provision requiring that amendments be passed by a majority vote of the System

^{1/} We have been furnished with a copy of the printed edition as revised October 1, 1928.

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Joint Adjustment Board on which, as stated above, the management had equal representation with the Association.

The Company also stated, in its reply to Coordinator Eastman's questionnaire, that from 1922 to the time of Mr. Eastman's investigation it made contributions totalling \$3751.15 towards expenses incurred by the Association's representatives "when, at the direction of the Management, they were called upon to perform services outside of the usual normal routine"; that it paid publication expenses of the Association's official organ until January, 1933 ^{2/}; that the Company allowed use of space in its Back Bay station for the Association's headquarters, without charge, as well as use of facilities on its premises at other points for the meetings of the Association's locals; and that the Company provided the Association with local telephone service, without charge. Moreover, the Company admitted that it was collecting dues for the Association through payroll deductions; that the Association's elections were conducted on Company property and time with clerical and other assistance furnished by the Company, including preparation of the ballots on the Company's mimeograph machine; and that the Association's Constitution could not, under its provisions requiring approval of amendments by a majority of the System Joint Adjustment Board, be amended without the consent of the management.

Other information in Coordinator Eastman's files shows that the Company had entered into a contract with an insurance company for group insurance for which only members of the Association were eligible, and that the Company paid part of the premium on this insurance. In reply to a questionnaire sent out by Coordinator Eastman on January 26, 1934, the Company stated that it had issued a bulletin on February 1, 1934, making employees eligible for the group insurance irrespective of membership in the Association. In this reply the Company also stated that the Association's Constitution had been amended February 5, 1934, to eliminate Company control. A letter sent you on November 21, 1947, by Mr. E. B. Perry, Assistant Vice President of the Company, considered with other material available to me, indicates that other practices of the Company mentioned above, such as making payroll deductions of dues, and furnishing space, facilities, and services free of charge, continued even after the Association became System Unit No. 4 of the Brotherhood of Railroad Shop Crafts of America, and were not terminated until January 13, 1936. However, Mr. Perry's letter also indicates that beginning with that date there was no "interference, influence, or coercion" by the Company in connection with the organization, and apparently your investigation has uncovered nothing to indicate otherwise.

In view of the foregoing, I am of the opinion that from its formation until January 13, 1936, this was not, but that beginning with

^{2/} In a breakdown for certain years the Company stated that it spent \$6,330.20 in 1930 and \$5,341.73 in 1931 to publish the "Mechanical Department News", the Association's official organ.

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that date it was, an organization to which "employee representative" service could be rendered. General Counsel's Opinions Nos. L-45-136 in the case of the Shopmen's Association, Atlantic Coast Line Railroad Company, and L-47-334 in the case of the Shop Employes' Association - Union Pacific System. 3/

Myles F. Gibbons
General Counsel

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3/ In General Counsel's Opinion No. L-47-722 the Brotherhood of Railroad Shop Crafts of America (including the National Grand Lodge and all subordinate units not previously ruled upon) was ruled to be an organization to which "employee representative" service could be rendered. System Unit No. 4 was not one of the subordinate units previously ruled upon. General Counsel's Opinion No. L-47-722 is now qualified to the extent that service rendered to System Unit No. 4 prior to January 13, 1936, is not creditable.