

MEMORANDUM

L-45-172

M-37

March 27, 1945

TO The Chief Liaison Officer
Through the Office of the Executive Officer

FROM The General Counsel

SUBJECT ✓ Associated Organizations of Shop Craft Employes of the
Northern Pacific Railway Company

In response to your request I submit herein my opinion on the following:

QUESTION

Is service which was rendered to the Associated Organizations of Shop Craft Employes of the Northern Pacific Railway Company during the period beginning with November 15, 1922, and ending with February 9, 1934, creditable as "employee representative" service under the Railroad Retirement Act of 1937?

OPINION

No; such service is not creditable as "employee representative" service.

FACTS

The following statement of facts is based upon the material which you have submitted to me in connection with this matter, including a copy of the Constitution, as amended March 23, 1927, and of the By-Laws, as amended April 15, 1930, of the Associated Organizations of Shop Craft Employes of the Northern Pacific Railway Company (hereinafter referred to as Associated Organizations); copies of various agreements between Associated Organizations and the Northern Pacific Railway Company (hereinafter referred to as the Company); and information concerning the Company's connection with Associated Organizations, obtained in the latter part of 1935 and early 1934 by former Federal Coordinator of Transportation Eastman in an investigation of company unions in the railroad industry.

On July 1, 1922, the organizations affiliated with the American Federation of Labor which then represented the Company's shop

The Chief Liaison Officer

craft employees joined in the nation-wide railroad shopmen's strike which began on that day. On October 11, 1922, the Company issued circulars informing its shop employees that it was "willing to render its assistance" in the organization of an association to represent those employees "to the extent of preparing the necessary ballots and giving such other assistance as the employees may desire in arranging for an election of representatives to meet in St. Paul for the purpose of working out the details"; that the Company was "willing to defray the necessary expenses of the delegates elected while such organization is being perfected, and to continue their wages during such period"; that arrangements were being made for an election and that the details of the plan would be explained to the employees by the Company's local officers. "Election Instructions" issued by the Company on the same day, apparently only to certain of its Mechanical Department officials, stated that the delegates elected would represent the employees "at a conference to be held at St. Paul with the management of the Northern Pacific Railway to perfect an organization representing the mechanical department employees" which would "function in negotiation of an agreement with the Railway Company governing rates of pay and rules covering working conditions"; provided that at each shop and roundhouse, during working hours, the Master Mechanic or Shop Superintendent was to call a meeting of the employees, at which he was to explain to the employees the purpose of the election and present to them copies of certain forms, "the signing of which is a declaration of the desire of the employee to have such an organization formed"; and provided that Company officials were to appoint half the members of each election committee established at the various shops and roundhouses to conduct the election.

According to the Company's reply to Coordinator Eastman's "Company Union Questionnaire", the representatives elected by the employees "met with representatives of the management for the purpose of forming an organization and during that conference the representatives of the management assisted the employees in wording the constitution and by laws . . .". This constitution, adopted November 15, 1922, stated that it was one of Associated Organizations' fundamental principles that there should be no suspension of work as a result of grievances or dissatisfaction with wages and working conditions, and expressly provided that no officer or member was empowered to take a strike vote (Article II); stated that the members "mutually agreed . . . that during the period of their employment by the Northern Pacific Railway Company they will not join any other trade union . . . covering the same kind of work . . . where such association or organization's obligations in any way conflict with this Constitution or the By-Laws" (Article XII, Section 1); and "prohibited" Associated Organizations "from joining, affiliating, amalgamating or co-operating with any other organization or association" (Article XII, Section 2). The

The Chief Liaison Officer

provision that amendments to the Constitution had to be approved by a majority vote of the Joint System Board of Adjustment (Article XVI), half the members of which were representatives of the Company (Article XV), gave the Company power to prevent the amendment of the Constitution in any respect which did not meet with its approval. The By-Laws provided that meetings of the Local Districts might be held at the request of the Company (Article IV, Section 1), and contained a provision permitting the collection of Associated Organizations' dues by the Company through pay-roll deductions (Article VI, Section 1).

The Company paid the salary and expenses of the representatives who formed Associated Organizations, and, until May 1, 1927, of various representatives of Associated Organizations. Under the terms of Section 11 of the Company's Agreement of November 18, 1922, with Associated Organizations, which established the Joint System Board of Adjustment to dispose of disputes, such as grievances, not adjusted in conference, the Company assumed the office rent expense and agreed to furnish the necessary office equipment and supplies for the proper functioning of the Board.

In a letter to Coordinator Eastman dated February 9, 1934, the President of the Company indicated that it was the Company's practice to collect dues for Associated Organizations through the pay-roll deduction plan, on authorization by individual employees.

CONCLUSION

It is clear that at least during the period beginning with November 16, 1922, the day on which Associated Organizations came into existence, and ending with February 9, 1934, "interference, influence, or coercion" within the meaning of the Railway Labor Act, as amended, was a factor in the designation of Associated Organizations as a representative of the Company's shop craft employees. I am therefore of the opinion that service which was rendered to Associated Organizations during that period is not creditable as "employee representative" service under the Railroad Retirement Act of 1937. The principles of law on which this conclusion is based are discussed in General Counsel's Opinion No. L-45-136 in the case of the Shopmen's Association, Atlantic Coast Line Railroad Company.

D. M. G. Jr.

Myles F. Gibbons
General Counsel