

DRAFT - 6-7-63 - DMG

Dear Mr. Hendricks:

Prepared at Mr. Cameron Coble's request.

This is in reply to your letter dated May 28, 1963, concerning the effect of the abandonment of the Chicago, North Shore and Milwaukee Railway on the Railroad Retirement Act and Railroad Unemployment Insurance Act coverage of Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees. You stated that only six members of Division 900 are still employed by the North Shore, and you asked whether it would be proper to shift coverage of the Division to the social security system.

Division 900 has continued to be a local division "employer" under the Railroad Retirement and Railroad Unemployment Insurance Acts despite the fact that in recent years a large number of its members have been employed outside the railroad industry. Advice to this effect was given by our General Counsel, Myles F. Gibbons, in a letter dated May 31, 1956, to Mr. Maynard C. Groat, who was President of the Division at that time.

The degree to which Division 900 may serve employees of companies which are not "employers" under these Acts is not a factor in determining whether it is an "employer" under the Acts. What is controlling is the fact that it is a local division of a railway labor organization national in scope which is an "employer" under our Acts. All local divisions of such a national labor organization are themselves "employers", by express provision of the Acts.

Section 1(b) of the Railroad Retirement Act and Section 1(d) of the Railroad Unemployment Insurance Act take care of a situation like Division 900's by providing that individuals employed by a local division are not to be regarded as "employees" under the Acts unless they were in the service of, or (under the Railroad Retirement Act only) in an employment relation to, a "carrier" on or after August 29, 1935. The term "carrier" is defined in both Acts as meaning an express company, sleeping-car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act. An individual who has been a "carrier" employee and who is performing services for a local division is rendering service

as an employee of an "employer" under our Acts irrespective of whether his services are in behalf of division members who work for an "employer" under our Acts or of division members who are employed outside the railroad industry.

A local division is therefore an "employer" under our Acts to the extent that it has in its employ persons who have been in the service of, or in an employment relation to, a "carrier" on or after August 29, 1935. Division 900 should continue to file reports with the Railroad Retirement Board as long as any such individuals are rendering compensated service to the Division. To the extent that it has other individuals in its employ, Division 900 might be covered as an employer under the Social Security Act. That is a matter to be taken up with the Social Security Administration.

Very truly yours,

A. E. Lyon (type on copies only)

Mr. Albert J. Hendricks
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