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The Chief Liaison Officer
Through the Office of the Executive Officer

The General Counsel

Shop Crafts Protective League, Southern Pacific Company
(Pacific System)
Shop Crafts Association, Southern Pacific Company
(Pacific Lines)

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

QUESTION

Is service which was rendered to the organization originally named the Shop Crafts Protective League, Southern Pacific Company (Pacific System) and later named the Shop Crafts Association, Southern Pacific Company (Pacific Lines) during the period beginning with its formation in August, 1922, and ending with September 7, 1933, 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 information, obtained in the latter part of 1933 by former Federal Coordinator of Transportation Eastman in an investigation of company unions in the railroad industry, concerning the relationship between the Southern Pacific Company and the organization (hereinafter referred to as the Organization) which was originally named the Shop Crafts

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Protective League, Southern Pacific Company (Pacific System) and later was named the Shop Crafts Association, Southern Pacific Company (Pacific Lines).^{1/}

Formation. In its reply to Coordinator Eastman's "Company Union Questionnaire" dated September 7, 1933, the Company stated that when the Organization was formed in August, 1922, during the nation-wide railroad shopmen's strike which began on July 1 of that year, the Company assisted in the preparation of the Organization's original Constitution and By-laws and requested its employees to join the Organization. The Company submitted to Coordinator Eastman a copy of its bulletin dated August 14, 1922, addressed to its shop craft employees, which stated in part:

"1. The Shop Crafts Protective League has been launched and is in successful operation.

"2. The results will be mutually beneficial to the employees and the Company.

* * * * *

"4. . . .All outside influences are eliminated.

"5. Officers of the Company will at all times co-operate with the league in what is to their best interests . . . the advantages of membership . . . are so apparent, that all eligible employees are urged to enroll and enjoy the benefits of a strictly mutual organization which the company gladly supports."^{2/}

^{1/} The Company informed Coordinator Eastman that the Organization was originally named the Shop Crafts Protective League. Included in the material submitted to me in connection with this matter is a copy of the Organization's Constitution and By-Laws, as revised effective March 6, 1923, which stated the name of the Organization as the Shop Crafts Protective League, Southern Pacific Company, (Pacific System), and a copy of the Organization's Constitution and By-Laws effective October 18, 1927, which stated the name of the Organization as the Shop Crafts Association, Southern Pacific Company (Pacific Lines).

^{2/} The Organization's Constitution, at least as revised effective March 6, 1923 (Article 5) and as revised effective October 18, 1927 (Article V), provided that the General Chairmen were to travel over their districts "to the mutual advantage" of the Organization and the Company.

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The Advisor. The Organization's Constitution, as revised effective March 6, 1923, provided (Articles 4, 5, and 6) for the office of Advisor, to be filled by an employee of the Company appointed by the General Superintendent of Motive Power, and provided that the Advisor was to be an honorary member of the Organization; that it was the Advisor's purpose to conserve harmony and cooperation between the Company and its employees; that the Advisor could attend any of the Organization's meetings or conventions; that he was to consult with and advise the Organization's members and officers; that he was to assist in adjusting grievances and disputes between the Organization and the Company; and that ballots cast in the Organization's elections were to be sent to the Advisor, in the Office of the General Superintendent of Motive Power, for final tabulation. The Constitution which became effective October 18, 1927, contained (Articles VI and X) similar provisions with respect to the Advisor, except that no provision was made for his assisting in the adjustment of grievances and disputes; this Constitution also provided (Article IX) that the Advisor was to be a member of the Committee on the Constitution and By-Laws, which was to consider and report on proposed changes in the Constitution and By-Laws. In its reply to Coordinator Eastman's questionnaire the Company stated that one of its officers, the Assistant to the General Superintendent of Motive Power, occupied this office of Advisor.

Collection of dues through pay-roll deductions. The 1923 Constitution (Article 10) and the 1927 Constitution (Article XIII) contained a provision requiring members "to authorize (by signing an indenture to this effect) deduction of their dues quarterly from payroll" by the Company, and also contained a form of application for membership in the Organization which included a provision authorizing the Company to collect dues for the Organization by deducting them from the payroll. The Company indicated in its reply to Coordinator Eastman's questionnaire that this application form was still being used at the time of his investigation.

Elections. In its reply to Coordinator Eastman's questionnaire, the Company stated that ballots for the Organization's elections were run off in the Company's duplicating bureau, that elections were held on Company property during working hours, and that the Advisor made the final count of the ballots cast in elections of General Officers.

The Company's discrimination against employees connected with an outside organization. In August, 1933, under Coordinator Eastman's direction, an agent of the Interstate Commerce Commission performed a field investigation of alleged efforts of the Company to prevent its boilermakers, who were represented by the Organization, from joining an outside labor organization. The agent obtained from the Company

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copies of correspondence, some of it in code, which had passed between the General Manager, the General Superintendent of Motive Power, and the Superintendent and the Master Mechanic at Portland, Oregon, as well as a copy of the stenographic transcript of the hearings in the Master Mechanic's office at which the employees involved were questioned about their union affiliations. This evidence discloses that in the latter part of July, 1933, the Master Mechanic, acting under orders of the General Superintendent of Motive Power, conducted an investigation to ascertain which employees under his supervision had applied for membership in the outside labor organization; he then offered those employees the alternative of discontinuing their connection with that organization or of being discharged by the Company. Apparently most of the employees involved decided to retain their employment on the Company's terms; however, in a communication dated August 24, 1933, to Coordinator Eastman concerning this matter, the Company's President referred to "the action of our subordinate officers in dismissing certain employees", and in its reply to Coordinator Eastman's questionnaire the Company stated that on July 24, 1933, it had discharged an employee for joining an outside labor organization.

CONCLUSION

It is clear that from its formation in August, 1922, through September 7, 1933, "interference, influence or coercion" within the meaning of the Railway Labor Act, as amended, was a factor in the designation of the Organization as a representative of the Company's shop employees. I am therefore of the opinion that service which was rendered to the Organization from its formation in August, 1922, through September 7, 1933, 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.

Myles F. Gibbons
General Counsel

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