

L-99-21  
December 28, 1999

**TO:** Ronald R. Russo  
Acting Director of Policy and Systems

**FROM:** Steven A. Bartholow  
General Counsel

**SUBJECT:** Job Posting By Non-Railroad

This is in reply to your memorandum of December 14, 1999, regarding posting of non-railroad jobs by the RRB. You advise that the Massachusetts Bay Transportation Authority has awarded a contract to Bay State Transit Services, Inc., to perform equipment maintenance. For the last twelve years Amtrak has performed this service under a contract with the Massachusetts Bay Transportation Authority. A representative of Rail Management Services, a consultant company for Bay State, has requested that the RRB advertise a job order for mechanical foremen, mechanics, and electricians for Bay State. You advise that currently that Listing is located on the HSL system and the internet. Only railroad job vacancies are listed on the internet. Non-railroad jobs are located on HSL, where they are accessible to RRB field offices.

You state that there is a possible labor dispute regarding the hiring of individuals for the job vacancies, and inquire whether the RRB would be prohibited from including the job openings on the RRB Job Vacancy Listing. You further inquire whether there is any requirement for the RRB to include the job openings on the RRB Job Vacancy Listing, whether there are any precedents regarding this issue, and whether there are any legal issues or problems that would result from a decision to post or not to post the job vacancies.

Provisions arguably relevant to these questions are contained in section 12 of the Railroad Unemployment Insurance Act which provides in pertinent part that:

(i)\* \* \* The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with

respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

\* \* \* \*

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have theretofore been substantially employed by employers.

(k) The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

The language in section (i) appears designed to encourage the RRB to direct its efforts toward reemployment of former railroad employees, presumably as distinguished from individuals who had never worked in the railroad industry. Section (k) provides that the RRB is to take appropriate steps to promote the reemployment of unemployed employees but does not define "reemployment" to include or exclude employment outside that covered by the Railroad Retirement and Railroad Unemployment Insurance Acts, and does not specify what "appropriate steps" are. Accordingly, it appears to me that these provisions do not determine whether the RRB is proscribed from listing or required to list the jobs in question.

Section 346.1 of the RRB's regulations provides that:

(a) The Board shall maintain a central register of railroad employees with at least one year of service who have declared their current availability for rail industry employment. The register shall indicate which of those employees claims a first right of hire.

(b) The central register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current employee availability.

(c) Upon request, listings of employees named in the central register and selected on the basis of job experience, location of residence, claimed hiring preference, last railroad employer or other

available selection criteria will be furnished to railroads. Railroads may provide written notice of job vacancies to selected employees listed on the register. The railroad notice to the employees should contain job qualification requirements and application instructions. If the railroad requests, the Board shall notify the employees of the vacancy.

This provision refers to the maintaining of a register of employees only. It does not pertain to the listing of jobs, and therefore does not decide the questions you have raised. It should be noted that this regulation was originally part of a regulation issued pursuant to the Regional Rail Reorganization Act of 1973. That regulation (part 359), which has expired, required the listing of jobs by railroads and would not, therefore, decide these questions either. It should be noted that a memorandum issued July 19, 1988, by this office regarding the release to a rail carrier of the central register of unemployed railroad workers, maintained pursuant to part 359, where the rail carrier planned to use the register to recruit applicants for positions vacant due to a labor dispute, concluded that whether to release that information or not was a matter of discretion with the RRB.

In conclusion, it is my opinion that there is no law or precedent which would prohibit the RRB from listing jobs available with Bay State, or which would require the RRB to list such jobs. Since neither the RUIA nor the Board's regulations mandate a specific response to this issue, a decision on this question is a matter of Board policy.