

EMPLOYER STATUS DETERMINATION
Joint Council of Dining Car Employees
Dining Car Employees Union Local 43

This is the determination of the Railroad Retirement Board concerning the status of the Joint Council of Dining Car Employees (Joint Council, BA No. 8930) and Dining Car Employees Union Local 43 (Local 43) as employers under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

Information about the Joint Council and Local 43 was provided by Mr. Isaac Monroe, who is the Administrative Assistant to the General President of the Hotel Employees & Restaurant Employees International Union (International Union), as well as the Secretary/Treasurer of Local 43 in Chicago, Illinois. Mr. Monroe has been reported (to the Board) as an employee of the Joint Council.

The Joint Council of Dining Car Employees was a subordinate organization of the International Union. In Legal Opinion L-49-390, the International Union was held not to be an employer under the Acts, and the Joint Council was held to be an employer, with service creditable from October 25, 1937. Legal Opinion L-49-390 indicated that the Joint Council consisted of 15 locals, of which Local 495 was one. In a telephone conversation with a member of the staff of the Board's Bureau of Law, Mr. Monroe stated that Local 43, which was not one of the original 15 locals which formed the Joint Council, resulted from the merger of Locals 385 and 351 in the 1970's. Mr. Monroe also stated that prior to the end of October 1991, all of the other locals, except for Local 43 and Local 495, had merged (apparently at various times). Mr. Monroe stated that at a convention of the International Union in July 1991, a resolution was adopted to dissolve the Joint Council at the end of October 1991. Mr. Monroe provided a copy of a letter to him dated November 6, 1991, from the General President of the International Union wherein the General President stated that due to the merger of Local 495, Dining Car Employees Local, Washington, D.C. into Local 43, Chicago, Illinois, the Joint Council ceased to exist as of October 31, 1991.

In a letter dated March 19, 1993, Mr. Monroe stated that Local 43 carries a total membership of approximately 1,100, ninety percent of whom are employed by Amtrak (BA No.8301). The remaining members are employed by the Union Pacific Railroad (BA No.1715), the Burlington Northern (BA No.1621), and the Metro-North Commuter Railroad (BA No.3345). Local 43 is certified as a representative of the non-operating on-board employees, specifically the food and beverage workers, as well as coach and sleeping car attendants. Mr. Monroe stated that he is authorized to participate in the selection of the labor members of the National Railroad Adjustment Board. Mr. Monroe provided a copy of the Local's Bylaws, as well as the Constitution of the International Union.

Section 1(a)(1) of the RRA defines the term "employer" to include:

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended [45 U.S.C.A. §151 et seq.], and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

Section 1(a) of the RUIA contains essentially the same definition. Section 202.15 of the Board's regulations (20 CFR §202.15) establishes the criteria used in determining whether an organization is a "railway labor" organization which is "national in scope" within the terms of sections 1(a)(1)(v) and 1(a) of the Acts. Section 202.15(a) states that an organization will be presumed to be a labor organization national in scope and formed in accordance with the Railway Labor Act if that organization has a right to participate in the selection of the labor members of the National Railroad Adjustment Board. For purposes of a determination under section 202.15(a), a right of participation may be established if:

- (i) the organization has in fact participated in such selection;
- (ii) the organization has been found pursuant to section 3 "First" (f) of the Railway Labor Act (45 U.S.C. §153 "First"(f)) to be eligible to participate in such selection; or
- (iii) the organization is recognized by all other eligible organizations as having the right to participate in such selection.

Section 202.15(b) provides that a labor organization which is found to be national in scope will be determined to be a "railway" labor organization based on factors including the extent to which it is and has been recognized as the representative of crafts or classes of employees in the railroad industry, and the extent to which its purposes and business are and have been to promote the interests of railroad industry employees.

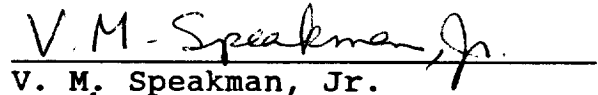
Based upon the information provided, it is determined that the Joint Council of Dining Car Employees ceased to be an employer under the RRA and the RUIA effective October 31, 1991, the date on which it ceased to exist.

The information provided by Mr. Monroe indicates that Local 43 subsequently took over the duties previously performed by the Joint

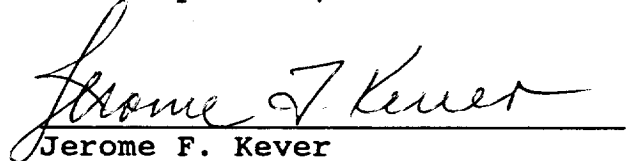
Council. First of all, Mr. Monroe, as Secretary/Treasurer of Local 43, is authorized to participate in the selection of the labor members of the National Railroad Adjustment Board. Under section 202.15(a) of the Board's regulations, Local 43 is thus presumed to be a labor organization national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. In addition, Local 43 is certified to represent non-operating on-board employees, specifically the food and beverage workers, as well as coach and sleeping car attendants. Article II of the Local's Bylaws states in pertinent part that its membership shall consist of "an unlimited number of workers in the railroad industry." Article I of the Bylaws provides in pertinent part that its purpose shall be to establish and maintain equitable wage scales and working conditions; to elevate moral, social and intellectual standing of its members; to guard their financial interests; to promote their general welfare; and to secure employment for its members. Local 43 is thus a "railway" labor organization within section 202.15(b) of the Board's regulations and section 1(a) of the RRA and section 1(a) of the RUIA. Since Local 43 succeeded to the duties formerly performed by the Joint Council, it is determined that Dining Car Employees Union Local 43 became an employer under the RRA and the RUIA effective November 1, 1991, the day after the day on which the Joint Council ceased to exist.



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