

MAY 21 1998

**EMPLOYEE SERVICE DETERMINATION
Metropolitan Transportation Authority Police Department**

This is the determination of the Railroad Retirement Board concerning the status of employees of the Metropolitan Transportation Authority Police Department (MTAPD) 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 Metropolitan Transportation Authority (MTA) was provided by Mr. Gary J. Dellaverson, Director, Labor Relations of MTA. MTA operates its services through the following subsidiary agencies:

- * New York City Transit Authority
- * Manhattan and Bronx Surface Transit Operating Authority
- * Staten Island Rapid Transit Operating Authority
- * Long Island Rail Road Company (BA No. 1311)
- * Metro-North Commuter Railroad (BA No. 3345)
- * Metropolitan Suburban Bus Authority
- * Triborough Bridge and Tunnel Authority

According to its 1996 Annual Report, the MTA is the largest public transportation provider in the Western Hemisphere. Its agencies serve a population of 13.2 million people in the 4,000-square-mile area, fanning out from New York City through Long Island, southeastern New York State, and Connecticut. The MTA moves 1.7 billion rail and bus customers a year. The MTA is a "public benefit corporation"¹ chartered by the New York State Legislature in 1965.

During the summer of 1997, the New York State Legislature passed and the Governor signed legislation which provided for the creation of the MTA police department and the establishment of a traditional police pension for the MTA police officers. The new law provides that initial appointments to the new police force "shall be all incumbent police officers from the Long Island Rail Road Company and/or the Metro-North Commuter Railroad Company at the time of such appointment."

Mr. Dellaverson stated that prior to the enactment of the legislation, the MTA and the

¹New York law defines a "public benefit corporation" as "a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of this or other states, or to the people thereof." [McKinney's Consolidated Laws of New York Annotated, Book 21, "General Construction Law," Article 2-A, §66].

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unions which represent the officers at Metro-North Railroad and the Long Island Rail Road, entered into an agreement concerning the then proposed legislation and the formation of the police department. The Letter of Understanding enclosed with Mr. Dellaverson's letter provided for job protection for the existing police force, a merged collective bargaining agreement and a unit more reflective of a municipal police force.

Pursuant to the new law, the MTA established the police department on January 1, 1998. A job advertisement for police officers enclosed with Mr. Dellaverson's letter of December 17, 1997, indicated that a police officer for the new department would be:

. . . responsible for ensuring the safety of all customers and employees, as well as protecting property throughout the MTA NY [New York] and Connecticut operating regions. As a full-service Police Department, assignments include patrol, community service, investigations, communications, and administrative services.

The Board's Employer Historical File contains the names of all companies upon which employer status determinations have been rendered under the RRA and the RUIA up to the date of its issue. The current Employer Historical File, which was issued in July 1997, states that the MTA is not covered as an employer under the RRA and the RUIA, but that a BA number (9351) has been issued to the MTA for accounting and payroll purposes for the employees who are working at Metro-North Railroad.

It appears that Mr. Dellaverson has brought the matter of the new police department to the Board's attention because the existing police forces of two covered employers, Metro-North Railroad and the Long Island Rail Road, were to be hired by the new department. The information provided indicates that employees of the new police department will perform full-service law enforcement duties throughout the territory under the jurisdiction of the MTA. There is no evidence to indicate that they should continue to be employees covered under the RRA and the RUIA.

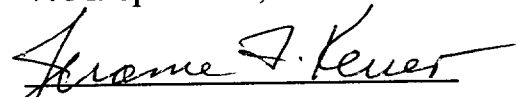
Accordingly, it is determined that effective January 1, 1998, the police officers who were transferred from Metro-North Railroad and the Long Island Rail Road to the newly established MTA police department are no longer employees under the RRA and the

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RUIA. Section 1(o) of the Railroad Retirement Act provides that for purposes of entitlement to a supplemental annuity and survivor benefits, an individual shall be deemed to have a current connection with the railroad industry "if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service." In this case, because coverage of the employees ceased by virtue of operation of law, the transfer of such employees from a covered employer to a non-covered employer is determined to be an "involuntary cessation" of railroad employment for purposes of establishing a "deemed current connection" under section 1(o) of the RRA.



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