

## PART 205—EMPLOYEE REPRESENTATIVE

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AUTHORITY: 45 U.S.C. 231, 45 U.S.C. 231f, 45 U.S.C. 231h.

SOURCE: 53 FR 39255, Oct. 6, 1988, unless otherwise noted.

### § 205.1 Introduction.

This part sets out the various factors considered in determining an individual's status as an employee representative under section 1(b)(1) of the Railroad Retirement Act, and discusses the procedure for reporting and crediting of compensation and service as an employee representative under that Act. An employee representative is considered to be a covered employee under the provisions of the Railroad Retirement Act.

### § 205.2 Definition of employee representative.

(a) An individual shall be an employee representative within the meaning of the Railroad Retirement Act if he or she is an officer or official representative of a railway labor organization, other than a labor organization included in the term "employer" within the meaning of part 202 of these regulations, who before or after August 29, 1935, was in the service of an "employer" within the meaning of part 202 of these regulations and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(b) An individual is also considered to be an employee representative within the meaning of the Act if he or she is regularly assigned to or regularly employed by an individual described in paragraph (a) of this section in connection with the duties of the office of employee representative of said individual.

(c) *Example:* A is employed by railroad R as a carman. He is also employed as recording secretary for the local chapter of union U, which has been recognized as the collective bargaining representative of the carmen of R. Although U represents some railroad employees, it is not a railway labor organization as described in part 202 of these regulations. A is an employee representative. His service for U is treated as employee service under the Railroad Retirement Act.

### § 205.3 Factors considered in determining employee representative status.

The following factors, among others, are considered by the Board in determining an individual's status as an employee representative:

(a) The name of the last railroad or other employer under the Act by which the individual was employed, and the period of employment;

(b) The present official name of the organization by which the individual is employed, as well as any other name(s) under which that organization operated previously;

(c) The date on which the organization was founded;

(d) The title of the position held by the individual within the organization, and the duties of said position;

(e) The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the time period covered by said authorization;

(f) The purpose or business of the organization as reflected by its constitution and by-laws;

(g) The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry;

(h) The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:

(1) The specific employee group(s) represented; and

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(2) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers;

(i) Whether the organization has been certified by the National Mediation Board as a representative of any class of employees of any company;

(j) If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees;

(k) Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board; and

(l) Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any contributions payable to the organization.

### § 205.4 Claiming status as an employee representative.

An individual who claims status as an employee representative shall file a report in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014)

### § 205.5 Reports of an employee representative.

An annual report of creditable compensation shall be made by an employee representative in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014)

### § 205.6 Service of an employee representative.

Service rendered as an employee representative is creditable in the same manner and to the same extent as though the organization by which the employee representative was employed were an employer under the Railroad Retirement Act. (Creditable railroad service is discussed under part 210 of the Board's regulations.)

### § 205.7 Termination of employee representative status.

The employee representative status of any individual shall terminate whenever the individual or the organization by whom he or she is employed loses any of the characteristics essential to the existence of employee representative status.

## PART 206—ACCOUNT BENEFITS RATIO

Sec.

206.1 Definitions.

206.2 Computations.

AUTHORITY: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

SOURCE: 68 FR 51153, Aug. 26, 2003, unless otherwise noted.

### § 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

*Account benefits ratio* means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefit Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

*Administrative expenses paid* means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

*Assets* means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account).

*Average account benefits ratio* means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before