AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

duty of each employer promptly to notify the Board of any change in operations affecting such company's status as an employer.

[Board Order 41–85, 6 FR 1210, Mar. 1, 1941]

§ 202.13 Electric railways.

(a) The Deputy General Counsel will require the submission of information pertaining to the history and operations of an electric railway with a view to determining whether it is an employer and will inquire into and make his recommendations upon the following considerations:

(1) Whether the electric railway is more than a street, suburban or interurban electric railway; or

(2) Whether it is operating as a part of a general steam-railroad system of transportation; or

(3) Whether it is part of the national transportation system.

(b) If in the opinion of the Deputy General Counsel an electric railway has the characteristic set forth in either paragraphs (a)(1), (2), or (a)(3) of this section, he will conclude that it is an employer under the act and if the operator concurs in such opinion, the decision will be made final by the Board. If the operator does not concur in the conclusion reached the question will be submitted to the Interstate Commerce Commission for determination.

(45 U.S.C. 231f(b)(5))

[4 FR 1478, Apr. 7, 1939, as amended at 48 FR 51448, Nov. 9, 1983]

§ 202.14 Service incidental to railroad transportation.

An organization, association, bureau or agency is performing a service in connection with or incidental to railroad transportation whenever it is engaged in the performance of functions which would normally be performed by the constituent employers in the absence of such organization, association, bureau, or agency.

§ 202.15 Railway labor organizations.

Railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations, shall be employers within the meaning of the act.

(a) An organization doing business on or after June 21, 1934, which establishes, in accordance with paragraph (a)(1), (2), or (3) of this section a right, under section 3 ''First'' (a) of the Railway Labor Act, as amended (48 Stat. 1189; 45 U.S.C. 153 ''First'' (a)), to participate in the selection of labor members of the National Railroad Adjustment Board, will be presumed, in the absence of clear and convincing evidence to the contrary, to be, from and after the date on which such right is thus established, a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Such an organization can establish that it is an employer by establishing, in accordance with paragraph (b) of this section, that, as a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, it is a ''railway'' organization. An organization, doing business on or after June 21, 1934, which has not established such a right of participation, will be presumed not to be a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, and such presumption can be rebutted only by clear and convincing evidence satisfactory to the Board showing that the reasons for the organization's failure to establish such a right have no relation to its being a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Only after such presumption has thus been rebutted will further evidence as to whether the organization is an employer be considered. (The establishment or nonestablishment of such a right of participation will not raise any presumption as to whether an organization is, or is not, a ''railway'' organization. The existence of this qualification shall be determined in accordance with paragraph (b) of this section.) An

organization will have established such a right of participation if:

(1) It has in fact participated in the selection of labor members of the National Railroad Adjustment Board and has continued to participate in such selection; or

(2) It has been found, under section 3 ''First'' (f) of the Railway Labor Act, as amended (48 Stat. 1190; 45 U.S.C. 153 ''First'' (f)), to be qualified to participate in the selection of labor members of the National Railroad Adjustment Board; or

(3) It is recognized by all organizations, qualified under paragraphs (a)(1) or (2) of this section, as having the right to participate in the selection of labor members of the National Railroad Adjustment Board.

(b) The question as to whether a labor organization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended, is, as such a national labor organization, a ''railway'' labor organization, will be determined by the Board on the basis of considerations such as the following:

(1) The extent to which it is, and has been recognized as, representative of crafts or classes of employees in the railroad industry.

(2) The extent to which its purposes and business are and have been to promote the interests of employees in the railroad industry.

(c) A labor organization which ceased doing business before June 21, 1934, will have been an employer if its characteristics were substantially the same as those of labor organizations, doing business on or after June 21, 1934, which are established as employers in accordance with paragraphs (a) and (b) of this section.

(d) An organization which establishes, to the satisfaction of the Board, that it is a labor organization, as defined in paragraph (e) of this section, and that is composed of labor organizations which are established as employers in accordance with paragraphs (a), (b), and (c) of this section, is thereby established as being an employer.

(e) For the purposes of the regulations in this chapter, a labor organization is an organization whose business is to promote the interests of employees in their capacity as employees, either directly or through their organizations.

PART 203—EMPLOYEES UNDER THE ACT

Sec.

203.1 Statutory provisions.
203.2 General definition of employee.
203.3 When an individual is performing service for an employer.
203.4 When service is compensated.
203.5 Service outside the United States.
203.6 Age, citizenship, and other factors.
203.7 Local lodge employee.

AUTHORITY: Secs. 1, 10, 50 Stat. 307, as amended, 314 as amended; 45 U.S.C. 228a, 228j, unless otherwise noted.

SOURCE: 12 FR 1133, Feb. 19, 1947, unless otherwise noted.

§ 203.1 Statutory provisions.

The term ''employee'' means (1) any individual in the service of one or more employers for compensation, (2) any individual who is in the employment relation to one or more employers, and (3) an employee representative. The term ''employee'' shall include an employee of a local lodge or division defined as an employer in sub-section (a) only if he was in the service of or in the employment relation to a carrier on or after the enactment date. The term ''employee representative'' means any officer or official representative of a railway labor organization other than a labor organization included in the term ''employer'' as defined in section 1(a) who before or after the enactment date was in the service of an employer as defined in section 1(a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal