B.C.D. 02-42

JUN 14 2002

EMPLOYER STATUS DETERMINATION
Columbiana County Port Authority

This is the determination of the Railroad Retirement Board regarding the status of Columbiana County Port Authority (CCPA) as an employer 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).

CCPA acquired a line of railroad, which extends from Darlington, Pennsylvania to Youngstown, Ohio from Railroad Ventures, Inc.[1], in January 2001. That acquisition was authorized by the Surface Transportation Board in Surface Transportation Board Docket No. AB-556 (Sub-No.2X)[2]. All rail services over the line are performed by the Central Columbiana & Pennsylvania Railway, Inc., a covered employer under the Acts effective March 1, 2001 (B.A. No. 2275). CCPA is a quasi-public agency established by the Board of County Commissioners of Columbiana County, Ohio. CCPA acquired the rail line to enhance the business environment in Columbiana County by assuring continued access to rail service by businesses located along the line or in close proximity thereto.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any

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[1] Railroad Ventures, which was held initially and on reconsideration to be an employer under the Acts effective November 6, 1996 (B.A. Number 9354; B.C.D. Nos. 98-48 and 00-47), was formed to acquire the assets of the Youngstown & Southern Railroad Company, which assets were then operated by the Ohio & Pennsylvania Railroad Company, a rail carrier employer under the Acts (B.A. No. 2264).

2 See decision dated October 3, 2000, which ordered Railroad Ventures to transfer the rail line to CCPA within 45 days of the effective date of the decision, November 3, 2000.

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> equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Board notes that in its reconsideration decision which held Railroad Ventures, Inc., to be a covered employer (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in that decision to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

CCPA does not have as a primary business purpose to profit from railroad activities. As described above, it acquired the rail line to enhance the business environment in Columbiana County by assuring continued access to rail service. CCPA does not operate and never has had the capacity to operate the rail line in question. The company which does operate the rail line, the Central Columbiana & Pennsylvania Railway, Inc., is a covered employer under the Acts (B.A. No. 2275). Accordingly, in this case, the Board finds that all three factors exist, and

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concludes therefore that CCPA is not a carrier and is thus not a covered employer under the Acts.

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