

JUL 23 2001

EMPLOYER STATUS DETERMINATION
Western New York & Pennsylvania Railroad, LLC

This is the determination of the Railroad Retirement Board concerning the status of Western New York & Pennsylvania Railroad, LLC (WNYP), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding WNYP was provided by Linda M. Fox, Controller, Livonia Avon & Lakeville Corporation, a covered employer under the Acts (B.A. No. 2115) and owner of WNYP. According to Ms. Fox, WNYP first compensated employees April 2, 2001, and began operations April 23, 2001. William D. Burt is the chief executive officer of WNYP. WNYP reports that it currently has 10 employees.

In Surface Transportation Board Finance Docket No. 34017, WNYP filed a notice of exemption to sublease from Norfolk Southern Railway Company approximately 145 miles of rail line. It interchanges with Norfolk Southern and Canadian Pacific.

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.

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

The evidence of record establishes that WNYP is a carrier operating in interstate commerce. Accordingly, it is determined that WNYP is an employer within the meaning of section 1(a)(1)(i) of the Railroad

Western New York & Pennsylvania Railroad, LLC

Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 2, 2001, the date as of which it first compensated employees. Cf Rev. Rul. 82-100, 1982-1 C.B. 155.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever