

Employer Status Determination
Mahoning Valley Economic Development Corporation

This is the decision of the Railroad Retirement Board regarding the status of Mahoning Valley Economic Development (MVEDC) 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).

Information Concerning MVEDC has been provided by Mr. Donald L. French, Executive Director of MVEDC.

MVEDC was incorporated in 1978 and began operations in 1979. MVEDC is a private, non-profit corporation established pursuant to section 501(c)(3) of the Internal Revenue Code. MVEDC's affiliates are Economic Development Rail Corporation and Economic Development II Rail Corporation. MVEDC's affiliates are quasi-public regional economic development entities. Economic Development Rail Corporation owns the right-of-way of the Youngstown and Austintown (Y & A) Railroad. Economic Development Rail II corporation owns the right-of-way of the Warren/Trumbull County Railroad, formerly known as the CSXT North Warren Lead.

Although, MVEDC's affiliate corporations own the rights-of-way of the aforementioned railroads, neither affiliate owns any railroad equipment nor operates any railroad equipment. These corporations were formed to hold real estate only. They have contracted with shortline haulers to operate and maintain rail service to the railroad customers.

MVEDC has eight employees, none of whom are engaged in service connected with the railroad.

The definition of an employer contained in section 1(a) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) reads in part as follows:

The term "employer" shall include--

(i) any express company, sleeping car company, and carrier by railroad, subject to [the Interstate Commerce Act];

(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 equipment or facility or performs any service (except trucking service, casual -2-

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service, and the casual operation equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

The Board has ruled that in the case of a company which merely has a leasehold interest and contracts with another company to operate rail carrier service over its line, the company which contracts for the performance of the rail carrier service is not a rail carrier under the Acts. See Appeal of the Board of Trustees of Galveston Wharves, Board Order 98-74. MVEDC does not have the ability to operate as a rail carrier and it does not provide any service with respect to any affiliate that has such capability. Based upon the information summarized above, and consistent with the holding in Board Order 89-74, it is the decision of the Board that MVEDC is not an employer under the RRA and RUIA.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever