

**EMPLOYER STATUS DETERMINATION  
WEST CENTRAL OHIO PORT AUTHORITY (WESTCO)**

This is the determination of the Railroad Retirement Board regarding the status of West Central Ohio Port Authority (WESTCO) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). WESTCO has not previously been determined to be an employer under the RRA and the RUIA.

Information about WESTCO was furnished by Robert L. Calhoun, attorney for WESTCO. According to information provided by Mr. Calhoun, WESTCO is a public authority composed of several counties in Ohio and created under the laws of the state of Ohio (See Ohio Rev. Code Ann. §4582.02 et seq.). WESTCO was created on August 16, 1993. The Interstate Commerce Commission (ICC) issued its approval order on January 28, 1994 (Finance Docket No. 32443 and No. 32444). The transaction involved approximately 64 miles of former Conrail line (known as the Bellefontaine Cluster). Mr. Calhoun advises that WESTCO has no employees of its own and owns no equipment. Operations on the line are performed by the Indiana & Central Ohio Railroad Company, pursuant to a trackage rights agreement.

Section 1(a)(1) of the RRA defines the term "employer" to 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 service, and the casual operation of 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, [45 U.S.C. §231(a)(1)(i) and (ii)].

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

In general, (former) Part I of the Interstate Commerce Act applies to common carriers engaged in the transportation of passengers or freight, wholly or in part by railroad, in interstate commerce. A governmental unit can be a common carrier so as to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. See U.S. v. California, 297 U.S. 175 (1936).

As Mr. Calhoun himself points out, under the ICC's order WESTCO is a common carrier subject to the Interstate Commerce Act. As a common carrier WESTCO has a residual duty to operate the freight line which it has hired Indiana & Central Ohio to operate. The Board has previously held that a lessor employer, which has sold all its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under the Acts. See Appeal of the board of Trustees of Galveston Wharves, Board Order 89-74 (Labor Member dissenting).

In this case WESTCO has never had any railroad equipment. It is primarily a government agency established to provide freight services to west central Ohio. It is not now operating a railroad nor does it have the capability to do so. Westco is in all important respects in the same status as was the Board of Trustees of Galveston Wharves. In accordance with the decision in Galveston Wharves, the Board finds that West Central Ohio Port Authority is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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Glen L. Bower

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V. M. Speakman, Jr.

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