

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34182

WLR RAILROAD ACQUISITION COMPANY—ACQUISITION AND OPERATION  
EXEMPTION—RAIL LINES OF THE CUYAHOGA VALLEY RAILWAY COMPANY  
AND RIVER TERMINAL RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 CFR 1150.32(e)]

Decided: March 21, 2002

By petition filed on March 8, 2002, WLR Railroad Acquisition Company (WLR Railroad or petitioner), a noncarrier subsidiary to be formed by WLR Acquisition Corp. (WLR),<sup>1</sup> seeks a partial waiver of the requirements of 49 CFR 1150.32(e)<sup>2</sup> to permit the exemption it is seeking in this proceeding to become effective without providing the full 60-day advance notice to the employees on the affected rail line and to the national offices of the labor unions of those employees. United Transportation Union (UTU) filed a reply in opposition to the petition for partial waiver. The petition will be denied.

WLR states that it has posted the required labor notice at the workplace of RTRC and CVRC employees, has served a copy of that notice on the national offices of the labor unions

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<sup>1</sup> The name of the wholly owned subsidiary of WLR that will be formed to acquire the assets of River Terminal Railway Company (RTRC) and The Cuyahoga Valley Railway Company (CVRC), Class III rail carrier subsidiaries of LTV Steel Company, Inc. (LTV), has not been established. For purposes of the waiver request, petitioner has used the name “WLR Railroad Acquisition Company.” WLR Railroad states that the Board will be notified once the actual name of the acquiring company is determined, which most likely will be at the time of the filing of the notice of exemption related to this transaction.

<sup>2</sup> In its entirety this section reads as follows: “If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.”

representing those employees, and has certified to the Board that it has done so by letter filed March 7, 2002.

Petitioner states that, in order to expedite regulatory approval for its acquisition of the assets of RTRC and CVRC, and to coordinate the acquisition of those assets with WLR's acquisition of non-rail assets from LTV, WLR Railroad seeks a reduction in the applicable notice period so that the notice of exemption, which it states it anticipates filing within 10 days of the filing of its waiver request, becomes effective within 20 days of the date of its labor notice certification (filed March 7, 2002). WLR Railroad argues that the waiver sought here is justified under the circumstances of this proceeding because it will not have an adverse effect on RTRC or CVRC employees and it will promote a smooth transition in the ownership of LTV assets and the resumption of steel mill and related rail operations at the Cleveland Works steel complex that has seen limited activities since December 2001.

WLR Railroad further states that RTRC and CVRC employees will not be adversely affected because those employees almost certainly have been aware for quite some time that the assets of RTRC and CVRC would be sold and the approximately 20-day advance notice that WLR Railroad seeks to provide should be more than sufficient because those employees will not be faced with a choice between staying with their current employers or joining WLR Railroad.

In its reply, UTU requests that the Board deny WLR Railroad's request for partial waiver. UTU states that, contrary to WLR Railroad's assertion, RTRC and CVRC employees have not been aware for quite some time that the assets of RTRC and CVRC would be sold. UTU claims that it only learned of the asset sale in a meeting with RTRC and CVRC on February 27, 2002 (one day after the sale became a matter of public record), about a week before it received the required notice from WLR Railroad.

UTU asserts that there has been no constructive notice to the employees as implied in WLR Railroad's petition. UTU argues that the employees must decide between working on the new railroad, if a position is even offered to them, accepting early retirement in certain circumstances, looking for work on another carrier, or entering a new career. It states that these are difficult decisions that deserve more than 20 days of consideration.

## DISCUSSION AND CONCLUSIONS

In Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997) (Advance Notice), we adopted amendments to our exemption procedures to provide rail employees on certain lines proposed to be transferred to a new owner or operator with 60 days' notice and information about the types and number of jobs expected to be available with the new operator. These amendments evolved from public comment and were formulated after considerable deliberation on our part. As we stated in that proceeding, we realize that it is

important for carriers in these circumstances to hire crews and begin operations as soon as possible. This usually means, however, that employees on the lines that have been sold are forced to make career choices in a very short period of time. Accordingly, we determined that 60 days' notice was warranted for the employees, while not being unduly burdensome on the new owners. See Advance Notice, 2 S.T.B. at 597-98.

This proceeding appears to be exactly the type of situation that we contemplated in promulgating the notice requirement in Advance Notice. Here, employees have career and life altering decisions to make and allowing them the full 60-day period to confront these issues appears both necessary and reasonable. Conversely, petitioner appears to be seeking the waiver based more on convenience than on operational or other necessity. Accordingly, we will deny the waiver request.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. WLR Railroad's petition for partial waiver is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary