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ORIGINAL

Decision No. 54531

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of METROPOLITAN COACH LINES, a corporation, for authority to replace rail passenger service on the Los Angeles-Bellflower Rail Line with motor coach service.	Application No. 37570

Waldo K. Greiner and James H. Lyons, for applicant.

George E. Bodle, Attorney, for Brotherhood of Railroad Trainmen; Henry P. Melnikow, for Don H. Sheets, General Chairman, Brotherhood of Railroad Trainmen; James C. Carson, for Southern Cities Transit, Inc.; John Munholland, for Long Beach Motor Bus Company; and James W. Walker, Jr., in propria persona; protestants.

Thomas V. Tarbet and T. M. Chubb, for Department of Public Utilities and Transportation of the City of Los Angeles; David D. Canning, for Los Angeles Transit Lines; Robert M. Newell, for Atkinson Transportation Company and South Los Angeles Transportation Company, D. Atkins, in propria persona; and Mrs. Faustina N. Johnson, Secretary-Manager, Watts Chamber of Commerce, for Watts Chamber of Commerce; interested parties.

Arthur F. Ager, for the Commission staff.

OPINION

This application, as amended, proposes the discontinuance of the existing rail passenger service on the Los Angeles-Bellflower Rail Line of applicant and the substitution therefor of motor coach service.

Public hearings were held before Commissioner Rex Hardy and Examiner Grant E. Syphers in Los Angeles on March 7, 8, 9, 15, 16 and 22, 1956. Also a public hearing was held in Bellflower on March 9, 1956. On these dates evidence was adduced, and on March 22 the matter was submitted subject to the filing of briefs by the parties. Briefs were filed, and on July 10, 1956, oral argument was

had before the Commission in bank. The matter now is ready for decision.

The present rail passenger service on the Bellflower Line is conducted by means of eleven 80-passenger electric rail cars, eight cars being used in regular service and three being held as spares. These cars are between 25 and 45 years old. All are in safe operating condition, although their appearance has deteriorated.

The track over which the Bellflower operations are conducted consists of a four-track private right of way between Los Angeles and Watts, a two-track private right of way from Watts Junction to Socorro, a distance of 0.66 miles, and a single-track private right of way from Socorro to Bellflower, a distance of 7.17 miles.

At the present time four rail passenger lines operate over the four-track right of way to Watts, namely, the Long Beach, the San Pedro, the Watts and the Bellflower Lines. This application proposes discontinuance of only the Bellflower Line. The other three remain in operation.[1]

The Pacific Electric Railway Company maintains all the rail lines and bills applicant for its share on a ton-mile basis. The electric power costs are prorated between the two companies according to use. Pacific Electric conducts freight operations over the rail lines, but it is now dieselizing these operations. At the time of the hearing there were only three electric locomotives in use in the freight operations, and it was estimated that after June, 1956, the freight operations would be completely dieselized.[2]

1/ By Application No. 38628, filed November 30, 1956, Metropolitan Coach Lines seeks authority to discontinue the rail service on the San Pedro Line and substitute buses therefor. This application is pending.
2/ Current information from Pacific Electric is to the effect that as to all joint operations with Metropolitan, complete dieselization has been completed as of about December 1, 1956.

The evidence shows that the present track on the Bellflower Line can be maintained for safe operations of passenger trains for the next five years with normal maintenance. The overhead distribution system for the electric power can be maintained for the next five years at a total estimated cost of $11,700.

To replace this rail service applicant proposes two new bus routes. One of these routes will be designated as the regular route and will operate between Los Angeles and Bellflower via Alameda Street, while the second, or express route, will operate via Santa Ana Freeway and Paramount Boulevard, among other streets. The motor coach equipment proposed to be used would be similar to the latest equipment purchased by applicant. It is estimated that a total of fifteen coaches, costing approximately $360,000, would be required for the operation.

In support of the proposed substitution applicant contended that the present rail cars are old and obsolete, and that it will be difficult and expensive to continue them in operation. Considerable overhauling would be necessary and a high standard of maintenance would have to be achieved. In substantiating these contentions, the applicant estimated that the proposed motor coach operations would result in an annual financial betterment of $46,010.

It was the opinion of witnesses of applicant that the proposed motor coach operations would result in additional patronage because of greater flexibility in operations, and because the proposed motor coach routes would reach a greater number of riders than now available to the present inflexible rail routes. To offset this, the testimony discloses that the running times of the proposed new service will be longer than those of the present rail operations.

Many public witnesses testified in connection with the proposed change, some in favor of the application, and some in opposition thereto. Those in favor stated that there would be an

advantage to the substitution, with some emphasizing the extension to Ashworth Street in Bellflower, since that would avoid the transferring to and the waiting for connecting buses. Those opposed testified that the buses would be slower than the rail coaches, would add to highway congestion, and would provide a less comfortable form of transportation, notwithstanding the obsolescence of the rail cars. It was also pointed out that Alameda Street is heavily congested and that it would be difficult for buses to operate thereon.

On March 7, 1956, the Board of Public Utilities and Transportation of the City of Los Angeles passed a resolution approving the proposed substitution, and this resolution was received in evidence as Exhibit No. 7.

Likewise the California Department of Public Works, Division of Highways, in a written statement dated January 31, 1956, which was incorporated in this record, indicated it would not interpose any objections to the proposed substitution.

Opposition to the motor coach extension between Center and Ashworth Streets along Bellflower Boulevard was voiced by the Long Beach Motor Bus Company, which presently conducts local operations along that street, and which pointed out that the proposed extension would be directly competitive with the existing service.

The only opposition to the application as such was voiced by Southern Cities Transit, Inc., and by Mr. James W. Walker in his individual capacity, as a member of the general public, as a student of public transportation, and as a rider on public transportation.

As to Long Beach Motor Bus Company, there is no doubt that the extension proposed by applicant to operate motor coaches along Bellflower Boulevard between Center and Ashworth Streets invades the territory presently locally and satisfactorily served by that

protestant. With proper restrictions against the carrying of local traffic along Bellflower Boulevard it does not appear that the local traffic being handled by Long Beach Motor Bus Company would be affected, while the through passengers to and from Bellflower and Los Angeles, boarding and debarking along Bellflower Boulevard would be greatly convenienced. We find that the opposition of Southern Cities Transit, Inc., is not well-founded inasmuch as this protestant was unable to show any adverse effect upon its operations should the proposed substitution of service be authorized.

The opposition of Mr. Walker was based on his personal preference for electric rail service as being faster and more comfortable than motor coaches. He also contended that the fuel fumes generated by motor coaches were disagreeable and added to the well-known "smog" conditions occasionally present in the Los Angeles Basin. We find that the factors on which Mr. Walker's opposition is based do not outweigh the public convenience and necessity involved.

The record discloses that it would be desirable to have additional bus stops along Alameda Street at Florence Avenue, at Firestone Boulevard, and at Tweedy Boulevard.

The record also discloses that motor coach operations along Alameda Street would meet with difficulties such as several railroad grade crossings and crowded traffic conditions, particularly during the peak hours, yet it appears that this street is the most feasible for the proposed operations as of the present time. It may well be that when the Harbor Freeway, now under construction, is completed, a more satisfactory and faster route can be established.

A consideration of all of the evidence presented in this record leads us to the conclusion, and we now find, that the proposed substitution is in the public interest and should be authorized subject to the conditions and restrictions hereinafter set out. Generally

the motor coach service would serve a greater number of people and would provide a greater frequency of service to the public than is now furnished over the rails. The express service would meet the demands of many of the long-distance riders. Except as to the protection hereinafter given to Long Beach Motor Bus Company as to local traffic along Bellflower Boulevard, the above-mentioned protests are outweighed by the public interest.

A problem raised throughout the hearings, and discussed in the oral argument before the Commission in bank, and in the briefs filed in this matter, concerns the question of separation or terminal benefits for employees who might be affected by the change from rail to motor coach operations. The record shows that fifteen employees who now work as rail operators will be displaced, but that the new bus operations will require more than fifteen drivers, and that the salaries proposed to be paid such drivers are higher than those presently paid to the rail operators. Of the fifteen rail operators concerned, eight can qualify as bus operators. Five of the remaining seven have sufficient seniority to replace other rail operators on other parts of the system. It was the contention of the applicant that none of these fifteen employees would be seriously affected inasmuch as those who could qualify as bus operators would probably do so because of the higher salary, and the remaining seven could be employed in other parts of applicant's operations, and accordingly, no employee would be adversely affected. On the other hand, the Brotherhood of Railroad Trainmen contended that a serious problem was presented and that the employees to be displaced would be vitally affected.

The rail passenger service here sought to be discontinued is a part of the passenger operation transferred by Pacific Electric Railway Company to Metropolitan Coach Lines in 1953, pursuant to the authority granted by this Commission. In the contract whereby Pacific Electric sought to transfer to Metropolitan the passenger operation

then conducted by Pacific Electric, Pacific Electric agreed to indemnify Metropolitan for any liability for employment protection which the latter might incur as a result of requirements imposed by regulatory bodies for the benefit of employees as a condition to the approval of the transfer of the passenger operation in question. Said indemnity agreement inured to the benefit of the employees of Pacific Electric who transferred to Metropolitan. (See paragraph 4 and other provisions of Article III of said contract.) This contract was authorized by the Commission pursuant to Decision No. 48923 in Applications Nos. 34249 and 34402, issued on the 4th day of August, 1953. Said contract was not authorized in the same terms in which it was presented to the Commission by the contracting parties. The Commission attached to its grant of authority specific terms and conditions, one of which was that Pacific Electric and Metropolitan were to make reasonable provision for employment protection as applied to the employees who would be affected by the transfer of the passenger operation in question, and the Commission retained jurisdiction to prescribe such protection in the event Pacific Electric and Metropolitan failed to provide the same. A further condition prescribed by Decision No. 48923 was that Pacific Electric would continue to be responsible jointly with Metropolitan for the continued operation of the rail passenger service which Metropolitan would take over from Pacific Electric. By the transfer of this passenger operation to Metropolitan, Pacific Electric relieved itself of a continuing annual operating deficit of in excess of $2,000,000. Pursuant to the condition contained in Decision No. 48923, Pacific Electric, Metropolitan and certain labor unions representing the employees affected entered into certain labor protective agreements, and these parties jointly requested this Commission to find that said employment protection provided for in said agreements made

reasonable provision and provided reasonable protection for the employees affected by the transfer of said passenger operation from Pacific Electric to Metropolitan.

By Decision No. 49071, issued by this Commission on the 15th day of September, 1953, such finding was made.

Both Decision No. 48923 and Decision No. 49071, long since, have become final and are binding upon the parties affected thereby.

The parties to these labor protective agreements construed such agreements as being applicable to employees who were affected by the abandonment of rail passenger service on the Glendale and Hollywood lines. This is an indication that these labor protective agreements were negotiated with a view to being applicable to employees who might be affected by the abandonment of rail passenger service which this Commission required Pacific Electric and Metropolitan to continue jointly to operate. That joint liability to continue the operation of rail passenger service still exists as to the remaining rail passenger service and exists as to the particular rail passenger service herein sought to be abandoned by substituting therefor motor coach service. That Pacific Electric has not been relieved of this joint responsibility is clearly demonstrated by Decision No. 51980, issued by this Commission in Application No. 37107 under date of September 19, 1955. That decision restated the continuing responsibility of Pacific Electric. Pacific Electric sought review of this decision before the Supreme Court of this State in the case of <u>Pacific Electric Railway Company</u> v. <u>Public Utilities Commission</u>, S. F. No. 19427, but that Court denied review on March 14, 1956.

The abandonment of rail passenger service here sought is a logical, contemplated and proximate result of the transfer of this passenger operation by Pacific Electric to Metropolitan and was specifically in the contemplation of Pacific Electric and the applicant, herein, as expressed in Article II of the contract whereby said

passenger operation was transferred from Pacific Electric to applicant.

The record herein does not disclose with certainty how many, if any, of applicant's employees will be or may be adversely affected, within the meaning and purview of the public interest, as a result of the authority which we will grant to applicant. However, we do find that it is a reasonable probability that some of the employees of applicant will be adversely affected, within the meaning and purview of the public interest, by the authority herein granted. Therefore, we will condition such authority by requiring applicant to provide any of such employees so adversely affected with the same employment protection and benefits as are provided in those certain labor protective agreements entered into by Pacific Electric Railway Company, the applicant, herein, and certain labor unions under date of September 10, 1953. Under date of September 15, 1953, by Decision No. 49071, this Commission found that such labor protective agreements made reasonable provision and provided reasonable protection for the employees affected by the transfer of the passenger operation referred to herein, from Pacific Electric to Metropolitan.

In placing this obligation upon applicant, we are aware of the indemnity agreement, heretofore referred to, on the part of Pacific Electric to hold and save harmless applicant with regard to employment protection benefits required of applicant by regulatory bodies. As heretofore pointed out, Pacific Electric is still jointly liable and responsible with applicant for the continued operation of the rail passenger service in question. Logically, it would follow that Pacific Electric should share with applicant any burden resulting from the authority herein granted, in light of the fact that Pacific Electric would share the benefits flowing from any such action.

ORDER

A public hearing having been held, the Commission being fully advised in the premises and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That, subject to the conditions hereinafter provided, Metropolitan Coach Lines, a corporation, is authorized to discontinue rail passenger service on the Los Angeles-Bellflower Rail Line.

(2) That a certificate of public convenience and necessity is granted to Metropolitan Coach Lines authorizing it to establish and operate a passenger stage corporation, as that term is defined in Section 226 of the Public Utilities Code, for the transportation of persons between the points and over the routes more particularly set forth in pages 32-A and 32-B of Appendix A attached hereto and made a part hereof. The authority herein granted is an extension and enlargement of, and to be consolidated with, applicant's existing authority and is subject to all the limitations and restrictions set forth in the certificate granted by Decision No. 52821, Application No. 36930.

(3) That Appendix A of Decision No. 52821, Application No.36930, is hereby amended by incorporating therein said pages 32-A and 32-B, referred to in paragraph (2) of this order.

(4) That Metropolitan Coach Lines shall provide any of its employees adversely affected by this decision with the same employment protection and benefits provided in those certain labor protective agreements, dated September 10, 1953, which were entered into by Pacific Electric Railway Company, Metropolitan Coach Lines and certain labor unions.

(5) That in providing service pursuant to the certificate herein granted, there shall be compliance with the following service regulations.

(a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 98. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 98, may result in a cancellation of the operating authority granted by this decision.

(b) Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective tariffs and time schedules satisfactory to the Commission.

(c) Changes in service shall be made only after thirty days' notice to the Commission and to the public, and motor coach service shall be inaugurated concurrently with the abandonment of rail service.

(d) Motor coaches to be used shall be new, modern equipment and shall be equal or superior to the equipment described at the hearings in these proceedings in connection with the company's proposals. Particularly shall such equipment contain forced ventilation and shall be designed in such a manner as to reduce noise, fumes and odors to a practical minimum. Before any motor coach equipment is substituted for rail service the company shall submit detailed specifications to this Commission and shall secure the Commission's approval.

(e) That Metropolitan Coach Lines, a corporation, in accordance with the provisions of Section 694 (g) and 697.1 of the California Vehicle Code, is hereby granted permission, in the conduct of the service herein authorized, to operate motor coaches having a maximum outside width of 102 inches and an over-all length not exceeding 40 feet.

A-37570 GH

(f) That Metropolitan Coach Lines, a corporation, may erect and maintain "Exempt Signs" in accordance with the provisions of Section 576 (d) of the California Vehicle Code and General Order No. 98, at the following spur track crossings:

Crossing Number	Nearest Intersecting Street
BG-484.75-C	Olympic Boulevard
BG-484.79-C	14th Street
BG-484.90-C	Newton Street
BG-484.98-C	16th Street
BG-485.11-C	Washington Boulevard
BG-485.12-C	Washington Boulevard
BG-485.27-C	Washington Boulevard
BG-485.43-C	22d Street
BG-486.46-C	46th Street
BG-486.53-C	48th Street
BG-486.60-C	48th Place
BG-487.1-C	55th Street
BG-487.2-C	57th Street
BG-487.5-C	E. Randolph Street
BG-488.1-C	Saturn Avenue
BG-490.51-C	Tweedy Boulevard
BG-490.58-C	103d Street
6N-9.11-C	Beechwood Avenue
6N-9.54-C	Chester Street

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 11th day of February, 1957.

Peter E. Mitchell
President

Matthew J. Dooley Reserving the right to file a concurring opinion.

E. Lyon Fox
Commissioners

LOS ANGELES-BELLFLOWER LINE - ROUTE NO. 74

REGULAR ROUTE:

From Main Street Station at 6th and Main Streets (Los Angeles), via Main Street, or, as an alternate, from Los Angeles Street Terminal (Los Angeles), via Los Angeles Street, 6th Street, San Pedro Street, 9th Street, Olympic Boulevard, Alameda Street, Fernwood Avenue (Lynwood), Atlantic Avenue, Rosecrans Avenue, Paramount Boulevard, Compton Boulevard, Lakewood Boulevard, Center Street, to Bellflower Boulevard (Bellflower), to Ashworth Street.

Return via reverse of going route to 7th and San Pedro Streets (Los Angeles), thence via 7th Street to the Los Angeles Terminal, or, as an alternate, via 7th Street and Maple Avenue to the Los Angeles Terminal.

Issued by California Public Utilities Commission.

Decision No. 54531, Application No. 37570.

Correction No. 16

LOS ANGELES-BELLFLOWER LINE - ROUTE NO. 74

EXPRESS ROUTE:

From Main Street Station at 6th and Main Streets (Los Angeles), via Main Street, or, as an alternate, from Los Angeles Street Terminal (Los Angeles), via Los Angeles Street, 6th Street, Whittier Boulevard, Boyle Avenue, Garnet Street, Santa Ana Freeway, Paramount Boulevard, Compton Boulevard, Lakewood Boulevard, Center Street, Bellflower Boulevard (Bellflower), to Ashworth Street.

Return via reverse of going route to Santa Ana Freeway and Soto Street (Los Angeles), thence via Soto Street, Whittier Boulevard, 6th Street, Central Avenue, 5th Street and Maple Avenue to Los Angeles Terminal.

RESTRICTIONS:

Regular Route: No passenger stops shall be made along Alameda Street and Olympic Boulevard between the intersection of 103d Street and Alameda Street and the intersection of Olympic Boulevard and Hooper Avenue, except at Vernon, Slauson and Florence Avenues and Firestone and Tweedy Boulevards.

Express Route:

1. No passenger stops shall be made on the Santa Ana Freeway.
2. No local passengers shall be handled between the intersection of Whittier Boulevard and Boyle Avenue and the Los Angeles Terminal, both points inclusive.
3. No passenger stops shall be made between the intersection of Paramount Boulevard and Rosecrans Avenue and the intersection of 6th and Mateo Streets.

Regular and Express Routes: No local passengers shall be handled along Bellflower Boulevard between Center Street and Ashworth Street.

Issued by California Public Utilities Commission.

Decision No. 54531, Application No. 37570.

Correction No. 17

DISSENT

I concur in the foregoing decision insofar as it authorizes the substitution of motor coach service between Los Angeles and Bellflower for the existing rail passenger service. I dissent from that portion of the decision which conditions the authority to substitute with the requirement that Metropolitan Coach Lines provide employment protection and benefits for its employees who will be adversely affected by the decision of the majority. My reasons are as follows:

I suggest that the opinion of the majority too lightly passes over essential facts in the record of this proceeding, and, in my opinion, the order erroneously, and beyond the jurisdiction of the Commission, establishes, as a condition to the authority to discontinue the rail passenger service, that applicant shall provide "any of its employees adversely affected by this decision with the same employment protection and benefits provided in those certain labor protective agreements, dated September 10, 1953, which were entered into by Pacific Electric Railway Company, Metropolitan Coach Lines and certain labor unions".

The predicates for the order which requires

> "That Metropolitan Coach Lines shall provide any of its employees adversely affected by this decision with the same employment protection and benefits provided in those certain labor protective agreements, dated September 10, 1953, which were entered into by Pacific Electric Railway Company, Metropolitan Coach Lines and certain labor unions"

seem to be, all as recited in the opinion, (a)

> "Pacific Electric agreed to indemnify Metropolitan for any liability for employment protection which the latter might incur as a result of requirements imposed by regulatory bodies for the benefit of employees as a condition to the approval of the transfer of the passenger operation in question",

(b) the requirement in Decision No. 48923 that Pacific Electric and Metropolitan were to make reasonable provisions for the protection of employees who would be affected by the transfer, (c) the retention by the Commission of jurisdiction to prescribe such protection if the utilities failed to provide the same, (d) the condition that Pacific Electric should continue to be responsible jointly with Metropolitan for the continued operation of the rail passenger service, and (e) the fact that certain protective agreements were made between the two utilities and the labor unions, which, pursuant to the request of the parties were found, by the Commission, in Decision No. 49071, "to make reasonable protection for the employees" etc. As noted in the decision of the majority, Decision No. 49071, issued on September 15, 1953, has long since become final and binding on the parties.

These predicates, I submit, are insufficient to sustain the order, and the order itself is, in my opinion, completely beyond the jurisdiction of the Commission.

The finality of Decision No. 49071 must, in my opinion, leave the parties as the Commission finds them. I believe it to be the law of this State that this Commission cannot construe nor interpret nor enforce a private contract, and as to what is meant by those labor protective agreements, as to the extent thereof, and as to which party is bound thereby, cannot be determined by this Commission. The respective rights, duties and obligations of such agreements must be determined by a tribunal other than this Commission. Examination of the provisions of Decision No. 49071 demonstrates that while the agreements are found to make reasonable protection for the employees, such protection is not spelled out, and the agreements must, themselves, be searched

in order to determine the extent of the protection as well as which is the party to be charged therewith. This, I contend, is beyond the power of this Commission to do, and it should be remembered that, in the instant proceeding before the Commission, Pacific Electric is not a party.

In Hanlon v Eshleman, 169 Cal. 200, the Supreme Court of this State, in considering the powers of this Commission, said, in part:

> "The commission's power is to be exercised for the protection of the rights of the public interested in the service, and to that end alone. . . . The owner may not transfer such properties unless authorized by the commission. All that the commission is concerned with, therefore, is whether a proposed transfer will be injurious to the rights of the public. If not, the owner may be authorized to make the transfer. With the rights of an intending purchaser the commission has nothing to do. Nor has it power to determine whether a valid contract of sale exists, or whether either party has a legal claim against the other under such contract. These are questions for the courts, and not for the railroad commission, which is merely authorized to prevent an owner of a public utility from disposing of it where such disposition would not safeguard the interests of the public." (Emphasis added.)

In Atchison etc. v Railroad Commission, 173 Cal. 577, the Supreme Court said that "the Railroad Commission is not a body charged with the enforcement of private contracts", citing Hanlon v Eshleman, supra.

In Motor Transit Company v Railroad Commission, 189 Cal. 573, the Supreme Court was considering the power of the Commission to hear and determine complaints against a public utility. The Constitutional and applicable statutory provisions, as well as decisions by the Court, were considered. The Court said, on page 579:

"The measure of the jurisdiction of the commission is to be found in a consideration of the power granted, which must be read and construed with relation to and in conjunction with the context and purpose of the statute in its entirety."

And then, on page 580, said:

"The power and authority so conferred upon the commission under the constitution and the Public Utilities Act is the power to supervise and regulate. The commission, therefore, is limited in its jurisdiction to hear and determine only such complaints as are 'germane to the subject of the regulation and control of public utilities.'" (Citing cases)

Later, the decisiom, in stating that the Commission, in hearing and determining that the petitioner before the Court was violating the provisions of the applicable statute, said:

"This disposes of petitioners' contention that the commission is by its order in effect enforcing a private contract between individuals which, of course, the commission is not empowered to do." (Emphasis added)

In Baldwin v Railroad Commission, 206 Cal. 581, at page 591, the Supreme Court said:

"When the commission has safeguarded, as it has, in its order authorizing the transfer, the rights of consumers of the canal company outside the district and has provided that the consumers within the district shall be served as provided in the Storage District Act, it is clear that the commission has properly performed its functions. With other questions it has no concern." (Emphasis added) Citing Hanlon v Eshleman, supra.

In Sale v Railroad Commission, 15 Cal. (2nd) 612, the Supreme Court quoted from Hanlon v Eshleman, supra, with approval.

The authorities above cited are all the more potent when it is remembered that in the instant proceeding, there were offered and received into evidence copies of two letters, one from Pacific Electric and one from Metropolitan, each to the labor union involved. Exhibit No. 13 is a copy of a letter written on May 18, 1955 which states in substance that Pacific Electric will not

extend the termination date of the agreements beyond October 1, 1955. Exhibit No. 15 is a copy of a letter written on March 6, 1956, which states that the position of Metropolitan is and always has been that employee protection is the responsibility of Pacific Electric. Also, there was offered and received into evidence, as Exhibit No. 23, a copy of an agreement made by Metropolitan with the union, effective December 1, 1955, in which Article 52, Section 1 D recites: ". . . this agreement shall be subject to reopening on or after June 1, 1957, for the sole purpose of discussing items covered by the three agreements dated September 10, 1953." Without attempting any interpretation of the two letters (Exhibits Nos. 13 and 15), or of the agreement (Exhibit No. 23), it must be obvious that a complex situation and a dispute exists which cannot be resolved by this Commission, which is now bound by the provisions of Decision No. 49071, — long since final and conclusive. Whatever may be the respective rights, duties and obligations of the two utilities in their dealings with their employees, through the unions, this Commission is through with the matter. The complexities of the agreement and the dispute must be determined by the Courts, and not by the Commission.

The record in this proceeding shows that while Pacific Electric, Metropolitan, and the unions did, in fact, execute a series of written agreements on September 10, 1953, — the exact interpretation of which is, at best, difficult of accomplishment, and, in my opinion, beyond the jurisdictional capacity of this Commission, — the record also shows, beyond question, that the contracting parties are themselves in dispute as to the termination date applicable to whatever benefits are provided, and are also in dispute as to which utility, if either, is to be charged with

such benefits. Merely to state the problem seems to me to demonstrate conclusively that it is a problem for the courts, and in an area in which this Commission is wholly without jurisdiction.

This brings me to a comment upon the power of this Commission, without regard to the provisions of any previous decisions, to make an order requiring employee protection in the first place. This Commission is the creation of the Constitution of the State, and by Article XII, Section 23, is given

> ". . . power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature . . ."

The right of the Legislature to confer powers upon the Commission is declared to be plenary, and to be unlimited by any provision of the Constitution. These powers, and the resulting jurisdiction of the Commission, have been the subject of many decisions by the high courts of the State and Nation. The Legislature has enacted Sections 701 and 702 of the Public Utilities Code, which undoubtedly give very broad powers to the Commission, but neither of these sections, nor any other section of that Code of which I am informed, gives to the Commission the power either to engage in the "labor relations" of utility management and its employees, or, as clearly expressed by the Supreme Court of this State, in the interpretation or enforcement of private contracts.

In The People v Western Air Lines, 42 Cal. (2nd) 621, the Supreme Court was considering the powers of the Commission, and after referring to the Constitutional grants (and decisions construing them), and the plenary power given to the Legislature to confer "other powers upon the commission", said, on page 634:

> "As to the scope of those powers we look to the legislation enacted in the exercise of that power, principally the Public Utilities

> Code, and to the decisions of this court in construing them. Such additional powers "must be cognate and germane to the regulation of public utilities, and when the power thus conferred relates to the regulation of transportation companies, it must be cognate and germane to the regulation of railroads or other transportation companies that are in fact common carriers."

In Pacific Telephone and Telegraph Company v Public Utilities Commission, 34 Cal.(2nd)822, the Supreme Court had this to say:

> "Again there is great public interest in the relations between labor and management, for wages invariably affect rates, and disputes over them or other matters are bound to affect services. Accordingly there has been considerable state and federal legislation to diminish economic warfare between labor and management. In the absence of statutory authorization, however, it would hardly be contended that the commission has power to formulate the labor policies of utilities, to fix wages or to arbitrate labor disputes." (Emphasis added)

At page 827 of the foregoing cited decision, in referring to the powers of the Commission, the court said:

> "The act does not, however, specifically grant to the Commission power to regulate the contracts by which the utility secures the labor, materials, and services necessary for the conduct of its business, whether such contracts are made with affiliated corporations or others."

The court later in the decision states that almost every contract a utility makes is bound to affect its rates and services, but that

> "the determination of what is reasonable in conducting the business of the utility is the primary responsibility of management. If the Commission is empowered to prescribe the terms of contracts and the practices of utilities and thus substitute its judgment as to what is reasonable for that of the management, it is empowered to undertake the management of all utilities subject to its jurisdiction. It has been repeatedly held, however, that the Commission does not have such power." (Emphasis added)

The foregoing language of the highest court of this State justifies my resistence to the attempted extension of power

by this Commission by implication or speculation. I see but little, if any, difference between this Commission fixing terminal benefits for utility employees and the fixing of wages when negotiations between management and labor break down, and a strike is threatened or exists. Certainly, if the Commission has such power, there will be frequent, if not constant, attempts by managment, by labor, by municipal authorities, by Chambers of Commerce and other organizations, and by the general public, seeking the interposition of this Commission to settle a strike by the fixing of wages to the employees of a utility. This Commission, itself, has recognized that any such attempt by this Commission would be beyond its powers, when such an effort was made in 1953, during the existence of a strike by the employees of the Key System Transit Lines. Applications Nos. 5492 and 5493 were filed by the Cities of Oakland and Berkeley, respectively, each of which sought the order of this Commission requiring Key to resume service. After public hearing, the Commission issued Decision No. 49132 (52 Cal. P.U.C. 779), on September 28, 1953, in which it said, in part:

> "In approaching the subject of power and authority exercised by government, we must ever keep in mind that we live under a government of laws and not of men and that due process of law must be observed. Also, it must be kept in mind that, even where jurisdiction and power exist, such jurisdiction and power must not be exercised arbitrarily or otherwise unlawfully. Likewise, we must remind ourselves that there are areas of human conduct which government has not seen fit to enter or to regulate, believing that it is better to leave such conduct to self-regulation than for government to enter such fields. In such areas of human conduct, government has established a policy of nonregulation. Furthermore, we desire to point out that <u>regulation is not inherent but must be based upon some constitutional, statutory, or established common law provision or principle. This Commission is a creature of the law and must stay within the law of its creation whenever action is taken by it. . . A desirable end can never be justified if it must be reached by unlawful means</u>.

Therefore, we are not permitted by law to achieve a lawful object by unlawful means. The desire, however justified, to solve a human problem can never substitute for lawful authority to accomplish such solution." (Emphasis added)

In my own conception of the philosophy of "regulation", I could not phrase it better than is done in the decision of the Commission last hereinabove referred to. It is regrettable that the opinion of the majority has overlooked so clear an expression.

At a later place in Decision No. 49132, in commenting upon a suggestion that had been made that the Commission order Key to "submit to arbitration or meet the demands made upon it by its employees", said that such order, in its opinion, would be unlawful, as "The law, as it now stands, confers no such authority upon this Commission." Then, the decision states:

> "Very recently, the Supreme Court of this State passed upon the implied powers of this Commission and, in our opinion, the holding of that Court on such subject rejects any thought that we possess powers sufficient to order this utility to submit to arbitration or to meet the demands made upon it by its employees." (Emphasis added)

And, the decision of the Supreme Court there referred to was Pacific Telephone and Telegraph Company v Public Utility Commission, supra.

Again, at a later place in the decision, the Commission made a most potent observation. At page 786 of the reported decision, appears this language:

> "A further proposition put forward by counsel for complainants was, in effect, that the expense which would be incurred from the payment by the utility of increased wages is guaranteed or in some way insured by this Commission. The exact contrary is true. We desire to make it clear to this utility and its employees that it would be unlawful for this Commission to undertake to assure either or both in advance that any rate increase will be granted to said utility or that the Commission will underwrite any wage increase which may be granted by the defendant utility to its employees. Reduced to its lowest terms, the proposition is that the employees of a public utility demand a wage increase; the utility resists; the employees strike and this Commission is obligated to put up the

> money, so to speak, in the form of a rate increase, which must be borne by the public, in order that the demands of the employees be met by the utility and the strike terminated. This Commission will not become a party to such a squeeze-play procedure."

I take it that it is hardly necessary to add any emphasis to the above-quoted language.

It cannot fail to be noticed that, in the instant proceeding, the unions have protested against the granting of the sought authority to substitute motor coaches for the existing rail passenger service, in effect, an abandonment of the rail service, unless the Commission conditions its authority so to do upon the establishment of the same kind of separation or terminal or dismissal benefits as were provided for by Decision No. 48923, supra. Can it be fairly said that such benefits are not a kind of wage? Can it be fairly said that the demand of the unions, if agreed to by the Commission, would not be the predicate of an application by the utility for a rate increase in order to meet the increased costs of operation? And more important, must it not be recognized that the demand of the union is, in essence, a demand that this Commission "formulate the labor policies of utilities, to fix wages or to arbitrate disputes"? Such was held by the Supreme Court, in Pacific Telephone and Telegraph Company v Public Utility Commission, supra, to be beyond the power of this Commission.

A concurrent element in the matter should be noted. During the course of the hearings in this proceeding, and after counsel for the union had made a strong plea for the establishment of the benefits in question, the following colloquies occurred:

"Mr. Bodle: We will be happy to file a brief statement, if it is necessary. Personally, I don't think it is necessary. I told Mr. Greiner when I was downstairs after the hearing that we wanted it applied to the employees who might be affected by this abandonment, the same terms and conditions as are contained in the protective agreement as executed by the Pacific Electric and the Brotherhood on September 10, 1953. (Page 510 Rep. Tr.)

"Commissioner Hardy: How can we do that unless the Pacific Electric is before us here in this case?

"Mr. Bodle: We want the M.C.& L., the Metropolitan Coach Lines, to be forced by this Commission to extend the same benefits as the Pacific Electric provided under that agreement to these employees who may be affected by this abandonment.

"We are not asking that the Pacific Electric be brought into this, or that the Pacific Electric be made responsible for it.

"We are asking the organization which is going to abandon the lines be made responsible for carrying out the terms of those protective conditions and terms. (Page 511, Rep.Tr.)

"Commissioner Hardy: Tell me this. As a labor lawyer, suppose the Commission should fix a dismissal benefit of one dollar. The unions had wanted two dollars, so the unions say they are not going to take it and then on the failure of the utility to bargain over and beyond the decision of the Commission the union calls a strike.

"Would the Labor Relations Board support the union in that position?

"Mr. Bodle: It wouldn't support it. It probably wouldn't seek an injunction to prohibit the strike, if the strike in itself weren't an unfair labor practice.

"Commissioner Hardy: Here the utility is willing to perform under the illustration I have given you, to the order of the Commission. It is willing to pay the dollar, but it is not willing to pay the two dollars. It says that is what the Commission ordered and that is what we should pay. The union says if you don't pay the two dollars, we are going to strike.

"I wonder where we are going.

"Mr. Bodle: I think the union could probably call the strike. I assume, unless there was some other factor that prohibited them from doing so, but actually this is always true it seems to me with respect to any group over which the Public Utilities Commission doesn't have jurisdiction. (Pages 552 and 553, Rep.Tr.)"

I contend that the situation before the Commission demonstrates the existence of a labor dispute. The record shows specifically that both Pacific Electric and Metropolitan have refused to deal with the unions in relation to the protection of employees who may be affected by the substitution of motor coaches

for rail passenger operations. It appears to me that in this matter of labor relations affecting commerce the federal government has preempted the exclusive jurisdiction. Such seems to be the holdings in cases of Amalgamated Assn. vs. Wisconsin etc. 340 U.S. 383, and Weber vs. Anheuser Busch, 348 U.S. 468. The National Labor Relations Board has ruled, as of October 26, 1954, in Greenwich Gas Company and Fuels, Inc., 110 N.L.R.B. 564, 565:

> "We have determined that in future cases the Board will assert jurisdiction over local public utility and transit systems affecting commerce whose gross value of business is $3,000,000 or more per annum."

The Commission knows by its own records, and the reports filed with it, that the gross annual business of Metropolitan is more than $3,000,000 per annum.

I have grave misgivings as to the wisdom of the action taken by the majority of the Commission in the absence of express agreement between Metropolitan and its employees. This appears to me to be an unjustifiable extension of the Commission's authority, in the absence of statutory mandate or judicial admonition, and is not, in my opinion, in the public interest. Organized workers have been provided by the laws of the State and Nation with ample means of protecting their interests in their employment. It is important that this Commission give proper consideration to the interests of the ratepayers, who have no other public authority to which they may look for their protection. Federal and State law have established a clear policy of fostering the solution of labor-management disputes by collective bargaining in the avoidance of industrial strife. The settlement of a labor dispute by mandate of this Commission would be out of harmony with that policy. In addition to what I have said about the legal and philosophical elements involved, there are very definite practical

problems involved, should this Commission enter into the field of labor-management relations as to the utilities regulated and controlled by the Commission. This Commission is not staffed with such experts in this highly specialized field of labor-management relations as would justify us in attempting to determine what provisions should be made in labor contracts. Here the record shows that both Pacific Electric and Metropolitan deny any responsibility for separation benefits to the employees of Metropolitan, and I do not see how, in such a void, we can attempt to determine the amount or extent of such benefits. The mere fact that a contract of supposedly like import was entered into at an earlier date does not of itself create any precedent for current action.

Finally, it seems to be apparent that the majority of the Commission, or some of them, are concerned with the necessity of following a former decision of the Commission, where, so far as I am informed, the Commission for the first time established benefits for the employees of a public utility who were to be displaced by the abandonment of a public utility operation. This was Decision No. 48686, issued on June 9, 1953, in Application No. 33942, wherein Richmond & San Rafael Ferry & Transportation Co. was authorized (in substance), to abandon its ferry operations when a bridge to be built by the State of California, generally paralleling the ferry route, was in operation. In that decision, the authority was conditioned upon the requirement "that Richmond & San Rafael Ferry & Transportation Co. pay its employees dismissal benefits in the manner and amount set forth in Appendix A attached hereto and made a part hereof." (52 Cal. P.U.C. 585).

This decision had been predicated upon an "Interlocutory Opinion and Order" of the Commission, Decision No. 48315, in the same application matter, reported in 52 Cal. P.U.C. 420. In the

latter-mentioned decision, the Commission said that under the authority of Hanlon v. Eshleman, supra, and of Henderson v Oroville-Wyandotte Irr. Dist., 213 Cal. 514,

> "In transfer or abandonment proceedings the function of the Commission is to protect and safeguard the interests of the public."

And then, under the authority of three federal decisions, said that

> " . . . the dismissal of employees in situations involving the consolidation, merger or abandonment of public utility operations is a vital part of the public interest."

It is my contention that each of the three federal decisions was predicated either on specific statutory provisions, or in furtherance of a socialogical policy that had been established by the Supreme Court of the United States. In any event, those decisions are not, necessarily, binding upon the Courts of this State, nor upon this Commission which is concerned solely with intrastate public utility operations. In Southern Pacific Company v Public Utilities Commission, 41 Cal. (2nd) 354, the Court said:

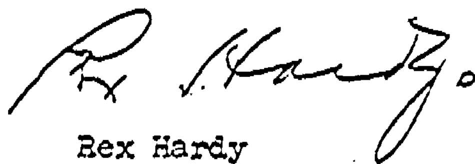
> "The company refers to and relies upon decisions of the United States Supreme Court holding that attempts by state commissions to compel railroads at substantial expense to stop interstate trains at local stations were invalid as an unconstitutional burden on interstate commerce, and referring to Southern Pac. Co. v Arizona, 325 U.S. 761, holding invalid a requirement of the Arizona statute limiting the length of railroad trains engaged in interstate commerce. The cases so relied upon are not controlling for the reason that the railroad business here involved is entirely intrastate and there is no contention that the intrastate operations of the company as a whole are unprofitable." (Citing cases) (Emphasis added)

And, as to whether a decision of the Commission in the instant proceeding which did not follow either Decision No. 48686, supra, or Decision No. 48923, supra, would violate the doctrine or policy of stare decisis, here is what the Supreme Court of this State said, on that subject:

> "Orders of the commission being conclusive between the same parties only for the purpose for which they are made and not being binding upon the same parties in subsequent proceedings, certainly, such orders cannot be said to be binding upon different parties, and orders of the commission, not attaining the status of res adjudicata, obviously, cannot be held to rise to the dignity of stare decisis." (Emphasis added) Motor Transit Company v Railroad Commission, supra.

In the instant proceeding, Pacific Electric is not a party, nor can it be said, with any certainty, are the employees the same who were provided for in Decision No. 48923, supra.

This dissent goes only to the conditioning of the authority sought by the applicant, and not to the authority granted of itself. In my opinion, the record justifies the granting of the authority, but the law and reason prohibit the establishment of the condition.



Rex Hardy

Commissioner

A 37570

I concur in the opinion of the majority. In view of Commissioner Hardy's cogent dissent, however, I wish to make my position clear.

I am in substantial agreement with the conclusions set forth in the dissenting opinion. I think Commissioner Hardy has adopted and expounded the most reasonable interpretation of the law; even though the majority opinion could be supported by as many, and perhaps as persuasive, citations. When the law is clearly defined by the Legislature or the courts, it may well be found that the Commission is lacking in any authority to deal with labor disputes in general, but has a responsibility to help resolve such disputes as may arise out of the Commission's own orders. The present case would fall in the latter category, inasmuch as there would be no dispute but for the fact that the Commission's order authorizes abandonment of the rail service.

Even in such cases, however, I would, in the absence of a clear mandate in the law, be extremely reluctant to join in a decision by which the Commission ordered the payment of severance or dismissal benefits in an amount determined by itself in the absence of a prior agreement of the parties.

As Commissioner Hardy so well points out, the field of labor relations has, by well-established state and national policy, been reserved for the processes of collective bargaining; and it would not be consistent with the long-run interests of the organized workers, any more than with those of management, to have a regulatory commission assume jurisdiction in this field.

Further than that, our assuming jurisdiction would create a serious conflict in the Commission's responsibilities. Our primary duty is to safeguard the interests of all the people as customers of the public utilities. As customers, the people's interests are best served when the utilities provide optimum service at the lowest rates which will permit such service to be continuously maintained. Those members of the public who are also employees of the utilities have a greater interest in

increasing their own incomes; through higher wages and such benefits as are here involved. To the extent that improved income for utility employees results in higher costs and necessitates higher utility rates, there is a conflict between the interests of the customers and those of the employees.

To recognize this truth is not to imply that the public interest is more concerned with the maintenance of low utility rates than it is with fair wages and the rights of labor. It does raise the question, however, as to whether this Commission, definitely charged with responsibility in the one area, should assume responsibility in the other. The consumers have no other public authority to which to look. The organized workers have ample other protection under the law.

While I can find no justification, in law or logic, for this Commission's injecting itself into the field of labor-management relations and dictating any of the terms of employment contracts, I have no difficulty, when labor and management have arrived at a reasonable agreement through proper processes of collective bargaining, in subscribing to a Commission order which requires and enables a utility to meet its obligations under the terms of such agreement. This, in my opinion, is essentially the situation with which we are here confronted.

I need not review the facts as outlined in the majority Opinion. The legal rights and obligations of the various parties under the agreements therein discussed may not be clear. But one fact is perfectly clear. The severance benefits herein sought by the Brotherhood were arrived at by negotiation between all the parties, including Metropolitan. They were mutually agreed to as fair and reasonable, and presented to this Commission. The Commission found them reasonable and approved them. This is not a case, therefore, in which the Commission is asked to fix the amount of the benefits to be paid. It is asked only to order the payment of amounts arrived at by collective bargaining and already found reasonable by the Commission.

There would be no issue here, but for the fact that Metropolitan, in agreeing to the reasonableness of the benefits provided, expected Pacific Electric to

pay them; as perhaps the proper tribunal will decide that Pacific Electric must, under the indemnity agreement. The circumstances here involved are most unusual; and the Commission may never again be called upon to require a utility to pay benefits that it has agreed are reasonable and should be paid, but seeks to avoid on the ground that somebody else should pay them.

I have indicated above that it is my personal conviction that the Commission should enforce such reasonable agreements as are reached by labor and management, but should never itself dictate any of the terms of labor contracts. My concurrence in the majority decision involves some departure from that position; not in the amount of the benefit, but in the party to be bound. My justification for such departure lies in my conclusion that the equities of the present case require it.

It has nowhere in this record been denied that the displaced workers are entitled to the agreed benefits which they seek. It has nowhere been indicated that they have any of the responsibility for any confusion there may be as to the party they must look to for the satisfaction of their rights. Metropolitan is their employer, and the only chargeable party now before us. If we fail to attach the condition provided in the Order of the majority, the employees will have no means of securing the benefits to which they are clearly and admittedly entitled, save through expensive and time-consuming litigation. I feel that it would, under the circumstances herein disclosed, be most inequitable to place them in that position. For that reason, and despite the cogency of Commissioner Hardy's dissent, I concur in the majority decision.

Commissioner