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ORIGINAL

Decision No. 54755

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

OPINION AND ORDER CLARIFYING DECISION NO. 54531 AND DENYING REHEARING

Metropolitan Coach Lines, applicant herein, has filed a petition for rehearing respecting Decision No. 54531, rendered herein, whereby it requests that Pacific Electric Railway Company be made a party to the instant proceeding for the purpose of determining the respective liability of petitioner and Pacific Electric for employment protection of employees of petitioner who may be adversely affected by the abandonment of the passenger rail service, herein concerned. Also, petitioner requested the clarification of Decision No. 54531, as to the particular labor contract which is applicable to paragraph (4) of the ordering part of said decision. This petition for rehearing was filed February 21, 1957 and asserted no contention that the Commission was without authority or jurisdiction to render Decision No. 54531 or that any of petitioner's constitutional rights had been infringed by any of the requirements of said decision.

Belatedly, petitioner filed (the stamped filing date of the Docket Clerk of the Commission reflects March 8, 1957 as the date of filing with the Commission) what it described as a supplement and amendment to its petition for rehearing and therein asserted that the Commission had no jurisdiction or authority to render Decision No. 54531 and that the rendition of said decision infringed certain of

petitioner's constitutional rights. Specifically, petitioner alleges that said decision violates Article I, Section 9, of the Constitution of the United States and, also, violates Article I, Section 16, of the Constitution of California. Apparently, the reference by petitioner to Section 9 of Article I of the Federal Constitution is in error and intended to refer to Section 10 of that Article, which, among other things, prohibits a State from passing a bill of attainder, ex post facto law or law impairing the obligation of contract. The objection to the assailed decision, based upon the State Constitution, is bottomed upon the foregoing enumerated grounds of Section 10 of Article I of the Federal Constitution which are, also, contained in Section 16 of Article I of the State Constitution.

Notwithstanding the date of filing of the supplement and amendment to the petition for rehearing, we shall treat the same as timely filed so that petitioner's constitutional and jurisdictional contentions may be preserved for the purpose of any judicial review which it may seek respecting the action of the Commission, herein.

We shall address ourselves first to petitioner's jurisdictional and constitutional objections.

Preliminarily, we point out that Sections 22 and 23 of Article XII of the State Constitution grant to the Legislature plenary authority to confer upon this Commission jurisdiction and power unlimited by any provision of said Constitution. Therefore, in rendering the decision, herein, if the Commission has kept within the authority conferred upon it by the Public Utilities Act, the objections on State Constitutional grounds are without merit. (Pacific Telephone & Telegraph Co. v. Eshleman, 166 Cal. 640, 650, 655-656, 658, 689; Sexton v. A.T. & S.F. Ry. Co., 173 Cal. 760, 762; San Jose v. Railroad Commission, 175 Cal. 284, 288; Clemmons v. Railroad

Commission, 173 Cal. 254, 256-257; Miller v. Railroad Commission, 9 Cal. (2d) 190, 195; Southern Pacific Co. v. Public Utilities Commission, 41 Cal. (2d) 354, 359-361.)

In order to accomplish the program which petitioner has requested the Commission to authorize, that is, abandonment of certain rail passenger service and substitution therefor of motor coach service and which, by the herein assailed decision, the Commission did authorize, petitioner must secure from the Commission a certificate of public convenience and necessity to operate as a passenger stage corporation. This is an integral and necessary part of the program. Said decision did grant such a certificate to petitioner but conditioned the authority to abandon and substitute upon the requirement that petitioner provide reasonable employment protection to any of its employees who are adversely affected by the grant of such authority. The Commission found that the public interest required that such condition be imposed upon its grant of authority to petitioner.

Section 491 of the Public Utilities Code prohibits a public utility from abandoning service without proper authority. Section 851 of that Code is to the same effect but specially prohibits a transfer or other disposition of operative public utility property without first securing the authority of the Commission so to do. By filing its application and requesting proper authority, petitioner recognized these requirements of the regulatory law of this State. Furthermore, Section 701 of the Public Utilities Code provides as follows:

> "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Surely, the authority contained in Section 701 is of the broadest scope. Specifically, Section 1032 of the Public Utilities Code provides, as regards the issuance of the certificate of public convenience and necessity, which decision No. 54531 granted to petitioner, as follows:

> "Every applicant for a certificate shall file in the office of the commission an application therefor in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

The same provisions as to attaching terms and conditions to grants of certificates of public convenience and necessity are found in Section 1005 of the Public Utilities Code as regards, among others, interurban and street railroad corporations.

Plainly, the foregoing comprehensive statutory authority empowered the Commission to do exactly what it did. (Interstate Commerce Commission v. Railway Labor Executives Assn. (1942), 315 U.S. 373, 86 L. ed. 904.)

In the case just cited, the Supreme Court of the United States held, in practically identical circumstances, that the Interstate Commerce Commission had authority to impose employment protection conditions upon its grant of authority to Pacific Electric Railway Company to abandon certain rail passenger service and substitute therefor motor coach. The applicable provisions of the Interstate Commerce Act are substantially identical to the provisions of Section 1032 and 1005 of the Public Utilities Code, as relates to

the attaching of terms and conditions to the grant of certificates of public convenience and necessity. The reason why the Interstate Commerce Commission took jurisdiction in the Pacific Electric case was because there was involved the abandonment of portions of interstate rail lines. Under the Interstate Commerce Act, such fact gives to the Federal authority exclusive jurisdiction over the entire matter, including purely intrastate operations. Here, there is not involved any interstate matter which brings the program involved within the jurisdiction of the Interstate Commerce Commission.

It is standard practice for the Interstate Commerce Commission and the Civil Aeronautics Board to impose employment protection conditions upon grants of authority to consolidate and merge, abandon or transfer public utility property. (U.S. v. Lowden (1939), 308 U.S. 225, 84 L. ed. 208; Railway Labor Executives Assn. v. U.S. (1950), 339 U.S. 142, 94 L. ed. 721; Kent v. Civil Aeronautics Board (1953), 204 Fed. (2d) 263, review denied by Supreme Court 346 U.S. 826, 98 L. ed. 351; Western Air Lines v. Civil Aeronautics Board (1952), 194 Fed. (2d) 211.)

The most extreme exertion of the power here discussed appears in the Kent case, supra. The Civil Aeronautics Board required the parties to agree to reasonable employment protection or refer the matter to arbitration. In that case it was held that the matter of requiring an employer to provide reasonable employment protection is an inseparable part of the public interest and does not constitute a labor controversy as that term is generally understood. The court, in that case, further held that the condition imposed by the Civil Aeronautics Board must control even though it was contrary to a collective bargaining agreement existing between the employees and

the employer air carrier, pointing out that such contracts cannot bind the regulatory body in the exertion of its power to protect the public interest. In that case the Civil Aeronautics Board ordered the carrier not to enter into any collective bargaining agreements contrary to the condition imposed by the Board for employment protection. In the Kent case, the Supreme Court of the United States denied review. The specific statutory authority upon which the Civil Aeronautics Board based its action in the Kent case is less comprehensive than the provisions of the Public Utilities Act.

Absent specific statutory jurisdiction to attach terms and conditions to grants of authority by the State and its agents, it has been held by the Supreme Court of this State and other courts that such authority is implied and may be lawfully exercised. (Henderson v. Oroville etc. District, 213 Cal. 514, 529; Contra Costa County v. American Toll Bridge Co., 10 Cal. (2d) 359, 363; 37 C.J.S. 165, Sec. 20b.)

Additionally, we desire to point out that this Commission has exercised the authority herein assailed on two recent occasions. We cite the Richmond and San Rafael Transportation Company case (52 Cal. P.U.C. 585, Decision No. 48686, Application No. 33942; 52 Cal. P.U.C. 420), and the Pacific Electric-Metropolitan Coach Lines case (52 Cal. P.U.C. 718, Decision No. 48923, Application Nos. 34249 and 34402.)

The foregoing adequately demonstrates that the contentions of petitioner on jurisdictional and constitutional grounds are without merit.

Some contention is made by petitioner that the action taken by the Commission invades Federal jurisdiction by virtue of the provisions of the National Labor Relations Act. The ready answer to that

contention is that the situation presented does not constitute a labor controversy within the meaning of the Federal statute, that the passenger operations involved are purely intrastate and that any effect such operations may have upon interstate or foreign commerce would be purely incidental. (Kent v. Civil Aeronautics Board, supra; A.T. & S.F. Ry. Co. v. Public Utilities Commission, 346 U.S. 346, 355, 98 L. ed. 51, 61; Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U.S. 329, 333, 95 L. ed. 993, 998; Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 186, 95 L. ed. 190, 202.)

The decisions of the Supreme Court of the United States (Weber v. Anheuser-Busch, 348 U.S. 468 and Amalgamated etc. v. Wisconsin Employment Relations Board, 340 U.S. 383) cited by petitioner on the point of Federal jurisdiction over labor controversies are clearly not in point because they involved actual labor controversies. However, as applied to an actual labor controversy involving a strike, where the Supreme Court found that the controversy was subject to the provisions of the National Labor Relations Act, it was held that State authority is not excluded and upheld the invocation of State authority to enjoin certain actions of the striking employees. (United etc. v. Wisconsin Employment Relations Board, 351 U.S. 266, 100 L. ed. 1162.) The cases cited by petitioner are qualified by the holding in this later case.

We have given full consideration to petitioner's request that Pacific Electric Railway Company be made a party to this proceeding. It is our view that such request is not justified in the circumstances of the case.

The particular labor contract which we had in mind, in Decision No. 54531, is the contract which constitutes Exhibit No. 19 in this

proceeding. This contract sets up a formula for determining employment benefits and prescribes what such benefits shall be. The Commission has found such benefits to constitute reasonable employment protection, as pointed out in Decision No. 54531. It was and is the intent of that decision that petitioner provide employment protection, as provided in said contract (Exhibit No. 19), to any of its employees who may be adversely affected by the grant of authority contained in Decision No. 54531. This protection shall apply to all of petitioner's employees adversely affected and not exclusively to those employees of petitioner who transferred from Pacific Electric Railway Company to petitioner.

O R D E R

For the reasons stated in the foregoing opinion,

IT IS ORDERED that the petition for rehearing and the supplement and amendment thereto be, and the same are, hereby denied.

Dated at Los Angeles, California, this 26th day of March, 1957.

President

Commissioners

CONCURRENCE

I concur in the decision of the majority on the ground that all points raised in the petition for rehearing were given careful consideration by the Commission before Decision No. 54531 was handed down. No useful purpose would, therefore, be served by a reopening of the matter. My concurrence on these grounds does not imply acceptance of the interpretation of the law set forth in the majority decision.

Roy E. Watterson

Commissioner

D I S S E N T

Heretofore, I entered my Dissent to that portion of the decision of the Commission issued on February 11, 1957 (Decision No. 54531), which conditions the authority to substitute motor coach operations for the existing electric rail operations with the requirement that Metropolitan Coach Lines provide employment protection and benefits for its employees who were adversely affected by the Commission's decision.

Convinced as I am that Decision No. 54531 was erroneous and beyond the jurisdiction of the Commission as to the point in question, I must dissent from the current decision which denies rehearing.

My reasons are as follows:

1. As stated in my dissent to Decision No. 54531.

2. The federal authorities cited in the current opinion, as authority for what I contend is an unlawful extension of the Commission's power, are, to my mind, not the law of the State of California which must govern this question. Metropolitan Coach Lines is an intrastate operator exclusively within the State of California, and I repeat that, in my opinion, the applicable law in California in such a case is not necessarily controlled by the mandates of federal courts. Such was the holding of the Supreme Court of California in Southern Pacific Company v Public Utilities Commission, 41 Cal. (2nd) 354, cited and quoted from in my dissent to Decision No. 54531. In the major case before the Commission, it is my opinion that no question exists upon which the federal power can operate, except insofar as the provisions of the so-called Taft-Hartley Act can apply to what I believe is a labor dispute between the utility and its employees.

3. The Commission's decision denying rehearing must be deemed to be an interpretation of Exhibit No. 19 filed in the major case, and a legal determination that Metropolitan Coach Lines is bound thereunder to furnish separation benefits to its employees adversely affected by the substitution of service. The basic trouble with any such result is that the record shows indisputably that Exhibit No. 19 is a contract between Pacific Electric Railway Company, on the one hand, and various Union officials, on the other. Metropolitan was not a party to that contract, and I do not see how it can be bound thereby. Additionally, paragraph 5 of that contract contains, to my mind, a mandatory provision for arbitration "in the event that any dispute or controversy arises with respect to the (employee) protection afforded by the foregoing conditions" (of the contract). The law on this point is too well settled to require any citation of authority, and I cannot bring myself to the belief that the Commission has the power to abrogate that contract and disavow the arbitration prerequisites, or to cast upon Metropolitan any of the obligations of that contract, to which it is not a party, upon any such tenuous basis that Pacific Electric has agreed to indemnify Metropolitan for any liability for employee protection occasioned as a result of regulatory impositions. Any such basis must also abrogate the contract made between Metropolitan and its employees (Exhibit No. 23), which may mean that Metropolitan's employees have voluntarily agreed to defer discussion of separation benefits until after June 1, 1957. Notwithstanding the decision in Kent v Civil Aeronautics Board, 204 Fed. (2nd) 263, I do not believe, as to utility regulation and control localized as to California, that the provisions of Section 16 of Article I of the Constitution of California, which reads:

> "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed"

have been nullified.

Without any intention of exacerbating the situation, I would grant the rehearing, bring Pacific Electric into the proceeding, and reconsider the legalities of the whole situation with the necessary acuity. To my mind, this is a matter for legality rather than empathy.

Rex Hardy
Commissioner