

ORIGINAL

Decision No. 77097

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of AIR CALIFORNIA and PACIFIC)
SOUTHWEST AIRLINES for Order)
Authorizing Purchase by PACIFIC)
SOUTHWEST AIRLINES, a passenger)
air carrier, of the properties of)
AIR CALIFORNIA, a passenger air)
carrier and for authorization for)
the transfer by AIR CALIFORNIA to)
PACIFIC SOUTHWEST AIRLINES of)
Certificate of Public Convenience)
and Necessity.)

Application No. 51736
(Filed February 25, 1970)

ORDER REVISING MAILING DATE FOR PROTESTANTS'
TESTIMONY AND EVIDENCE, AND DENYING CONTINUANCE
OF HEARINGS.

This proceeding involves the joint application by Air California (Air Cal) and Pacific Southwest Airlines (PSA) for the transfer of Air Cal's certificate of public convenience and necessity to PSA.

A prehearing conference was held on March 16, 1970 in San Francisco. It was agreed that the applicants would mail their prepared testimony and exhibits on April 1, 1970, and that protestants would do likewise on April 15, 1970. Hearing dates were set for April 23, 24, 27, 28, 29, 30, and May 1, 1970.

By telegram dated April 8, 1970, Transport Workers Union (TWU), a protestant herein, requests that additional time be granted to it for the preparation of its evidence and that the hearing dates be indefinitely postponed because Air Cal failed to include in its mailing of testimony and exhibits four exhibits to the Agreement and Plan of Reorganization; and because PSA has refused

to negotiate with TWU regarding a protection agreement for Air Cal's employees.

On April 9, 1970, Air Cal and PSA filed responses to TWU's request. Both applicants charge TWU with dilatory tactics and they oppose any continuance in the hearing schedule. Air Cal states that the four exhibits are accessible at the office of Commission staff counsel, and that it will mail copies of them to TWU and all other protestants on April 9, 1970. PSA maintains that it is impossible to conduct negotiations on labor matters until after all appropriate regulatory agencies have approved the acquisition because not all the labor unions involved have appeared before the Commission in this proceeding.

The prehearing conference record is clear that Air Cal was obligated to serve all parties at the conference copies of the four exhibits (TR. 14-15). It inadvertently served these exhibits only on the Commission staff. Apparently, there was no deliberate intent to conceal the exhibits from adverse parties. Under these circumstances it is reasonable to extend the mailing date for protestants' evidence. Five days should be sufficient time to review the material involved. Therefore, the mailing date for protestants' evidence is revised from April 15, 1970 to April 20, 1970.

TWU's request for an indefinite continuance of the hearing is not justified merely because PSA has refused to negotiate with TWU regarding an employee protection agreement. No such negotiations were ordered during the prehearing conference. If the Commission determines that the acquisition should be approved and that a plan for employee protection is appropriate, the Commission's final order can so provide. In any event, the delay of the hearing will not further any interest of the public.

TWU cites App. Richmond & San Rafael Ferry & Transportation Company, 52 Cal. P.U.C. 420 (1953), in support of its position. That decision was issued after the ferry company's employees filed a petition for rehearing of the Commission's earlier ex parte decision (Decision No. 48045), which had approved abandonment of the ferry service. The unions involved therein did not oppose the abandonment, and further action on the application was deferred so that the parties could have "the opportunity of negotiating, if they be so advised, for such dismissal benefits as may be appropriate under the circumstances" (52 Cal. P.U.C. 420, 421).

In the present proceeding TWU opposes the proposed acquisition of Air Cal on the ground, inter alia, that a monopoly will result; and TWU also seeks protection for Air Cal's employees in the event that the acquisition is approved (TR. 5, Prehearing Conference). Therefore, a prompt hearing is appropriate to consider the protests. Furthermore, PSA has apparently announced dismissal benefits for Air Cal's employees (see Exhibit A to the prepared testimony of Carl A. Benscoter). Whether these benefits are satisfactory to TWU is not clear. If they are not, and if the Commission determines that it should approve the acquisition, it can deal with the matter of negotiations by including in its decision whatever provisions on this subject it deems appropriate.

IT IS ORDERED that:

1. The mailing date for the prepared testimony and exhibits of the protestants and interested parties is April 20, 1970.

2. The request by Transport Workers Union for an indefinite delay in the hearings in this proceeding is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of APRIL, 1970.

William Amos, Jr.
President

August

[Signature]

Hermon L. Sturgeon
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.