

Decision 93230 JUN 16 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LARRY MOWREY, RONEY NUNES,
RITA FRIEDMAN, and Petitioners,

Complainants,

vs.

THE SANTA CLARA COUNTY TRANSIT
DISTRICT,

Defendant.

Case 10716
(Filed February 8, 1979)

ORDER OF DISMISSAL

Statement of Facts

Larry Mowrey, Roney Nunes, and Rita Friedman (complainants) at the time of filing this complaint were bus drivers for the Santa Clara County Transit District (District).

District, organized in 1972 with the approval of the voters of Santa Clara County, took over the assets of the three existing transportation systems then operating within the county, and on January 1, 1973, began operations with the 60 used buses inherited from the three predecessor systems.

In 1973 District acquired another 18 used buses to be put into service on its countywide arterial routes. Then, during 1974, District purchased 134 propane-powered 30-foot Twin Coaches for use in a "dial-a-ride" system designed to feed into the new arterial routes. However, in May 1975 "dial-a-ride" was abandoned, and the small Twin Coach vehicles were impressed into service on the heavily traveled arterial routes to meet increasingly heavy passenger load demands. The Twin Coaches could not stand up to the demands of such heavy-duty service, however, and the old central maintenance facility was inadequate to handle servicing. The new Agnews facility for

maintenance was still in construction. The situation rapidly deteriorated. Breakdowns of the Twin Coach vehicles increased and employee relations suffered. By December 1978 employees had filed approximately 500 grievances (since 1976) under the provisions of the collective bargaining agreement between the Amalgamated Transit Union and the District.

In April 1978 complainant Mowrey was discharged for refusing to drive a Twin Coach vehicle, and filed a civil action alleging wrongful dismissal. In May 1978, after a first-level bargaining agreement hearing, Mowrey's dismissal was sustained. In June 1978 Mowrey filed for a writ of mandate in the California Supreme Court, alleging safety violations by the District. The Supreme Court transferred the petition to the Court of Appeal, First Appellate District. On July 24, 1978 the Appeal Court summarily denied the petition for a writ of mandate.

A second-level administrative hearing on September 11, 1978 eventually reinstated Mowrey to his job by way of a stipulated arbitration award which provided for half pay.

Subsequently Mowrey amended his civil action to include a separate cause of action on safety issues. That civil matter was heard on December 19, 1978. Mowrey's claim for damages was resolved against him and injunctive relief on the safety issues was denied. The Court concluded that the matter was essentially a labor-management dispute. Noting the by then improved safety statistics of the District, the Court suggested that the levers which should have been used to move the District on the safety issues were the existing administrative and grievance procedures within the District, and the administrative procedures provided by the State, including the California Highway Patrol and the California Public Utilities Commission.

On February 8, 1979 complainants filed this action, alleging in essence that the District (1) had ordered complainants to operate buses known to be unsafe, (2) intentionally destroyed evidence of defects, (3) threatened and disciplined employees for reporting or disclosing defects, (4) ordered drivers to operate Twin Coaches known to be an explosion and fire hazard, and (5) precluded the California Highway Patrol from effectively testing the equipment.

On March 12, 1979 District filed its answer denying all five allegations made by complainants, and asserted that while safety matters such as those involved here are subject to the grievance procedures of District's collective bargaining agreement with the Amalgamated Transit Union, no safety-related grievances had been filed. In addition, District asserted that the vehicle safety matters involved were, under provisions of Division 14.8 of the California Vehicle Code (§§ 34,500 et seq.), primarily under the regulation and authority of the California Highway Patrol; that the Patrol had been diligent in its inspections and District in its implementation of safety management; that District's fleet performance as to reliability, safety, efficiency, etc., had been improving steadily; and that the National Highway Traffic Safety Administration's field investigation of the propane fuel system buses had concluded that there was no basis for belief that a defect or failure trend existed in the fuel system of the propane buses. District asked that the complaint be dismissed.

On June 5, 1979, the Legal Division of the Commission staff advised all Commissioners that it was its opinion that the Commission had no regulatory authority over safe operation of buses within District's territory.

On August 19, 1980, the Transportation Division of the Commission staff wrote to complainants' attorney inquiring whether complainants still desired to pursue the matter. To date no response has been received.

Discussion

There being no response to staff's inquiry, we conclude that complainants do not desire to pursue this matter further at this time. Accordingly, we need not address the jurisdiction issues raised, and the matter should be dismissed without prejudice.

IT IS ORDERED that Case 10716 is dismissed without prejudice.

This order becomes effective 30 days from today.

Dated JUN 16 1981, at San Francisco, California.

John E. Ryan
President
Michael D. Goodell
Francis W. Jones
William C. ...
Priscilla C. ...
Commissioners