
Decided April 3, 1980

Initial Decision

SYNOPSIS

Perno Bus Co. and 19 other bus companies operating on the Bergen Avenue bus route petitioned the Department of Transportation for a fare increase. The administrative law judge assigned to the case determined that there were three issues to be resolved before granting an increase: (1) whether or not the requested fare increase was reasonable; (2) whether or not the petitioners could be excused from the normal requirement of proving a rate base by virtue of the exceptions set forth in N.J.S.A. 48:2-21.2 and (3) whether the projected revenues and projected ridership decreases were based on fair assumptions?

The administrative law judge found that the fares presently charged by petitioners did not enable them to meet average operating expenses because of the great increase in operating costs and in the rate of inflation. Since the proposed fare increase would not result in an average per bus profit to any of the petitioners nor would the increase change the fact that the gross operating revenues of each company would still exceed the depreciated book cost of the property used in each company’s business, the judge ruled that the petitioners could be excused from proving a rate base. The judge found that the use of the experience of a comparable bus route (instead of the traditional Hebranck formula) to measure rider resistance to a fare increase was appropriate in this case since that experience reflected a ridership decrease resulting from a comparable fare increase on a bus line traveling over similar routes, in a similar geographic area, in a similar inflationary economy, and with similar types of riders as the petitioners.
Accordingly, the judge concluded that the petitioners had shown by a preponderance of the competent evidence that that requested fare increase was reasonable and should be granted.

Morris Drogin, Esq., attorney for Petitioners, Perno Bus Co., Inc., et al.

Helene Wallenstein, Deputy Public Advocate for the Department of Public Advocate Division of Rate Counsel (Stanley G. Van Ness, Public Advocate of New Jersey, attorney)

MOSES, ALJ:
The Bergen Avenue Bus Owners’ Association (petitioner) composed of bus companies who operate the Bergen Avenue bus routes petitioned the Department of Transportation for a fare increase. Each company operates at least one autobus on the Bergen Avenue bus route, serving the municipalities of Bayonne, Jersey City and Kearny, New Jersey. The Petitioners share a garage and share the high and low revenue slots on the route.

A prehearing conference was held on December 20, 1979 and it was determined that the following issues were to be decided at the hearing:

1. Whether or not the requested fare increase is just and reasonable?
2. Whether or not the Petitioners fit within one or both of the exceptions set forth in N.J.S.A. 48:2-21.2, wherein they do not have to prove a rate base?
3. Whether or not the projected revenues and projected ridership decrease are based on fair assumptions?

Testimony was taken from Benjmain Buren, CPA, who was qualified as an expert in the field of accounting with a special expertise in bus companies. He testified he has represented the Bergen Avenue Bus Owners Association for 43 years. The Association is an unincorporated association of buses that travels on Bergen Avenue. The Association was made for the purpose of insurance, purchasing municipal certificates, etc. and is not a utility. Each of the members, however, is a utility with a certificate of public convenience and necessity from the Public Utility Commission. The Association has a staff of two office personnel, as well as five starters at the terminals in order to regulate the schedule and give proper service. There are two common terminals for members of the Association, one at the Bayonne City line and one at Jersey City Port Authority Terminal. The schedule is made by the officers of the Association. The Association pays the Port Authority fees, the contract for fuel, and negotiates the labor contract. However, each driver is employed and paid by the individual
company, which also pays its own comprehensive insurance, general salaries and maintenance. Mr. Buren characterized the Association as a cooperative, or clearing house, non-profit group.

Mr. Buren described the method of fare collection used by Association members. Each bus collects “exact fare only” in a locked box. At the end of the day the money is counted by the officers of the Association and deposited in a joint account, where each company is credited with the amount of money in its box. The Association deducts its operating expenses from the gross revenue. Then the average amount of money collected per trip is determined and each company receives that amount times the number of trips its bus has made that week.

Mr. Buren prepared and testified to all the financial exhibits. Updated financial information on the Association was prepared on January 10, 1980, using the latest cost figures. Mr. Buren asserted that, since the date of preparation, costs have continued spiraling upwards. For example, he noted the price of gasoline has risen at least three cents a gallon and the cost of tires has also gone up because of the increase in oil. The witness noted that the figures in the financial statement do not contain the costs of flats and road service because the Association is testing steel belted radial tires which are more expensive but require less service. Mr. Buren also noted that the labor contract expires in June 1980.

Mr. Buren testified that two other bus companies, Central Avenue Bus and Greenville-Lafayette Bus, which compete with, and are similar to, the Bergen Avenue Bus Route have 45 cent fare. Therefore, in order to determine the appropriate rider resistance formula he relied on the experience of these lines and did not rely on the “tried and true” Hebrank formula. Mr. Buren is familiar with the Central Avenue Bus line as he has represented them. Data was introduced into evidence which details Central Avenue’s experience in rider resistance between January and August 1978, when the fare was 35 cents and January and August 1979, when the fare was 45 cents. The decrease in ridership was 12.75%. Additional data was introduced showing the Greenville-Lafayette Bus Line’s experience when it increased its fare from 35 cents to 45 cents, in 1979. Mr. Buren testified that rider resistance there, for the first five months of 1979, was 18.05%.

Mr. Buren testified that Bergen Avenue’s Western Electric route has had a decrease in riders of 34.58%.

It was his opinion that at the present rate of fare the Petitioners could not continue to give the public good service, since the average pro forma loss per bus at the present fare is $12,034. Even with the requested fare increase, he emphasized each bus would still have an average pro forma loss of $1,625.
There was extensive cross examination of Mr. Buren. His responses corroborated and reinforced his direct testimony. He showed that Bergen Avenue bus line only had an increase in ridership of .0057% in 1979, when it was the only line running at 35 cents per ride.

Mr. Buren was cross-examined in regard to the salaries of stockholders, officers and directors of each company. Salaries are determined by each individual company’s Board of Directors, based on duties and type of work. He pointed out that some people are shareholders in more than one company and some companies are more profitable than others. In Mr. Buren’s expert opinion, the allocation of 60% of revenues to salary is a medium figure. Mr. Buren was questioned as to the duties of Mr. Valerioti, a stockholder and officer of more than one member company. His duties include working and being on call at all hours and doing all his own maintenance.

Mr. Buren was questioned in regard to the Association expenses and testified that they include stationery, electricity, heat, professional fees, salaries and similar items. He again explained the method of collection of gross receipts and disbursements of net income to the member companies by the Association, which treats each company and each trip equally.

The second witness on behalf of petitioner was Thomas Herbert Jelly, President of William H. Jelly, Inc. and a member of the Bergen Avenue Bus Owners Association for 39 years. He is familiar with, and pointed out the similarities of, the Bergen Avenue, Central Avenue and Lafayette-Greenville routes. He indicated the routes were similar in all respects in that they went through urban areas, they had commuters in the morning and evening, shoppers and senior citizens during the day and some school children. In Mr. Jelly’s experience, passengers decrease when a fare increase is granted. He noted Western Electric ridership has decreased tremendously since there is just one shift a day now, as opposed to three shifts in past times. He also pointed out that Transport of New Jersey pays $7.80 an hour to its drivers, who belong to the same union as those who work for the Bergen Avenue. Bergen bus drivers are now paid $5.90 an hour, but have a contract that expires in June 1980.

Cross examination of Mr. Jelly strengthened his credibility. He reiterated that he is personally familiar with the Central Avenue and Lafayette-Greenville bus routes, which have the same type of riders as Bergen Avenue. Mr. Jelly did not see an increase in ridership on the Bergen Avenue route when the Central and Lafayette fare went up to 45 cents. It was his opinion that ridership on the Bergen Avenue line is fairly stable, the difference between 1978 and 1979 being less then 2%. This stability is due to good and frequent service, not to a 45 cent fare on other lines. The last fare increase for Bergen Avenue was in 1972. He said it is necessary to have
five starters on the line in order to get the buses out on time, space the buses, account for lost trips, keep records and purchase gas. He is at the Association office, from 8:00 a.m. to 4:00 p.m. every day, is on call 24 hours a day and is called quite often after 4:00 p.m., as are the other officers. Mr. Jelly and other officers conduct Association business, make repairs, replace parts and clean-up.

Both Mr. Jelly and Mr. Buren were honest, credible and competent witnesses who testified with great expertise.

The Public Advocate did not present any witnesses or introduce any evidence.

Counsel for the petitioners summed up by saying that petitioner has shown the degree of rider resistance to be expected by using actual figures of similar companies. He asserted that petitioner has shown, by a preponderance of the competent and credible evidence, that the requested increase is fair and reasonable. He said there is no need to prove a rate base because petitioners have met the criteria of N.J.S.A. 48:2-21.2.

Ms. Wallenstein summed up on behalf of the Public Advocate. She tried to distinguish between the Bergen Avenue and Central Avenue lines to show that the ridership decrease on Central Avenue after a fare increase would not be applicable to Bergen Avenue. She does not envision a loss of passengers to cars, due to high gasoline prices, or to neighboring lines, and feels that ridership will remain stable even if the fare increase is not granted. It was her opinion that projected expenses, specifically Association expenses and salaries were to high, and therefore 40 cents (not 45 cents) would be a just and reasonable fare increase.

No member of the public appeared to speak either for or against the proposed fare increase.

The proposed fare schedule is as follows:

**PRESENT AND PROPOSED FARE SCHEDULE**

<table>
<thead>
<tr>
<th>FARES</th>
<th>PRESENT</th>
<th>PROPOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>One (1) Zone</td>
<td>35 cents</td>
<td>45 cents</td>
</tr>
<tr>
<td>(2) Zones</td>
<td>45 cents</td>
<td>45 cents</td>
</tr>
<tr>
<td>Student Fares with School Tickets**</td>
<td>2/3 of one way adult fare</td>
<td>Same</td>
</tr>
<tr>
<td>Senior Citizens</td>
<td>1/2 of one way adult fare down graded to nearest 5 cents increment</td>
<td>Same</td>
</tr>
</tbody>
</table>

**Reduced Student and Senior Citizen fares are subject to rules and regulations and to availability of appropriate State and Federal funds for reimbursement.**
The principal elements of the Petition include balance sheets, statements of income, \textit{pro forma} revenues and expenses under the proposed rate. The balance sheets and statements of income of each company are incorporated herein as if set forth at length. The average per bus operating revenues, expenses and income for a test year, 1978, the average per bus \textit{pro forma} revenues and expenses based on the present fare and the average per bus \textit{pro forma} revenues and expenses based on the proposed fare, as detailed by Mr. Buren, are as follows:

\begin{center}
\textbf{BERGEN AVENUE BUS OWNERS}\\
\textbf{JOINT FINANCIAL INFORMATION}\\
\textit{(AVERAGE PER BUS)}\\
\begin{tabular}{llll}
& \text{Test Yr. Pro Forma} & \text{Pro Forma under proposed F} & \vspace{1em} \\
& \text{(1978)} & \text{under present fare} & \vspace{1em} \\
\hline
\text{Gross Operating Revenues} & 82,642 & 82,642 & 93,063 \\
\text{Operating Expenses} & 82,560 & 94,407 & 94,419 \\
\text{Operating Income (or Loss)} & 82 & \text{(11,765)} & \text{(1,356)} \\
\text{Net Profit (or Loss)} & \text{(187)} & \text{(12,034)} & \text{(1,625)}
\end{tabular}
\end{center}

This Petitioner was submitted pursuant to \textit{N.J.S.A.} 48:2-21.2 in order to obviate the need to find a rate base or a rate of return. The testimony is uncontroverted that anticipated average revenue from the proposed new fare structure will not exceed the average operating expenses, depreciation and taxes of each company. It is also uncontroverted that the gross operating revenues of each company exceed the depreciated book cost of property used and useful in each company’s business as a public utility. Therefore, it is unnecessary to find a rate base or rate of return.

At the conclusion of the hearing, counsel for Petitioners was given the opportunity in evidence a schedule of Association expenses. He did so on January 30, 1980. Rate Counsel submitted a letter memorandum in opposition to the requested fare increase on February 13, 1980. Counsel for Petitioners responded on February 26, 1980. Rate Counsel counterresponded on February 28, 1980. Petitioners’ counsel objected to the broad sweep of Rate Counsel’s memorandum as being beyond that which the court permitted. Without deciding whether that is, in fact, the case, this judge feels it appropriate, in an administrative proceeding, to review all arguments of counsel. Petitioners’ attorney has had ample opportunity to review all the
arguments of Rate Counsel and to respond thereto.

The ultimate issue in any public utility rate of fare or service controversy case is whether the proposed rates are just and reasonable. See, In re New Jersey Power and Light Company, 9 N.J. 498 (1952). The Public Advocate has strongly questioned the reasonableness of certain of Petitioners' projected expenses; (1) operating salaries and wages, (2) Association expenses and (3) general expenses. Rate Counsel disagrees with the projected level of passenger revenues under the new fare as not being supported by the appropriate rider resistance determination. Rate Counsel does not oppose the remainder of the revenues and expenses projected by petitioners, and they are found to be true and reasonable.

The basis of projected charges to petitioners' expense accounts will be reviewed by this court as to their propriety and reasonableness. Petitioners have the burden of proof "... not only as to the amount of the various accounts but also (as to) sufficient evidence from which the reasonableness of the accounts can be determined..." Public Coordinated Transport v. State, 5 N.J. 196, 219 (1950).

Rate Counsel questions the reasonableness of the salary and wages expense of $48,328 per bus, because she asserts there is an excessive amount of money being paid to the stockholders and officers in the various bus companies, and because the total amount equals 66% of projected total revenue Mr. Jelly testified to his duties as a stockholder/officer of his bus company which was representative of those of all other officers. Mr. Jelly works eight hours a day, is on call 24 hours a day and also serves as an officer of the corporation. During cross examination by Rate Counsel, Mr. Jelly testified that all the officers do repairing, cleaning, replacement of parts and also work on Association business. Their salaries are determined by the Board of Directors of each company, and depend on the duties and type of work performed and on the profitability of each company, some companies being more profitable than others. Mr. Buren specifically testified that Mr. Valeriote (who Rate Counsel cites as earning an excessive salary) works at all hours, does his own maintenance, except for very major repairs, and is on call at all hours. The court specifically rejects the inference Rate Counsel would have it draw, that Petitioners intentionally excluded certain officers from testifying in order to obfuscate their duties and salaries. It is not unreasonable for parties who are officers in more than one bus corporation to earn salaries from each of the corporations which they serve. The New Jersey Supreme Court has succinctly stated in Public Service, supra at 255:

The rate which a public utility may reasonably charge should be sufficient to encourage good management and furnish a reward for
efficiency.

Thus, the salaries and wages, averaging $48,328 per bus, is not unreasonable, but is based on competent, credible and uncontroverted evidence in the record.

Rate Counsel’s memorandum reviewed the breakdown of the actual 1978 expenses of $155,037 of the Bergen Avenue Bus Owners Association. The projected pro forma expense of the Association reflects a 12 1/2% increase. Mr. Buren’s testimony showed that the increase would be due, in part, to general inflationary trends in expenses, which include salaries to two clerical help and five starters, heat, electricity and stationary. Rate Counsel questioned certain specific items as well as the general increase. The court will discuss each specific item separately.

Rate Counsel urged the deletion of $30,979, Port Authority Departure Fees, from Association expenses, because that charge was included in the average per bus cost. Mr. Drogin explained that the Association expense of $6,530 and the Port Authority fees of $1,630 was a per bus cost. The $30,979 shown on the data reflecting Association Expenses, was arrived at by multiplying the per bus figures by the 19 buses that are part of the Association. The explanation is eminently logical and is a reasonable basis for that expense.

Rate Counsel also objects to an expense of $175 for bus association dues which it asserts was included in the breakdown of per bus expenses. Counsel for Petitioner explains that the $175 represents dues for the entire Association itself, whereas the $17 listed is a per bus figure. The court finds this explanation reasonable.

Rate Counsel objects to the “bus off” charges of $18,035. Each company contributes toward this fund, held by the Association, to recompense those companies whose buses are not driving for a particular week. Rate Counsel calls this a “strange, convoluted and improper accounting practice”. This court has no evidence before it, either lay or expert, to support that conclusory statement. Therefore, the explanation of petitioner is accepted in that it is reasonable to infer that productivity is increased due to the fact that buses are given vacation periods in order to decrease the total number of trips made by the entire group, but increase the trip rate allowance.

Petitioners’ counsel concedes that a loan of $10,000 to M & R Kleinman is nonrecurring, and the court will delete same from the Association expenses.

Rate Counsel objects to a fee of $8,400, charged to Association expenses, and paid to corporate officers of the different bus companies for attending Association meetings, and calls this “outrageous, insulting and thoroughly improper” This conclusory statement is unsupported by any testimony.
whatsoever, lay or expert. Counsel for petitioners asserts that this is normal business practice and it is a necessary business expense allowed by the Department of Public Utilities and the Internal Revenue Service. This forms a reasonable basis to charge that expense to the accounts of the Association.

Petitioners' attorney agrees to delete the performance bond expense of $2,394 from the general expenses of the Association.

Rate Counsel correctly challenges Association office expenses of $2,722 and General expenses of $562 as there is no testimony in the record whatsoever to support the reasonableness of these expenses and the listing of Association expenses already includes charges for such items as telephones, clerical, printing, etc., generally considered Office or General Expenses. These items will be deleted from Association expenses and thus $172.84 per bus will be deducted from the net pro forma loss under the Proposed Fare.

Rate Counsel alleges that an Association expense of $1,526, to pay for the union drivers' third week of vacation, is improper because there was testimony that the individual companies are solely responsible for paying their own drivers. Petitioners' counsel explains that it would be unfair for a company with a senior driver to have to pay for that third week of vacation, when other companies would not have that expense but would still receive the same trip rate. Therefore the companies agreed that such expense would be averaged out and paid by everyone. This is a reasonable basis for said expense.

Rate Counsel also objects to an Association expense of $906 for fare box repairs because of testimony that the individual companies were responsible for maintenance of their own buses. However, the record reflects that the Association is responsible for the exact fare system and the exact fare boxes and that the Association operates a money room with coin counting machines. These boxes, machines, supplies, parts and keys are under contract to the Association. This is a reasonable basis for this expense to be charged to the Association.

The court finds that the evidence supports an adjusted pro forma loss per bus, at the new fare, of $800.16. This includes a conceded deletion of $652 per bus as well as the deletion made by the court, of unsubstantiated expenses, of $172.84.

The Public Advocate opposes the general expense item of $588 per bus, but did not examine either witness as to the basis of this expense. The court finds it reasonable to have a small general fund for miscellaneous expenses.

Rate Counsel also objected to petitioners' reliance on the experience of the Central Avenue Bus Owners Association in order to justify a projected net loss of 12.75% of their passengers due to rider resistance to the fare
increase. Despite Rate Counsel’s belief that the experience of that line is inappropriate and not determinative for use in relation to Bergen Avenue, this judge finds that the experience of Central Avenue, as well as of Greenville-Lafayette line is more than adequate to determine projected sufficient and competent evidence in the record, from experienced, credible witnesses, to show that those lines are very similar in ridership makeup as well as in geographical location. The testimony of Mr. Buren, a knowledgeable and credible witness, was that the Central Avenue line had a decrease in ridership of 12.75% between January and August of 1979. Greenville-Lafayette line had a ridership decrease, during the first five months of the new 45 cents fare, of 20.24% and during the first 10 months of the new 45 cents fare, of 20.24% and during the first 10 months, of 18.05%. It was also relevant to note that Bergen Avenue’s Western Electric route has had a decrease ridership of 34.58% since the Plant operates with just one shift.

Rate Counsel objects to petitioners’ attorney, in his letter memorandum of February 25, 1980, calling the court’s attention to an increase in fuel costs since the date of the hearing as being ultra vires, unsubstantiated and not subject to cross examination. Notwithstanding that objection, this court finds it appropriate to take official notice of “...such facts as are so generally known or of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute”, see New Jersey Rules of Evidence, Rule 9 (2)(d), see also Sandler v. Board of Adjustment of Springfield Township, 113 N.J. Super. 333 (App. Div. 1971). New Jersey courts have previously taken judicial notice of escalating costs and rising values. See Fox v. Stuyvesant Town, Inc., 3 N.J. Super. 408 (Ch. Div. 1949), modified 5 N.J. Super. 253 (App. Div. 1949) and Pollock v. Bowman, 49 A. 2nd 40 (E. & A. 1947). The proposed Uniform Rules of Administrative Procedure provide that the parties shall be notified before or during the hearing of the material noticed and that the parties will be afforded an opportunity to contest that material of which the judge is asked to take official notice. See, N.J.A.C. 1:1-15.3. In the instant matter Rate Counsel has been afforded an opportunity to contest the fact to which her adversary referred. The court will thus take official notice of rising fuel costs, since such notice is in accord with the above mentioned cases, the Rules of Evidence and the Proposed Uniform Rules of Administrative Procedure. The fact that the price of gasoline is going up is of such common notoriety and so capable of being immediately determined that there is no need for cross examination. It is so universally known as to be beyond reasonable dispute. However, the court will not offset the contested depletion of $652 because it has taken notice of the above fact.
After consideration of the entire record, including the testimony, exhibits and letter memoranda submitted by Rate Counsel and counsel for Petitioners, the court makes the following findings of fact:

1. The present fare charged by the petitioners does not enable them to meet their average operating expenses because there has been a great increase in operating costs and in the rate of inflation and thus their ability to provide safe, adequate and proper service to the public is jeopardized. *N.J.S.A. 48:2-23.*

2. Petitioners have met all service and notice requirements.

3. Petitioners have truthfully set forth the operating revenues, expenses and income for each of its member companies for the three years preceding the petitioner. Counsel have stipulated that the same are true and accurate. I hereby find them to be facts and incorporate them by reference as if set forth herein at length.

4. The proposed pro forma expenses of the Bergen Avenue Bus Owners Association, which reflects a 12.5% increase is reasonable in all respects with the exception of office expenses of $2,722 and general expenses of $652.

5. Association office expenses and general expenses do not have a reasonable basis in the record and should be deleted from the net pro forma per bus loss under the proposed fare, as should the nonrecurring expenses.

**PRO FORMA**

**UNDER PROPOSED FARE**

Average per bus (loss) (1,625.00)
- 652.00 (deleted from association expenses by consent)
- 172.84 (deleted by court as not having a reasonable basis)
  (800.16)

6. Salary and wages of $48,328 per bus are reasonable based upon the testimony presented during the course of the hearing.

7. Petitioners have set forth their pro forma income and expenses under the present rate of fare and their pro forma income and expenses under the proposed rate of fare, which I find to be true and accurate, and which have a reasonable basis in the record; as amended, the letter memoranda of counsel and the deletions as set forth in this decision. They are therefore found to be facts and are incorporated herein by reference as if set forth at length.

8. Rider resistance on the Bergen Avenue line to the increase in fare from 35 cents to 45 cents will be 12.75%. The court further finds as a fact that the use of the experience of the Greenville-Lafayette Avenue line and the
Central Avenue line to measure rider resistance to a fare increase is appropriate in the instant matter and is based on fair assumptions. The court finds as a fact that these figures show a ridership decrease, when fare was increased by 10 cents, on bus lines traveling over similar routes, in a similar demographic area, in a similar inflationary economy, and with similar types of riders as the instant petitioners.

9. The fare increase proposed by petitioners will not result in an average per bus profit to any of the member companies of the Association. The increase in fare also will not change the fact that the gross operating revenues of each company will still exceed the depreciated book cost of the property used and useful in each company’s business as a public utility. Therefore, no finding of a rate base or rate of return is necessary, N.J.S.A. 48:2-21.2.

10. The proposed fare increase as set forth herein is necessary in order for petitioners to continue to provide safe, adequate and proper service to the public.

I therefore CONCLUDE that petitioners have shown, by a preponderance of the competent and credible evidence, that the requested fare increase is just and reasonable and is necessary for petitioners to continue to provide the appropriate safe, adequate and proper service to the public. I therefore CONCLUDE that petitioners be granted the requested increase in the schedule of fares.

After reviewing this Initial Decision, the Department of Transportation on April 18, 1980 issued the following Final Decision:

The Administrative Law Judge has submitted her Initial Decision on the above entitled matter. After due consideration of the entire record herein, including the Administrative Law Judge’s Initial Decision to grant the increase as proposed the Department hereby ADOPTS the Initial Decision and hereby ORDERS that the rates, charges and fares proposed by petitioners be accepted.