

FINANCE DOCKET NO. 23487

ERIE-LACKAWANNA RAILROAD CO. DISCONTINUANCE OF
PASSENGER TRAINS BETWEEN HOBOKEN, N. J. AND CHI-
CAGO, ILL.

Decided June 28, 1965

Upon investigation, found that the continuance of operation by the Erie-Lackawanna Railroad Company of passenger service on trains Nos. 7 and 8 between Hoboken, N. J., and Chicago, Ill., is not required by the public convenience and necessity and that the continuance thereof will constitute an undue burden on interstate commerce. Investigation discontinued.

J. T. Clark for petitioner.

Walter L. Zullig, Jr., and Kent H. Brown for Public Service Commission of the State of New York, protestant.

Alvin C. Vinopal for the city of Akron, Ohio, protestant.

William McLain for the city of Warren, Ohio, protestant.

James L. Kerwan for the city of Elmira, N. Y., protestant.

John E. Gilroy, William A. Richards, and Thomas P. Shearer for labor organizations and others, protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, WALRATH, AND GOFF

WALRATH, *Commissioner*:

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, Erie-Lackawanna Railroad Company, a common carrier by railroad subject to the provisions of part I of the act, hereinafter referred to as the carrier, filed on February 1, 1965, a notice and supporting statements announcing the proposed discontinuance of operation on March 3, 1965, of passenger service on its passenger, mail and express trains Nos. 7 and 8 between Hoboken, N. J., and Chicago, Ill. Copies of the notice were duly served and posted in the manner required by statute and the Commission's rules and regulations.

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Following receipt of petitions, letters and telegrams of protest filed on behalf of individuals, municipalities, cities, several rail labor organizations, and a news agency, an investigation of the proposed discontinuance was instituted by order of February 17, 1965. The order requires continued operation of the trains for a period not to exceed 4 months beyond the effective date indicated in the notice filed by the carrier. Because of statutory limitations upon the time available for investigation and decision, our order provided for the omission of an examiner's report and recommended order as a part of the decision-making process in this proceeding. Briefs were filed simultaneously by the carrier, an individual, the Public Service Commission of New York, and representatives of railroad labor organizations.

DESCRIPTION OF THE TRAINS

Trains Nos. 7 and 8 are primarily mail and express trains. The normal consist of train No. 7 is a minimum of 10 cars placed in the train at Hoboken for movement to Chicago and an additional minimum of 6 cars for movement to intermediate points. Basically, they consist of one or two "unit-haul" express cars, two "working mail" cars, a "working mail-baggage" car, a passenger coach, one to four sealed mail cars, one or two sealed express cars, one 30-foot railway post office (RPO) car, and a passenger coach at the rear of the train (called a "rider" car) to accommodate the rear flagman. In addition, one newspaper car, two or three empty milk cars, two or three sealed mail cars and one or two sealed express cars are placed in the train at Hoboken for intermediate destinations. Thus, when train No. 7 leaves Hoboken it has a consist ranging from 15 to 23 cars.

As the train proceeds westward, an empty milk car is set off at Binghamton, N. Y.; two sealed mail cars, two sealed express cars, and one working-mail car are added at Binghamton; a sealed mail car is added at Elmira, N. Y.; one or two empty milk cars are set off at Jamestown, N. Y.; two sealed mail cars and one working-mail car is placed in the train at Youngstown; two sealed express cars and one sealed mail car are set off at Akron, Ohio; one or two sealed mail cars are set off at Huntington, Ind.; and the balance of the consist goes into Chicago, Ill. The consist ranges from a minimum of 13 to a maximum of 27 cars at various places along the route, varying with demand and the day of the week. Some cars do not move on Sunday, some are not in the con-

sist on Sunday and Monday, and some move on Sunday but not on Monday.

While the consist of train No. 8 varies somewhat from that of train No. 7, in that it does not handle as many cars as does train No. 7, and the on-and-off points vary, the operations are otherwise substantially similar.

Train No. 7 is operated by a crew consisting of an engineer, fireman, conductor and two brakemen from Hoboken to Binghamton, at which point a baggageman and a baggageman's helper are added. At Corry, Pa., one brakeman leaves the train, from which station the train is operated as far as Marion, Ohio, with a total crew of six men. An additional brakeman is required from Marion to Hammond, Ind. No baggage is carried on this train from Hoboken to Binghamton.

The crew on train No. 8 consists of an engineer, fireman, conductor, a baggageman and a brakeman from Chicago to Hammond, and in addition a brakeman from Hammond to Marion where a baggageman's helper is added and one brakeman is removed. At Corry, an additional brakeman is placed on the train and at Hornell a baggageman's helper is removed. At Binghamton the baggageman is removed, from which point the train moves to Hoboken with a five-man crew.

These trains operate 998.7 miles between Hoboken and Chicago over a two track system except for a few locations where only a main-line track is provided. Between the Indiana-Illinois State line and Chicago they operate over the lines of the Chicago and Western Indiana Railroad Company.

Although the trains operate through a territory which is predominantly rural in nature, they do serve five cities having populations of 100,000 or more, namely, Hammond, Ind., Youngstown, and Akron, Ohio, Scranton, Pa., and Paterson, and Newark, N. J. There are also a few cities served by these trains with populations between 40,000 and 100,000, namely, Binghamton, Elmira and Jamestown, N. Y., and Warren, Mansfield, and Lima, Ohio. Appendix A hereto specifies the schedules of the trains, the population of each station served, and the mileage between stations.

By virtue of the scheduled transit time of the trains (26 hours, 25 minutes westbound and 25 hours, 24 minutes eastbound), the unfavorable hours of arrival and departure, and the absence of any pullman cars and any eating facilities on the trains, little utilization is made of the trains by "through passengers." Passengers

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utilizing the trains travel relatively short distances (200 miles or less) between intermediate points on the line.

During the 7-month period, May 1 through November 30, 1962, there was a total of 16,064 revenue passengers transported on train No. 7, and 20,090 on train No. 8. For the 11-month period, February 1 through December 31, 1963, the respective totals were 22,475 and 23,614. Pullman and dining car services were discontinued on the trains in 1963, after which there was a marked decline in passenger patronage on both trains. For the 8-month period from January 1 through August 31, 1964, there were 11,377 revenue passengers handled on train No. 7, and 9,679 on train No. 8. Based on the three study periods mentioned, the average number of revenue passengers per trip on train No. 7 ranged from a high of 75.5 in 1962 to 46.6 for 1964, and, on train No. 8, from a high of 94.4 in 1962 downward to 39.7 for 1964. During the study period for 1964, the occupancy rate on train No. 7 was below eight passengers when the train departed from all stations other than Randolph, N. Y., at which point the occupancy rate was 8.8 revenue passengers. For the same study period, the average coach occupancy rate on train No. 8 at no point reached nine revenue passengers and reached a low of 5.7 passengers when the train departed from Marion, Ohio.

The average passenger revenue per month accruing on train No. 7 during the aforementioned 1962 and 1963 study periods was \$13,063 and \$12,016, respectively, while on train No. 8 the averages were \$21,980 and \$15,948. For the 10-month period of January 1 through October 31, 1964, the average passenger revenue per month was \$5,792 on train No. 7, and \$8,403 on train No. 8. Projecting these monthly averages to an annual basis, the carrier estimates the total passenger revenues on train No. 7 for the years 1962 through 1964 were, respectively, \$156,756, \$144,192, and \$69,504, and on train No. 8, \$263,760, \$191,376, and \$100,836, respectively. In connection with such projections, it may be noted that none of the study periods utilized reflect operations during portions of the respective holiday seasons when patronage admittedly increased. Thus, it may be assumed that the total passenger revenues actually accruing for each of the years mentioned were somewhat greater than the amounts estimated by the carrier. This is borne out by appendix B hereto which reflects that the total passenger revenues accruing from operation of the trains during 1964 were \$179,659, whereas the carrier's projected estimate was \$170,340.

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ALTERNATE SERVICE

The entire area served by the trains is interlaced with numerous all-weather highways over which there has been a steady increase in private passenger automobile travel. As intercity automobile travel has continued to increase, railroad intercity passenger travel has continued to decline. The use of private automobiles, however, is not the only alternative mode of transportation available to the public involved in this proceeding. The service of motorbus lines, commercial airlines, and of other railroads is also available to most of the communities served by the instant trains, with some communities having all three types of service available and others having only two types or a single type available. In addition to the service afforded on the instant lines, Erie-Lackawanna also provides passenger service between Hoboken and Chicago on its trains Nos. 1 and 2 (the Phoebe Snow) and trains Nos. 5 and 6. The Phoebe Snow provides pullman, dining and coach service over the entire route, whereas trains Nos. 5 and 6 provide coach and dining car service between Hoboken and Chicago with sleeping car service being provided between Hoboken and Youngstown. Petitioner also provides weekday commuter service between Hoboken and Port Jervis on three or more additional trains.

Of the 12 cities served by the instant trains having populations in excess of 40,000, all except Scranton, Binghamton, Elmira and Jamestown have rail passenger service available from carriers other than Erie-Lackawanna. Paterson and Newark have suburban rail passenger service available to New York, and Hammond has such service available to Chicago. Akron, Youngstown, Warren and Lima are provided rail passenger service by the Baltimore & Ohio Railroad Company, while Mansfield is served by the Pennsylvania Railroad Company. All of the cities named have air passenger service as well as adequate motorbus service. Although petitioner offers the only rail passenger service at many of the points here in question having populations of less than 40,000, most of such cities are served directly by one or more motorbus lines. Of those having no direct-bus service, all are within a relatively short distance of transportation service which affords the public a reasonably convenient means of traveling between the points served by the instant trains. While some travelers unquestionably would be inconvenienced by the elimination of the passenger service on trains Nos. 7 and 8, it does not appear that any

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segment of the area served by the trains would be materially affected thereby or that any residents of the areas served by the trains would be left without any available public transportation service if the passenger service on trains Nos. 7 and 8 is discontinued.

REVENUES AND EXPENSES

Total revenues on the two trains amounted to \$3,397,127 in 1964. This was composed of \$179,659 in passenger revenue, \$368 in baggage, \$2,228,426 in mail, \$943,209 express, milk \$35,945, and "other" \$9,520. The combined out-of-pocket expenses for the same period amounted to \$3,077,202. Column 1 of appendix B hereto reflects the respective items making up this total.

From the revenue and expense data thus presented, it is seen that, on a combined basis, the trains earned an excess of revenues over expenses for the year 1964 amounting to \$319,925. This profit, however, was not derived from both trains, neither were the revenues and expenses equally divided between the two trains. While train No. 7 realized some \$803,107 more revenues than did train No. 8, its expenses were only \$133,590 more than those for train No. 8. While train No. 7 earned more revenue from mail, express, RPO cars, and "other" than did train No. 8, the latter earned \$37,657 more in passenger revenue, and some \$35,945 more from milk than did train No. 7. Overall, the operating results on train No. 7 were a profit of \$494,721, and a loss of \$174,796 on train No. 8. Expressed on a per train-mile basis, operating revenues were \$5.59 for train No. 7, \$3.56 for train No. 8, and \$4.66 per train-mile for both trains combined, compared to operating expenses of \$4.42, \$4.04, and \$4.22 per train, respectively. Thus, train No. 7 shows an excess of revenues over expenses of \$1.17 per train-mile, train No. 8 shows an excess of expenses over revenues of \$0.48 per train-mile, and the combined trains show an excess of revenues over expenses of \$0.44 per train-mile for the year 1964.

PURPOSE OF THE PROPOSAL

The head-end service provided by the instant trains is considered to be of extreme importance to the carrier and it asserts that the adequacy of this service and the efficiency of the operation are

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substantially impaired by being required to provide the single coach, passenger service on the trains. It contends that the very limited use which is made of the trains by passengers demonstrates that there is no existing public need for the continuance of passenger service on the trains and that it should be permitted to discontinue such service so that it might provide the public with more flexible and efficient head-end service.

The existence of passenger service on the trains requires a reasonable adherence to published schedules and also makes it necessary for the trains to be shifted at some stations to unload passengers, mail and express where the station platforms are not long enough to accommodate the simultaneous handling of passengers, mail and express. Discontinuance of passenger service would permit a more flexible operation in that trains could either depart as soon as express and mail is loaded or their departure could be delayed to await the arrival of traffic from connections. Trains could also be rerouted, as the traffic on a particular move permitted, to move over either of the carrier's alternate routes between Hoboken and Binghamton. Petitioner asserts that elimination of the passenger service would enable it to eliminate a number of stops along the line, thereby providing for more expeditious movement of the head-end traffic between termini.

Petitioner refers to its present precarious financial condition (hereinafter discussed in some detail), and claims that the earnings from the head-end traffic on the trains is so important that it must take whatever steps may be available to it to retain the present volume of mail and express and to supplement it, if possible. It is petitioner's view that the flexibility and speed-up of service that will flow from elimination of passenger service on the trains would enable it to retain the present mail and express handled thereon and possibly to increase such traffic.

Because of the out-of-pocket costs of approximately \$1,250,000 per year which, it is estimated, would be sustained in the operation of passenger train service separate and apart from the head-end service, assuming no further reduction in the number of passengers utilizing the trains, it would not be practical or economical for petitioner to improve the head-end service by scheduling a separate passenger train on the present schedules of trains Nos. 7 and 8 and operate two other trains for handling head-end traffic exclusively. Petitioner visualizes the elimination of the passenger service on the present trains as the only practical and feasible means of retaining the earnings realized from the head-end service.

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FINANCIAL CONDITION

Petitioner's financial position is precarious.¹ It has not earned its fixed charges in any of the last 8 years and in 1964 it incurred a net loss of \$8.3 million after fixed charges and other deductions. Its working capital position during the 5-year period 1959 through 1964 fluctuated from \$22.5 million on December 31, 1959, downward to a deficit of \$1.6 million on March 31, 1964, and upward to a working capital position of \$2 million as of December 31, 1964. Drastic steps were taken to minimize the bad working capital position. A loan of \$15 million was used for working capital and cash realized from the sale of salvaged material reduced the strain upon carrier's working capital. While fixed charges are now being paid as well as taxes and payroll taxes, bills for materials and similar miscellaneous items are not being paid currently. However, none are past due more than 90 days. The carrier has been living on borrowed funds, the sale of assets, and funds generated by depreciation accruals. The carrier must use the utmost care to maximize its revenues and reduce expenses if it is to escape bankruptcy.

ESTIMATED SAVINGS

The carrier contends that it would realize a minimum of \$104,311 per year in net savings if it were authorized to eliminate the passenger and baggage service on the trains and continue to operate them exclusively as mail and express trains. The estimate assumes the loss of all the passenger and baggage revenue now accruing to the trains, a total of \$180,027 in 1964, and the elimination of certain expenses incurred in providing the passenger and baggage service totaling \$284,338. This total is comprised of an estimated reduction in passenger car repairs amounting to \$109,562; a saving of \$110,588 in traincrew wages made possible through the elimination of eight traincrew positions on the trains; a reduction in the cost of train supplies in the amount of \$46,508; and a saving of \$17,680 in railroad retirement taxes, unemployment taxes, and vacation expenses.

Petitioner stressed the fact that it had estimated the very minimum of savings that could be realized from the elimination

¹See Finance Docket No. 21510, *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1.

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of the passenger service on the trains and that there were additional savings which it felt could be realized from the change in service but which could not be computed with any degree of certainty at this time. For example, it was estimated that at least 30 percent of the passenger revenue might be retained by the system through a shift of passengers from trains Nos. 7 and 8 to other trains of the carrier operating between Hoboken and Chicago. Through such retention of passenger revenue, the net savings to petitioner would be increased by some \$54,000 a year, based on the passenger revenue accruing on trains Nos. 7 and 8 in 1964. Other examples of additional savings not included in the aforementioned estimate, were (1) the reduction in trackage-use charges (estimated at \$30,096 a year) that would result from the elimination of baggage and passenger cars from the trains which move over the tracks of the Chicago and Western Indiana Railroad; and (2) the reduction in the number of diesel units that would be required if the passenger service were eliminated from the trains. While petitioner contends that elimination of the passenger service would reduce locomotive requirements on the trains by two diesel units through the use of the same unit in "turn-around" service on trains Nos. 7 and 8, no explanation was offered for the record why the present units on the trains are not now used in "turnaround" service or why the mere elimination of a baggage car and passenger car from each train would enable the carrier to institute the "turnaround" service. The carrier asserts, however, that the savings in locomotive expenses would approximate \$71,780 annually if the diesel units on the trains were used in the "turnaround" service described. It is the petitioner's representation that it might reasonably be expected to realize savings totaling approximately \$156,000 a year in addition to those included in the aforementioned estimate.

If the authority here requested is granted, petitioner proposes to eliminate the baggage car and passenger coach from each train and to eliminate the following traincrew assignments on each train:

- One baggage helper between Binghamton, N. Y., and Cornell, N. Y.
- One brakeman between Cornell, N. Y., and Meadville, Pa.
- One brakeman between Cornell and Corry, Pa.
- One brakeman between Meadville and Marion, Ohio.
- One brakeman between Hammond, Ind., and Chicago, Ill.
- Two brakemen between Marion, Ohio and Ohio City, Ohio.

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Petitioner claims that these changes in train consist and crew assignments will enable it to realize all of the savings contained in its estimate.

Protestants dispute the ability of petitioner to eliminate all of the traincrew described in order to effect the claimed savings in traincrew wages. They also claim that petitioner, without discontinuing passenger service on the trains, now has the power to effectuate certain changes in the car consists on the trains and to eliminate certain traincrew assignments, thereby realizing approximately the same amount of savings as would be realized by discontinuing the passenger service. They refer to the admission by petitioner's operating official that baggage service on the trains could be eliminated without eliminating passenger service thereon, and that it was physically possible to remove the so-called "rider" from the consist of the trains and have the flagman ride with the passengers in the coach. Protestants point to the fact that petitioner's claimed savings of \$109,562 in passenger car repairs was computed by determining the actual number of car-miles operated by each of the passenger coaches and baggage cars on trains Nos. 7 and 8 and multiplying that mileage by the system average repair costs per passenger car-mile. They claim that a "rider" car is, in reality, a passenger coach and that the repair cost would be the same as that of a passenger car or coach. It is, therefore, their position that inasmuch as the savings figure mentioned was predicated upon the elimination of one baggage car and one coach, this exact amount would be saved by eliminating one baggage car and one "rider" car on each train and without discontinuing passenger service thereon.

Protestants also argue that petitioner could realize the estimated savings of \$46,508 in train supplies by the simple expedient of removing the baggage car and the "rider" car from the consist of the trains while continuing to carry passengers in the passenger car. It appears to be protestants' position that inasmuch as it is presently a mere matter of discretion on the part of petitioner whether it will realize the savings described by eliminating the baggage and "rider" cars, it is improper for petitioner to, in effect, charge the savings to be derived from a reduction in the train supplies expenses against the passenger service.

Protestants also contend that the elimination of baggage service on the trains would enable petitioner to eliminate at least five of the trainmen proposed to be eliminated under the instant proposal and without affecting the passenger service on the trains.

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This, they claim, would enable petitioner to realize a substantial portion of the savings in crew wages and fringe benefits claimed in its estimates.

The gist of protestants' contentions is that it is the mere failure of petitioner to exercise the right to make operating changes in the trains, rather than the existence of passenger service on the trains, that has prevented the carrier from realizing savings in the amounts estimated. While this contention is based on the presumption of an unrestrained right in petitioner to eliminate the aforementioned baggage and "rider" cars and to dispense with the traincrew positions described and assumes the practicality and feasibility of making such operating changes, the record herein fails to support either premise. Also, there is no showing that it would be either practicable or feasible, from an operating standpoint, for the carrier to eliminate the baggage car while still holding itself out to provide baggage service. The record is clear that, regardless of petitioner's right in the matter, its operating officials have considered that petitioner was obligated to continue to provide such service on the trains and to operate the baggage cars. It is admitted by protestants that such service has been afforded without interruption.

Obviously, with the continued operation of the baggage car on the trains, it was not possible to eliminate any of the traincrew assignments mentioned by protestants. Thus, no savings in this area were possible. With respect to the suggested elimination of the "rider" car, petitioner states that the real purpose of such car is to provide a place to the rear of the train for the rear brakeman. It is admitted that it would be physically possible to place the passenger coach at the rear of the train where the rear brakeman might ride, but it was pointed out by petitioner that a number of operating considerations make it impractical for the passenger coach to be placed at the rear of the trains. It is the judgment of petitioner's officials that the trains are more efficiently operated and passengers are more conveniently handled by placing the passenger coach in the center or near the front of the trains and to utilize the "rider" car for the use of the rear brakeman. There is nothing in this record to indicate that the carrier could arbitrarily discontinue the operation of the "rider" car and it has been shown that it would be impractical to do so. Regardless of what its rights may have been insofar as the elimination of this "rider" car is concerned, the conclusion is warranted that the carrier has considered it to be its obligation

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to serve the passengers on the trains as efficiently as possible and the carrier, in carrying out this obligation, has continued to operate both the passenger coach and the "rider" car thereby preventing the realization of any savings that would flow from the elimination of either car. In our view, there has been no impropriety on the part of the petitioner in the manner in which it estimated the savings which it expects to flow from the discontinuance of service proposed in this proceeding.

In support of their contention that petitioner could not effectuate the reductions in traincrew assignments described and could not realize the estimated reduction of \$110,580 in traincrew wages, protestants presented evidence respecting certain laws of some of the States through which the trains operate and an agreement between the Brotherhood of Railroad Trainmen and various carriers, including petitioner, which, they contend, prevent the carrier from eliminating all of the positions previously described.

It is the contention of the protesting unions that even if the so-called "full crew laws" of New York and Ohio did not prevent petitioner from eliminating the traincrew assignments described, it would be prevented by the aforementioned agreement with the Brotherhood of Railroad Trainmen from eliminating such positions. Protestants also question whether the laws of Pennsylvania and Indiana might also prevent petitioner from eliminating the positions of traincrew operating through those States.

With respect to the applicability of the New York statutes to petitioner's proposed reduction of traincrew assignments, the New York Public Service Commission, a protestant in the proceeding, on brief, concedes that the New York Railroad Law would constitute no obstacle to the elimination of the two job assignments heretofore described between Binghamton and Cornell and the single assignment between Cornell and the New York-Pennsylvania line, but apparently is of the belief that petitioner has also proposed the elimination of some other job assignments which, it is contended, would be contrary to the New York statute. No representation is made by this protestant respecting the effect the aforementioned labor agreement might have upon the carrier's ability to effectuate the reduction in crew assignments if the authority here requested were approved.

Although questions were raised by protestants as to the possibility that provisions of the statutes of Pennsylvania and Indiana

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might prevent petitioner from eliminating the positions described between Meadville and Marion, between Cornell and Meadville, and between Hammond and Chicago, there is no concrete evidence in the record tending to indicate what effect, if any, such statutes might have on the described proposals. Accordingly, it cannot here be determined what savings, if any, petitioner might be able to realize from the crew changes proposed affecting service in Pennsylvania and Indiana.

The Ohio labor organizations, protestants, dispute petitioner's contention that the traincrew changes in the State of Ohio could be effectuated without violating the Ohio Full Crew Law. Under section 4999.06 of the Ohio Revised Code, trains Nos. 7 and 8, while presently operated as a passenger train carrying one passenger coach and one "rider" car, may operate in Ohio with a minimum crew of one engineman, one fireman, one conductor, and one brakeman. Section 4999.07 of the Ohio Code requires a minimum crew for freight trains of one engineman, one fireman, one conductor, and two brakemen. At present the operation through Ohio is performed with a total crew consist of either six or seven, but under the instant proposal petitioner proposes to eliminate one trainman's job between Meadville and Marion and two trainmen between Marion and Ohio City, thereby reducing the crew to either three or four employees.

It is petitioner's contention that, if the passenger service is discontinued as proposed, the train will no longer be a "passenger train" nor will it become a "freight train" under the Ohio statutes and that there is, therefore, no statutory restriction against the train consist being reduced to three crew members while operating through Ohio. Protestants, on the other hand, argue that a train must be either a freight train or a passenger train and contend that petitioner, in no event, could reduce the crew consist through Ohio below four and still be in compliance with Ohio laws. On this basis, protestants claim that petitioner would only be enabled to eliminate two of the three traincrew assignments specified involving employees assigned to the operations through Ohio.

Petitioner admitted that in the event it were not enabled to reduce all of the traincrew assignments planned for the State of Ohio, its estimated savings in crew wages would be reduced by \$9,980 annually with a corresponding reduction in railroad retirement and unemployment tax and vacation expense of approximately \$1,423 a year.

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In presenting the aforementioned agreement with the Brotherhood of Railroad Trainmen, the railway labor organizations, in effect, are requesting the Commission to construe its provisions and to determine its applicability to petitioner's proposals herein. This is neither the proper forum for construing the provisions of this instrument nor is any construction thereof essential to the basic conclusions herein. The construction of this agreement must, of course, be reserved to the forum having appropriate jurisdiction.

While some doubt exists in the record as to the ability of petitioner to realize all of the savings in crew wages described, the record clearly demonstrates that some savings, not here determinable in any definite amount, could be realized under the instant proposal. Even assuming, however, that none of the savings in wages were possible, the record leaves no doubt of the overall net benefit that could be expected to accrue to petitioner by the granting of the proposal here considered. Petitioner reasonably could expect to realize the savings in train supplies and car repair expenses estimated, in the aggregate, to total \$156,070 annually. While the net loss in passenger and baggage revenues would be offset against these savings, we are of the view that, by virtue of the other passenger services provided by the carrier between the same points as those served by the instant trains, the convenience of such service, and the type of services available on the other trains, petitioner may reasonably expect to retain a considerable portion of the passenger revenues now accruing on trains Nos. 7 and 8. This might well equal the 30-percent rate estimated by petitioner. Assuming such percentage of retention of passenger revenue, the net loss in passenger revenue based on the passenger revenues for 1964 would amount to \$126,027. With this as an offset to the aggregate savings specified, the net benefit to petitioner would amount to \$30,043 annually, assuming no other savings were realizable from the instant proposal.

While no satisfactory basis exists for concluding that the carrier would be able to realize all of the estimated savings in diesel unit expenses (estimated at \$71,788 annually) or that the aforementioned reduction in trackage charges, estimated to total \$40,096 annually, would actually result in an overall saving to petitioner, protestants did not dispute petitioner's estimates or attempt to establish that such savings would not be realized. Should such savings actually occur, the total net benefit to petitioner, as a result of the service discontinuance here proposed, could be expected to approximate \$132,000 a year even without realizing any of the wage savings mentioned.

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Notwithstanding the various obstacles described which might arise to limit the savings flowing from the discontinuance of service here proposed, it is nevertheless evident that petitioner would still realize benefits of a substantial nature.

PUBLIC WITNESSES

Although the instant trains serve 54 separate communities, the testimony by public witnesses in opposition to petitioner's proposal was confined to general statements in opposition by three officials from the cities of Elmira and Jamestown, N. Y., and Akron, Ohio, a statement made by an attorney on behalf of certain Amish passengers, and the testimony of one passenger who occasionally uses the trains in traveling between Meadville, Pa., and Jamestown, N. Y. While the city officials indicated that the governing body of each of the cities named had adopted resolutions in opposition to petitioner's proposal, it was established that no effort was made by any of the communities to determine the actual interest or desire on the part of residents in or for the continuance of passenger service on the trains. The testimony of the city officials indicated a mere civic desire to retain all present passenger service but demonstrated no existing public need or demand for the service here proposed to be discontinued.

The representations on behalf of the Amish group were to the effect that their members from time to time use the trains for travel from Randolph, N. Y., to Sharon, Pa., and points west thereof to attend weddings or funerals in Amish communities at those points. Such travel is usually on a group basis. It is the practice of the group to travel by horse and buggy to and from the station at Randolph. This arrangement is more convenient and involves less travel than would be involved in utilizing bus service which is also available in the same general area. A representative of the group indicated that it would be helpful to the Amish passengers if petitioner would arrange to stop its trains Nos. 5 and 2 at Randolph on advance notice to the carrier's agent at Jamestown. Petitioner agreed that, in the event of the discontinuance of the service involved herein, it would stop trains Nos. 5 and 2 at Randolph to permit passengers to board or depart the trains upon notice being given in advance to its agent.

The aforementioned "occasional" passenger on trains Nos. 7 and 8 travels regularly between Meadville and Jamestown and, while he could travel by automobile, he prefers to utilize passen-

ger train service. Although he often utilizes the other trains operated by petitioner in traveling between the named points, it is more convenient to him to utilize either train No. 7 or train No. 8. Although the witness contends that the schedules of petitioner's other trains are such that he could not use those trains and still meet his business schedule, it is obvious from his testimony that a substantial portion of his travel is on trains other than those here considered.

EMPLOYEE PROTECTIVE CONDITIONS

A representative of the New York State Railway Labor Organization requested that, in the event the proposed discontinuance of service is authorized, the Commission impose conditions for the protection of adversely affected railway employees similar to those imposed in *Chicago, B. & Q. R. Co. Abandonment*, 257 I.C.C. 700. As was stated in *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, section 13a does not confer authority upon us to impose employee-protective conditions. However, an element which we must consider in reaching decisions upon proposals initiated under section 13a is the probable effect upon employees, and the net effect thereof upon public convenience and necessity. We will discuss these matters in our general findings.

DISCUSSION AND CONCLUSIONS

Under the provisions of section 13a(1) the Commission is empowered to require the continuance of an interstate rail-passenger service if, after investigation, it is found that the public convenience and necessity require its continuance and that such continuance will not impose an undue burden on interstate or foreign commerce.

Not only is it petitioner's contention that the public convenience and necessity no longer require the passenger service provided on trains Nos. 7 and 8, but also that an unjust and unreasonable burden would be imposed upon it and upon interstate commerce by being required to continue the passenger service on the trains. It asserts that the substantial savings that would accrue from the elimination of the passenger service and the improvements which could be made in the mail and express service if the passenger service were not required on the trains, is of great importance

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to petitioner in its present difficult financial position. It claims that, in view of the sparse passenger patronage on the trains, it should be apparent that the important savings contribution resulting from the elimination of passenger service can be made without any material inconvenience to the public. It, therefore, contends that, under such circumstances, the denial of its proposal and a requirement that it continue to provide passenger service on the trains would constitute an undue burden on its interstate operations and on interstate commerce.

Protestants, while conceding that the passenger traffic on the trains is insubstantial and that alternative transportation service is available generally throughout the area served by the trains, nevertheless point to the overall operating profit earned by the trains and contend that, under such circumstances, no undue burden can be deemed to be imposed upon interstate commerce by requiring the carrier to continue the passenger service in question.

It is protestants' position that petitioner is attempting to subordinate the passenger service to the interests of the mail and express service on the trains, thereby making more profitable an operation already shown to be making significant contributions to petitioner's overhead and fixed costs. They claim that, in the face of an operation already more than paying its own way, the necessity of continuing to afford all of the services rendered by the trains cannot be deemed to create an undue burden on interstate commerce. They refer to the decision of the Commission in Finance Docket No. 23272, *Southern Pac. Co. Discontinuance of Passenger Trains*, 328 I.C.C. 14, and argue that, because of the similarity between that case and the instant proceeding, insofar as petitioner's desire to discontinue passenger service on a concededly profitable set of mail and express trains is concerned, the same conclusion must be made herein as was reached in the case cited, namely, that the requested authority should be denied.

Notwithstanding some similarity in the basic proposals involved in the two cases, the facts and circumstances surrounding the instant proposal are so substantially different from those in the *Southern Pacific* case as to warrant an entirely different conclusion herein. Here we do not have a financially sound carrier which is experiencing favorable trends in operating results and in which the carrier would not be benefited by the discontinuance of the service proposed. Rather, we have here a railroad which

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is in precarious financial condition, which is required to use every means available to it to maximize its earnings and reduce operating expenses in order to avoid bankruptcy, and which would realize substantial net benefits from being able to eliminate the uneconomic passenger service under consideration.

As was stated in *Chicago & N. W. Ry. Co. Discontinuance of Passenger Trains*, 320 I.C.C. 648, 656, a significant factor underlying enactment of section 13a(1) was the desire to alleviate the financial difficulties of the railroad industry and to strengthen the national transportation system by removing the obstacles that railroads face in attempting to obtain economies and efficiencies through the discontinuance of uneconomic and duplicative services. In our opinion, because of the circumstance here involved, the objectives of section 13a(1) would be fulfilled by permitting the discontinuance of the passenger service here in question.

Some of the factors distinguishing the instant proceeding from the *Southern Pacific* case, are: (1) Whereas the passenger service in the latter case provided Southern Pacific with an excess of revenues over expenses in a rather substantial amount annually, the record herein establishes that the passenger revenues in the aggregate on both trains have continued to be less than the out-of-pocket expenses properly allocable to the passenger service on both trains; (2) while the carrier in the *Southern Pacific* case realized a net benefit to its system by retaining passenger service on the trains, petitioner herein is required to continue an uneconomic service which also prevents it from realizing the savings which are of such extreme importance to it in view of its critical financial condition; and (3) whereas there was an adequate showing in the *Southern Pacific* case of an existing public need for the passenger service on the trains in question, in the instant case the record amply demonstrates that there is no substantial public need or demand for the passenger service on trains Nos. 7 and 8 and that the alternative transportation services available are adequate to meet the needs of the public throughout the territory served by the trains.

Protestants argue that, inasmuch as the trains are now operated at a profit and make a contribution to the carrier's overhead and fixed costs, no undue burden can be deemed to be imposed upon interstate commerce by reason of the rendering of passenger service thereon. They consider that, inasmuch as the trains are paying their way, we would not be justified in allowing the

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carrier to subordinate its passenger traffic in the manner proposed for the purpose of increasing the mail and express revenues on the trains. These contentions ignore the fact that the passenger service is not paying its own way; that the need for such service on the trains is very insubstantial; and that the carrier, in being required to provide passenger service on the trains, is deprived of the opportunity to make improvements in the segments of the service which provide the vast proportion of the revenues earned by the trains, namely, the mail and express service, and is prevented from realizing the savings in operating expenses which would flow from the discontinuance proposed, thereby providing the means for improving the carrier's critical financial condition. Under such circumstances, an unjust and unreasonable burden would be imposed upon petitioner and interstate commerce by requiring the continuance of the passenger service on the trains.

Because of the many dissimilarities between the instant case and those in the *Southern Pacific* case, the ruling in the latter case clearly has no application to the instant proceeding. The record herein is convincing that discontinuance of the passenger service on the trains would cause relatively little inconvenience to the communities along the route of the trains; that it would enable the carrier to make substantial improvements in the mail and express service, thereby assisting materially in holding this traffic to the trains, and would provide the carrier with substantial net savings thereby benefiting the carrier's critical financial condition.

While there is considerable doubt as to the actual number of employees who would be adversely affected by the discontinuance proposed, we do not believe that, even if petitioner were enabled to eliminate all of the traincrew positions hereinbefore described, the adverse effect upon the employees would be so drastic as to overshadow the anticipated advantage to the carrier and to the public generally. The elimination of job opportunities herein does not justify our invoking procedures to prohibit or postpone the elimination of an uneconomic service and the realization of substantial savings so urgently needed.

Other contentions of the parties as to fact or law not specifically discussed herein have been given consideration and found to be without material significance or are not justified.

We find that the operation by the Erie-Lackawanna Railroad Company of passenger service on its trains Nos. 7 and 8 between Hoboken, N. J., and Chicago, Ill., is not required by public con-

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venience and necessity and that the continued operation thereof would constitute an undue burden on interstate commerce.

An appropriate order will be entered herein discontinuing the investigation.

COMMISSIONER TUGGLE did not participate.

APPENDIX A

Trains Nos. 7 and 8

Stations	Population	Miles	No. 7 (Read down)	No. 8 (Read up)
Hoboken, N. J-----	48,441	0.0	1:15 a.m.	12:30 a.m.
Paterson, N. J-----	143,663	15.6	-----	11:57 p.m.
Ridgewood, N. J-----	25,391	20.9	-----	11:50 p.m.
Middletown, N. Y-----	5,000	66.0	2:31 a.m.	11:02 p.m.
Port Jervis, N. Y-----	9,268	87.2	3:05 a.m.	10:22 p.m.
Narrowsburg, N. Y-----	550	121.4	3:59 a.m.	9:26 p.m.
Callicoon, N. Y-----	2,176	135.1	4:25 a.m.	9:10 p.m.
Hancock, N. Y-----	1,830	163.3	5:02 a.m.	8:35 p.m.
Deposit, N. Y-----	2,025	176.0	5:24 a.m.	8:16 p.m.
Susquehanna, Pa-----	2,591	191.6	5:55 a.m.	7:47 p.m.
Binghamton, N. Y-----	75,941	214.1	6:25 a.m.	6:40 p.m.
Endicott, N. Y-----	18,775	222.7	7:09 a.m.	6:27 p.m.
Owego, N. Y-----	5,417	236.1	7:28 a.m.	6:10 p.m.
Waverly, N. Y-----	5,950	255.2	8:01 a.m.	5:48 p.m.
Elmira, N. Y-----	46,517	272.8	8:20 a.m.	5:05 p.m.
Corning, N. Y-----	17,085	290.2	9:05 a.m.	4:46 p.m.
Addison, N. Y-----	2,185	301.3	9:17 a.m.	4:22 p.m.
Hornell, N. Y-----	13,907	331.3	9:50 a.m.	3:35 p.m.
Wellsville, N. Y-----	5,967	357.5	10:50 a.m.	2:56 p.m.
Friendship, N. Y-----	1,231	372.5	P 11:06 a.m.	-----
Cuba, N. Y-----	1,949	385.4	11:18 a.m.	2:24 p.m.
Olean, N. Y-----	21,868	397.8	11:50 a.m.	2:10 p.m.
Salamanca, N. Y-----	8,480	415.7	12:10 p.m.	1:35 p.m.
Randolph, N. Y-----	1,414	433.2	12:42 p.m.	1:12 p.m.
Jamestown, N. Y-----	41,818	449.4	1:15 p.m.	12:54 p.m.
Corry, Pa-----	7,744	476.3	1:51 p.m.	12:12 p.m.
Union City, Pa-----	3,819	487.7	2:07 p.m.	11:51 a.m.
Cambridge Springs, Pa-----	2,031	503.3	2:30 p.m.	11:34 a.m.
Meadville, Pa-----	16,671	518.0	2:50 p.m.	11:05 a.m.
Greenville, Pa-----	8,765	544.2	3:40 p.m.	10:28 a.m.
Sharon, Pa-----	25,267	560.3	4:07 p.m.	9:58 a.m.
Youngstown, Ohio-----	166,689	573.9	4:30 p.m.	9:02 a.m.
Niles, Ohio-----	19,545	582.7	-----	E 8:52 a.m.
Warren, Ohio-----	59,648	590.5	5:30 p.m.	8:44 a.m.
Ravenna, Ohio-----	10,918	610.9	6:00 p.m.	8:08 a.m.
Kent, Ohio-----	17,836	617.2	6:10 p.m.	7:49 a.m.
Akron, Ohio-----	290,351	627.9	6:52 p.m.	7:29 a.m.
Barberton, Ohio-----	33,805	634.5	M 7:01 p.m.	-----
Wadsworth, Ohio-----	10,635	641.1	M 7:10 p.m.	-----
Rittman, Ohio-----	5,410	645.5	7:17 p.m.	-----
Ashland, Ohio-----	17,419	677.6	8:05 p.m.	6:04 a.m.
Mansfield, Ohio-----	47,325	694.3	8:37 p.m.	5:30 a.m.
Galion, Ohio-----	12,650	709.7	9:10 p.m.	4:59 a.m.
Marion, Ohio-----	37,079	730.6	9:25 p.m.	4:20 a.m.

See footnotes at end of table.

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Trains Nos. 7 and 8—Continued

Stations	Population	Miles	No. 7 (Read down)	No. 8 (Read up)
Kenton, Ohio-----	8,747	755.6	M 10:20 p.m.	O 3:50 a.m.
Lima, Ohio-----	51,037	782.6	11:00 p.m.	3:19 a.m.
Ohio City, Ohio-----	851	809.9	M 11:27 p.m.	2:43 a.m.
Decatur, Ind-----	8,327	826.6	11:46 p.m.	2:24 a.m.
Huntington, Ind-----	16,185	857.2	12:20 a.m.	1:40 a.m.
Rochester, Ind-----	4,883	901.9	-----	11:54 p.m.
Hammond, Ind-----	111,698	981.9	1:55 a.m.	10:35 p.m.
Englewood, Ill-----	3,550,404	996.8	2:15 a.m.	10:14 p.m.
Chicago, Ill-----		1003.1	2:30 a.m.	10:06 p.m.

E—Stops on advance notice to discharge from Hammond and West.

M—Stops on advance notice to pick up for Chicago and let off from Youngstown and East.

O—Stops on advance notice to pick up for Akron and East and let off from Chicago.

P—Stops on advance notice to pick up for Chicago and let off from Binghamton and East.

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APPENDIX B

Statement comparing revenues and certain claimed expenses of operating trains Nos. 7 and 8 as passenger trains and as mail and express trains only

Interstate Commerce Commission account number	Item	Revenues and expenses showing present operation of passenger trains Nos. 7 and 8 between Chicago and Hoboken	Proposed operation showing revenues and expenses for operating trains Nos. 7 and 8 as mail and express trains only	Revenue loss
	<i>Operating revenues</i>			
102	Passenger	\$179,659	-----	\$179,659
103	Baggage	368	-----	368
106	Mail RPO	394,468	\$394,468	-----
	Other	1,833,958	1,833,958	-----
107	Express	943,209	943,209	-----
108	Other	9,520	9,520	-----
109	Milk	35,945	35,945	-----
	Total operating revenues	3,397,127	3,217,100	180,027
	<i>Selected out-of-pocket expenses</i>			<i>Claimed savings in expenses</i>
311	Locomotive repairs	332,976	332,976	-----
317	Passenger car repairs	734,652	625,090	109,562
392	Engine crew wages	317,016	317,016	-----
394	Fuel	267,072	267,072	-----
397)	Locomotive water,			
398)	Lubricants and			
399)	Supplies	32,628	32,628	-----
400	Enginehouse expenses	93,792	93,792	-----
401	Traincrew wages	427,213	216,625	110,588
402	Other train supplies	311,748	265,240	46,508
	Railroad retirement tax, unemployment tax and vacation expense	119,062	101,382	17,680
	C&WI wheelage and coach yard costs	441,043	441,043	-----
	Total	3,077,202	2,792,864	284,338
	Revenue in excess of expenses	319,925	424,236	-----
	Net savings claimed	-----	-----	104,311