

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4130

IN THE MATTER OF:

Served July 12, 1993

Application of PETER PAN BUS LINES,)
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-93-19

By application filed June 14, 1993, Peter Pan Bus Lines, Inc. (Peter Pan or applicant), a Massachusetts corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

Notice of this application was served on June 21, 1993, in Order No. 4114. The order directed applicant to file an attested copy of its current articles of organization and all documents indicating the rights of each of its shareholders so that the Commission could determine whether minority-shareholder Peter L. Picknelly controls Peter Pan within the meaning of the Compact, Title II, Article XII, Section 3. Applicant has since stipulated that Mr. Picknelly is a controlling shareholder but questions what it presumes to be the Commission's definition of that term. Applicant suggests that the Commission look to the definition of control under the Interstate Commerce Act.

In construing the Interstate Commerce Act, the Supreme Court has held that "control" means more than mere legal control; it encompasses "every type of control in fact." Gilbertville Trucking Co. v. United States, 371 U.S. 115 (1962). All pertinent facts and circumstances are considered in determining whether a person controls a carrier. Albert L. Evans, Jr. -- Continuance in Control Exemption, No. MC-F-17980, 1987 WL 98892 (I.C.C.) (July 8, 1987). Past and present directorships and veto power over extraordinary corporate transactions are indicia of control. Id.; New York Central R.R. & Alleghany Corp. -- Control, 320 I.C.C. 271 (1963); Benjamin Casser & Jules Casser -- Control, 7 Fed. Car. Cas. ¶ 31,610 (1949); The Greyhound Corp. -- Control, 7 Fed. Car. Cas. ¶ 31,543 (1948). A forty percent equity interest can be controlling. The Greyhound Corp. -- Control, 101 M.C.C. 655 (1967). Add a close family relationship with carrier management, and the presumption of control arises. Fast Interstate Express, Inc., 127 M.C.C. 279 (1976); San Maita & Irving Levin Extension, 110 M.C.C. 845 (1969).

The evidence of Peter L. Picknelly's control over applicant is considerable. He is one of applicant's current directors. His ownership interest and applicant's current management structure are the same as they were in 1988, when the evidence supporting Peter Pan's application for a certificate showed that Peter L. Picknelly was "responsible for applicant's financing and for generally overseeing

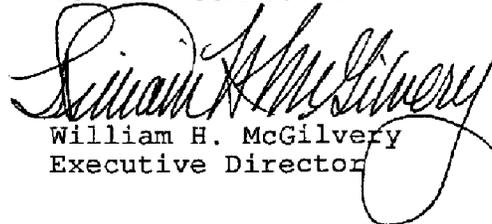
its operations."¹ Applicant's articles list him as one of its incorporators in 1951, and Commission records filed by Mr. Picknelly and his testimony in connection with various applications for authority over the years demonstrate that he has occupied a prominent ownership and management position with Peter Pan since its inception.² Mr. Picknelly presently possesses absolute veto power over extraordinary corporate transactions.³ He is the father of the other board members, who are all members of senior management. Thus, according to the definition suggested by applicant, Peter L. Picknelly controls Peter Pan.

Given the apparent difference of opinion between staff and applicant over what constitutes control, applicant will be directed to disclose fully and completely all affiliations Peter Pan and/or its shareholders have with any other carrier. To the extent any such affiliations exist, the Commission will determine which are controlling and which are not.

THEREFORE, IT IS ORDERED:

That, pursuant to Commission Regulation No. 54-04(c), Peter Pan Bus Lines, Inc., shall file with the Commission, no later than July 22, 1993, an original and four copies of a disclosure identifying and describing fully and completely all affiliations Peter Pan and/or its shareholders have with any carrier other than applicant.

FOR THE COMMISSION:



William H. McGilvery
Executive Director

¹ In re Peter Pan Bus Lines, Inc., No. AP-88-36, Order No. 3311 (April 4, 1989). Order No. 3311 described Peter Pan's ownership and management structure as follows: "Peter Pan is owned and operated by the Picknelly family. Mr. Picknelly owns 40% of its stock; his children Peter, Jr.; Paul; and Mary Jane own the remaining stock and serve as president, executive vice-president, and vice president, respectively." This describes applicant's ownership and management structure today.

² See e.g., American Coach Lines, Inc., No. AP-85-36, Order No. 2908 at 2 (Sept. 10, 1986) (discussing ownership of Peter Pan).

³ Peter L. Picknelly owns 40 percent of applicant's voting stock and 35.26 percent of its nonvoting stock. Because Peter Pan's articles do not specify a less-than-2/3 shareholder approval standard, Mr. Picknelly may block the following corporate transactions: amendment of the articles, sale of substantially all assets, consolidation or merger, and dissolution. See Order No. 4114 (citing laws of Mass.).