

ORIGINALDecision No. 25024.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the rates, rules, regulations, charges, classifications, contracts, practices and operations, or any of them, of ALLEN BROTHERS INC., a corporation, D. W. GRIGGS, operating under the fictitious name of American Warehouse; M. JASPERSON, operating under the fictitious name of Arlington Van & Storage Company; BEKINS VAN LINES, INC., a corporation; A. OTIS BIRCH, a corporation; CALIFORNIA FIREPROOF STORAGE COMPANY, a corporation; CALIFORNIA TRUCK COMPANY, INC., a corporation; W. E. FESSENDEN, operating under the fictitious name of California Warehouse Company; CENTRAL WAREHOUSE AND STORAGE COMPANY, a corporation; H. G. CHAFFEE WAREHOUSE COMPANY, a corporation; HELEN NICHOLSON-LOIS NICHOLSON, co-partners operating under the fictitious name of Chicago Van & Storage Company; L. E. MANOR, operating under the fictitious name of Citizens Warehouse; J. A. CLARK DRAYING COMPANY, LTD., a corporation; CURTIS C. COLYEAR, operating under the fictitious name of Colyear's Van & Storage Co.; COOK-McFARLAND COMPANY, a corporation; DAVIES WAREHOUSE COMPANY, a corporation; G. ECKDAHL, operating under the fictitious name of G. Eckdahl & Son Warehouse Company; FARMERS GRAIN AND MILLING COMPANY, a corporation; FRANK R. PALMATEER and ROBERT F. PALMATEER, co-partners operating under the fictitious name of FIDELITY VAN & STORAGE; GLOBE WAREHOUSE COMPANY, a corporation; E. A. HEYN, operating under the fictitious name of H. & J. TRUCK & WAREHOUSE COMPANY; JENNINGS NIBLEY WAREHOUSE COMPANY, LTD., a corporation; K. C. JOHNSON; ROY B. SUMNER, operating under the fictitious name of Pacific & Orient Dock; O. C. BUTLER-E. A. GRUNDY, co-partners operating under the fictitious name of Pacific Transportation Company; PAUL KENT TRUCK CO. INC., a corporation; LINCOLN FIREPROOF STORAGE COMPANY, a corporation; LONG BEACH TRANSFER & WAREHOUSE COMPANY, INC., a corporation; LOS ANGELES COMPRESS & WAREHOUSE COMPANY, a corporation; LOS ANGELES WAREHOUSE COMPANY, a corporation; METROPOLITAN WAREHOUSE COMPANY, a corporation; MODERN WAREHOUSES INCORPORATED, a corporation; OUTER HARBOR DOCK AND WHARF COMPANY, a corporation; OVERLAND TERMINAL WAREHOUSE COMPANY, a corporation; PACIFIC COAST TERMINAL WAREHOUSE COMPANY, a corporation; PACIFIC COMMERCIAL WAREHOUSE INC., a corporation;

Case No. 3278.

RICHARDS TRUCKING & WAREHOUSE COMPANY, a corporation; VERN M. OSBORN, operating under the fictitious name of Salt Lake Warehouse; SANTA FE WAREHOUSE COMPANY, a corporation; LISLE L. SMITH, operating under the fictitious name of SMITH BROS. TRUCK CO.; E. S. STANLEY, operating under the fictitious name of Star Truck & Warehouse Co.; TAYLOR MILLING COMPANY; TENTH STREET WAREHOUSE COMPANY, a corporation; UNION TERMINAL WAREHOUSE, a corporation; WESTERN WAREHOUSE & TRANSFER COMPANY, a corporation; WESTLAND WAREHOUSES INCORPORATED, a corporation; E. J. EVANS, operating under the fictitious name of West Los Angeles Milling Company; WILMINGTON TRANSFER & STORAGE COMPANY, a corporation; CITY AND HARBOR WAREHOUSE LTD., a corporation; A. E. DREW, operating under the fictitious name of Harbor Warehouse; CITY TRANSFER AND STORAGE COMPANY, a corporation; L. H. ZIMMERMAN-A. F. ZIMMERMAN, co-partners operating under the fictitious name of Zimmerman Brothers; SEAFOAM WAREHOUSE COMPANY, a corporation, CRESCENT WAREHOUSE COMPANY, LTD., a corporation; HOLLYWOOD STORAGE COMPANY, a corporation; engaged in operating public utility warehouses in the Cities of Los Angeles, Vernon, San Pedro, Wilmington, Hollywood and/or Long Beach, California.

Reginald L. Vaughan, for California Warehousemen's Association.

LeRoy M. Edwards, for Los Angeles Warehousemen's Association.

Reginald L. Vaughan and LeRoy M. Edwards, jointly, for the following warehouses:

California Warehouse Co.; City Transfer and Storage Company; Cook-McFarland Company; Crescent Warehouse Company, Ltd.; Hollywood Storage Company; Jennings-Nibley Warehouse Company; L. A. Warehouse Company; Metropolitan Warehouse Company; Modern Warehouses, Inc.; Pacific Commercial Warehouse, Inc.; Star Truck & Warehouse Co.; Union Terminal Warehouse Co.; Westland Warehouses Inc.; Wilmington Transfer & Storage Co.; Richards Trucking & Warehouse Co.; Santa Fe Warehouse Co.; Western Warehouse & Transfer Co.; Citizens Warehouse; Chaffee Warehouse Co.; Davies Warehouse Co.; Central Warehouse and Storage Co.; American Warehouse; Birch Smith Storage Co.; Long Beach Transfer & Storage Co.

Young & Young, by Wm. K. Young, for City & Harbor Warehouse, Ltd., a corporation.

Perry F. Backus, for Chicago Van & Storage Co.

Overton, Lyman & Plumb, by Wm. K. James, for Tenth St. Warehouse Co.

E. E. Bennett, for Overland Terminal Warehouse Co.
Phil Jacobson, for J. A. Clark Drayage Co.
R. E. Ashworth, for Allen Bros. Inc.
E. T. Harnett, for Seacoast Warehouse Co.
Charles Wright, for Eckdahl Warehouse Co.
F. M. Brock, for California Fireproof Storage Co.
Hugh Gordon, for Pacific Coast Warehouse Co.
J. B. Porter, for Cremeen Bros.
Milo W. Bekins, for Bekins Co.
J. M. Sims, by F. J. McGowen, for Outer Harbor
Dock Wharf Co.

CARR, Commissioner:

O P I N I O N

Respondents named in the title are warehousemen operating in the Los Angeles metropolitan area. The occasion for this investigation was the representation made to the Commission that the warehouse industry in this locality was fast getting into a chaotic condition, with disregard of filed tariffs becoming increasingly prevalent.

Public hearings were had on June 28, 29 and 30, 1932, and the matter is now ready for decision.

The following conclusions flow from the evidence:

1. The warehouse business in this locality is not operating on a profitable basis. Indeed, taken as a whole, it is probably at the present time operating at an actual loss.

2. With but few exceptions, these warehousemen have been and are deviating from their filed and published tariffs. The extent of the business handled at off-tariff rates varies from less than one per cent. in some cases to as high as 50 per cent. in others. Over-all the business

handled off-tariff is indicated to be less than 5 per cent. of the total. It has been increasing recently.

3. Tariff departures are due partly to insistence of customers and partly to competitive activities of other warehousemen who either cut rates by filing new and reduced tariffs or by under-cutting their tariffs.

4. These warehousemen, as a rule, dislike the charging of off-tariff rates and are anxious to bring about a situation where they will operate under their legally specified rates.

5. A uniform tariff applicable to all the warehousing in this locality containing, or supplemented by, rules or regulations directed against rebating through collateral services or devices such as draying concessions, space or office rentals, or extension of telephone or other facilities¹, may be a partial remedy for the present unsatisfactory

¹ A suggested form of such rules and regulations was submitted by counsel for the two warehousemen's associations. While urged as a basis for general rules and regulations applicable to all warehousemen in the state, they might well be incorporated in any tariffs filed by an individual or groups of warehousemen. The regulations so proposed are:

(1) DRAYAGE:

No warehouse shall give free drayage or drayage at less than its fair reasonable value to any warehouse customer. Each warehouse must file with the Commission its drayage rates, and no warehouse customer shall be charged less than the drayage rates so on file.

(2) OFFICE SPACE:

No warehouse shall give free office space or office space at less than its fair reasonable value to any warehouse customer. Each warehouse must file with the Commission a schedule of rates for office space, and no warehouse customer shall be charged less than the rates so on file.

(3) TELEPHONE:

No free telephone service shall be given to any warehouse customer, or any telephone service at less than the amounts charged the warehouse for the service rendered. The foregoing rule shall not preclude a warehouseman from allowing incidental or casual calls over the phone without charging therefor, nor shall it preclude a warehouseman from maintaining a "secretarial switchboard" without charge to the customer.

conditions. Such a tariff, however, should develop from within the industry itself rather than be imposed upon it by the Commission.²

6. Off-tariff charges now being made and as they have been made in the past have worked and are working a discrimination as between patrons.

The Commission is of the opinion that the circumstances under which the respondents have operated are such that actions

(4) LEASE SPACE:

No commodities shall be stored under lease space agreements at less than the filed tariff rates for such commodities, unless said lease is:

- (a) Made pursuant to a written agreement.
- (b) For a definite term of not less than 30 days.
- (c) Made for definite space to be enclosed by walls, wire or other substantial inclosure with a door which can be locked.
- (d) Under express agreement that warehouse shall assume no responsibility for any commodities stored in said leased space, other than as landlord of the premises.
- (e) No warehouse receipts or other acknowledgment of receipt of goods shall be issued.

(5) CHANGE IN DRAYAGE AND OFFICE RATES:

Any warehouse may change its rates for drayage or office space, subject to the limitations hereinbefore set forth, by filing said new rates with the Railroad Commission at least 24 hours before same are put into effect.

(6) CHANGE IN WAREHOUSE RATES:

No warehouse can solicit new business on the basis of, or accept storage at, rates other than tariff rates then on file for such warehouse and approved by the Railroad Commission.

² Warehousing conditions at Los Angeles Harbor differ in some respects from those in the city. There developed sharp differences of opinion as to whether or not there should be a differential in charges in favor of Class "C" warehouses. The framing of a tariff fair to all these warehousemen is fraught with many practical difficulties. It is something which almost necessarily should develop from the industry itself as the result of mutual concessions and adjustments and in the light of business conditions peculiar to the industry affected.

to collect penalties for tariff violations should not now be directed. (See Re Chas. F. Kane, 51 C.R.C. 752.) These warehousemen have not been entirely free agents. Apparently they have not been imbued with the fundamental concept of the older and more seasoned utilities that tariffs must be complied with and discriminations avoided. Customers and prospective customers have pressed them to disregard their utility obligations. Competition for accounts has been exceedingly keen and has literally forced practices inconsistent with operations as a regulated public business. However, the respondents should be required to collect from their respective patrons the amounts of all under-charges. (Modesto Irrigation District vs. Pacific Gas & Electric Co., 36 C.R.C. 766, 769.) Not only is this a fundamental obligation imposed upon these warehousemen as public utilities, but common fairness to those customers who have paid the lawful rates demands that the few favored customers receiving unlawful concessions and rebates should not be permitted to retain the advantage thus gained.

As to future operations, these respondents should be put upon notice that tariff violations by a utility are subject to severe penalties. (Re Chas. F. Kane, 51 C.R.C. 752.)

A suggestion was made at the hearing that the respondent warehousemen be "put on probation" for a six months' period, following, in effect, the procedure in Re Ashton et al., 36 C.R.C. 777. No useful purpose would be served by such a course. If respondents desire to try out a uniform tariff they should be able to develop and file such a one by the effective date of this order. No defensible ground appears for allowing these warehousemen to continue disregarding their tariffs and extending lower and off-tariff rates to a few of their customers to the manifest prejudice of their other patrons who pay the lawful charges.

The following form of order is recommended:

O R D E R

Public hearings in the above entitled matter having been had,

IT IS HEREBY ORDERED,

1. That each respondent herein who or which has made charges less than those authorized by his or its tariff on file with the Commission forthwith diligently and in good faith proceed to collect and collect the amount of all such under-charges and not later than December 1, 1932 report, under oath, to this Commission the amount of under-charges it has collected and if all have not been collected then report in detail the proceedings taken looking to their collection.

2. That each respondent herein shall immediately cease and desist and thereafter abstain from charging, demanding, collecting or receiving any charges for warehousing services greater or less than or different from those shown in his or its tariff therefor on file with this Commission.

3. That the Commission retain jurisdiction in this proceeding to take such further steps and make such further orders as shall be necessary to insure a compliance with law by these several respondents.

The effective date of this order, except as otherwise provided herein, shall be September 15, 1932.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of August, 1932.

C. C. Seaver
Leon A. D. Hall
W. B. Rainey
James G. Stewart
Commissioners.