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Decision No. 29118

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of S. OSUKA, PABLO RUBIO, PRUDENCIO RODRIGUEZ, VICTOR J. CARRICK, WILLIAM J. YOUNG, CHAS. KETNER, FRED O. SONES, JOHN R. WILLIAMS, D. V. PORTER, A. FALLAVENA, J.C. MINSHEW, doing business as Minshew Truck & Transfer Co., H. W. HENDRIX and H. M. HENDRIX, copartners doing business as Hendrix Truck Co., HUE FOLLENDORE, doing business as Hue's Transfer, DAN BUMP, SPENCER GILL, DELL GRAY, JOE ROMBOUT, J. W. ASHER, HARRY U. KUBOTA, doing business as Central Service Co., CLAUDE CHILDEERS, C. B. GREEN, MAGGIO BROS. CO., INC., a corporation, CHESTER McNUTT, K. METROS, E. P. OBERGFELL, L.C. OBERGFELL and I. C. OBERGFELL, copartners, L. F. ROGERS, FRANK M. STALL, J. F. WAGGONER, and PETER COMPOURIS, operating as Radial Highway Common Carriers; of P. M. ACEVES, J. H. BAILEY, Y. HONDA, ELMORE JAMESON CO., a corporation, Y. NAKAGAMI, SHOGO G. SAITO and V. L. YOUNG, copartners, JACK V. WHITE, doing business as White Bros. Trucking, JERRY A. FARMER, FRED O. SONES, E. S. WILKINS, H.W. HENDRIX and H.M. HENDRIX, copartners doing business as Hendrix Truck Co., HUE FOLLENDORE, doing business as Hue's Transfer, WALTER CARSTON, L.H. DOWE, O.B. AIKEN, F.R. BROWN and R.E. BROWN, copartners doing business as Brown Bros., G. W. CLARK, L.S. COBLEIGH, R.S. ENGBREITSON, D.H. LOO, RAY McGUIRE and J.A. SHIPLER, copartners, CHESTER McNUTT, DUANE D. STAFFORD and PERCIE C. THACKER, copartners doing business as Pioneer Truck & Transfer Co., R. THOMPSON, GARRETT JOHNSON, ELGER LOW, TOM KING, and ED ROYCE, operating as Highway Contract Carriers; and of J. R. SNYDER and J. L. BAIN, operating without permits, respondents, for the purpose of determining whether said respondents are, or any of them is, engaged in conducting any service as a Highway Common Carrier between any points in this State, and more particularly between points in the Imperial Valley, on the one hand, and Los Angeles, San Diego, and San Francisco and other San Francisco Bay points, respectively, on the other hand, without having previously obtained therefor a certificate of public convenience and necessity.

ORIGINAL

Case No. 4129

Herbert Cameron, for the Railroad Commission of the State of California.

Fred N. Bigelow, for Pacific Southwest Railroad Association, interested party.

Guy V. Shoup and Edward Bissinger, for Southern Pacific Company and Pacific Motor Transport Company, interested parties.

Edward Stern, for Railway Express Agency, Inc., interested party.

Harold W. Dill, for The Truck & Warehouse Association of San Diego County, interested party,

and

Hue Follendore, d.b.a. Hue's Transfer

L. H. Dowe

Chester McNutt

Percie C. Thacker, for Duane D. Stafford and Percie C. Thacker, d.b.a. Pioneer Truck & Transfer Company

E. P. Obergfell, L. C. Obergfell and I. C. Obergfell, -d.b.a. Obergfell Bros.

Maggio Bros. Co., Inc.

R. S. Engebretson

J. H. Bailey

Jerry J. Farmer

Dinzel V. Porter,

Respondents.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission instituted upon its own motion an investigation into the operations of fifty-five carriers, for the purpose of determining whether or not they were engaged in business as highway common carriers between Imperial Valley points on the one hand, and San Diego, Los Angeles and San Francisco Bay points, and intermediate points, respectively, on the other hand. Of the respondents, all of whom have their headquarters in the Imperial Valley, and who comprise substantially all the operators in that territory, twenty-five hold permits from the Commission as radial highway common carriers, <sup>(1)</sup> twenty-four as highway contract carriers, four as both radial highway common carriers and highway contract carriers, and two are operating without permits, those which had previously been issued to them having been cancelled before the proceeding was initiated.

A public hearing was had before Examiner Austin in El Centro, on June 9th, 10th, 11th, 12th, 16th, 17th and 18th, 1936, when evidence was introduced, the matter was submitted, and it is now ready for decision.

Of the respondents fifty-two appeared and testified, while three, viz., Pablo Rubio, Joe Rombout and J. W. Asher, failed to appear. In addition to the testimony of respondents, evidence was

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(1) For brevity, we shall refer in this opinion to a Radial Highway Common Carrier as a radial carrier; to a Highway Contract Carrier as a contract carrier; and to a Highway Common Carrier as a common carrier.

received from various representative shippers who have patronized them.

The products of the Imperial Valley, situated some two-hundred miles southeast of Los Angeles, are largely of a perishable nature, consisting chiefly of lettuce, tomatoes, cantaloupes and watermelons, and in addition hay and grain are raised in considerable quantities. A large part of the cantaloupe crop moves east by rail in refrigerator cars, but a substantial share of these products is consumed in nearby markets such as Los Angeles and San Diego. To Los Angeles there is a heavy movement by truck, and in a lesser degree, to San Diego and San Francisco.

During the harvest season a heavy demand for equipment arises, which soon tapers off as the products are marketed. Due to the highly perishable nature of the traffic, it must be transported expeditiously, particularly since trucks provide no refrigeration. To meet these requirements, the larger local truck operators have been accustomed to hire independent truck owners to assist them during the peak season.

Many of the respondents have engaged in the transportation of produce for compensation to Los Angeles, and to some extent to San Diego, and in handling various commodities on the backhaul, such as lumber, fertilizer, paper, and other property. And a few have conducted such a service between the Valley and San Francisco Bay points.

In performing this service, many of the respondents have operated regularly between various points in the Imperial Valley on the one hand, and San Diego and Los Angeles, on the other hand, and, as we have stated, some have operated between Valley points and San Francisco. A few have operated regularly

between points within the Valley itself. Others have confined their operations to the transportation of produce from the farms within a general area to the rail facilities or packing sheds at some Valley point. Still others have limited their service to the transportation of property under contracts with a limited number of shippers.

In the administration of the Auto Truck Act (Statutes 1917, Chapter 213, as amended) the Commission has often been called upon to examine the operations of carriers operating, without certificates, over regular routes or between fixed termini, and in our decisions many such operators, who have been found to be "transportation companies" within the meaning of that statute, have been required to discontinue. At the legislative session of 1935, the Auto Truck Act was repealed but its provisions were substantially reenacted in Sections 2-3/4 and 50-3/4 of the Public Utilities Act. A carrier of this type, now known as a "Highway Common Carrier" must, under the terms of Section 50-3/4, still secure from the Commission a certificate of public convenience and necessity before commencing his operations.

Section 2-3/4 of the Public Utilities Act defines such a carrier as:

"\* \* \* every corporation or person, \* \* \* owning, controlling, operating or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town, or city and county \* \* \*".

Such a carrier is included within the category of a "Highway Carrier" described in Section 1(f) of the Highway Carriers' Act (Statutes of 1935, Chapter 223), which provides that the term "Highway Carrier" as used therein shall include every corporation or person "engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor

vehicle or motor vehicles." It is clear, however, that under the terms of this Act no highway common carrier was granted the privilege of initiating his operations without first securing a certificate.

Section 1(g) defines as a highway common carrier:

"...every highway carrier operating as a common carrier subject to regulations as such by the Railroad Commission under Chapter 213 of the Statutes of 1917, as amended."

Section 2 of that Act provides that:

"No highway carrier other than a highway common carrier shall engage in the business of the transportation of property for compensation by motor vehicle over any public highway in this State, except in accordance with the provisions of this act, \* \* \*" (Emphasis supplied),

and Section 3 provides that:

"Except as hereinafter provided, no highway carrier, other than a highway common carrier, shall engage in the business of transportation of property for compensation by motor vehicle on any public highway in this State without first having obtained from the Railroad Commission a permit authorizing such operation; \* \* \*" (Emphasis supplied).

By the terms of Section 1, subdivisions (f), (g), (h) and (i) of that Act, all "highway carriers", other than "highway common carriers" are classified as either "radial highway common carriers" or "highway contract carriers". Carriers falling within each of these classes are required to secure permits before initiating their operations, but the Act does not excuse those falling within the class of a highway common carrier from securing a certificate before embarking in business. On the other hand, no highway common carrier is required to secure a permit.

Thus, it appears that the legislature has set up a complete scheme for the regulation of all types of carriers operating motor vehicles over the public highways for compensation. The Radial and the Contract Carrier need only secure a permit, while the Highway

Common Carrier is still obliged, as before, to secure a certificate. Neither carrier may, without obtaining proper authorization, trespass upon the field of the other. Therefore, whenever a highway carrier, operating under a Radial or a Contract permit, engages in the transportation of property as a common carrier, as defined in the Public Utilities Act, for compensation over any public highway between fixed termini or over a regular route, he then becomes a Highway Common Carrier, and before commencing such operations he must secure a certificate. Should a Radial or a Contract carrier embark upon operations of this character without obtaining a certificate, his operations are unlawful and he may be required by order of the Commission to cease and desist from their continuance.

It is unnecessary to repeat here the definitions of the various types of carriers mentioned in the Highway Carriers' Act, set forth in our decision in Rampono vs. Leonardini, Decision No. 29256, 39 C.R.C. 588.

The evidence in this case demonstrates that many of the respondents, operating only under permits as radial or contract carriers, have regularly engaged in the business of transporting property for compensation for the public between fixed termini, viz., between points in the Imperial Valley on the one hand, and San Diego, Los Angeles and San Francisco, respectively, and intermediate points. In the absence of certificates, these operations must be held to be unlawful, and such respondents will severally be required to cease and desist from continuing these activities.

We shall first discuss the evidence relating to carriers of this type.

HIGHWAY COMMON CARRIERS

From our consideration of the record it appears that the following respondents are engaged in business as highway common carriers. Their operations will now be reviewed.

HUE FOLLENDORE, dba Hue's Transfer. This respondent, who holds permits from the Commission as both a radial and a contract carrier, has for the past fourteen years been engaged in the trucking business under the name of Hue's Transfer, with headquarters at Holtville. He has six trucks and four trailers, which are used exclusively in the service, no additional trucks having been hired from other operators. He hauls for compensation principally hay, grain, fruit and vegetables but will accept freight of any character. So far as possible he has confined his service to full truckloads.

He has solicited business from the public generally, paying particular attention to the more responsible shippers, and it is his custom to distribute calendars annually and circulate business cards. At Los Angeles he maintains an office where inquiries for transportation are answered and orders are accepted by his wife.

Substantially all the business he handles originates at Holtville or in its immediate vicinity. From Holtville to San Diego, since January 1st, 1936, he has averaged three or four trips a week, and since May 1st, 1936, his back-hauls have averaged ten or twelve a month, being somewhat more frequent now than previously. He has made no shipments between Imperial Valley and San Francisco, his equipment not being suitable, so he testified, for such long trips. However, between Holtville and Los Angeles he has operated quite frequently, in fact, daily during the produce season, which extends from early December until late in July, and once or twice a week during the remainder of the year. He will accept shipments from anyone

able to pay his charges and has never refused to haul for anyone. He admitted that he traverses two regular routes, occasionally operating over U. S. Highway 99 and at other times surmounting the Jack Rabbit Grade. To San Diego he traverses U. S. Highway 80.

Although respondent testified he had entered into verbal agreements with Don Starr and with the Imperial Valley Milling Company, both of Holtville, for the transportation of their property, it is clear that these arrangements were of the loosest kind, since no obligation rested upon either shipper or carrier to ship any definite amount of tonnage. Because of the readiness with which he will carry property for anyone, respondent cannot be deemed a contract carrier. And the testimony of several shippers using his facilities establishes the absence of any contracts, there being no understanding as to the quantity of tonnage to be handled, the term of existence, or the notice of termination. One stated the understanding was terminable on a few hours' notice. They agreed only upon the rate.

The regularity of his operations between Holtville and San Diego and Los Angeles, clearly indicates that his status is not that of a radial carrier. He must therefore be held to be a highway common carrier.

WALTER CARSTON. This respondent, who holds a permit as a contract carrier, has been engaged in the trucking business at Calexico for seven years, using three Chevrolet trucks, and occasionally, as business requires, employing other highway carriers.

He testified that during the past three years he had entered into contracts for transportation with various shippers, including J. R. Sullivan, Calexico Lumber Company, Southern California Grocery Company, Cohen Bros., Tarr & McComb Company, Nelson-Carrell Co., Bill Bathe, Fred Gunterman, Frank Cumberg, Mr. Steveson, Frank Chiack,

Gilmore Oil Company, F. Yakawa, Martin Bros., and Pennzoil Company, together with others whom he could not then recall. In this connection, Mrs. Carston testified no new contracts had been consummated within the past three months.

As to all these arrangements, none of which was in writing, an understanding had been reached as to the rate, but no definite term was specified, the shipper was not obligated to deliver to respondent any definite amount of tonnage, nor was any notice of termination provided. Respondent testified that the contracts were to continue in effect so long as the shipper was satisfied, and that in each instance the latter was obligated to deliver to the respondent all the commodities of a certain kind that he might have for transportation between Calexico and Los Angeles and harbor points. As to some of these arrangements, respondent admitted that he would acquiesce were the shipper to terminate it without notice.

From respondent's testimony it appears that he will haul for anyone tendering all his tonnage, provided respondent has sufficient equipment to handle it. Business has been rejected because the shipper offered only a single load. Respondent has solicited transportation, and he has established rates which are applicable uniformly among all shippers.

The evidence of representatives of the shippers with whom respondent alleged he had entered into contracts, tended to corroborate his testimony to the effect no definite contracts had been made, but in some respects their statements did not coincide with his.

Mr. David R. Kincaid, Manager of Calexico Lumber Company, testified he had entered into no written or oral contract with respondent, that he was free to employ any truckmen without incurring any liability to Carston and that, in fact, he actually employed some eight truck operators, including among others, respondents

Chester McNutt and L. H. Dowe, as well as the Imperial Truck Agency and the Valley Truck Company, which performed a pick-up service only.

Appearing on behalf of Southern California Grocery Company, Mr. C. J. June, its manager, testified that his company had entered into an oral agreement with respondent to haul soap, which, he stated, was not exclusive, the company being free at any time to terminate the arrangement without liability on its part to Carston.

P. E. Cook, a seed and feed merchant at Calexico who represents Tarr & McComb Company as buying agent, testified that no contract, either written or verbal, had been entered into with respondent for transportation. Furthermore, he stated, Tarr & McComb Company was under no obligation to supply any minimum tonnage, no term had been agreed upon during which any transportation service was to be performed, nor was any notice provided for the termination of the arrangement, Tarr & McComb Company being free at any time to cease using respondent without incurring any liability. Contrary to Mr. Carston's testimony that Tarr & McComb Company had agreed to give him all of their shipments and to use his service exclusively, Mr. Cook testified that the company was free to employ any other carrier, stating in this regard that generally they gave preferred consideration first to respondent because he was located at Calexico, and then to respondent Hue Follendore of Holtville in the event Carston was unable to handle the business. In fact, so he testified, several other truckmen, including respondents L. H. Dowe, Chester McNutt, Pioneer Truck & Transfer Company of El Centro, Ed Royce and Hue Follendore had transported shipments for them.

Fred Gunterman, a rancher near Calexico, stated he had entered into no agreement, either written or oral, with respondent; that he was required to deliver to respondent no minimum tonnage; and that

the arrangement could be cancelled without notice. In this respect his testimony contradicts that of respondent, who stated that under a verbal contract with Mr. Gunterman, the latter was obligated to give him all his livestock hauling.

It thus appears that the arrangements into which respondent may have entered with various shippers, whatever they may be termed, cannot arise to the dignity of contracts for transportation. They provide no term of existence; they obligate the shipper to deliver no definite amount of tonnage; they obligate the carrier to haul no definite quantity; and they can be terminated upon a moment's notice without liability on the part of one party to the other. In fact, they are no more than mere rate quotations.

Respondent operates regularly and frequently between Calexico and vicinity on the one hand, and Los Angeles and San Diego, respectively, on the other hand, carrying property for compensation. Clearly, he must be held to be a highway common carrier.

L. H. DOWE. Operating under a contract permit, this respondent, who maintains his headquarters at Calexico, has been engaged in trucking for six years, operating continuously throughout this year and conducting his business under the name of Pioneer Transfer Company. Respondent owns six trucks which are used in the business, and employs other highway carriers when necessary, it being his practice on these occasions to deduct 10% of the charges received to cover the cost of loading and bookkeeping. His cargo insurance applies only to his own trucks, and not to those of other truckmen.

Respondent hauls from Calexico only, serving no other Valley towns. During the current season, since January 1st, the trips to San Diego have averaged four or five a month. Because of the distance

he has hauled nothing to San Francisco, but he has operated quite frequently between Calexico and Los Angeles, averaging from three to five trips a week, depending upon the tonnage offered. To Los Angeles and intermediate points, he has transported farm products, hay, grain and cotton, with an occasional load of furniture, and from these points he has hauled building material, steel, oil, grease and fertilizer. On the Los Angeles shipments the charges were paid by the shipper or consignee at Calexico; and on those to San Diego the consignees at that point have paid. No office is maintained at Los Angeles, but the drivers are authorized to make their own arrangements for back hauls.

This respondent has never entered into written contracts with any shippers. In his dealings with them he has exacted no conditions requiring the delivery of any specific volume or minimum quantity of tonnage, nor providing any definite term during which the transportation would be performed. The rates, which apply uniformly among all his patrons, are not always expressly agreed upon in each instance, respondent ordinarily relying upon the customary rate then in effect. Not only has he solicited business, but it is his practice to distribute calendars annually. From time to time he has refused shipments where the rate is not satisfactory or the commodity is not suitable to his equipment, but otherwise he will accept any shipment tendered.

He admitted he had failed to list with the Commission all the shippers with whom he had entered into arrangements, excusing this on the ground that many of them were occasional customers whom he would never see again. Since January 1st, 1936, he has served some twenty steady customers and has handled single loads for others. The testimony of David R. Kincaid of the Calexico Lumber Company, and Arthur J. Conkey of the Globe Mills, corroborates respondent's statement that he had entered into no contracts for transportation. Clearly,

his operations are those of a highway common carrier, not authorized under his contract permit.

CHESTER McNUTT. Since 1923, this respondent has been engaged in the trucking business at El Centro, where he maintains an office, holding both a contract and a radial permit. He owns two trucks, but employs other highway carriers whenever necessary, using as many as fifteen additional trucks at one time during the peak season, although this varies with the traffic available. On these occasions respondent collects from the shipper the full amount of his charges and pays the operators a smaller sum, retaining the difference, so he stated, to cover his own expenses. Since January 1st, 1936, he has employed as many as thirty operators. All these shipments are handled under the billing of respondent, who collects the charges and settles with the operators.

Since last January his shipments to San Diego have averaged one a week, back-hauls being carried about half of the time. Upon all of these shipments the consignors have paid the charges. To Los Angeles he has operated approximately ten trucks daily during the past three months, hauling property for compensation in both directions.

Respondent testified he had entered into oral arrangements with various shippers, of whom he named the Taylor Milling Corporation, Los Angeles, Eddins & Inwood, Westmoreland, Imperial Grain Growers, Inc., Brawley, I. V. Milling Company, Holtville, J. B. Hill Company, Los Angeles, Associated Oil Company, Pacific Land & Cattle Company, Imperial, Seaside Oil Company, El Centro, Sam Dannenburg, El Centro, Union Hardware & Metal Company, Los Angeles, Richfield Oil Company, Los Angeles, Pacific Nut Oil Corporation, Imperial Valley Warehouse Company of Imperial, and El Centro Lumber & Trading Company, of El Centro.

Under the arrangements originally consummated with these shippers there was no obligation on their part to deliver to respondent any definite amount of tonnage, although in this respect respondent testified he expected to secure a substantial volume. No definite term was provided and the arrangement was terminable by either party without notice. Uniform rates were exacted from all shippers upon all commodities of a similar character.

During his testimony at a later stage of the proceeding, respondent produced a list of shippers, taken from his records, with whom he stated contracts were now in effect, the following shippers being named, viz., Sam Dannenburg of El Centro, Fred Gunterman of Calexico, I. V. Milling Company of Holtville, Imperial Grain Growers, Inc. of Brawley, J. B. Hill Grain Company of Los Angeles, Taylor Milling Corporation of Los Angeles, El Centro Lumber & Trading Company, of El Centro, Richfield Oil Company of Los Angeles, Benson Lumber Company of San Diego, Howell Feed Company of Escondido, Seaside Oil Company of El Centro, Pacific Land & Cattle Company of Imperial, Estate of M. E. Cavin Lumber Company of Heber, El Centro Hatchery of El Centro, County Oil Company of El Centro, Eddins & Inwood of Westmoreland, Poultrymens Cooperative Association of Los Angeles, and Imperial Hay Growers Association of Brawley. In addition to these, he has hauled for many others who have tendered only occasional shipments. Included among them are certain shippers for whom respondent testified he has discontinued hauling because they had failed to give him substantially all their tonnage, or the volume of their shipments decreased to a considerable extent. Among them are included S. L. Hartzel of El Centro, V. O. Milling Company of Los Angeles, Cia-Internacional Minera of Calexico, First National Bank of Norwalk, Imperial Valley Hardware Company of El Centro, Sunland Dairy of El Centro, W. J. Vogel of

Brawley, Peter Bonfert of Seeley and Cocoa Cola Bottling Works of El Centro. For some of these, respondent has hauled shipments as late as April and May of this year.

This does not exhaust the shippers whom he has served, occasional shipments having been made for others, including such other carriers as Walter Carston and the B. & B. Trucking Company. By his own admission he has regularly served twenty-two shippers, and until lately, nine more.

During the early part of the current year respondent submitted to some of these shippers a form of written contract, but most of them were not sent out until May. Only a few have been signed, most of the shippers having retained the contracts for further consideration, but respondent has still continued to haul for them.

Certain shippers testified they had entered into no contracts with respondent for transportation, nor had they any understanding with him contemplating any minimum tonnage, a definite term, or any notice of cancellation. Such was the testimony of David R. Kincaid of the Calexico Lumber Company (a firm which, though not named in either list submitted by respondent, has used his service this year), C. A. Butler of the Imperial Valley Milling Company at Holtville, J. G. Suess, Manager of Imperial Grain Growers, Inc. at Brawley, Fred Gunterman, of Calexico, and Ashley C. Inwood, of Eddins & Inwood, at Brawley. Mr. Gunterman, however, expressed the belief he was obligated to deliver all his hay and flax to this respondent. Some testified they had signed the contract submitted, while others still had it under consideration. On behalf of Morrow Lumber Company, Charles H. Morrow testified that though he had made no agreement with respondent, either written or oral, he had used his facilities. This company also was not mentioned in the list of shippers submitted by respondent.

There was introduced in evidence a copy of an agreement executed January 25th, 1936, between respondent and the Taylor Milling Company, which provides in substance that the shipper thereby employs respondent, and respondent accepts employment from the shipper, for the transportation by motor truck of certain commodities between various points in the State, for which the shipper agrees to pay respondent, and the latter agrees to accept, certain rates which are set forth in considerable detail. It is stated that respondent shall be deemed an independent contractor and not an agent of the shipper; that the carrier will conduct no regular schedules but will render service "only if, as and when the business of the shipper requires". It is further provided that should the Commission require the carrier to "alter or change his operations or charges to a basis different from that herein specified", then neither party shall be bound to the further performance of any term or condition which may conflict with any such decision, ruling, regulation or direction. By its terms the agreement shall continue in effect for one year from January 1st, 1936, "unless sooner terminated by mutual agreement of the parties".

This agreement, so respondent testified, is typical of those executed by or submitted to the parties, excepting only as to the details relating to the description of the commodity, the rates and the term of existence. By its provisions, this agreement does not obligate the shipper to deliver to the carrier any minimum or definite quantity of goods for transportation. In this respect it is wholly inconsistent with respondent's testimony that he sought, wherever possible, to bind the shipper to deliver to him all the tonnage he had available for transportation.

The evidence discloses that respondent has held himself out to serve the public generally. It is true that he has endeavored

wherever possible to haul only for substantial shippers, but it was established that he will accept business from any such shipper. From time to time he has carried casual shipments. No contracts have ever been executed obligating the shipper to deliver and the carrier to transport any definite amount of tonnage for a fixed term, nor is any specific notice of cancellation required, and the written contract actually used wholly lacks mutuality because of its failure to obligate the shipper to tender any specific tonnage.

The record abundantly shows that this respondent has been carrying property for compensation regularly between Imperial Valley points, viz., El Centro, Brawley, Calexico, Eber, Holtville, Imperial and Westmoreland, on the one hand, and San Diego and Los Angeles and Los Angeles harbor points, on the other, thus transmating his operations into those of a highway common carrier.

DUANE D. STAFFORD and PERCIE C. THACKER, co-partners, doing business as PIONEER TRUCK & TRANSFER COMPANY. These respondents, who hold a contract permit, are conducting a trucking business at El Centro as co-partners under the firm name and style of Pioneer Truck & Transfer Company, their equipment consisting of ten trucks and two trailers. They haul produce locally from the ranches to the packing sheds at El Centro, and also engage in the long haul business. To San Diego, they have transported property from El Centro for compensation upon an average of once a month, handling principally household goods, which they solicit and will accept from anyone. To Los Angeles, however, the trips from El Centro have been more frequent, occurring upon an average of once a week. Here also they have transported household goods for anyone. It is their practice to collect uniform rates for similar commodities.

From Los Angeles they have hauled freight of all descriptions to El Centro, the transportation of which has ordinarily been arranged

before leaving El Centro on the outbound trips. They have made no trips between El Centro and San Francisco, although on rare occasions they have hauled household goods to intermediate points, such as Sacramento and Fresno.

Mr. Thacker, testifying on behalf of these respondents, stated they had entered into contracts with three shippers, including the Imperial Irrigation District of El Centro, Sears-Roebuck & Company and the Railway Express Agency, all of which were in writing. No contract was made with the Western States Grocers, although respondents have carried freight regularly for this concern.

The evidence shows that these respondents have not confined their operations to hauling for those with whom they have entered into contracts; on the contrary they are regularly engaged in transporting property for compensation between El Centro and San Diego and Los Angeles, respectively, serving the public generally. Their operations must be viewed as those of a highway common carrier, not justified under their contract carrier's permit.

ELMORE JAMESON COMPANY. Elmore Jameson Company, a corporation, with its office at Brawley, is engaged to a large extent in producing hay upon certain ranches, which it owns or leases, in the Imperial Valley. It hauls this hay to Los Angeles and vicinity where it is marketed, and on the return journey the company transports a substantial volume of tonnage from Los Angeles to Brawley, assertedly under contracts with certain shippers.

About two months before the hearing, its trucking business was consolidated with that previously conducted by H. E. Kretz, a copartnership, one of whose members, W. A. Kretz, assumed the management of the trucking operations of this respondent. Mr. Kretz prevailed upon several

of his former patrons to transfer their business to Elmore Jameson Company.

Although this respondent has hauled nothing for compensation between Brawley and other points and San Diego and San Francisco, respectively, and has hauled only its own products to Los Angeles, the record shows that from Los Angeles to Brawley and other Imperial Valley points it has transported property for various concerns, using for this purpose seven trucks which it owns and those of other highway carriers who are employed from time to time as occasion demands, the company sometimes paying these truckmen the full amount received and in other instances deducting a commission. The contracts under which this respondent claims to have handled these back-hauls were entered into with the Standard Oil Company, Hammond Lumber Company, Inland Fertilizer Company, Kerckhoff-Cuzner Mill & Lumber Company, Pacific Clay Products and McCune Lumber Company.

As to the contract with the Standard Oil Company, the witness Kretz was unable to state whether it was to endure for any definite term or whether it contained any provision for cancellation or notice of termination, but he recalled that it provided for minimum loads of twenty tons. From a copy of this instrument, later received in evidence, it appears that Standard Oil Company is not obligated to ship nor respondent to carry any definite amount of tonnage, nor is any term of existence specified. Essentially it provides that should Standard Oil Company, in its discretion, tender any shipments to respondent for transportation the latter, if it accepts them (and it is not therein obligated to do so) will apply certain rates, Standard Oil Company reserving the right to tender shipments in twenty ton lots "with a four-way split". The arrangement may be terminated at any time without notice.

Under the arrangement with the Hammond Lumber Company, so Mr. Kretz testified, respondent undertook to haul, in truck and trailer load minimums, such lumber and cement as the company might require. According to his recollection, notice of cancellation was required.

The contract with the Kirckhoff-Cuzner Mill & Lumber Company provided, so Mr. Kretz testified, for the transportation of lumber products and other materials from Los Angeles to the company's branches at Imperial, Brawley and Calipatria. This arrangement was designed to last as long as the service was satisfactory, but it could be terminated without notice. Mr. Kretz stated that during the negotiations he requested the exclusive right to serve these yards, to which the company consented, provided the service was satisfactory. The rates were identical to those specified in the arrangement with the Hammond Lumber Company.

The branch managers of this company at the three points in question testified that under a verbal arrangement respondent was transporting lumber from Riverside, San Bernardino and Los Angeles. This arrangement, so they stated, can be terminated at any time without notice, the lumber company is obligated to deliver no minimum tonnage, no definite term is provided, and respondent was given no exclusive privilege to haul for the company, the latter being free to use the service of any other truckman and in fact has done so from time to time, having availed itself occasionally of the facilities of Valley Truck Company.

The contracts with the other shippers mentioned above, it appears from the testimony not only of Mr. Kretz but of representatives of the shippers, were subject to the same infirmities; no definite term having been provided, no notice of cancellation being required, and neither shipper nor carrier being obligated to tender nor transport any definite amount of tonnage.

And the testimony of Mr. Kretz indicates that his compensation from respondent rests on a commission basis, depending entirely upon the amount of cargo he is able to secure and control, particularly for transportation on the back-hauls to the Valley. This fact, together with the deficiencies in the contracts into which respondent attempted to enter, is sufficient to stamp its operations as those of a highway common carrier.

J. C. MINSHEW and RAYMOND MINSHEW, co-partners doing business as MINSHEW TRUCK & TRANSFER COMPANY. These respondents, who maintain offices at Brawley and who hold a radial permit, are co-partners doing business under the firm name of Minshew Truck & Transfer Company. Raymond Minshew, the manager, described the operations, undertaking to bind the firm by his testimony. The Order Instituting Investigation will therefore be amended so as to include him as a respondent, as well as his co-partner, J. C. Minshew.

Since 1928 this business has been conducted continuously throughout the year. Although they have not served San Diego, they are operating regularly between Brawley and San Francisco and Los Angeles, respectively, using their own trucks, of which they now own five, and those of independent truck owners.

Before describing the operations of these respondents, it may be informative to touch upon the relations between them and E. T. Childerhose. Under the arrangement existing between these operators, the Minshew trucks perform the pick-up service in Imperial Valley and also engage in the line haul operations to Los Angeles, but not to San Francisco, only the trucks of Childerhose and of independent highway carriers being used for that purpose. In the line haul service to Los Angeles, however, it has been their practice to load first the trucks of respondents, then those of Childerhose and lastly, the outside trucks,

i.e., the trucks of independent owners who have entered into arrangements to haul for them.

The receipts derived from the operations of both the respondents and Childerhose were deposited in a bank account kept in Childerhose's name, and from this fund the amounts due the owners of independent trucks were paid, whether they were hired by the respondents or by Childerhose. Shipments moving to and from both San Francisco and Los Angeles were carried under Childerhose's billing and the freight charges were paid ordinarily by checks made payable to Childerhose and deposited in this account. Shipments to both San Francisco and Los Angeles were sent collect, the commission houses in all instances paying the charges and deducting them from their remittances to the growers. From this fund the respondents were permitted to make no withdrawals without the consent of Childerhose, while Childerhose, on the other hand, was free to make withdrawals at his own discretion. The cost of conducting the pick-up service was also defrayed from this fund.

After payment of commissions to the independent pick-up truck operators, and after deducting other expenses including the cost of operation, the balance of the fund, if any, was divided equally between Childerhose and the respondents. All cargo insurance was carried in Childerhose's name. He also participated in the management of the business and engaged actively in solicitation.

Between Brawley and San Francisco, operations have been conducted regularly, shipments during the peak season moving as frequently as four or five times a week. No intermediate points are served. It is customary to pick up the produce in the field and haul it to the dock at Brawley, where it is transferred to the line haul trucks. Produce only is transported to San Francisco where it is consigned to

San Francisco commission merchants. Substantially all the trucks return to Brawley or Imperial Valley points carrying a back-haul, approximately forty per cent of which is secured through the activities of respondents, the balance being procured by the independent truck owners themselves with the aid of San Francisco "forwarders". Where respondents have failed to secure a back-haul before the trucks leave the Valley on the outbound trip, respondents ordinarily telegraph to a certain San Francisco "forwarder" advising her that the truck is en route, and where they have done so, respondents participate in the commission paid by the truck operator to this "forwarder". In all other cases respondents do not share in this commission. The consignee ordinarily pays the freight charges on the back-haul.

To Los Angeles the shipments from Brawley average two trucks daily, increasing to three or four during the peak season. These shipments consist of produce consigned to commission merchants in Los Angeles. In less than four per cent of the outbound shipments is there any back-haul, respondents discouraging this because of the delay. All such back-hauls are arranged through the Brawley merchants and shippers.

The respondents freely solicit business, and they circulate cards and publish advertisements in the newspapers for this purpose. At the beginning of each season it is their custom to discuss with the shippers the arrangements under which the transportation will be conducted, including of course the rates. They produced a list of some 161 shippers whom they have served since January 1st, 1936, most of whose shipments consisted of produce such as tomatoes, squash and cantaloupes moving from Brawley to Los Angeles. Approximately fifty independent truck owners are available for this service, though respondents seldom use that many, the total at any one time rarely exceeding thirty or forty. A list was submitted naming thirty-eight independent truck operators hired from time to time by respondents to

assist them in their business. On this list appeared the names of some of the respondents in this proceeding, such as Hendrix Truck Company, Y. Honda and Saita & Young. None of these operators is permitted to solicit business or to issue the billing in his own name, all of this being conducted exclusively in the name of respondents.

In our judgment these respondents have been engaged in the transportation of property between Brawley and Los Angeles and San Francisco, respectively, as highway common carriers.

H. W. HENDRIX and E. M. HENDRIX, doing business as HENDRIX TRUCK COMPANY. These respondents, who are co-partners engaged in business under the name of Hendrix Truck Company, maintain their headquarters at Brawley, where they have followed this business seasonally since 1918, operating eleven trucks and hiring others as occasion requires. They hold both radial and contract permits.

Between Brawley and San Diego no shipments have moved during the past six years, and between Brawley and San Francisco respondents have handled only a few loads which moved early in the year, all of them being transported by independent truckers.

Between Los Angeles and Brawley and other Imperial Valley points the tonnage moves in heavy volume in both directions, and occasionally respondents have served some of the intermediate points. Since January 1st, 1936, the shipments to Los Angeles have averaged three truck loads daily, some of which are straight loads, and in the opposite direction they average three or four a week. To Los Angeles produce only is transported, the commission houses paying the transportation charges.

Respondents supplied a list of shippers, both at Los Angeles and at Imperial Valley points, such as Brawley, Westmoreland, Holtville,

Heber, Imperial, Niland and El Centro. Altogether a total of one hundred eighty-nine shippers have been served during the year. Of these, approximately sixty per cent are regular shippers, and the remainder represents those for whom respondents perform occasional hauling. From Los Angeles paper is hauled back to the Imperial Valley for three of the large paper distributors, as well as for other shippers.

No contracts have been entered into with any shipper, either in the Valley or at Los Angeles. It is respondents' custom to discuss with them annually the rates, but these understandings have not been reduced to writing. Although respondents expect to secure, and very often have been able to secure all of the tonnage of certain shippers, the understanding does not contemplate such a condition, and, moreover, these arrangements are terminable without notice. No shipper is obliged to provide a minimum amount of tonnage, nor is any term provided during which the arrangement shall continue.

Respondents have solicited business quite extensively, and have circulated business cards and on one occasion published a newspaper announcement containing a declaration by one of the partners, Harry Hendrix, that he had resigned his position with Zellerbach Paper Company in order to devote his time to the trucking business. No traffic offered has been refused, respondents having accepted all tonnage tendered for transportation either from Imperial Valley points or from Los Angeles.

A large part of respondents' business is performed through the instrumentality of independent truck owners, who are called upon by respondents from time to time as occasion may require, and whenever their own facilities are overtaxed or inadequate. All of the shipments handled by these truckers move under respondents' billing, none of the operators being permitted to solicit tonnage in his own name, nor to use

his own billing. These operators receive ten percent less than the total transportation charges paid by the shippers, respondents retaining this commission to cover their overhead expenses. A list of these operators was submitted showing that since January 1st, 1936, these respondents have employed twenty-seven independent truck owners, including respondents P. M. Aceves, Minshew Truck Company, Pablo Rubio and White Bros. Trucking. In addition, Mr. Hendrix testified that respondents Brown Bros. also were employed occasionally.

From the testimony of H. W. Hendrix and Bud Anslyn, it appears that Hendrix Truck Company picks up produce in the field, hauls it to their dock in Brawley, and there turns it over to the trucks operated through Bud Anslyn for transportation to San Francisco.

It is clear, however, that respondents have been operating as highway common carriers between the Imperial Valley points above mentioned and Los Angeles.

FRANK R. BROWN and ROY E. BROWN, co-partners doing business under the name of BROWN BROS. These respondents, who hold a contract permit, have been engaged for sixteen years in the trucking business at El Centro where they now operate as copartners under the firm name of Brown Bros. At their offices they occupy the same space as that used by the Pioneer Truck & Transfer Company, one of the respondents herein, as well as other operators. Closely connected with respondents in the conduct of their produce transportation business is H. W. Jensen, who has been associated with them since last April.

Two trucks are operated by Brown Bros., but occasionally they employ other highway carriers, the record showing that during the current season they have arranged with about thirteen of such operators, including respondents J. F. Waggoner, and Pioneer Truck & Transfer Company to haul for them. Occasionally respondents lease their trucks

to others.

Between the Imperial Valley and San Diego and San Francisco, respectively, no shipments have been made. However, they are transporting produce, such as lettuce, cantaloupes and tomatoes, from El Centro to Los Angeles. The trips at present average about one truck an hour, and on some occasions as many as three trucks are loaded out at once. The cantaloupes now comprise about eighty per cent of the total tonnage, tomatoes constituting the balance.

This produce is picked up at the sheds and hauled to Los Angeles where it is delivered to various commission merchants, who pay the transportation charges and deduct them from their remittances to the shippers. Approximately thirty shippers are now utilizing the service. There are but few back-hauls, respondents discouraging this since it tends to slow down the operations. They solicit extensively for business and circulate business cards among the shippers.

Respondents also buy and sell produce, generally purchasing it to fill orders previously received from those to whom it is ultimately delivered. One of the partners, Frank R. Brown, testified that they were willing to accept such orders from any responsible merchant.

No written contracts have been entered into with any shippers, the only arrangement being an understanding as to the rates, and also relating to damages which may be incurred in the event of loss of or injury to the shipment. The rates are uniform as to all shippers.

On shipments transported by independent truckers and handled under the billing of Brown Bros., the turnover among these operators is quite high, being approximately fifty per cent. These operators are paid on a tonnage basis. Cargo insurance is provided by Brown Bros. covering all shipments transported not only by their own trucks but also by those which they hire. These operators are free to secure business from other

sources for the return trip, respondents making no effort to provide the back-haul.

The nature and scope of respondents' operations are such that they do not fall within the scope of their contract permit; clearly, they are operating as a highway common carrier.

S. OSUKA. Mr. Osuka, who owns two Dodge trucks, and who has been engaged in the trucking business for three years with headquarters at Brawley, operating under a radial permit, regularly transports produce, consisting chiefly of cantaloupes and tomatoes, from the farms in the vicinity of Westmoreland to the Los Angeles commission houses, having averaged ten shipments a month since last January. For this service he is paid by the commission houses, who deduct the transportation charges from their remittances to the growers. Although he hauls largely for two growers, he has in fact transported property for others, and testified he would do so for anyone willing to hire him. He has delivered no shipments from Los Angeles to Imperial Valley, nor has he handled anything between the Valley and San Diego. His operations, clearly, are those of a highway common carrier.

VICTOR J. CARRICK. During the past twelve years this carrier, who makes his headquarters at Calipatria, has been hauling livestock and farm products continuously for compensation from the territory surrounding Calipatria to Los Angeles and vicinity, using in this business one flat rack truck. He holds a radial permit. Since January 1st, 1936, his trips from Calipatria to Los Angeles have averaged once a week, but he has hauled nothing in the opposite direction. Although most of the livestock is tendered him by Balfour Guthrie & Company, he will accept such shipments from anyone. He operates infrequently between Imperial Valley and San Diego, having delivered no shipments during the past year, and he

has made no shipments between the Valley and San Francisco in the past two years. Clearly, he is operating as a highway common carrier.

Y. NAKAGAMI. This respondent, who holds a permit as a contract carrier, has been engaged for four years in the general trucking business, with his headquarters at Brawley. He uses in this business three trucks. Since January, 1936, he has regularly transported property for compensation from Brawley and the surrounding area to Los Angeles, daily trips having been made since May 1st.

He has hauled cantaloupes and produce for Z. Osmond Company, and K. Oyama Company of Brawley, to Jacob Greenfield Company, of Los Angeles, the latter paying the transportation charge and deducting it from the amount remitted to the grower. His service has not been limited to the shippers mentioned, for he admitted he would be willing to transport property for anyone. He has made no written or verbal contracts with any shipper, and the arrangements between him and Z. Osmond Company and K. Oyama Company are of the most indefinite character. He does not exact of them any minimum tonnage, accepting on the contrary whatever shipments they may offer, nor has he quoted any rate to them. In conducting the business it has been his practice to accept mixed loads tendered by various shippers and to solicit business among prospective shippers. He is clearly operating as a highway common carrier.

JOHN R. WILLIAMS. Although this respondent holds a permit as a radial carrier, he has regularly hauled shipments for the public generally from Coachella to Los Angeles, averaging three trips a week since last January. Upon the return trips he has hauled box shoo and some quantities of seed, these back-hauls averaging once a week. On shipments moving to Los Angeles, the transportation charges are paid by the Commission houses and charged back to the shipper, but compensation

for the back-hauls is paid by the shipper. In this service two Chevrolet trucks are used, and occasionally he employs another highway carrier. This respondent has made no shipments between Imperial Valley and San Diego or San Francisco. Clearly he is operating as a highway common carrier.

Y. HONDA. During the past fourteen years this respondent, who makes his headquarters at Brawley, has been engaged in the general trucking business, using in his business four trucks which he owns and occasionally he employs other highway carriers. He operates under a contract permit. Although he has not solicited business, he has never refused any shipments, and he testified that he will haul for anyone who has business to offer. He has hauled nothing between Imperial Valley and San Diego or San Francisco. However, he has been engaged daily since May 1st, 1936, and regularly although not quite so frequently before that date, in the transportation of produce, consisting of tomatoes, lettuce and melons, from Brawley and vicinity, including Westmoreland, to Los Angeles, serving three large shippers principally, together with all others who may tender business to him. Quite frequently mixed loads have been hauled. On all these shipments the charges were paid by the Los Angeles commission houses and deducted from their remittances to the shippers. Occasionally empty boxes and crates are hauled back to Brawley from Los Angeles.

The respondent has entered into no special arrangement with any shipper governing the performance of any transportation service. In fact, it has been his practice to use waybills, consecutively numbered, bearing the date, his name, address and telephone number, showing the name of the consignor and the name and address of the consignee, a description of the commodity shipped, the rates and charges

applicable and containing a space for the signature of the consignee, copies of which were received in evidence. When other truckers have been employed, the shipments were transported under respondent's billing, and the charges were paid to him. He in turn reimburses these operators, ordinarily making no deductions, except for the cost of performing the pick-up, for cash furnished them and for premiums paid on cargo insurance. From a list submitted at the hearing it appears that since January 1st, 1936, this respondent has entered into arrangements of this character with six independent operators for transportation between Brawley and Los Angeles.

Obviously these operations cannot lawfully be conducted under the contract permit now held by respondent. They are clearly those of a highway common carrier.

PETER CAMPOURIS. This respondent, who was originally named herein as Peter Compouris, but whose name was substituted at the hearing with his consent, is engaged in the trucking business, under a radial permit, with headquarters at Holtville. He hauls produce principally to the packing sheds and rail facilities in Holtville from the immediately surrounding area. He operates three trucks, but occasionally during the season employs as many as five additional highway carriers.

He has made no trips between Imperial Valley and San Diego, Los Angeles or San Francisco. However, he has operated between Holtville and El Centro with sufficient frequency to establish this part of his service as being that of a highway common carrier. In all other respects his operations fall within his radial permit.

MAGGIO BROS. CO., INC. This respondent, a corporation with its principal office at El Centro, operating under a radial permit, transports with its seven trucks and two trailers its own property between points in Imperial Valley and elsewhere, but it has also transported property for compensation. Between Imperial Valley and San Diego and San Francisco, it has hauled no property for hire, but it has engaged quite frequently in this business between El Centro and other Valley points and Los Angeles. From the Valley it has hauled produce for the Imperial Garden Growers at Heber and for any other shipper tendering full loads. During the season it has transported grapefruit from Heber and other points in the Valley to Los Angeles. The occasions when it has hauled for hire from El Centro and Heber to Los Angeles range from once a week to daily. On the return, however, its equipment is used generally for carrying its own products. During the past year respondent has transported property for compensation on about eight occasions from El Centro to points intermediate to Los Angeles, such as Pomona and Ontario. Clearly, this respondent is operating as a highway common carrier.

FRED O. SONES. The respondent, Fred O. Sones, has been engaged in the trucking business at Niland during the past five years continuously, operating under both a contract and a radial permit. He now owns three trucks and neither leases trucks to others nor hires any from them.

During the past year, no trips have been made between Imperial Valley and San Francisco and San Diego, respectively. However, since the season opened last December, daily trips have been made from Niland to Los Angeles, with back-hauls occurring about once a week.

From Niland he usually hauls split loads of cantaloupes and tomatoes, serving generally about five shippers on each trip. The transportation charges are paid by the Los Angeles commission houses, and deducted from their remittances to the grower. The back-hauls consist generally of full loads of box shoo and fertilizer, the transportation charges on which are usually paid by the growers. On rare occasions, no charge is made for the back-haul, it being performed merely as an accommodation.

The identity of respondent's patrons varies from season to season, generally averaging about twenty at any one time. He has been willing to serve anyone, testifying that he would "make a deal with any farmer who moved in".

At the beginning of each season he has discussed with the growers the rates under which he will operate, and daily he calls upon them to ascertain whether they have any loads. In the rare instances when he has refused to accept shipments, he has done so because they were tendered too late, he could not haul them conveniently, or the grower would not pay the rate demanded. On some occasions, where the shipments have been tendered after the departure of respondent's truck, he has hauled

them to the nearest local office of Railway Express Agency, Inc. for transportation.

Respondent has entered into no arrangement with any shipper to haul for him exclusively, and uniform rates upon each commodity are collected from the various shippers.

Closely associated with respondent are the Brand Bros., a partnership consisting of George H. Brand, Harry Brand and Herman Brand, who occupy the same offices and who carry produce to Los Angeles. However, the record sufficiently shows that this respondent is engaged independently in conducting between Niland and Los Angeles the service of a highway common carrier.

D. E. 100. This respondent is engaged in the trucking business at El Centro, operating one truck under a contract permit. He has made no trips to San Diego nor San Francisco, but operates quite frequently between Imperial Valley and Los Angeles, hauling produce from El Centro and vicinity once or twice a week, and delivering it to the commission houses. In addition, he has been transporting melons from the fields to the packing sheds at El Centro.

Through Charles P. Lee, operating as Farmers Trucking Service, respondent has secured all of his business, local as well as line-haul, Lee directing him where to pick up and deliver the shipments,

handling the traffic under his own billing, advancing respondent his expenses, when necessary, collecting the transportation charges from the consignees, and paying respondent, as well as other truckers whom he has engaged under a similar arrangement, his share of the proceeds. Of the charges collected, Lee retains ten per cent and pays respondent the balance. In this connection, Mr. Lee testified that the percentage retained by him was designed to cover office expenses, overhead and costs of solicitation, any balance remaining being refunded to the drivers. So far, however, there has been no surplus. Lee collects from the commission houses the price of the produce, which he remits to the growers, after deducting the transportation charges. Although respondent does not deal directly with the shippers in arranging for the transportation, it is apparent, because of the close connection between him and Lee, his operations are those of a highway common carrier.

SHOGO G. SAITO and V. L. YOUNG, co-partners. These respondents, during the past seven months, have been engaged in business at Brawley under a contract permit, operating two trucks which have been used not only for local hauling but also to transport property between Imperial Valley points and Los Angeles, and on rare occasions, between the Valley and San Diego. No trips have been made to San Francisco.

Between Brawley and San Diego and Los Angeles, and intermediate points, such as Fontana, respondents have transported for compensation shipments of hay and grain for Frank Harmon. They have also hauled grain to Los Angeles from Brawley for the Whitman Seed Company, and from time to time they have entered into arrangements with Minshew Truck & Transfer Company, respondent herein, and with Imperial Grain Growers Association to haul loads for compensation from Brawley to Los Angeles. On the return trip they have hauled loads for Whitman Seed Company as frequently as once a week. The record shows a regular operation between Brawley and Los Angeles.

From the testimony of respondent Saito, it appears that in response to calls from Minshew Truck & Transfer Company, averaging once or twice a month, they have hauled loads from Brawley to Los Angeles, payment being made by checks of E. T. Childerhose, an associate of the Minshew brothers.

Although these respondents are operating under a contract permit, the record fails to disclose any arrangement for transportation between them and any of their shippers. Not only have they served several shippers directly, but they have also served the public indirectly through their association with Minshew Truck & Transfer Company, whom we have found to be a highway common carrier. Respondents must therefore be held to be operating as a highway common carrier.

JACK V. WHITE, K. E. WHITE and E. L. WHITE, co-partners doing business as WHITE BROS. TRUCKING. The respondents, Jack V. White, K. E. White and E. L. White are engaged in business at Brawley as co-partners under the firm name of White Bros. Trucking, and are operating under a contract permit.

Undertaking to bind the firm by his testimony, one of the co-partners, Jack V. White, described the operations. The Order Instituting Investigation will therefore be amended so as to include King E. White and E. L. White, as well as Jack V. White, as co-partners.

They own five trucks and occasionally have hired one or two other highway carriers. The operations have been of a seasonal character, business being suspended during the slack period.

Between Imperial Valley and San Diego no hauling has been performed, and since January 1st, 1936, but two loads have been carried to San Francisco. To Los Angeles, there have been transported during the past forty-five days, twenty-five loads of cantaloupes and other

perishables, all of which were picked up at the packing sheds in and around Brawley. These shipments were consigned to the Los Angeles produce dealers, who paid the transportation charges. The consignors have been few in number, generally not exceeding four, and much of the tonnage has been supplied by one shipper. However, one of respondents' partners, Jack V. White, testified they printed and circulated business cards and that if a satisfactory arrangement could be made as to rates upon suitable commodities, "they will haul for anyone who pays the price". Moreover, the arrangements which have been made with the shippers contemplate no requirement as to minimum tonnage, and they are all subject to cancellation without notice.

Although respondents have attempted to secure back-hauls, only a very few have been handled. But one shipment has moved from Los Angeles, for the account of the Crown Willamette Paper Company, respondents being unable to retain this business. A shipment of beer was hauled from San Francisco to Los Angeles, and one of steel from San Francisco to Los Angeles where it was turned over to a certificated truck line for delivery to the consignee at Bishop.

In addition to the long hauls, respondents have operated regularly within a radius of one and one-half miles from Brawley, a type of operation not authorized by their contract permit, and for which they should secure a radial permit.

The operations between Imperial Valley and Los Angeles, because of their regularity and because of respondents' willingness to serve anyone, must be deemed those of a highway common carrier.

HARRY U. KUBOTA, doing business as CENTRAL SERVICE CO. This respondent, who holds a radial permit and is operating under the fictitious name of Central Service Company, maintains his headquarters

at El Centro. He owns six trucks, and is now also using those of two other highway carriers.

Although he has hauled no loads between Imperial Valley and San Francisco and San Diego, he is regularly engaged in the transportation of produce for compensation between El Centro and Los Angeles, and delivering it to the commission houses who pay the transportation charges and charge them back to the growers. Altogether he has served about twenty-five growers and seven or eight commission houses. Many of these shipments comprise mixed loads. He solicits business regularly, and has entered into no contracts for transportation.

He is hauling cantaloupes daily for compensation from the sheds in Brawley to those in El Centro, and is also hauling cantaloupes to the packing sheds in Calexico from the farms in the surrounding area. No back-hauls have been made except during the lettuce season, when he has returned crates used in connection with shipments of lettuce moving from the Valley to Los Angeles.

In our judgment this respondent is operating as a highway common carrier between Brawley and Los Angeles and between Brawley and El Centro. However, the Calexico operations fall within the scope of his radial permit.

J. F. WAGGONER. This respondent operates under a radial permit, with headquarters at El Centro, using but one truck. All of his hauling from Imperial Valley to Los Angeles has been performed solely for other truck operators, most of whom are respondents to this proceeding, under arrangements entered into with them for the use of his truck. On all such occasions the shipments have moved

under the billing of the other operators, the respondent at no time professing to transport goods to Los Angeles as an independent carrier.

On the return trips from Los Angeles he has hauled not only for respondent Maggio Bros. Co., Inc., but also on his own behalf, stating in this respect that he will accept a back-haul from Los Angeles from any shipper willing to pay a satisfactory rate. To this extent his operations must be deemed those of a highway common carrier.

In addition, he has hauled produce from farms to the sheds at various points in Imperial Valley, but this falls within the purview of his radial permit.

It is apparent from the foregoing recital of the facts surrounding the operations of each of these carriers that they have been operating as highway common carriers without first having secured certificates of public convenience and necessity. Consequently, a cease and desist order will be issued against each of them.

This brings us to a consideration of the operations of those respondents who appear to be engaged in business as highway contract carriers.

#### HIGHWAY CONTRACT CARRIERS.

We shall review the operations of each of these carriers.

P. M. ACEVES. Operating under a contract permit, with headquarters at Brawley, this respondent, who owns one truck, has been engaged in purchasing, and in selling to farmers in the Imperial Valley

manure which is secured in Riverside, San Bernardino and Los Angeles Counties. On the return trip he hauls chicken fertilizer.

all of the manure and chicken fertilizer he buys and sells, excepting that hauled for George Fisely of Riverside, which is handled under a contract. Previously, he hauled melons from ranches in Imperial Valley, but this has long since been discontinued. He has handled no loads between Imperial Valley and San Diego, Los Angeles and San Francisco, respectively. The operations of this respondent appear to have been conducted in accordance with the terms of his permit.

G. W. CLARK, GARRETT JOHNSON, ELGER LOW, THOMAS A. KING and L. S. COBLEIGH. The respondents, G. W. Clark, Garrett Johnson, Elger Low, Thomas A. King (substituted by his consent for "Tom King", the name appearing in the Order Instituting Investigation) and L. S. Cobleigh, each of whom has his headquarters at El Centro and is operating under a contract permit, are engaged respectively in hauling milk from ranches in a radius of twenty-five or thirty miles of El Centro to the plants of the Golden State Creamery, Arden Farms and Western Dairy--Arden Farms, respectively, all of which are situated at El Centro. This service is performed under contracts entered into by each of the respondents with the dairy he serves.

The transportation charges are paid and borne by the dairy, no part of this cost being charged back to the milk producers. Occasionally, and solely as an accommodation to the ranchers, the respondents transport property of various kinds from El Centro to the ranches, no charge whatsoever being made for this service.

Occasionally respondent Cobleigh hauls cattle from the various ranches which he serves, but this also is performed without cost and wholly as an accommodation.

Clearly, each of these respondents is operating within the terms of his contract permit.

R. S. ENGBRETSON. This respondent, who holds a permit as a contract carrier, has an office at El Centro, where he has been engaged for some seventeen years in the trucking business. He has hauled only for the Imperial Grapefruit Growers Association of El Centro, and for the Arlington Heights Imperial Valley Growers Association. Under a contract with the former, he has handled fruit from the groves in the Valley to the packing house and distributing plant at El Centro. Between El Centro and Los Angeles, where he hauls grapefruit outbound and empty boxes back, he is operating under contracts with both associations.

This respondent appears to be operating as a contract carrier.

SPENCER GILL. This carrier has been engaged in the general trucking business, with headquarters at Calexico, for some three years, transporting farm products, consisting largely of lettuce and melons and also hay, from the territory within a radius of twelve miles of Calexico, most of which is delivered to Tecate, Lower California, Mexico, although some is hauled to rail facilities or packing sheds in Calexico. In the past he has accepted business from the public generally, but during the current season he has hauled only the property of one shipper, situated at Calexico, with whom he has entered into an agreement for that purpose.

At times he has found it necessary to employ other highway carriers, hiring as many as fifteen during the peak season, and at present he is using ten. The compensation paid them is less than that received by this respondent from the shipper.

Respondent has not operated between Imperial Valley and San Diego, Los Angeles nor San Francisco, respectively, assigning as his reason the absence of adequate insurance coverage, his policy being restricted to operations within a radius of fifty miles from Calexico. His operations, clearly, must be deemed those of a contract carrier and, as such, are not authorized by the radial permit he now holds. He will

be required to cease such operations until he has secured a contract permit.

RAY McGUIRE and J. A. SEIPLER, co-partners. The respondents Ray McGuire and J. A. Shipler have been engaged for the past year in conducting a trucking business at El Centro, using seven trucks and occasionally employing other highway carriers, five trucks now being operated on this basis. Only those operators holding permits issued by this Commission are employed.

One of the partners, J. A. Shipler, testified that ninety-eight per cent of their work has been performed pursuant to a contract with Charles Freedman, under which they have hauled cantaloupes and melons in the Imperial Valley and grapes in the vicinity of Modesto. No shipments have been made between Imperial Valley points and San Diego, Los Angeles and San Francisco, respectively. At times, but only rarely, property is hauled locally for others as an accommodation, but this is a very minor part of their business. For approximately ten months each year they are engaged in the performance of their contract with Charles Freedman, and during the remainder of the year their trucks stand idle.

Although respondents' operations under the Freedman contract fall within the terms of their contract permit, it appears that their other operations are of a radial character and should be discontinued until a radial permit has been secured.

L. F. ROGERS. This respondent is engaged in the trucking business at El Centro, using six trucks in this service. Through inadvertence, so he testified, a contract permit was issued to a firm of which he was formerly a member but which has since been dissolved. He stated he had since filed an application for a contract permit, which has not yet been issued. In fact, no such permit has ever been issued.

All of his business, other than hauling a few watermelons for a single farmer, has been performed under a contract with Alex E. Engelman, Inc., a company financing growers in the Valley which has undertaken to turn over to respondent for transportation all the products it controls, other than those the growers choose to haul in their own equipment. When the company has no business the trucks are laid up. Occasionally he has employed additional highway carriers, usually paying them the same compensation he has received. During the past year respondent has made but one shipment to San Diego and has hauled nothing either to Los Angeles or to San Francisco.

Since this respondent has not yet received his contract permit, his operations are unlawful and he must discontinue them until the permit is issued.

R. THOMPSON. Mr. Thompson, who is engaged in the trucking business at El Centro and holds a contract permit, operates two trucks, hauling produce under a contract with three ranchers, whom he serves exclusively. He has not solicited business generally, has declined shipments tendered him and has made no trips between the Valley and San Diego, San Francisco and Los Angeles. He appears to be operating within the terms of his permit.

EUGENE S. WILKINS. This respondent, operating under a contract permit with headquarters at Brawley, hauls cattle for two packing houses located at Brawley and Imperial, respectively, from points in the Imperial Valley, serving no other shippers. For these services he is paid by the packing houses. He does not operate regularly between any of the towns in Imperial Valley, nor has he hauled any loads between the Valley and San Diego, San Francisco and Los Angeles. He appears, therefore, to be operating within the terms of his contract.

These respondents have not solicited business; on the contrary, they have rejected shipments offered by those with whom they have not contracted. And they have confined their operations to the service of a limited and selected number of shippers. This proceeding will therefore be dismissed as to these respondents, other than respondents L. F. Rogers and Spencer Gill, who are operating as contract carriers without having secured the necessary permits, and respondents Ray McGuire and J. A. Shipler, copartners, who are operating radially without the proper permit. They will be required to discontinue all operations not covered by their existing permits.

Now we shall consider the operations of those respondents who appear to fall within the class of radial carriers.

#### RADIAL HIGHWAY COMMON CARRIERS.

We shall discuss briefly the evidence relating to each of the carriers within this group.

O. B. AIKMAN. At the hearing, the true name of this respondent, O. B. Aikman, was substituted with his consent for the name appearing in the Order Instituting Investigation, viz., O. B. Aiken.

He maintains headquarters at El Centro, and has been engaged in the trucking business for twelve years, operating four trucks and holding a contract carrier's permit. His operations are of a seasonal character, extending only to the transportation of produce to the railroad team tracks and packing sheds at El Centro from the surrounding area. He has made no trips between Imperial Valley and San Diego for two years and none whatsoever to Los Angeles or San Francisco. Usually his load is limited to the property of a single shipper, who

pays the charges. Occasionally, during the peak season, he has hired additional highway carriers, paying them the full amount which he himself has received from the shippers.

His operations appear to be those of a radial carrier and since they are not authorized under his contract permit, he will be required to secure a radial permit and in the meantime he must discontinue such operations.

J. E. BAILEY. Conducting his business under a contract permit, this respondent operates generally in the vicinity of Brawley, where he maintains an office. During the past nine years he has been continuously engaged in the general trucking business and at present he is doing business under the name of Brawley Transfer & Storage, of which he is the sole owner. Generally he transports for hire gravel, heavy machinery, furniture and occasionally grain. Since December, 1935, he has made but three trips to San Diego, nothing having been hauled there since February of this year, and no operations have been conducted between the Valley and San Francisco. Since February, 1936, he has hauled two shipments to Los Angeles and vicinity, one of which consisted of household goods and the other of grain, and on one of these occasions he secured a backhaul from Van Nuys. He has not undertaken "long line hauls", having refused daily to transport property to Los Angeles. When such requests were received he has never referred them to any other carrier to handle the business for him.

Under an arrangement with the Standard Oil Company he has carried for their employees household furniture from one town to another in the Imperial Valley, and has also hauled generally within the Valley for certain shippers. However, no contract has been entered into with any of the shippers he has served. While it is clear that this respondent is not a highway common carrier, it is equally true that

his operations do not fall within the terms of his contract permit. He will therefore be directed to secure a radial permit, and in the meantime to discontinue such operations.

DAN BUMP. This operator, who maintains his office at Calexico, during the past year has transported produce from the fields in the immediately surrounding area to the packing sheds, rail facilities and warehouses in Calexico. He operates two trucks, which are used exclusively in this service. In conducting his business he employs no other carriers. He solicits and will accept business from anyone for local hauling only, no service whatsoever having been performed between the Valley and San Diego, Los Angeles or San Francisco, respectively.

Clearly, this respondent must be held to be operating lawfully within his permit as a radial carrier.

CLAUDE CHILDERS. Operating under a radial permit, this respondent, who resides near El Centro and who owns three trucks, is engaged principally in hauling produce to the packing sheds in El Centro from farms within a radius of fifteen miles. He has devoted much of his time to the service of a single rancher, but he is willing to haul for anyone within this territory. On four occasions only has he employed other highway carriers, retaining seven per cent of the gross earnings, and from time to time he has hired his trucks to other truckmen, including respondent Chester McNutt. On a few occasions during the past six months he has purchased scrap iron in the Valley, which he has hauled to Los Angeles and sold. He has never made any trips between Imperial Valley and San Francisco, and during the past year has hauled no loads between the Valley and San Diego nor Los Angeles.

From the record it is apparent that respondent's operations have been conducted within the purview of his radial permit.

A. FALLAVENA. This respondent, who makes his headquarters at Heber, is hauling produce under a radial permit, from the ranches to Imperial Valley shipping points, where he delivers his loads to the packing sheds or railway freight stations. Occasionally, the transportation charges have been paid by the growers, but generally he has been employed by commission houses operating in the Valley.

Occasionally he has employed other operators making no deductions from the amounts which he has himself received. No shipments have been made between the Valley and San Diego, San Francisco and Los Angeles. His operations, therefore, appear to be conducted within the scope of his radial permit.

JERRY J. FARMER. By an amendment made at the hearing, to which this respondent consented, his true name Jerry J. Farmer was substituted for that shown in the Order Instituting Investigation, viz., Jerry A. Farmer.

Since 1914, this respondent has been engaged continuously in the general trucking business at Calipatria, operating two trucks and occasionally employing other operators, but not leasing his own equipment. He has hauled no shipments between the Valley and San Diego for ten years; he has never operated between the Valley and San Francisco; and during the past year has not operated into Los Angeles. His service is limited exclusively to transporting produce to warehouses, packing sheds and rail facilities in Calipatria from ranches within the surrounding territory.

Although he has received a permit as a contract carrier, it is clear from the evidence that he has entered into no contracts with any shipper, and he will haul for anyone, occasionally refusing to accept business only when he is too busy. Since his operations are of a radial character, he should secure such a permit, his contract permit being

insufficient to authorize his present service. In the meantime, he should discontinue operating radially until the permit has been received.

DELL GRAY. Operating under a radial permit, this respondent, who maintains his office at Calexico, during the past four years has hauled lettuce culls, watermelon and produce to Calexico from the farms within a radius of fifteen miles, using in this service two Chevrolet trucks. Fertilizer, which he buys and sells, is also hauled within the same general area. Business is solicited and accepted from anyone. During the watermelon season he has been employed by Spencer Gill, one of the respondents in this proceeding. Clearly, his operations fall within the terms of his radial permit.

C. B. GREEN. This respondent is engaged in the trucking business at El Centro, owns three trucks and confines his operations to the transportation of produce from the packing sheds in El Centro and from the fields in the surrounding area. He has made no trips between Imperial Valley, San Diego, San Francisco and Los Angeles, respectively, nor between any of the towns in the Valley. Clearly, he is operating within the scope of his radial permit.

CHARLES KETNER. This operator, who has his headquarters at Calipatria, has been engaged for some six years in hauling property, consisting principally of hay, grain, melons and produce to Calipatria from the farms in the surrounding area and in hauling fertilizer from Calipatria to the farms. He now holds a radial permit. For this purpose he uses two trucks, both of which he owns, and he will accept business from anyone up to the capacity of his equipment. Within the past three years he has hauled no shipments between Imperial Valley and San Diego. Since May 10th of this year he has hauled nothing to Los Angeles, and he has never served San Francisco. His operations appear to be those

of a radial carrier.

E. P. OBERGFELL, L. C. OBERGFELL and I. C. OBERGFELL, co-partners. These respondents, who hold a radial permit, are co-partners engaged in business at their ranch some three miles from Calexico, and are sometimes known as Obergfell Bros. They have one truck which they use almost exclusively for hauling their own products, consisting principally of hay. On return trips, they occasionally haul the property of others for compensation.

To San Diego they have hauled only their own alfalfa hay, no back-hauls having been made. No trips whatever have been made to San Francisco. To Los Angeles they have hauled only their own hay, but back-hauls have been made infrequently for compensation. They have never solicited any of this business, nor have any trucks other than their own been used for this purpose. The operations of these respondents fall within the terms of their radial permit.

DINZEL V. PORTER. For the past seven years this respondent has been continuously engaged in the trucking business at Heber, operating four trucks and hauling produce, consisting chiefly of cantaloupes and watermelons from the surrounding district to the sheds, warehouses and rail facilities at Heber. To San Diego he has delivered but two loads during the past year, to San Francisco no shipments have been delivered, and to Los Angeles no deliveries have been made for the past year. Occasionally he has hauled produce between various towns in the Imperial Valley, but this has been done with no regularity. He has also occasionally hired other operators,

whom he has paid the full amount received by him from the shippers, three having been so employed since January 1st, 1936. During the same period he hauled for approximately eight farmers in the vicinity of Heber. His operations fall within the terms of his radial permit.

PRUDENCIO RODRIGUEZ. During the past four years, this carrier has been engaged in transporting lettuce and cantaloupes to the packing sheds at Brawley, where he makes his headquarters, from the farms in the area surrounding that city and in the vicinity of Heber. Although much of his time has been devoted to the service of three shippers, he has accepted and will accept shipments from anyone. He operates two Chevrolet trucks, which he uses exclusively in this service. He does not employ the trucks of other carriers. No shipments have been made between Imperial Valley and either San Diego or San Francisco, and none between the Valley and Los Angeles since July, 1935.

His operations clearly seem to be those of a radial carrier and fall within the permit he now holds.

EDWARD M. ROYCE. This respondent, since 1912, has followed the trucking business at El Centro, operating both within and outside of that city and holding both contract and city carrier permits. Four trucks are used in the business, two of which are confined exclusively to the local service. From time to time his equipment has been rented to other truck operators, including respondents Chester McNutt and Pioneer Truck & Transfer Company. Respondent operates generally through-

out the Imperial Valley, serving "on call", not only points in the country but also such towns as Calexico and Brawley. However, no regular service has been conducted between any of these communities.

Since he has solicited business and accepted employment from the public generally, and has never entered into a contract with a shipper, his operations are not authorized by his contract permit, and he will be expected to secure a permit as a radial carrier. Until this is received, he must discontinue all radial operations.

FRANK M. STALL. This respondent, who holds a permit as a radial carrier and has his headquarters near El Centro, is now hauling produce to the packing sheds of the Golden Valley Produce Company at El Centro from ranches within a twenty-five mile radius, using five trucks for this purpose. During the past year he has hauled nothing between Imperial Valley and San Diego, San Francisco nor Los Angeles. On one occasion he operated under an arrangement with respondent, L. S. Rogers, from ranches to the packing shed.

It is apparent that his operations have been performed wholly within the scope of his radial permit.

WILLIAM J. YOUNG. This operator, who holds a permit as a radial carrier, with headquarters at Calipatria, has been transporting property, chiefly produce, for compensation to the railroad terminals and to warehouses in Calipatria from the farms within a radius of eight miles, using for this purpose one  $1\frac{1}{2}$  ton Chevrolet truck. He has made no trips within the past three years either between Imperial Valley and San Diego or San Francisco, nor during the past two years between Imperial Valley and Los Angeles. We find him to be a radial carrier.

From what has been said, it appears that the operations of these respondents follow a similar pattern. All haul within a general area, serving the public generally, and handling produce from the farms to the rail terminals or packing sheds at the nearest town or shipping center, and in some instances hauling supplies back to the farms. None is operating regularly between the Valley and San Diego, Los Angeles or San Francisco, nor between any points within the Valley. This proceeding, therefore, will be dismissed as to these respondents, excepting those who are operating radially under contract permits, and they will be required to secure radial permits. In the meantime, they will be directed to discontinue such operations.

We shall now consider the respondents who are no longer engaged in business.

CARRIERS NO LONGER IN BUSINESS.

From the record it appears that three of the respondents have discontinued their operations. We shall review the evidence relating to them.

J. R. SNYDER. Formerly this respondent held a radial permit, but this was cancelled on April 6th, 1936.

Since July, 1935, he has hauled no property for hire, using his own equipment solely for the transportation of his own property. Prior to that time he operated as a radial carrier, hauling cantaloupes from the fields to the packing sheds at Holtville. Recently he sold his truck and is no longer in business. The proceeding will therefore be dismissed as to him.

J. L. BAIN. This respondent, who resides at El Centro, formerly held a permit as a radial carrier, but this was cancelled on April 30th, 1936, for failure to continue in effect his insurance policy. He has three trucks with semi-trailers.

Since March 1st, 1936, he testified he had not hauled for hire, although before that time he occasionally did so. Respondent testified that he purchases from the farmers in Imperial Valley hay which he transports to Hynes where it is sold at the public hay market. It is his practice to pay the growers the current market price in cash, and he likewise sells in cash. Although he endeavors wherever possible to secure a price sufficient to compensate him for his costs, no specific item is included in this price to cover the transportation charge. And no sales have ever been made for the purpose of filling orders previously secured.

On two occasions, prior to March of this year, respondent hauled property back from Los Angeles for respondent McNutt, but he has discontinued this practice.

It is apparent that respondent is engaged wholly in the transportation of his own products and therefore requires neither a permit nor a certificate of public convenience and necessity. As to him the proceeding will be dismissed.

K. METROS. This respondent, who was formerly in the trucking business at El Centro, operated under a radial permit which has since been cancelled. He testified that on May 20th, 1936, he sold his two trucks to George E. Brand, Harry Brand and Herman Brand, who are engaged as copartners in the trucking business at Niland under the firm name of Brand Bros. He is now employed on a salary by Brand Bros. directing their trucking operations. Part of the purchase price of his trucks has been paid, and the balance is payable at the end of June, 1936.

When questioned as to the occasion for the sale, he stated he had done so because he had no job and could not make a living.

It is apparent from his testimony that he has withdrawn from the business. Therefore the proceeding should be dismissed as to him.

As we have previously stated, cease and desist orders will be directed against the operations of each of the respondents whose operations have been found to be those of a highway common carrier. Those who are improperly operating as radial highway common carriers and highway contract carriers, respectively, will be directed to secure proper permits therefor; and the proceeding will be dismissed as to those radial and contract carriers who appear to be operating within the scope of their permits. Jurisdiction will be retained for the purpose of taking such further steps or proceedings against the respondents, Pablo Rubio, Joe Rombout and J. W. Asher, as may be deemed necessary in view of their disregard of the Commission's order and of the subpoenas served upon them.

In arriving at these conclusions, the Commission has not been unmindful of the requirements of the farmers of Imperial Valley whose crops, as we have indicated, mature during a short season and must move to market expeditiously. But the respondents whose activities we have been constrained to prohibit by our order in this proceeding, are not the only

carriers in a position to serve them. There are others in the field holding certificates or permits from the Commission who may lawfully render this service. Should their equipment prove to be inadequate or should they for any reason be unable to meet the demands of the public, then it will be time enough for the Commission to consider the certification of other carriers. Moreover, it is possible for these respondents to operate lawfully as contract carriers and thus secure a substantial portion of the business. (Rampone vs. Leonardini, Dec. No. 28256, 39 C.R.C. 588). But we cannot condone their unlawful operations nor permit their continuance.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is, in its effect, not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution, the Public Utilities Act, the Highway Carriers' Act and the City Carriers' Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five days, or both. C.C.P. Sec. 1218, Motor Freight Terminal Co. v. Bray, 37 C.R.C. 224; In re Ball and Hayes, 37 C.R.C. 407; Wermuth v. Stammer, 36 C.R.C. 438; Pioneer Express Company v. Keller, 33 C.R.C. 571.

It should also be noted that under Section 79 of the Public Utilities Act, a person who violates an order of the Commission is guilty of a misdemeanor, and is punishable by a fine not exceeding \$1,000.00 or by imprisonment in the County Jail not exceeding one year, or by both fine and imprisonment. Also under Section 14 of the Highway Carriers' Act and Section 13 of the City Carriers' Act, any person, or any director, officer, agent or employee of a corporation who violates any of the provisions of these acts, respectively, or of any operating permit issued thereunder to any highway carrier or city carrier, respectively, or any order, rule or regulation of the Commission, is guilty of a misdemeanor, and is punishable by a fine not exceeding \$500.00, or by imprisonment in the County Jail for not exceeding three months, or by both fine and imprisonment.

#### FINDINGS OF FACT

Upon consideration of the evidence herein, the Commission hereby finds the facts to be as follows:

(1) That the respondent, Hue Follendore, doing business as Hue's Transfer, has transported property for compensation over the public highways between fixed termini, to-wit: (a) between Holtville and San Diego, and (b) between Holtville and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(2) That the respondent, Walter Carston, has transported property for compensation over the public highways between fixed termini, to-wit: (a) between Calexico and San Diego, and (b) between Calexico and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first

having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(3) That the respondent, L. E. Dowe, doing business as the Pioneer Transfer Company, has transported property for compensation over the public highways between fixed termini, to-wit: (a) between Calexico and San Diego, and (b) between Calexico and Los Angeles and intermediate points, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(4) That the respondent, Chester McNutt, has transported property for compensation over the public highways between fixed termini, to-wit: (a) between El Centro, Brawley, Calexico, Heber, Holtville, Imperial and Westmoreland, on the one hand, and San Diego, on the other hand, and (b) between El Centro, Brawley, Calexico, Heber, Holtville, Imperial and Westmoreland, on the one hand, and Los Angeles, on the other hand, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(5) That the respondents, Duane D. Stafford and Percie C. Thacker, co-partners doing business under the firm name of Pioneer Truck & Transfer Company, have transported property for compensation over the public highways between fixed termini, to-wit: (a) between El Centro and San Diego, and (b) between El Centro and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(6) That the respondent, Elmore Jameson Company, a corporation, has transported property for compensation over the public highways between fixed termini, to-wit: between Brawley, Imperial and Calipatria on the one hand, and Los Angeles on the other hand, and intermediate points, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(7) That the respondents, J. C. Minshew and Raymond Minshew, co-partners doing business under the firm name of Minshew Truck & Transfer Company, have transported property for compensation over the public highways between fixed termini, to-wit: (a) between Brawley and Los Angeles, and (b) between Brawley and San Francisco, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(8) That the respondents, H. W. Hendrix and E. M. Hendrix, co-partners doing business under the firm name of Hendrix Truck Company, have transported property for compensation over the public highways between fixed termini, to-wit: between Brawley, Westmoreland, Holtville, Heber, Imperial, Niland and El Centro, respectively, on the one hand, and Los Angeles on the other hand, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(9) That the respondents, Frank R. Brown and Roy E. Brown, doing business under the firm name of Brown Bros., have transported property for compensation over the public highways between fixed termini, to-wit: between El Centro and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(10) That the respondent, S. Osuka, has transported property for compensation over the public highways between fixed termini, to-wit: between Westmoreland and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(11) That the respondent, Victor J. Carrick, has transported property for compensation over the public highways between fixed termini, to-wit: between Calipatria and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(12) That the respondent, Y. Nakagami, has transported property for compensation over the public highways between fixed termini, to-wit: between Brawley and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(13) That the respondent, John R. Williams, has transported property for compensation over the public highways between fixed termini, to-wit: between Coachella and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(14) That the respondent, Y. Honda, has transported property for compensation over the public highways between fixed termini, to-wit: between Brawley and Westmoreland, respectively, on the one hand, and Los Angeles on the other hand, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(15) That respondent, Peter Campouris, has transported property for compensation over the public highways between fixed termini, to-wit: between Holtville and El Centro, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(16) That the respondent, Maggio Bros. Co., Inc., a corporation, has transported property for compensation over the public highways between fixed termini, to-wit: between El Centro and Heber, respectively, on the one hand, and Los Angeles on the other hand, and intermediate points, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(17) That the respondent, Fred O. Sones, has transported property for compensation over the public highways between fixed termini, to-wit: between Niland and Los Angeles, as a highway common carrier

as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(18) That the respondent, D. H. Loo, has transported property for compensation over the public highways between fixed termini, to-wit: between El Centro and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(19) That the respondents, Shogo G. Saito and V. L. Young, co-partners, have transported property for compensation over the public highways between fixed termini, to-wit: between Brawley and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(20) That the respondents, Jack V. White, King E. White and E. L. White, co-partners doing business under the firm name of White Bros. Trucking, have transported property for compensation over the public highways between fixed termini, to-wit: between Brawley and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations. That said respondents have also been operating in the vicinity of Brawley as a radial highway common carrier without first having secured from this Commission a permit authorizing them so to do.

(21) That the respondent, Harry U. Kubota, doing business under the name of Central Service Co., has transported property for

compensation over the public highways between fixed termini, to-wit: (a) between Brawley and Los Angeles, and (b) between Brawley and El Centro, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(22) That the respondent, J. F. Waggoner, has transported property for compensation over the public highways between fixed termini, to-wit: between El Centro and Los Angeles, as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, without first having secured from this Commission a certificate of public convenience and necessity authorizing such operations.

(23) That the respondents, P. M. Aceves, G. W. Clark, L. S. Cobleigh, R. S. Engebretson, Spencer Gill, Garrett Johnson, Thomas A. King, Elger Low, Ray McGuire and J. A. Shipler, copartners, L. F. Rogers, R. Thompson and Eugene S. Wilkins are not, nor is any of said respondents engaged in the transportation of property as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, between any point or points in Imperial Valley on the one hand, and San Diego, Los Angeles and/or San Francisco on the other hand, nor between any point or points in the Imperial Valley; that each of said respondents, other than respondents L. F. Rogers and Spencer Gill, is engaged in the transportation of property, over the public highways of the State of California, for compensation as a highway contract carrier, as defined in Section 1 of the Highway Carriers' Act (Statutes 1935, Chapter 223, of the State of California), under a permit heretofore issued to him by this Commission; that respondents, L. F. Rogers and Spencer Gill, are and each of them is engaged in the transportation of property for

compensation as such highway contract carrier without first having secured from this Commission a permit authorizing such operations.

(24) That the respondents Ray McGuire and J. A. Shipler, co-partners, are engaged in the transportation of property for compensation over the public highways of the State of California, as a radial highway common carrier, as defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(25) That the respondents, Jack V. White, King E. White and E. L. White, co-partners doing business under the firm name of White Bros. Trucking, are engaged in the transportation of property for compensation over the public highways of the State of California as a radial highway common carrier, as defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(26) That the respondent, O. B. Aikman, is engaged in the transportation of property for compensation over the public highways of the State of California as a radial highway common carrier, as defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(27) That the respondent, J. H. Bailey, doing business under the name of Brawley Transfer & Storage, is engaged in the transportation of property for compensation over the public highways of the State of California as a radial highway common carrier, as defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(28) That the respondent, Jerry J. Farmer, is engaged in the transportation of property for compensation over the public highways of the State of California as a radial highway common carrier, as

defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(29) That the respondent, Edward M. Royce, is engaged in the transportation of property for compensation over the public highways of the State of California, as a radial highway common carrier, as defined in Section 1 of said Highway Carriers' Act, without first having secured from this Commission a permit authorizing such operations.

(30) That the respondents, O. B. Aikman, J. H. Bailey, Jerry J. Farmer, and Edward M. Royce are not, nor is any of said respondents engaged in the transportation of property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between any point or points in Imperial Valley, on the one hand, and San Diego, Los Angeles, and/or San Francisco, on the other hand, nor between any point or points in the Imperial Valley.

(31) That the respondents, Dan Bump, Claude Childers, A. Fallavena, Dell Gray, C. B. Green, Charles Ketner, E. P. Obergfell, L. C. Obergfell and I. C. Obergfell, copartners doing business under the firm name of Obergfell Bros., Dinzel V. Porter, Prudencio Rodriguez, Frank M. Stall and William J. Young, are not, nor is any of said respondents engaged in the transportation of property as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act, between any point or points in Imperial Valley on the one hand, and San Diego, Los Angeles and/or San Francisco on the other hand, nor between any point or points in the Imperial Valley; that each of said respondents is engaged in the transportation of property over the public highways of the State of California, for compensation, as a radial highway common carrier, as defined in Section

1 of said Highway Carriers' Act, under a permit heretofore issued to him by this Commission.

(32) That the respondents, J. R. Snyder, J. L. Bain and K. Metros, are, and each of them is no longer engaged in business as a highway carrier, as defined in Section 1 of said Highway Carriers' Act.

#### O R D E R

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised;

#### IT IS HEREBY ORDERED:

(1) That the respondent, Hue Follendore, doing business as Hue's Transfer, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the

public highways, (a) between Holtville and San Diego, and (b) between Holtville and Los Angeles, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(2) That the respondent, Walter Carston, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways, (a) between Calexico and San Diego, and (b) between Calexico and Los Angeles, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(3) That the respondent, L. H. Dowe, doing business as the Pioneer Transfer Company, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways, (a) between Calexico and San Diego, and (b) between Calexico and Los Angeles, and intermediate points, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad

Commission a proper certificate of public convenience and necessity therefor.

(4) That the respondent, Chester McNutt, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways, (a) between El Centro, Brawley, Calexico, Eber, Holtville, Imperial and Westmoreland, and each of them, on the one hand, and San Diego on the other hand, and (b) between El Centro, Brawley, Calexico, Eber, Holtville, Imperial and Westmoreland, and each of them, on the one hand, and Los Angeles on the other hand, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(5) That the respondents, Duane D. Stafford and Percie C. Thacker, co-partners doing business under the firm name of Pioneer Truck & Transfer Company, be and they are, and each of them is hereby required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways (a) between El Centro and San Diego, and (b) between El Centro and Los Angeles, and between any of said points, over any route or routes between said termini, and any of them, unless they and each of them shall have first secured

from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(6) That the respondent, Elmore Jameson Company, a corporation, be and it is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley, Imperial and Calipatria, and each of them, on the one hand, and Los Angeles on the other hand, and intermediate points, over any route or routes between said termini, and any of them, unless it shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(7) That the respondents, J. C. Minshew and Raymond Minshew, co-partners doing business under the firm name of Minshew Truck & Transfer Company, be and they are, and each of them is hereby required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways, (a) between Brawley and Los Angeles, and (b) between Brawley and San Francisco, and between any of said points, over any route or routes between said termini, and any of them, unless they and each of them shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(8) That the respondents, H. W. Hendrix and H. M. Hendrix, co-partners doing business under the firm name of Hendrix Truck Company, be and they are, and each of them is hereby required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley, Westmoreland, Holtville, Heber, Imperial, Niland and El Centro, and each of them, on the one hand, and Los Angeles on the other hand, over any route or routes between said termini, and any of them, unless they and each of them shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(9) That the respondents, Frank R. Brown and Roy E. Brown, doing business under the firm name of Brown Bros., be and they are, and each of them is hereby required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between El Centro and Los Angeles, over any route or routes between said termini, unless they and each of them shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(10) That the respondent, S. Osuka, be and he is hereby required and directed to cease and desist, directly or indirectly, or

by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Westmoreland and Los Angeles, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(11) That the respondent, Victor J. Carrick, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Calipatria and Los Angeles, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(12) That the respondent, Y. Nakagami, be and he is hereby directed and required to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley and Los

Angeles, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(13) That the respondent, John R. Williams, be and he is hereby directed and required to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Coachella and Los Angeles, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(14) That the respondent, Y. Honda, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley and Westmoreland, and each of them, on the one hand, and Los Angeles on the other hand, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(15) That the respondent, Peter Campouris, be and he is hereby directed and required to cease and desist, directly or

indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Holtville and El Centro, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(16) That the respondent, Maggio Bros. Co., Inc., a corporation, be and it is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between El Centro and Heber, and each of them, on the one hand, and Los Angeles on the other hand, and intermediate points, over any route or routes between said termini, and any of them, unless it shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(17) That the respondent, Fred O. Sones, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section

2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Niland and Los Angeles, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(18) That the respondent, D. H. Loo, be and he is hereby directed and required to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between El Centro and Los Angeles, over any route or routes between said termini, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(19) That the respondents, Shogo G. Saito and V. L. Young, co-partners, be and they are, and each of them is hereby required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley and Los Angeles, over any route or routes between said termini, and any of them, unless they and each of them shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(20) That the respondents, Jack V. White, King E. White and E. L. White, co-partners doing business under the firm name of White Bros. Trucking, be and they are, and each of them is hereby

required and directed to cease, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between Brawley and Los Angeles, over any route or routes between said termini, and any of them, unless they and each of them shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(21) That the respondent, Harry U. Kubota, doing business under the name of Central Service Co., be and he is hereby directed and required to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between (a) Brawley and Los Angeles and, (b) between Brawley and El Centro, and between any of said points, over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

(22) That the respondent, J. F. Waggoner, be and he is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act of the State of California, by any motor vehicle or motor vehicles over the public highways between El Centro and Los Angeles,

over any route or routes between said termini, and any of them, unless he shall have first secured from the Railroad Commission a proper certificate of public convenience and necessity therefor.

IT IS HEREBY FURTHER ORDERED that the respondents, Ray McGuire and J. A. Shipler, co-partners, Jack V. White, King E. White and E. L. White, copartners doing business under the firm name of White Bros. Trucking, O.B. Aikman, J. H. Bailey doing business under the name of Brawley Transfer & Storage, Jerry J. Farmer and Edward M. Royce be, and they are and each of them is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a radial highway common carrier as defined in the Highway Carriers' Act (Statutes 1935, Chapter 223, of the State of California), over any public highway in said State by means of any motor vehicle or motor vehicles, unless they and each of them shall have first secured from the Railroad Commission a proper permit or permits authorizing them and each of them to operate as such.

IT IS HEREBY FURTHER ORDERED that the respondents, L. F. Rogers and Spencer Gill, be, and they are and each of them is hereby required and directed to cease and desist, directly or indirectly, or by any subterfuge or device from conducting or continuing any and all operations for the transportation of property for compensation as a highway contract carrier, as defined in the Highway Carriers' Act, (Statutes 1935, Chapter 223, of the State of California) over any public highway in said State by means of any motor vehicle or motor vehicles, unless they and each of them shall have first secured from the Railroad Commission a proper permit authorizing them and each of them to operate as such.

IT IS HEREBY FURTHER ORDERED that this proceeding be and it is hereby dismissed as to the respondents, P. M. Aceves, G. W. Clark, L. S. Cobleigh, R. S. Engebretson, Garrett Johnson, Thomas A. King, Elger Low, R. Thompson, Eugene S. Wilkins, Dan Bump, Claude Childers, A. Fallavona, Dell Gray, C. B. Green, Charles Ketner, E. P. Obergfell, L. C. Obergfell and I. C. Obergfell, copartners doing business under the firm name of Obergfell Bros., Dinzel V. Porter, Prudencio Rodriguez, Frank M. Stall, William J. Young, J. R. Snyder, J. L. Bain and K. Metros, and as to each of said respondents.

IT IS HEREBY FURTHER ORDERED

(a) That the true names of certain respondents be and they are hereby substituted, respectively, for the names erroneously set forth in the Order Instituting Investigation herein, as follows:

<u>Name Substituted</u>	<u>Name appearing in Order Instituting Investigation for which substitution is made.</u>
Peter Compouris	Peter Compouris
Jerry J. Farmer	Jerry A. Farmer
O. B. Aikman	O. B. Aiken
Thomas A. King	Tom King

and the Order Instituting Investigation herein is hereby amended accordingly.

(b) That Raymond Minshew be and he is hereby made a respondent to this proceeding and that the Order Instituting Investigation herein be and it is hereby amended by naming him therein as such respondent and by designating him as a co-partner of respondent J. C. Minshew and by showing the correct title of said firm, as follows: "J. C. Minshew and Raymond Minshew, co-partners doing business under the firm name of Minshew Truck & Transfer Company".

(c) That King E. White and E. L. White be and they are hereby made respondents and each of them is hereby made a respondent to this proceeding and that the Order Instituting Investigation herein be and it is hereby amended by naming them and each of them as respondents and by designating them and each of them as co-partners of respondent, Jack V. White, and by showing the correct title of said firm, as follows: "Jack V. White, King E. White and E. L. White, co-partners, doing business under the firm name of White Bros. Trucking."

IT IS HEREBY FURTHER ORDERED that the Railroad Commission retain jurisdiction of this proceeding for the purpose of making such further order or orders or taking such further steps or proceedings as it may deem advisable with respect to respondents, Pablo Rubio, Joe Rombout and J. W. Asher, and each of them.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall immediately cause a certified copy of this decision to be personally served upon each of said respondents.

IT IS HEREBY FURTHER ORDERED that for all other purposes this order shall become effective as to each respondent ten (10) days from and after service thereof upon such respondent.

Dated at San Francisco, California, this 21<sup>st</sup> day of

September, 1936.

W. B. Harris  
Simon O. ...  
W. A. ...  
...  
Commissioners.