

Decision No. 29176

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
G. BUFFO, H. CONIGLIO and D. PETTAS,
for certificate of public convenience
and necessity to operate passenger
service, as a common carrier, between
canning plants at City of Pittsburg
and Town of Antioch.

Application No. 20730

ORIGINAL

In the Matter of the Application of
FRANCK CANEPA for certificate of
public convenience and necessity to
operate passenger service, as a common
carrier, between the City of Pittsburg
and the Town of Antioch.

Application No. 20771

BY THE COMMISSION:

Eugh E. Donovan for Buffo, et al, Applicant

Hugh E. Donovan for E. H. Ward, Protestant
in Appl. 20771.

Clarence W. Morris by L. A. Worthington for
Franck Canepa, Applicant

G. E. Jenkins in propria persona, Protestant

O P I N I O N

By application filed August 26, 1936, G. Buffo, H. Coniglio and D. Pettas, co-partners, seek authority from this Commission to transport passengers, as an automotive common carrier, between the City of Pittsburg and certain canneries located in the town of Antioch during the canning seasons only and service to be limited to the transportation of employees of the canneries only.

By application filed September 22, 1936, Franck Canepa, an individual, seeks authority from this Commission to establish an automotive service, as a common carrier of passengers, between the City of Pittsburg and certain canneries in the town of Antioch and likewise limits such passengers to cannery plant workers.

A public hearing was conducted by Examiner W. R. Williams at Pittsburg on September 29, 1936, when evidence was offered, the matters were submitted and now are ready for decision. Upon stipulation of counsel for applicants, the matters were consolidated.

The situation herein is peculiar to the locale and concerns the need of furnishing transportation for cannery workers from their homes, either in Pittsburg or Antioch, to the various canneries located in the town of Antioch.

The operation of a cannery is dependent entirely on the quantity and arrival time of raw materials at the plants and once such material has been started through the routine of the canning process it devolves upon the operators to continue work until the supply of material has been disposed of. This varies from day to day thus engendering irregular hours of arrival and departure of workers.

Under these circumstances it is highly important that transportation facilities be available at practically any hour of the day and night and in addition requires that the carrier be one either in close contact with the cannery employers or one very familiar with the general routine followed in the industry.

Testimony was received on behalf of the applicants from J. H. Dempsey, president of the Hickmont Canning Company, W. G. Buchanan, general merchandise, Pittsburg, Augusta Di Mercurio, fore-lady, Hickmont Cannery, Esther Mayjoffa, cannery worker, Vincent A. Davi, Superintendent of Western California Cannery, and James Gunn, Superintendent of F. E. Booth Company. All witnesses generally testified to the necessity for the particular service as proposed by applicants and expressed satisfaction with

such service. No particular preference as to operator was apparent. There appears to be little difference between the proposals except that Canepa has the newer equipment and home-to-plant service, while Buffo indicated pick-up at central points rather than a house-to-house operation. Canepa proposes a 15 cent round trip fare between Pittsburg and Antioch with a special rate for seven (7) day a week workers of \$1 per person. Buffo, et al proposes a round trip fare of 17½ cents, amended at the hearing to 17 cents. Canepa proposes an "on call" service to be adjusted to cannery working hours while Buffo, et al scheduled one trip each way daily subject to additional operations as movements may be required in conformity with working hours.

Three-hundred and fifty or more cannery workers are employed during the various seasons, nearly all of whom are dependent on common carrier service in going to and from their work. Approximately one-hundred of these workers live in Pittsburg.

All testimony, both of employer and employee, was preponderantly in favor of applicants proposed service and further showed that such service had been rendered satisfactorily in the past by Canepa for periods ranging from four to ten years and on the part of Buffo, as an individual, for four years. It was further averred by witnesses that no other service was available or practicable.

E. H. Ward, operator of Ward's Auto Stage between Pittsburg and Antioch under prescriptive right, entered a protest to the Canepa application but withdrew same when satisfied that applicant only proposed transporting passengers to and from the canneries.

G. H. Jenkins, the other certificated operator between Pittsburg and Antioch, appeared as a protestant in ^{both} applications but

it appears that under the certificate of public convenience and necessity recently granted to him he was not rendering, nor could he render thereunder, the particular types of service demanded by the cannery people without an amendment to his certificate which he has not attempted to obtain. The proposed services of applicants herein do not appear to be competitive with the operations of Mr. Jenkins as now constituted.

Applicant Canepa through counsel and by his own testimony freely admitted that, through ignorance of the law, he had in the past and was now conducting a common carrier passenger service on an individual fare basis without a certificate of public convenience and necessity. G. Buffo, through his son Pete Buffo, likewise admitted such operation.

However, when apprised of their dereliction in these matters, they immediately filed applications for the required certificates but continued to be of the erroneous opinion that the filing of an application with the Commission was permissive and would enable them to operate until such time as a decision by the Commission was reached. While, ordinarily both applicants should be censured for this illegal activity, the fact that they alone of the carriers involved actually offered and performed for many years, the service herein outlined, without question a public convenience and necessity, satisfies a finding that they should be permitted to bring their operations within the law.

G. Buffo, E. Coniglio and D. Pettas, co-partners, and Franck Canepa, an individual, are hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining

reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been had in the above entitled application of G. Buffo, H. Coniglio and D. Pettas, co-partners, evidence having been received, the matter having been duly submitted and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES the public convenience and necessity require the operation by G. Buffo, H. Coniglio and D. Pettas, as a passenger stage corporation as defined in Section 2 $\frac{1}{2}$, Public Utilities Act, of an automotive service for the transportation of passengers between Pittsburg and the Hickmont Canning Company, California Packing Corporation, Western California Cannery, Inc., and the F. E. Booth Company, in the town of Antioch or adjacent thereto subject to the following restrictions:

- (1.) No intermediate service may be rendered between Pittsburg and Antioch.
- (2.) Transportation of passengers will be limited to persons going or coming from the canneries set forth above.
- (3.) Service to be rendered only during the canning seasons.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby

granted to G. Buffo, E. Coniglio and D. Pettas, co-partners,
subject to the following conditions:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by applicants under a contract or agreement on a basis satisfactory to the Railroad Commission.

A public hearing having been had in the above entitled application of Frank Canepa, an individual, the matter having been duly submitted and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES the public convenience and necessity require the operation by Frank Canepa, an individual, as a passenger stage corporation as defined in Section 2 $\frac{1}{2}$, Public Utilities Act, of an automotive service for the transportation of passengers between Pittsburg and the Hickmont Canning Company, California

Packing Corporation, Western California Cannery, Inc. and the F. E. Booth Company in the town of Antioch, or adjacent thereto, subject to the following restrictions:

(1.) No intermediate service may be rendered between Pittsburg and Antioch.

(2.) Transportation of passengers will be limited to persons going to or coming from the canneries set forth above.

(3.) Service to be rendered only during the canning seasons.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted to Frank Canepa, an individual, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.

2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13th day of October, 1936.

M. B. Lavin

Leon A. Whedell

W. A. Linn

Matthew A. Linn

Paul R. Lavin
COMMISSIONERS