

DEC. NO. 20038

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BENJAMIN WALTERS, doing business under the firm name and style of ISLAND TRANSPORTATION COMPANY, for certificate of public convenience and necessity to operate vessels, etc.) AMENDED APP. NO. 21076

In the Matter of the Investigation on the Commission's own motion into the service, operative rights, rates, rules, regulations, contracts, facilities, practices, operations, transfer or other disposition of the operative rights, or any of them, of LAFAYETTE J. SMALLPAGE, Trustee, HENRY E. HANSEN; LAURA A. GERDES; PEARL L. THOMAS; ADA GORMSEN; GRACE E. VEHEMEYER; FEDERAL RESERVE BANK OF SAN FRANCISCO; PACIFIC NATIONAL BANK OF SAN FRANCISCO; R. W. SEITZ as Receiver of FREIGHTERS, INC., a corporation, etc.) CASE NO. 4216

In the Matter of the Joint Application of HENRY E. HANSEN to sell and UNITED BOAT LINES, a corporation, to purchase certain floating equipment, consisting of boats, tugs, et al, and to exercise certain operating rights in conjunction therewith, etc. and UNITED BOAT LINES, a corporation, to issue and deliver to applicant Hansen 300 shares of its capital stock in payment for said properties and to issue and sell not over 50 additional shares thereof to provide operating capital.) AMENDED APP. NO. 21288

In the Matter of the Application of HENRY E. HANSEN to convey and transfer to BENJAMIN WALTERS, the right to operate vessels as a common carrier of property on the inland waters of the State.) APP. NO. 21305

Gwyn H. Baker and Harry M. Wade for Benjamin Walters
Lafayette J. Smallpage for Henry E. Hansen and United Boat Lines

F. W. Mielke; McCutchen, Olney, Mannon & Greene for
The River Lines, interveners

A. L. Whittle for Southern Pacific Company, Northwestern Pacific Railroad Company, Pacific Motor Transport Company, and Southern Pacific-Golden Gate Ferries, Ltd., interveners.

H. S. Graham for Petaluma and Santa Rosa Railroad Company
Lafayette J. Smallpage for Lafayette J. Smallpage, Trustee, Henry E. Hansen, Laura A. Gerdes, Pearl L. Thomas, Ada Gormsen and Grace E. Vehmeyer

Herbert D. Armstrong for Federal Reserve Bank of San Francisco and Pacific National Bank of San Francisco
Chalmers G. Graham, C. G. Morse and Lafayette J. Smallpage for R. W. Seitz, Receiver of Freighters, Inc.

RILEY, Commissioner:

PRELIMINARY OPINION AND ORDER

These consolidated proceedings, involving the operative rights of certain common carriers by vessel, afford an opportunity to end costly litigation extending over a period of years. At the hearing of June

29, 1937 the matters were submitted with the understanding, agreed to by all parties, that Henry E. Hansen and Benjamin Walters would file a further application, hereinafter discussed, and that such application would be submitted without hearing, subject to the filing of concurrent briefs on July 20, 1937. The only seriously contested question, one of law, will be raised in connection with that application. It appears appropriate to immediately dispose of all other matters by a preliminary order.

In 1934 the Commission instituted an investigation into the operative rights of some sixty vessel operators. (Cases 3824 and 4012.) During the pendency of the general investigation, six of these operators, including Benjamin Walters, were authorized to transfer their rights and properties to a new corporation, Freighters, Inc., and the latter was authorized to issue a certain amount of stock. (Decision 27592, Dec. 17, 1934, in App. 19728.) In May of 1935 Freighters, Inc. was authorized to execute a loan agreement and a general pledge and collection agreement with the Federal Reserve Bank of San Francisco, and also to execute promissory notes and a mortgage of vessels and rights to Pacific National Bank of San Francisco. (Decision 27981, App. 19957.) In October of 1935 Walters filed an application which in effect sought a rescission of the order authorizing the transfer to Freighters, Inc. In dismissing that application for lack of jurisdiction the Commission stated that if it should be determined by a court of competent jurisdiction that Walters had not conveyed his rights or was entitled to a rescission of such conveyance, the Commission would then entertain his further petition for an order permitting the refiling of rates and resumption of service. (Re Walters, 39 C.R.C. 667.)

In April of 1936, because of financial difficulties, Freighters, Inc. sought relief in the Federal Courts under section 77 B of the Bankruptcy Act. Thereafter the Federal Reserve Bank instituted two federal court proceedings against Freighters, Inc., the latter's prop-

erties and rights were sold at public auction to Henry E. Hansen, and the sale was confirmed on June 7, 1937.⁽¹⁾

On May 24, 1937 the Commission issued its final decision in its general operative right investigation (Decision 29778, 40 C.R.C. 493). The extent and nature of the rights of the predecessors of Freighters, Inc. were defined as of December 16, 1934.

The present proceedings are four in number, three applications and a Commission investigation. In March of 1937 Walters applied for a certificate. (App. 21076.) The application was amended on June 29, 1937, and Walters' counsel have requested that this matter "go off calendar." No action will be taken on Application 21076 (Walters' application for a certificate) pending the issuance of a final decision on Application 21288 (Hansen to transfer to United Boat Lines) in so far as the former Walters' rights are concerned, and on Application 21305 (Hansen to transfer to Walters), both of which are hereinafter discussed.

In Case 4216 the Commission ordered the various respondents to show cause why any rights claimed by them should not be revoked because of unauthorized abandonment or suspension of service or because of any unauthorized mortgage or transfer, the rights in question being those theretofore authorized to be transferred to Freighters, Inc. The record made in response to that order shows that operations were suspended from time to time because of strike conditions,⁽²⁾ but that otherwise there was no refusal of service. The transfer of the rights to Freighters, Inc. and the subsequent mortgage thereof were authorized by the Commission, and the transfer to Hansen by order of the Federal Court was a transfer by operation of law, and one not requiring Commission authoriza-

(1) Exhibit 2, Order for Confirmation, Fed. Res. Bk. of S.F. v. The American Oil Screw Dorothea, etc. Admiralty No. 22470-L

Exhibit 3, Order for Confirmation, Fed. Res. Bk. of S.F. v. Freighters, Inc., Equity No. 4057-L.

(2) The testimony shows that service was temporarily suspended or curtailed because of strikes by warehouse employees, bargemen, the I. L. A., and also because of an agricultural strike.

tion. Case 4216 will therefore be dismissed.

As purchaser at the court sale, Henry E. Hansen is now the owner of the properties and operative rights of Freighters, Inc., which were formerly owned by the six predecessors of Freighters, Inc., including Benjamin Walters. By Application 21288 Hansen seeks authority to transfer such properties and rights to a new corporation, United Boat Lines.⁽³⁾ The corporation proposes to issue and deliver to Hansen 300 shares of common stock (total par value of \$30,000) in payment for such properties and rights, and to issue and sell at not less than par 50 shares of common stock for working capital. The proposed stock issue is fully supported by the record and will be authorized.

No objection has been made to the proposed transfer insofar as it involves the properties and rights formerly owned by Higgins Transportation Company, Larkin Transportation Company, Vehmeyer Transportation Company (R. H. Vehmeyer), Stockton Transportation Company (Gormsen and Hansen), and M. S. Dorothea (Wood and Seitz). The transfer of such properties and rights will be authorized.

The only controversy herein arises in connection with the operative rights formerly owned by Benjamin Walters. As to the disposition of those rights, Application 21288 was amended at the hearing of June 29, 1937 in that authority was sought to transfer from Hansen to United Boat Lines a portion only of the former Walters rights.⁽⁴⁾ Pursuant to an understanding had at the hearing, Application 21305 was filed on June 30, 1937, wherein Hansen seeks authority to transfer to Walters the balance of the former Walters' rights. Objection to the "splitting" of prescriptive rights was voiced by certain interveners. Be-

(3) The new corporation has been organized with a capital stock structure of 500 shares of the par value of \$100 each, making a total par value of \$50,000.

(4) Walters' Application for a certificate (App. 21076) was also amended at the hearing and now requests a certificate only between the points described in the final operative right decision (Decision 29778), excluding that part of Walters' former rights which Hansen proposes to transfer to United Boat Lines.

cause of the nature of the controversy and in accordance with the arrangement agreed to by all parties, the proposed transfer of the so-called Walters' rights will be considered in a separate decision.

Good cause appearing, IT IS ORDERED as follows:

1. Case No. 4216 is hereby dismissed.

2. In Application No. 21305 (Hansen to transfer to Walters), concurrent briefs may be filed by the parties to these consolidated proceedings on July 20, 1937, the matter then to be submitted for decision without further hearing.

3. Action on Amended Application No. 21076 (Walters' certificate application) is deferred pending the issuance of a final decision on Application 21268 (Hansen to transfer to United Boat Lines) in so far as the former Walters' rights are concerned, and on Application 21305 (Hansen to transfer to Walters).

4. Prior to August 1, 1937 Henry E. Hansen may transfer to United Boat Lines, a corporation, the following properties and rights:

- (a) The floating equipment described in Exhibit 1 attached to Application No. 21288;
- (b) Those operative rights formerly held by Freighters, Inc., and acquired by Henry E. Hansen by court sale, which rights are defined in Appendix A of Decision No. 29778 in Cases 3824 and 4012 under the following headings:

Higgins Transportation Company (a corporation)
Larkin Transportation Company (a corporation)
Stockton Transportation Company (Elmer M. Gormsen
and H. E. Hansen, copartners)
Vehmeyer Transportation Co. or Company (R. H.
Vehmeyer)
M. S. Dorothea (Wood & Seitz) (P. F. Wood and
R. W. Seitz, copartners),

provided, that within 30 days after the above transfer United Boat Lines shall file with the Commission a true copy of each instrument of conveyance under which it acquires any of the above properties or rights.

5. United Boat Lines may issue to Henry E. Hansen in payment for the above properties and rights 300 shares of common stock, and may issue and sell for cash on or before December 31, 1937, at not less than par (\$100 each) not exceeding 50 shares of common stock to provide working capital, it being found that the money, property or labor to be procured or paid for by the above issue of \$35,000 of common stock is reasonably required for the purposes hereinabove stated and that the expenditures for such purposes are not in whole or in part chargeable to operating expenses or to income.

6. United Boat Lines shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file not later than the 25th day of each month a verified report, as required by General Order No. 24.

7. Action on that portion of Amended Application No. 21288 which relates to the so-called Walters' rights is deferred pending submission of Application No. 21305.

This order shall be effective immediately.

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

Dated, San Francisco, California, July 7th, 1937.

Walter H. Hays
Frank P. Riley
Walter H. Hays
Commissioners