

Decision No. 32439

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, contracts, and practices, of WEBB & SCHELL, a co-partnership, OTIS ROE, JACK REID, and JOHN FERREIRA.

ORIGINAL

Case No. 4374

Carl R. Schulz, for Respondents.
Milton G. Sapiro, for Agricultural
Cooperative Service Association.
W. G. Stone, for Sacramento Chamber
of Commerce.
Edward M. Berol and Roy B. Thompson,
for Truck Owners Association of
California.
Marvin Handler, for Agricultural
Cooperative Association.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted to determine whether respondents (as possessors of radial highway common carrier and highway contract carrier permits and in their capacities as such) have transported property for Agricultural Cooperative Service Association at less than the established minimum rates. (1)

Respondents claim that hauling is performed by the Association, an agricultural cooperative, with trucks leased to it by respondents, and that respondents' activities in connection with such hauling were and are those of employees, under the

(1) "for the Agricultural Cooperative Service Association, or any member thereof, or Warren & Enos, Schuler & O'Connell, Gray & Evans, E. Salz & Sons, Hart-Hill Grain Company, Golden Eagle Milling Company, Poultry Producers of Central California, Rio Farms, Inc., John Lawler, or Clarence Bales, * * *." (Order Instituting Investigation.)

direction and control of the Association's traffic manager. (2)

The Transportation Department contends that respondents' relationship with the Association is that of "highway carriers," despite the existence of lease agreements and the employment of respondents as district managers. In this connection it is urged that respondents retain and exercise full control over the selection and direction of drivers and the operation of "leased" equipment; that non-leased equipment had been used regularly for "lease" hauling; and that the real purpose of the agreements is to provide transportation services without appearing to be subject to regulation, rather than to make a bona fide transfer of the use, possession and control of equipment.

The matter was submitted upon briefs filed after the taking of evidence by Examiner Cassidy at public hearings held at San Francisco, Petaluma, and Gilroy. (3)

Agricultural Cooperative Service Association

The Association is a California corporation. According to the articles of incorporation its incorporators are "engaged in the production and marketing of agricultural products," and the Association is a "non-profit, cooperative agricultural association * * * under the Agricultural Code," organized "for the purpose of encouraging and fostering agriculture and for cooperatively and collectively handling the problems of producers of agricultural products * * *."

(2) Section 1(f)(5) of the Highway Carriers' Act, in defining the term "highway carrier," excludes any "nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 4, Division VI of the Agricultural Code to the extent only that it may be engaged in transporting its own property or the property of its members."

(3) Respondents' motion to strike the testimony of a Commission inspector regarding two conversations with a truck driver, primarily upon the ground that such conversations occurred after the commencement of the proceeding, is denied. Respondents' motion to dismiss is also denied.

The president of the Association is the general manager of Poultry Producers of Central California, which operates a fleet of its own trucks and also uses contract haulers. (4) Early in 1938, in anticipation of increased transportation costs resulting from the establishment of minimum rates, and desiring to keep such costs as low as possible, Poultry Producers considered whether it would be advisable to purchase additional trucks or to become associated with others in having certain transportation performed through a cooperative agency. The latter method was chosen because of its greater flexibility and elimination of investment.

The Association was organized in June of 1938, following a series of conferences attended by various shippers, truck owners and counsel. (5) It now has eight members, including two cooperative organizations, Poultry Producers of Central California and California Prune and Apricot Growers Association. Two of its members are employees of Poultry Producers (John Lawler and H. C. Eales), and three are San Francisco grain dealers (Warren & Enos, Gray & Evans, and Hart-Hill Grain Company). The remaining member is Rio Farms, Inc.

The Association performs no services for its members other than in connection with transportation.

The Lease Agreements

Shortly after being organized, and in July of 1938, the Association entered into written leases of certain equipment owned

(4) The Association's vice-president is E. R. Warren, a member of the partnership of Warren & Enos, grain dealers in San Francisco, and its secretary and acting treasurer is Carl R. Schulz, who is counsel for the respondent truckers herein and also is associated in business with Max B. Schulz as Schulz Brothers, traffic managers. Max B. Schulz is traffic manager for the Association.

(5) The Association's incorporators were John Lawler, president of Poultry Producers; H. C. Eales and J. E. Dougherty, employees of Poultry Producers, and E. R. Warren and H. F. Enos, of Warren & Enos, grain dealers.

by respondents Webb & Schell (of Gilroy), Otis Roe (of Napa), and Jack Reid (of Petaluma). The leases are substantially identical in form. The Webb & Schell agreement describes the property leased as follows:

<u>"UNIT</u>	<u>MAKE AND YEAR</u>	<u>CAPACITY</u>
WS-1	Reo - 1932	22
WS-2	American La France - 1932	22
WS-3	Reo - 1932	22"

Roe's equipment was identified as units R-1 to R-5, inclusive; and Reid's equipment as units JR-1 to JR-3, inclusive.

The leases are for twelve months, cancelable at any time by either party upon thirty days' written notice. The vehicles are to be used by the Association for the carriage of freight, but not for the carriage of any commodities the natural effect of which shall make the vehicle unfit or unsuitable for hauling grain and feed. The Association is to have sole possession, custody and control at all times. The Lessor agrees to maintain the vehicles in good repair and running order and to pay all fuel and lubrication charges, but shall not pay drivers' wages or cargo insurance, and the latter expense is to be borne by the Association.

Public liability and property damage insurance is to be carried on each vehicle, insuring the interest of Lessor and Association "as it may appear." Association is to pay the cost of any policies which it takes out. If Lessor's present policies are continued, the proportionate cost of the unexpired period shall be computed, and the Association shall pay Lessor ("in addition to the compensation provided in paragraph VII hereof") one cent per loaded mile until the amount so paid equals the proportionate cost to Lessor of such insurance, together with a carrying charge on unpaid balances owing on the first of each month at the rate of two-thirds of one cent per month. The Lessor

is to carry insurance against damage or injury to leased vehicles, and the Association shall not be liable for any loss or damage to such vehicles arising out of its "possession, control, or use" thereof. The Association shall employ competent drivers who shall be responsive only to the Association and not to the Lessor.

Compensation to the Lessor is to be computed upon "annual loaded miles per vehicle," which is defined as the number of loaded miles for which each vehicle is operated during the year commencing with the date of the lease. Such compensation is 21 cents per loaded mile for the first 26,000 annual loaded miles, 19 cents per mile for the next 4,000 miles, 17 cents per mile for the next 2,500 miles, and 16 cents per mile for all in excess of 32,500 miles. (6) None of the equipment has been used to the extent of 26,000 loaded miles.

Payments are to be made upon the actual mileage from the first point of pickup on any load to the last point of delivery, but when such mileage is less than 50, it shall be deemed to be 50 miles; when more than 50 but less than 70, it shall be deemed to be 70 miles; and when more than 70 but less than 90, it shall be deemed to be 90 miles. Friday of each week is settlement day. Lessor shall have access to all Association records pertinent to a calculation of the number of loaded miles traversed.

(6) Each unit of the equipment of Webb & Schell and of Reid is rated at a capacity of 22 tons, and the compensation is identical. The capacity of Roe's equipment varies, and his compensation is as follows:

<u>Unit</u>	<u>Capacity</u>	<u>First 26000 miles</u>	<u>Next 4000</u>	<u>Next 2500</u>	<u>Over 32500</u>
R-1	22-1/2	21 cents	19-1/2¢	17-1/2¢	16-1/2¢
R-2	16	15 cents	14¢	12-1/2¢	11-1/2¢
R-3	16	15 cents	14¢	12-1/2¢	11-1/2¢
R-4	20	19 cents	17-1/2¢	15-1/2¢	14-1/2¢
R-5	23	22 cents	20¢	18¢	16-1/2¢

Vehicles not in use shall be stored in a garage to be selected by the Association, but Lessor agrees to permit the use of his storage yard at a compensation of \$5.00 per month. If Lessor fails properly to maintain the vehicles, the Association may make repairs and charge the expense to Lessor. The agreement terminates if Lessor is adjudged bankrupt or insolvent, and upon any breach thereof by the Association, not cured within three days after notice, Lessor may repossess the vehicles, whereupon the agreement terminates.

Methods of Operation

When members desire to have goods transported they give their orders, usually written, to the traffic manager of the Association. Such orders describe the commodity, location, destination, etc., and contain practically the same information as, for example, was contained in orders given by Warren & Enos to respondent Roe prior to the formation of the Association. The information contained in these orders is then transmitted by the Association's traffic manager to one of its three district managers, who are Messrs. Schell, Roe and Reid. They dispatch the trucks and see that the orders are completed, and as district managers (as distinguished from lessors), are compensated at the rate of one half cent per loaded mile. If district managers act as drivers they also receive compensation in that capacity.

Orders to district managers are on printed forms and are made out in triplicate. The original is retained by the traffic manager, one copy is sent to the Association member, and the other copy is forwarded to a district manager. The orders are numbered and the form contains blanks for member's order number, date, name of member, name of district manager, number of sacks, commodity, lot number, warehouse receipt, location and

destination, as well as a space for general instructions (date of delivery, time of pickup, more detailed description of location, etc.). The lower portion of the order form contains several columns under the title "Deliveries." The heading and number of these columns vary in the different copies of each order. (7)

The district managers render daily reports on printed forms which have appropriate blanks wherein are shown the unit, sacks, weight, from, to, mileage (loaded), tolls, loading charges, driver, wages, and order number. Upon receipt of these daily reports the traffic manager makes appropriate record entries on the original district manager orders, and then bills

(7) The original, retained by the Association, is as follows:

"Date	Sacks	Weight	Unit	Mileage	Lease Cost	Wages	Misc..	Total Rate	Charges"
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"Date" is the date of delivery; "lease cost" is the amount that accrues to the lessor; "miscellaneous" includes bridge tolls, ferry fares, and loading charges; "total" represents the total of the three preceding columns; "rate" is the rate assessed members by the Association, and the last column shows the charges to members, computed from the weight and the rate. With the exception of the last two columns, the required record information is obtained by the traffic manager from the district manager's daily reports, hereinafter discussed.

The member's copy, under the title "Deliveries," contains columns headed as follows:

"Date	Sacks	Weight	Mileage	Rate	Charges"
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The district manager's copy has the following columns:

"Date	Sacks	Weight	Unit	Mileage	Lease Cost	Wages	Misc."
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members. (8) While the Association charges members a rate per hundred pounds it attempts to charge an approximate percentage in excess of costs (lease compensation, wages, miscellaneous charges, etc.), and in so doing sometimes absorbs bridge and ferry tolls and at other times adds these amounts to the bill.

Drivers and laborers are hired by the district managers, and the Association's traffic manager first learns of such hiring after services have been performed and the hours have been sent in on the reports of the district managers, who have discretion as to hiring or discharging. Drivers' wages are paid by Association checks forwarded to and distributed by the district managers.

The method of operation may be illustrated more clearly by reference to the functions performed by each of the three lessors and district managers.

(8) Exhibit 12 contains copies of approximately 280 orders issued by the Association, except that there has been omitted therefrom the rate assessed and the charges made to members by the Association. The number of orders placed by the respective members of the Association are as follows:

Warren & Enos -----	160
Poultry Producers of Central California -----	91
Hart-Hill Grain Company -----	15
Gray & Evans -----	3
Rio Farms, Inc. -----	2
California Prune & Apricot Growers Association	1
John Lawler -----	0
H. C. Eales -----	0

Commodities involved have been as follows:

Wheat	79	Limestone Products	1
Barley	39	Alfalfa Meal	1
Milo	51	Lumber	1
Corn	39	Cottonseed Meal	2
Oats	25	Charcoal	1
Beet Pulp	11	Rice Products	1
Empty Sacks	1	Hay	3
Grit	6	Shells	1
Dried Fruit	1	Fish Meal	4
Coco Meal	2	Salt	1
		Peat Moss	1

The number of orders sent to each district manager follow:

Roe -- 137 Schell -- 90 Reid -- 45

Respondent Webb & Schell

Webb & Schell is a partnership, Fred Schell being the partner actively conducting the business. Mrs. Mason, its bookkeeper until the end of September, 1938, and who was not employed by the Association, prepared Schell's daily reports as district manager, obtaining the necessary information from delivery receipts made out by drivers. One copy of such reports was retained and the other mailed to the Association.

As heretofore stated, Exhibit 12 consists of copies of the original orders to district managers, which contain data obtained from the district managers' reports after completion of the hauls. Order No. 67 covers six hauls of wheat made on two days in August of 1938 from Topo to Watsonville, showing a loaded mileage on each trip of sixty-seven miles. Attached to the original of that order is a note in Mrs. Mason's handwriting, written by her at Schell's direction, and requesting extra compensation for these hauls.⁽⁹⁾ It is argued that this request for a higher rate of compensation for these particular hauls than that specified in the agreement, reference to such compensation as a rate, together with comparison of the lease compensation with a rate based on tonnage, reflect Schell's own appraisal of the partnership as a carrier and not as a lessor.

Certain drivers employed prior to formation of the Association were told by Schell that they would be working for the

(9) The note reads as follows:

"The country covered by Truck Report #29 & 30 is very mountainous. Our rate on this has always been \$2.00 per ton. This would gross us \$267.30 on these six loads and after deducting drivers' wages and loading costs of \$65.44 it would net us \$201.86. At the A.C.S.A. rate we will only net \$92.40 which does not begin to cover our expenses for work in this rough country. We feel that we should be paid at least a 90 mile rate on this.

Webb & Schell
by C. Mason"

Association and that their orders and checks would be coming out of San Francisco. Schell also advised them that he was acting as district manager "for this district" and that his trucks "were out on a lease." At times Schell has employed relief drivers for single trips on Association hauls, and drivers have been shifted between partnership hauling and Association hauling.

According to the agreement three trucks were leased to the Association, two 1932 Reos and a 1932 American La France. No trailers are mentioned, except that a rider to the lease added a "1931 Dodge with Utility Trailer" for a fifteen-day period. (Nov. 27, 1938 to and including Dec. 12, 1938.) Additional equipment owned by the partnership consists of a Dodge truck, a Ford tractor with a semi-trailer attachment, a Fageol truck, a second Utility trailer, a Reliance trailer, and a home-made trailer. Certain of these trailers are used in connection with Association work, and are sometimes interchanged. (10)

Association Order No. 80, (11) as well as Schell's report thereon as district manager, shows that Unit S-4 ("1931 Dodge with Utility Trailer") was used in performing an Association haul on August 8, 1938, although that equipment was not brought under the lease agreement until November 27, 1938. (Exhibit 3.)

(10) For example, the American La France truck (leased), used for Association hauling, ordinarily "pulls" the home-made trailer (not leased). When the latter is undergoing repairs, one of the two Utility trailers (one of which was leased for a fifteen-day period, although not described specifically) is used with that truck. All of the trailers are about the same size.

(11) This order, directed to district manager Schell, reads in part as follows:

"Instructions: This is not a new order - it was executed to record a movement evidently authorized directly by some one in the Poultry Producers."

Respondent Otis Roe

The agreement with Otis Roe describes the property leased by him to the Association as follows:

<u>"Unit</u>	<u>Make and Year</u>	<u>Capacity</u>
R-1	G.M.C. - 1931	22-1/2
R-2	Dodge -- 1938	16
R-3	Dodge -- 1938	16
R-4	International - 1937	20
R-5	Dodge -- 1938	23"

The agreement is dated July 7, 1938. By two riders Unit R-3 was eliminated from the lease as of August 20, 1938, and was reinstated as of November 28, 1938. (12) No trailers are mentioned in the agreement, although the drivers, in describing Roe's equipment, testified that certain trailers are used regularly with each of the trucks. (13)

Drivers employed by Roe before the Association was organized thereafter continued as regular drivers of the same trucks, but were paid by Association checks. Roe told them that his trucks had been leased, and also advised them that they would be working for the Association or asked them if they wanted to work for the Association. When starting on Association hauls drivers are

(12) The driver of Unit No. 3 testified that in September and October of 1938, during the grape season, he worked for Roe more than for the Association, but that even during that period he worked occasionally for the Association. He drove Unit No. 2 "occasionally last fall." The period of the grape season (September and October) coincides with the period that Truck No. 3 was "eliminated" from the lease arrangement. (August 20 to November 28, 1938.)

(13) Roe's equipment and regular drivers are as follows:

<u>No.</u>	<u>Truck</u>	<u>Trailer Used</u>	<u>Regular Driver</u>
1	1931 G.M.C.	Utility trailer	Roe
2	1938 Dodge (2 ton)	Utility semi-trailer	Nelson
3	1938 Dodge (2 ton)	Fabco semi-trailer	Douglas
4	1937 International	Utility trailer	Jones
5	1938 Dodge (3 ton)	Utility semi-trailer and trailer	Bishop

usually given the Association's order to the district manager, but sometimes receive verbal instructions, generally from Mr. Roe, but at times from Mrs. Roe.

Respondent Jack Reid

The property leased by Reid to the Association is described in the agreement as follows:

<u>"Unit</u>	<u>Make and Year</u>	<u>Capacity</u>
JR-1	International A-6 -- 1930	22
	1937 - Motor and trailer	22
JR-2	White 7-18 -- 1937 and trailer	22
JR-3	White 7-22 -- 1938 and trailer	22"

A rider to the agreement provides that Unit JR-3 shall be withdrawn from the lease arrangement on November 16, 1938, but shall be subject thereto on and after December 6, 1938.

The equipment owned by Reid was described by the drivers as follows:

<u>Reid's No.</u>	<u>Ass'n. No.</u>	<u>Description</u>	<u>Regular Driver</u>
1	JR-1	1930 International flat bed truck, which regularly "pulls" a 3 axle Reliance trailer.	Hagerman
2	-	(No equipment now designated by this number.)	
3	-	1935 White flat bed truck, which formerly used a Utility 3 axle trailer (now used with the 1937 White truck, No. 5), but which now uses a Reliance 3 axle trailer (formerly used with No. 5).	M. Augustine
4	-	1934 International flat bed truck.	Jacobson
5	JR-2	1937 White flat bed truck (see No. 3 above, regarding trailer used with this truck).	T. Augustine
6	JR-3	1938 White with semi-trailer attachment.	Warner

While the lease agreement refers to a 1937 White and a 1938 White, the testimony of the drivers shows that the 1935 White and the 1937 White were regularly used for Association hauling and that the 1938 White was not so used except on one occasion, which will be discussed presently. On brief, respondents state that inclusion of the 1938 White in the lease agreement was a mere stenographical error of description, that the 1935 White was the piece of equipment actually leased, and that since the error was called to their attention the parties, as between themselves, have reformed the lease agreement to correctly list the equipment. The record is silent concerning the facts thus suggested for the first time in the brief. (14)

A rider to the lease agreement provides that the 1938 White (JR-3) shall be withdrawn from the lease arrangement between November 16 and December 5 of 1938, both inclusive. However, that truck was used for Association hauling on November 21, 1938. While respondents' brief suggests that the 1937 White (JR-2) was the truck actually used for that shipment, the record shows that that truck was used on another Association haul on the same day. (15) On two occasions a unit described as JR-4 was used, although the lease agreement does not refer to such a unit. According to the brief this unit was used by mistake, and when called to the attention of the parties an adjustment was made which resulted in increasing the charges on the two shipments to the prescribed minimum rates.

- (14) Use of the 1935 White for Association hauling was disclosed by no less than five driver witnesses at the adjourned hearing of January 3, 1939. No explanation concerning the use of such truck appears in the record, although further adjourned hearings were had on February 8 and 24, 1939. Respondents' brief was filed on April 25, 1939.
- (15) Order No. 259 of Exhibit 12, shows that on November 21, 1938, the 1938 White hauled some 22½ tons of corn from Princeton to Petaluma, and was accredited with a mileage of 145 miles, while Order No. 257 shows that on the same day the 1937 White hauled some 18 odd tons of wheat from a point three miles north of Willows to Petaluma, and was accredited with a mileage of 150 miles.

Status of Respondents' Operations

The Association not being a respondent, it is assumed for the purpose of this proceeding that the Association is a bona fide "agricultural cooperative," and that it may transport the property of its members without being subject to the provisions of the Highway Carriers' Act. However, the statute does not exempt from regulation transportation performed for an "agricultural cooperative" by other persons acting as carriers, and the basic question is whether respondents have so acted.

Respondents, as carriers, formerly hauled for certain members of the Association. They continue to act as carriers for nonmembers. Two large shippers, a grain dealer and a cooperative organization, were the moving factors in organizing and are responsible for about 90 per cent of the shipments made by the Association. Their sole purpose was to forestall increased transportation costs which they anticipated would result from the establishment of minimum rates. The Association immediately consummated arrangements with respondents looking toward continued transportation of property by means of respondents' equipment. These arrangements, intended to remove such hauling from the statute, consisted of three distinct but related parts, the execution of agreements whereby respondents purported to lease certain vehicles to the Association, appointment of the lessors as district managers of the Association, and the Association's employment of a traffic manager through whom transportation orders would be transmitted to the district manager-lessors, and who billed Association members for such transportation.

We believe that the record impels the conclusion that these arrangements are those of form and not of substance. The provisions of the lease agreements have not been observed. Equipment not specified in the leases has been used for Association hauling.

The agreements provide that the vehicles covered thereby shall be in the sole possession and control of the Association, which shall employ drivers responsive only to the Association. Yet respondents retain actual possession and control of their equipment. They continue to hire, discharge and control drivers, and the latter report to and receive instructions from respondents, only infrequently contacting the Association's traffic manager by telephone. It is claimed that direct control of drivers and operations has been exercised by respondents in their dual capacity as Association district manager employees, rather than as lessors or carriers, and thus that the hauling has been performed by the Association, acting through its employee respondents. But orders transmitted to district managers contain about the same information and instructions normally received by carriers from their shippers, and designation of respondents as district managers has neither altered materially the transportation modus operandi nor resulted in the performance by them of any substantial employee services for the Association. The preparation of daily reports, while giving color to a claimed employer-employee relationship, is in substance a form of billing. No real need for district managers appears other than the necessity of lending credence to the position that the transportation is performed by the Association.

The practical result of the functions performed by the Association's traffic manager in connection with respondents' trucking activities is that the transportation orders of several shippers are placed by a single shipper acting as a "clearing house" for the others. The fact that respondents' compensation under the agreements is based upon loaded truck miles is not inconsistent with carrier status. Examination of the lease agreements in the light of actual operations thereunder discloses the

lack of the element of a transfer of use and possession to the hirer which the courts have held to be essential to a leasing of property, and that the hauling in fact has not been performed by the Association, but by the respondents as carriers within the meaning of the statute.

Minimum Rates

Commission witnesses Peters and Lake presented an exhibit showing the minimum rates (16) applicable to the shipments covered by particular orders contained in Exhibit 12. The exhibit sets forth the origin and destination, commodity, weight, constructive mileage, mileage rates, the total charges shown in Exhibit 12, and the difference between those charges and the minimum rates. In the following computations miscellaneous charges (bridge and ferry tolls, loading charges, etc.), drivers' wages, and the half cent per loaded mile paid to respondents as district managers, have been added to the "lease compensation" in order to show fairly the total charges assessed by respondents, before comparing such charges with the applicable minimum rates.

Webb & Schell

<u>Association Order Number</u>	<u>Charges Assessed</u>	<u>Proper Charge Under Minimum Rates</u>	<u>Difference</u>
13	\$157.75	\$187.62	\$ 29.87
19	37.06	51.21	14.15
22	30.25	34.29	4.04
23	35.72	40.20	4.48
55	17.89	22.00	4.11
106	39.42	55.00	15.58
108	163.85	170.99	7.14
146	44.63	55.34	10.71
252	185.49	287.37	101.88
Totals-	\$712.06	\$904.02	\$191.96

(16) Decision No. 30640, as amended, in Case No. 4088, Part "F," establishes minimum rates for the transportation of grain, grain products and related articles by radial highway common and highway contract carriers. Decision No. 30000 in Case No. 4088, Part "N," establishes constructive mileages for the transportation of property in California.

Otis Roe

<u>Association Order Number</u>	<u>Charges Assessed</u>	<u>Proper Charges Under Minimum Rates</u>	<u>Difference</u>
11	\$103.92	\$120.13	\$ 16.21
28	31.13	38.55	7.42
46	29.02	36.00	6.98
50	79.75	135.65	55.90
59	35.54	36.38	.84
61	131.74	185.01	53.27
63	253.10	328.32	75.22
66	36.23	40.50	4.27
147	73.81	106.98	33.17
273	79.23	90.36	11.13
Totals-	\$853.47	\$1,117.88	\$264.41

Jack Reid

<u>Association Order Number</u>	<u>Charges Assessed</u>	<u>Proper Charges Under Minimum Rates</u>	<u>Difference</u>
17A	\$155.21	\$170.34	\$ 15.13
42	104.87	119.68	14.81
226	41.70	52.81	11.11
257	46.85	53.64	6.79
259	45.01	60.88	15.87
265	54.71	82.21	27.50
Totals-	\$448.35	\$539.56	\$ 91.21

Respondents should be required to collect the undercharges set forth in the last column of each of the above tables and should be directed to desist from future violations of a like nature. Suspension of operating permits should also be ordered.

A fourth respondent, John Ferreira, has entered into a somewhat similar leasing arrangement with Warren & Enos, but as the record contains no evidence relating to the sufficiency of the compensation received under that arrangement, the matter will be dismissed as to Ferreira.

A Commission order directing the suspension of operation or the cessation of a certain practice is in its effect not unlike

a Court injunction, and violation thereof constitutes contempt. The Commission has power to punish for contempt in the same manner and to the same extent as courts of record. One adjudged guilty of contempt may be fined \$500, imprisoned for five days, or both. Under the Highway Carriers' Act one convicted of a violation of a Commission order is guilty of a misdemeanor, and is punishable by a fine not exceeding \$500, or by three months' imprisonment, or both.

O R D E R

The Commission having instituted the above investigation, public hearings having been held for the taking of evidence, briefs having been filed, the matter having been submitted for decision, and based upon the record and upon the factual findings contained in the above opinion,

IT IS HEREBY FURTHER FOUND that Webb & Schell, a copartnership, Otis Roe, and Jack Reid, and each of them, since June 1, 1938, have transported grain, grain products and related articles, as highway carriers other than highway common carriers, for Agricultural Cooperative Service Association, at rates less than the minimum rates prescribed therefor by Decision No. 30640, as amended, in Case No. 4088, Part "F." Now, therefore, good cause appearing,

IT IS ORDERED that Webb & Schell, a copartnership, Otis Roe and Jack Reid, respectively, forthwith proceed to collect the amounts of the undercharges found to exist and as set forth in detail in the preceding opinion, and to report to the Commission under oath when such collections have been made.

IT IS FURTHER ORDERED that Webb & Schell, a copartnership, Otis Roe, and Jack Reid, and each of them, cease and desist and hereafter abstain from charging and collecting for transportation, as highway carriers other than highway common carriers, rates less than the applicable minimum lawful rates established by order of this Commission.

IT IS FURTHER ORDERED that each of the following permits

Radial highway common carrier permit
No. 43-805, issued to Webb & Schell

Highway contract carrier permit
No. 43-806, issued to Webb & Schell

Radial highway common carrier permit
No. 49-32, issued to Jack Reid

Highway contract carrier permit
No. 28-24, issued to Otis Roe

be and it is hereby suspended for a period of ten days, said period of suspension to commence on the fifth day after the effective date of this order.

The Secretary is directed to cause certified copies of this opinion and order to be personally served upon Webb & Schell, a copartnership, upon Otis Roe, and upon Jack Reid; and this order, as to each of said respondents, shall become effective on the twentieth day after personal service of a certified copy thereof upon said respondent.

As to John Ferreira this investigation is hereby dismissed.

Dated, San Francisco, California, this 10th day of

October, 1939.

Paul J. O'Connell
George W. O'Connell
John J. O'Connell
John J. O'Connell
John J. O'Connell
Commissioners