

ORIGINALDecision No. 26824

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HOWARD HARTRY, an individual,)
for authority to operate as a) Application No. 26824
public warehouseman in the City)
of Wilmington, California.)

Appearances

Wallace L. Ware and James J. Broz, for applicant.
Arlo D. Poe, for Crescent Warehouse Company, Ltd.,
Harbor District Warehouse Company, Bekins Van
& Storage Company, West Coast Warehouse Corpor-
ation, City Transfer & Storage Company, and Los
Angeles Warehousemen's Association, protestants.
C. G. Munson, for Los Angeles Warehousemen's Associ-
ation, protestant.

OPINION

This application was submitted following public hearings held at Los Angeles before Examiner Bryant. A proposed report of the examiner has been issued, exceptions thereto have been filed, and the matter is now ready for decision.

The issues and the evidence are described in the examiner's report. Except as hereinafter indicated, our conclusions are the same as those set forth therein.

The examiner recommended that the Commission find that public convenience and necessity require that Howard Hartry, the applicant in this proceeding, establish and operate in the Wilmington district of the City of Los Angeles, not to exceed 30,000 square feet of floor space as a warehouseman, for the handling of all commodities other than those requiring refrigeration, the service to include customs-bonded storage, internal-revenue-bonded storage, and unbonded storage. The Board of Harbor Commissioners of Long Beach filed with

the Commission a statement that it favored the recommendation of the examiner. The Los Angeles Warehousemen's Association and five of its member warehouses, in a statement of exceptions, did not object to the recommendation that a certificate be granted, but only to the failure to include a definite condition that the quantity of warehouse space to be operated should not exceed 30,000 square feet "upon original establishment or by subsequent addition, extension, or other increase." No other exceptions were filed.

The position of the protesting warehousemen is that unless a condition such as they suggest is incorporated in the certificate, it might be held in the future that the provisions of Section 50½ of the Public Utilities Act would permit Hartry to increase his warehouse space by 50,000 square feet over and above the 30,000 originally authorized. Section 50½ provides, in effect, that no warehouse operation shall be commenced in a city having a population of 150,000 or more without a certificate having been obtained, and further that no warehouseman shall add to, extend, or otherwise increase his warehouse floor space by more than 50,000 square feet in any such city without first obtaining a certificate for such addition, extension, or increase. The section provides that the Commission shall have power to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require.

In their exceptions the protestants point out, as stated in the examiner's report, that conditions in the Los Angeles harbor

Counsel for applicant filed a "reply" to the exceptions of the warehousemen after the final date upon which exceptions were admissible.

district are not normal and still reflect the disturbances resulting from the occupation of extensive physical facilities in the area by the federal government. They argue that, under these circumstances, it seems definitely in the public interest for the Commission to be cautious in authorizing the establishment of warehouse operations in that area. They suggest that it is "almost absurd to suggest that an applicant could obtain the right to operate almost three times the quantity of space that he proposes and justifies by his original application." Protestants conclude, "In order to make the certificate to be granted to applicant conform to the showing made by him, it is suggested that a specific condition be attached restricting the amount of space to be operated under the certificate, including additions, extensions or increases, to 30,000 square feet of space. There seems to be no question that such a limitation is within the power of the Commission to impose. The condition which protestants seeks to have attached to the certificate to be granted to the applicant here, would be in no manner in conflict with the provisions of Section 50 $\frac{1}{2}$."

The position taken by protestants in this regard is sound. It would be clearly contrary to proper regulation if a certificate granted upon a showing that public convenience and necessity require the operation of 30,000 square feet of warehouse space should carry with it the automatic privilege of expanding the space at any time, without further showing, up to a total of 80,000 square feet. While the statute makes special provision for additions and extensions of 50,000 square feet or less, the Commission is specifically empowered to make appropriate exceptions to such provision by attaching to warehouse certificates such terms and conditions as the public convenience and necessity may require. Upon the record in the instant application, it is in the interest of public convenience and necessity that

Hartry be authorized to operate not to exceed 30,000 square feet in accordance with his present offer to serve.

Upon careful consideration of all of the facts and circumstances of record in this proceeding, the Commission finds as a fact that public convenience and necessity require that Howard Hartry establish and operate in the Wilmington district of the City of Los Angeles a warehouse business for the handling of all commodities other than those requiring refrigeration, including customs-bonded storage, internal-revenue-bonded storage and unbonded storage, utilizing not to exceed 30,000 square feet of floor space upon original establishment or by subsequent addition, extension, or other increase without a showing in a supplemental proceeding. A certificate will be issued accordingly.

Howard Hartry is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited in the number of rights which may be given.

O R D E R

Howard Hartry, an individual, having made application as above entitled, public hearings having been held, evidence received, the examiner's proposed report issued, exceptions filed, the matter submitted, and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require that Howard Hartry, an individual, establish and operate in the Wilmington district of the City of Los Angeles a warehouse business for the handling of all commodities other than those requiring refrigeration, including customs-bonded storage, internal-revenue-bonded storage and unbonded storage, utilizing not to exceed 30,000 square feet of floor space unless and until addition, extension, or other increase in floor space is specifically authorized by the Commission; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and it is hereby granted to said Howard Hartry, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall fail to file a written acceptance of the certificate herein granted within sixty (60) days from the effective date hereof.

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

IT IS HEREBY FURTHER ORDERED that in the conduct of said business of a warehouseman, Howard Hartry shall file, in triplicate, and make effective within a period of not to exceed ninety (90) days from the effective date of this order, or not less than ten (10) days' notice to the Commission and to the public, and concurrently with the establishment of said business, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Order No. 61 and containing rates, rules and regulations which

shall be identical with those proposed, or rates, rules and regulations satisfactory to the Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19th day of February, 1946.

Harold Anderson

Frank W. Clark

Frank Powell

Harold P. Hull

Commissioners