

ORIGINALDecision No. 46050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of HARRY G.) Case No. 5215
 ARNESEN and F. HELEN ARENSEN, doing)
 business as METRO PARCEL SERVICE.)

J. T. Phelps, for Transportation Department, Public Utilities Commission, State of California; Turcotte and Goldsmith, by F. W. Turcotte, for respondents; Preston W. Davis, for United Parcel Service of Los Angeles; John H. Gordon, for Pacific Electric Railway Company, Pacific Motor Trucking Company, and Southern Pacific Company; Gordon and Knapp, by Hugh Gordon, for Pacific Freight Lines and Pacific Freight Lines Express, interested parties.

O P I N I O N

The "Order Instituting Investigation" in the instant case, filed on July 11, 1950, alleges that Harry G. Arnesen and F. Helen Arnesen, copartners, doing business as Metro Parcel Service, may have operated or may be operating as a highway common carrier without having possessed or acquired a prior right so to operate, as required by Section 50 3/4 of the Public Utilities Act of California, between the Los Angeles Territory, on the one hand, and Pomona and various points intermediate thereto situated on U. S. Highways 60, 66, and other highways, on the other hand; between the Los Angeles Territory, on the one hand, and Riverside and various points intermediate thereto situated on U. S. Highway 60 and other highways, on the other hand; between the Los Angeles Territory, on the one hand, and Redlands and various points intermediate thereto situated on U. S. Highways 70, 99, and other highways, on the other hand;

and between the Los Angeles Territory, on the one hand, and San Bernardino and various points intermediate thereto situated on U. S. Highway 66 and other highways, on the other hand.

A public hearing was held on the matter on January 9, 1951, in Los Angeles, at which time and place respondents were present in person and with their legal counsel.

The Commission will take judicial notice of the fact that the respondents have had at all times since March, 1949, and still have, a radial highway common carrier's permit, a city carrier's permit, and a highway contract carrier's permit, all issued by the Public Utilities Commission of the State of California, and that respondents do not have, and at no time have had, a certificate of public convenience and necessity authorizing them to perform a service as a highway common carrier in California. The evidence shows that respondents are conducting operations between points in California under permits both as a radial highway common carrier and as a highway contract carrier and that they are charging for such services the rates prescribed by the Public Utilities Commission in Highway Carriers' Tariff No. 2.

An assistant transportation rate expert with the Public Utilities Commission testified that he called at the offices of the respondents, 157 North Towne Avenue, Pomona, on September 18, 1949, and again on September 5, 1950. On the occasion of the second visit, September 5, 1950, the witness talked with respondent Harry G. Arnesen. Mr. Arnesen stated that he and respondent F. Helen Arnesen were partner-owners of the Metro Parcel Service and had been such since March, 1949; that they operated over the

highways of California; that they were not engaged in business as a highway common carrier on July 26, 1917; that the partnership had not obtained the rights of any certificated highway common carrier since July, 1917; and that respondents had been in business since March 19, 1949. Mr. Arnesen also told the witness that shipments are picked up in Los Angeles five days per week; that en route from Los Angeles to Pomona, respondents serve intermediate points; and that, on arrival in Pomona, the freight is redistributed into the appropriate truck and delivered to Arlington, Corona, Riverside, and points between.

This witness then stated that the map, Exhibit No. 1 in evidence, was given to the witness by Mr. Arnesen on September 18, 1949. At that time the exhibit was marked by Mr. Arnesen to show the points served by respondents and the routes followed in serving those points, and shows that respondents serve from the Los Angeles Territory on the west to San Bernardino and Redlands on the east, and from Pasadena on the north to Corona on the south, serving Redlands, San Bernardino, Colton, Riverside, Corona, Fontana, Chino, Pomona, Ontario, Upland, Claremont, La Verne, Whittier, Covina, Glendora, Monrovia, Azusa, Baldwin Park, Puente, Monterey Park, El Monte, Alhambra, Arcadia, Sierra Madre, Pasadena, San Gabriel, Montebello, and Los Angeles, and intermediate points, using U. S. Highways 66, 70, 99, 60, 101, 71, as well as various state highways and unnumbered streets and highways.

On the occasion of the 1950 visit, Mr. Arnesen stated to the witness that service to all points except Los Angeles is rendered six days per week and that Los Angeles is served by special arrangement; all freight bills are made in Pomona; all drivers

perform all operations under the radial, city, or contract carrier permits; respondents have only one terminal, located at 157 North Towne Avenue, Pomona; and that this terminal is used for all operations. At that time the witness requested a copy of each of the types of freight bills used by respondents in their business.

Mr. Arnesen gave the witness a single shipment freight bill, in evidence as Exhibit No. 2, and a manifest freight bill, Exhibit No. 3, which is used when there are many shipments during a month.

In response to questions by various interested parties, the witness testified that Mr. Arnesen stated that respondents had 17 written contracts which were turned over to respondents by their predecessor in business. All of these contracts were on the form which was received in evidence as Exhibit No. 5. Mr. Arnesen also stated to the witness that he had 15 oral contracts. These oral contracts provided for no fixed amount of tonnage and no certain value of transportation to be furnished. Parties to both the written and oral contracts are included in the consignors, consignees, and parties who engaged services of respondents as shown on Exhibit No. 4 in evidence herein, but there is no evidence to identify the contracting parties.

The witness further testified that, on September 5, 1950, he asked for and received from Mr. Arnesen the respondents' freight bills for the periods May 1 to 5, inclusive, 1950, June 5 to 9, inclusive, 1950, and July 10 to 14, inclusive, 1950, and examined respondents' books, only one set of which respondents kept for their entire operation. From the records which he received from Mr. Arnesen, the witness prepared Exhibit No. 4, in evidence herein,

which lists all shipments carried by respondents during the 15 working days included within these periods, and sets forth the consignor, consignee, point of origin, point of destination, commodity, number of shipments, parties who paid the freight charges, parties who engaged the respondents, and frequency of service between points. This exhibit shows that, during the period covered by the exhibit, respondents transported 1357 shipments, ranging in weight from 1 to 10,000 pounds, of general commodities including, among other things, cotton pants, fixtures, dinnerware, jelly, shirts, stationers' supplies, brushes, chairs, paper, Ditto machines, cotton piece goods, cleanser powder, tile cement, tile, bicycles, pulp plates, lawn mowers, shoes, dry goods, liquid soap, chemicals, clocks, stoves, tackle, Sanitone, rubber heels, refrigerator, freezers, washing machines, electric switches, electrical goods, sprayers, weed killer, twine, pipe, poultry equipment, clothing, fruit juice, dishes, tape recorders, cleaning compound, bleach, disinfectant, hardware, rope, hose, garbage cans, nails, wire, toasters, mitre boxes, leather, toilet preparations, electric motors, sporting goods, game tables, grass catchers, Thermos bottles, Mixmasters, shovels, aluminum, glassware, ammunition, pins, fish eggs, lawn edgers, steel casters, weed cutters, polish, enamelware, machines, carpet, cabinets, brooms, neat's-foot oil, washers, electric switch plates, electric irons, linen, radio supplies, T. V. sets, transcribers, auto parts, filing cabinets, small arms, electric ranges, maps and office supplies. Exhibit No. 4 also shows the following facts relative to the 1357 shipments during the check periods:

<u>Origin</u>	<u>Destination</u>	<u>Number of days served</u>	<u>Number of shipments</u>
Los Angeles	Monterey Park	6	11
Los Angeles	Alhambra	6	11
Los Angeles	San Gabriel	6	6
Los Angeles	Temple City	5	5
Los Angeles	Garvey	2	2
Los Angeles	Rosemead	1	1
Los Angeles	El Monte	12	28
Los Angeles	Baldwin Park	13	22
Los Angeles	Covina	11	19
Los Angeles	Puente	4	4
Los Angeles	Spadra	1	1
Los Angeles	Pomona	15	167
Los Angeles	Ontario	15	72
Los Angeles	Bloomington	1	1
Los Angeles	Colton	13	27
Los Angeles	La Sierra	1	1
Los Angeles	Chino	9	18
Los Angeles	Arlington	11	21
Los Angeles	Corona	7	11
Los Angeles	Riverside	13	65
Los Angeles	Redlands	15	49
Los Angeles	Yucaipa	2	2
Los Angeles	San Bernardino	15	158
Los Angeles	Rialto	2	2
Los Angeles	Fontana	12	33
Los Angeles	Cucamonga	9	5
Los Angeles	Alta Loma	1	1
Los Angeles	Upland	11	21
Los Angeles	Claremont	8	17
Los Angeles	La Verne	7	8
Los Angeles	San Dimas	6	6
Los Angeles	Glendora	7	10
Los Angeles	Azusa	10	24
Los Angeles	Duarte	2	2
Los Angeles	Monrovia	8	12
Los Angeles	Arcadia	9	19
Los Angeles	West Arcadia	2	2
Rosemead	Los Angeles	1	1
El Monte	Los Angeles	1	1
Pomona	Los Angeles	15	80
Pomona	San Gabriel	1	1
Pomona	Baldwin Park	2	2
Pomona	Covina	6	9
Pomona	Ontario	12	29
Pomona	Colton	2	2
Pomona	Chino	4	5
Pomona	Corona	2	2
Pomona	Arlington	1	1
Pomona	Riverside	3	8
Pomona	Redlands	1	1
Pomona	San Bernardino	5	11

<u>Origin</u>	<u>Destination</u>	<u>Number of days served</u>	<u>Number of shipments</u>
Pomona	Rialto	1	1
Pomona	Cucamonga	1	1
Pomona	Upland	8	16
Pomona	Claremont	14	53
Pomona	La Verne	8	11
Pomona	San Dimas	8	7
Pomona	Glendora	2	3
Pomona	Azusa	2	2
Pomona	Monrovia	2	2
Pomona	Arcadia	1	1
Ontario	Los Angeles	8	26
Ontario	Alhambra	1	1
Ontario	Temple City	1	1
Ontario	El Monte	4	4
Ontario	Covina	1	1
Ontario	Riverside	1	1
Ontario	Redlands	4	4
Ontario	San Bernardino	3	3
Ontario	Monrovia	2	2
Ontario	Glendale	1	1
Chino	Los Angeles	1	2
San Bernardino	Los Angeles	3	3
San Bernardino	Alhambra	2	3
San Bernardino	San Gabriel	1	2
San Bernardino	Wilmar	1	1
San Bernardino	Garvey	1	1
San Bernardino	Rosemead	1	1
San Bernardino	El Monte	1	1
San Bernardino	Baldwin Park	1	1
San Bernardino	Covina	1	1
San Bernardino	Pomona	13	37
San Bernardino	Guasti	2	2
San Bernardino	Ontario	11	22
San Bernardino	Bloomington	1	1
San Bernardino	Colton	7	10
San Bernardino	La Sierra	2	2
San Bernardino	Chino	3	3
San Bernardino	Corona	1	2
San Bernardino	Arlington	1	1
San Bernardino	Riverside	6	17
San Bernardino	Loma Linda	1	1
San Bernardino	Redlands	10	22
San Bernardino	Fontana	5	10
San Bernardino	Cucamonga	3	3
San Bernardino	Etiwands	1	1
San Bernardino	Alta Loma	1	1
San Bernardino	Upland	8	19
San Bernardino	Claremont	7	11
San Bernardino	La Verne	2	5
San Bernardino	Monrovia	1	1
San Bernardino	Arcadia	1	1

<u>Origin</u>	<u>Destination</u>	<u>Number of days served</u>	<u>Number of shipments</u>
Fontana	Los Angeles	1	1
Upland	San Bernardino	1	1
Claremont	Los Angeles	2	2
Claremont	Pomona	3	4
Claremont	Pasadena	1	1
La Verne	Pomona	1	1
Monrovia	Los Angeles	1	1

Number of persons who delivered prepaid shipments to respondents during check periods 61

Number of persons to whom collect shipments were directed via respondents during check periods 256

Number of persons who engaged services of respondents during check periods 121

Total number of persons, eliminating duplications, who, during the check periods, delivered prepaid shipments to respondents, to whom collect shipments were delivered by respondents, or who engaged services of respondents. 332

There was no evidence presented on behalf of the respondents.

From the evidence presented at the hearing, it is impossible to tell which consignors, consignees, or parties engaging respondents' services had contracts with respondents. The only facts shown by the record relative to contracts are (a) that respondents have 17 written contracts on the form set forth in Exhibit No. 5, (b) that respondents have 15 oral contracts which specify no fixed amount of tonnage and no value of transportation to be furnished, and (c) that the parties to the contracts, other than the respondents, are included in the persons for whom services were performed, the consignors, or the consignees listed in Exhibit No. 4 herein. The over-all evidence does show that, during the check periods, 121 persons engaged the services of the respondents; that respondents delivered collect shipments to 256 consignees; that 61

persons delivered prepaid shipments to respondents; that a total of 332 persons used the services of respondents; that respondents transported a wide variety of commodities, none of which appear to require unusual treatment; that neither the written nor oral contracts imposed legal obligations; and that there is not a close relationship of respondents with the business or operations of those to whom they render transportation services, including those with whom respondents allegedly have written or oral contracts.

It appears from the record and we hereby find that respondents' operations constitute a sufficient "holding out" and indicate an "unequivocal intention to dedicate property to public use" such as to meet the tests of common carriage as enunciated by the Supreme Court of California (*Samuelson v. Public Utilities Commission*, February 9, 1951, 36 A.C. 686).

The evidence of record shows that respondents conduct their hauling operations between Los Angeles, on the one hand, and El Monte, Baldwin Park, Covina, Pomona, Ontario, Colton, Chino, Riverside, Redlands, San Bernardino, Fontana, Cucamonga, Upland, Claremont, Azusa, Monrovia, and Arcadia, on the other hand; between Pomona, on the one hand, and Ontario, Upland, Claremont, La Verne, San Bernardino and San Dimas, on the other hand; and between San Bernardino, on the one hand, and Ontario, Redlands, and Upland, on the other hand, over regular routes and between fixed termini.

Accordingly, we find that these operations of respondents are those of a highway common carrier. As to the hauling to the other points hereinbefore listed, the shipments are too infrequent and the time covered of too short a duration to find that those operations were conducted over regular routes or between fixed termini.

It is hereby found that, since March 19, 1949, respondents have been engaged, and are now engaged, in the transportation of property for compensation as a highway common carrier, between fixed termini, to wit: Los Angeles, on the one hand, and Arcadia, Azusa, Baldwin Park, Chino, Claremont, Colton, Covina, Cucamonga, El Monte, Fontana, Monrovia, Ontario, Pomona, Redlands, Riverside, San Bernardino, Upland, on the other hand; between Pomona, on the one hand, and Claremont, La Verne, Ontario, San Bernardino, San Dimas, and Upland, on the other hand; between San Bernardino, on the one hand, and Ontario, Redlands, and Upland, on the other hand, without possessing a prior operative right therefor, or without first having obtained a certificate of public convenience and necessity authorizing such operation, in violation of Section 50-3/4 of the Public Utilities Act.

An order will be issued directing respondents to cease and desist from conducting the operations herein found to be unlawful.

O R D E R

A public hearing having been held in the above-entitled matter, and based upon the evidence and findings set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Harry G. Arnesen and F. Helen Arnesen, and each of them, be, and they hereby are, directed to cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto truck as a highway common carrier (as defined by Section 2-3/4 of the Public Utilities Act) for compensation, over the public highways of the State of California, between fixed termini, to wit: Los Angeles, on the one hand, and Arcadia, Azusa,

Baldwin Park, Chino, Claremont, Colton, Covina, Cucamonga, El Monte, Fontana, Monrovia, Ontario, Pomona, Redlands, Riverside, San Bernardino, Upland, on the other hand; between Pomona, on the one hand, and Claremont, La Verne, Ontario, San Bernardino, San Dimas, and Upland, on the other hand; between San Bernardino, on the one hand, and Ontario, Redlands, and Upland, on the other hand; unless and until said Harry G. Arnesen and F. Helen Arnesen shall have obtained from this Commission a certificate of public convenience and necessity therefor.

The Secretary is directed to cause a certified copy of this decision to be served personally upon Harry G. Arnesen and F. Helen Arnesen.

The effective date of this order shall be forty (40) days after the date of said service.

Dated at San Francisco, California, this 7th day of August, 1951.

Justus F. Coe
Harold P. Hula
Frederick H. Hula
John L. Mitchell

COMMISSIONERS