

BD

Decision No. 57958

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of the)
PAJARO VALLEY COLD STORAGE)
COMPANY, a corporation.)

Case No. 6080

ORDER DENYING REHEARING

Pajaro Valley Cold Storage Company, a corporation, having filed a petition for rehearing with respect to Decision No. 57712 in the above-entitled proceeding, and the Commission having considered said petition and each and every allegation therein, and being of the opinion that no good cause for the granting of a rehearing has been made to appear,

IT IS HEREBY ORDERED that said petition be, and the same is, hereby denied.

Dated at San Francisco , California, this 3rd day of February 1959.

E. L. Fox
President
Matthew D. Smith
Theodore H. Jensen
Commissioners

D I S S E N T I N G O P I N I O N

I dissent. I would grant the respondent a rehearing. The conclusions of law are erroneous inasmuch as they are wholly inconsistent with the uncontradicted evidence and the findings of fact.

The issue presented by respondent in its petition for rehearing is whether the respondent has dedicated its facilities as a food warehouseman within the meaning of Section 2508 of the Public Utilities Code. The statute defines the act which concomitantly produces utility status as the control of storage facilities "in which food commodities, regularly received from the public generally are stored for compensation..."

The uncontradicted evidence established the following facts:

- 1) Respondent's warehouse was established to provide its members with storage facilities, and members have an unqualified prior right to the company's facilities for the storage of their apples.^{1/}
- 2) In the event that the entire storage space is needed for members, it will be so allocated and all frozen products will be removed. In 1954 and 1955 the entire capacity was so allocated.^{2/}
- 3) The Company exercises no control over the members' disposition of their allocated storage space.^{3/}
- 4) The Company does not and did not ever engage in the solicitation of business.^{4/}
- 5) There was a substantial stability in the customers of the company.^{5/}

^{1/} RT 94/26 to 95/1

^{2/} RT 217/8-20, 94/10-13

^{3/} RT 176/10-11 and Finding 18

^{4/} RT 154/2-155/14, 44/20-21 and Finding 8

^{5/} RT 106/17-18 and Finding 10

6) The Company has at all times manifested an unequivocal intent not to dedicate its facilities to the public generally.^{6/}

In determining whether an enterprise has unequivocally dedicated its property to a public use, the Supreme Court found affirmative answers to the following questions determinative.

- 1) Does the business restrict and select its customers?^{7/}
- 2) Does it refuse to deal with those outside the selected group where it has the facilities to accommodate them?^{8/}
- 3) Does it limit the type of service it will perform (i.e., the type of goods it will store)?^{9/}
- 4) Is there some stability in the identity of its customers?^{10/}
- 5) Does it refrain from soliciting business?^{11/}
- 6) Does it have the subjective intent not to dedicate its facilities to the general public?^{12/}

Applying the law of this state to the uncontradicted evidence and the findings of fact, I can not reasonably conclude that respondent has dedicated its facilities as a food warehouseman within the meaning of Section 2508 of the Public Utilities Code.

6/ RT 160/16 to 161/5, 182/10-15, 130/20-23

7/ Alves v. PUC, 41 C2d 344, 348(1953); Story v. Richardson, 186 C. 162,167(1921).

8/ Alves v. PUC, supra; Camp Rincon v. Eshleman, 172 C. 561,563 to 564(1951)

9/ Alves v. PUC, supra; Samuelson v. PUC, 36 C2d 722 (1951)

10/ Samuelson v. PUC, supra at 732

11/ Samuelson v. PUC, supra at 724,725

12/ Samuelson v. PUC, supra at 733



Peter E. Mitchell, Commissioner

