

ORIGINAL

Decision No. 75016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED FARM WORKERS ORGANIZING )  
 COMMITTEE, AFL-CIO, )  
 Plaintiff, )  
 vs. )  
 SALAVADORE REVELES, et al, )  
 Defendants. )

Case No. 8820  
(Filed July 10, 1968)

David Stephan Averbuck, for complainant.  
D. Bianco, for Alberto Camacho; Jesus Sierra;  
 Ramon Camacho; Abel Arellano; Jose Chavez,  
 also known as Joseph M. Chavez; Valeriano  
 Juarez; Joe Hernandez; Reyes Acero; Frank  
 Leija; Yrineo Marrufo, also known as Erineo  
 Marrufo; Manuel Ornales; Santano Scoto, also  
 known as Santano Soto; Jose Liciega; Elmo  
 Dock; Inocencio Razo, also known as Crescencio  
 Razzo; Jovita Medina; Leonardo Gonzales  
 Morales; Genjiro, also known as Jim Nakata;  
 Cipriano V. Padillo; Mike Pinson; Jesse Riley;  
 Armando A. Robles; Santos Soriano; defendants.  
Edward P. Thurban, for the Commission staff.

O P I N I O N

By this complaint, the United Farm Workers Organizing  
 Committee, AFL-CIO, alleges that Salavadore Reveles; Alberto  
 Camacho; Jesus Sierra; Ramon Camacho; Abel Arellano; Jose Chavez,  
 also known as Joseph M. Chavez; Valeriano Juarez; Jose Hernandez;  
 Reyes Acero; Frank Leija; Yrineo Marrufo, also known as Erineo  
 Marrufo; Ramon Melendez; Manuel Orneias; Santano Scoto, also  
 known as Santano Soto; Jose Liciega; Teresa Arrambide; Elmo Dock;  
 Inocencio Razo, also known as Crescencio Razzo; Jovita Medina;  
 Leonardo Gonzales Morales; Genjiro, also known as Jim Nakata;  
 Cipriano V. Padillo; Mike Pinson; Jesse Riley; Armando A. Robles;  
 Santos Soriano; Lupe Alvarez; the defendants herein, are operating

as charter-party carriers of passengers without having obtained the required operating authority from the Commission.<sup>1/</sup> The complaint alleges that each defendant has been, is now and will continue to transport farm workers by motor vehicle over the public highways for a fee to and from farms on which said workers are employed; that said defendants are "day haulers" as defined in Section 1682.3 of the Labor Code;<sup>2/</sup> that the Commission's Decision No. 64960, 60 Cal. P.U.C. 581 (1963), holds that "day haulers" are subject to the "Passenger Charter-party Carriers' Act" (Sec. 5351 et seq., Public Utilities Code) and must obtain operating authority; that the compensation received by the defendants is computed on an individual-fare basis in violation of Section 5401 of the Public Utilities Code; and that defendants lack reasonable fitness and responsibility to conduct operations as passenger charter-party carriers in that they have willfully and knowingly refused to comply with the governing act. The complaint prays that an order be issued directing said defendants to cease and desist from transporting workers to and from work and that applications by any of the defendants for operating authority be denied.

Answers were filed by Lupe Alvarez and by Counsel Bianco on behalf of 23 defendants denying that they are subject to the

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1/ Subject to certain exclusions not involved herein, a charter-party carrier of passengers includes "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway, in this State." Sec. 5360, Public Utilities Code.

2/ Section 1682.3 of the Labor Code states that a "day hauler" is a type of "farm labor contractor", and defines said term as "any person who is employed by a farm labor contractor to transport, or who for a fee transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person."

"Passenger Charter-party Carriers' Act." No answers were filed by defendants Ramon Melendez, Salavadore Reveles and Teresa Arrambide. Complainant moved to dismiss the complaint against the latter two defendants.

Public hearing was held before Examiner Mooney in Bakersfield on September 17 and 18, 1968. The matter was submitted on the latter date.

The evidence shows that the defendants, excluding the two covered by the motion to dismiss, fall into two categories. The first includes those who are licensed by the Division of Labor Enforcement of the Department of Industrial Relations as "farm labor contractors."<sup>3/</sup> The second includes those who are now or have been employed by Giumarra Vineyards Corporation (Giumarra) as foremen. We will discuss each category separately.

#### Farm Labor Contractors

Two of the defendants, Elmo Dock and Jesse Riley, fall into this category. The testimony of each was substantially the same and was as follows: He is a duly licensed farm labor contractor; he does work under contract for various growers in the Bakersfield area; the contract will specify a particular job to be performed, as for example pick grapes at a specific location, and

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<sup>3/</sup> Section 1682(b) of the Labor Code defines a "farm labor contractor" as "any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payment to such persons."

the amount to be paid for the job; the grower will look to the witness for the final results only; the manner in which the job is accomplished is controlled entirely by the witness and is his responsibility; he hires the necessary workers and supervises them; the grower has no supervisory authority whatsoever over the workers and has no right to hire or discharge them; the witness generally provides transportation for his workers in buses owned by him to and from the field; the grower pays the witness the amount agreed upon in the contract for the job; he pays his workers and makes the necessary deductions from their pay checks; the contract price is generally based on an agreed amount per hour, and the difference between said amount and the hourly wage paid by the witness to his workers is retained by him as his earnings and is referred to as a commission; no charge is made for transportation to either the grower or the workers when it is furnished by the witness; he absorbs all costs of providing said transportation and considers it to be his business expense; the question of whether the witness will or will not furnish transportation for his workers is not a factor considered in arriving at the contract price; the amount of the commission would be the same in either case.

Based on the evidence, it is apparent that both Elmo Dock and Jesse Riley are in fact independent farm labor contractors and that any transportation performed by them is incidental to said business. It has not been shown that the compensation paid to either defendant for a particular job would vary depending on whether or not he furnished transportation for his workers. Furthermore, the question of whether the type of activity engaged in by the two defendants is subject to the "Passenger Charter-party Carriers' Act" has

heretofore been considered in Decision No. 64960, supra, wherein the Commission held as follows:

"A farm labor contractor (Section 1682(b) Labor Code), who is the employer of the men he transports, paying their wages and with the right to hire or discharge them and to direct their work and who transports his employees, primarily to and from job sites, without charge, is exempted from the provisions of the Passenger Charter-party Carriers' Act under Section 5360 which requires that the transportation be 'for compensation'."

The amendments of the "Passenger Charter-party Carriers' Act" subsequent to Decision No. 64960 do not conflict with the above holding.

#### Foremen

All of the remaining defendants, with the exception of Ramon Melendez and Lupe Alvarez, are agricultural crew foremen regularly employed by Giumarra. Testimony was presented by four of the 21 Giumarra foremen regarding a "Foreman's Truck Lease Agreement" which each has with Giumarra. Two of said witnesses could not understand English and require a Spanish interpreter. It was stipulated that had the remaining 17 foremen been called to testify, their testimony would have been substantially the same as the four witnesses and that some would have required an interpreter. Copies of the 21 truck lease agreements were received in evidence (Exhibits 2-22). Additional testimony regarding the lease agreements and insurance arrangements in connection therewith was presented by Giumarra's controller and insurance agent, respectively.

The form of the truck lease agreement executed by Giumarra (lessee) and each of the foremen (lessors) is identical. Some of the agreements cover one unit of equipment while others cover more.

The equipment includes conventional buses, pickups, vans and flatbed trucks of various sizes and capacities. Each foreman owns the equipment covered by the agreement to which he is a party. The agreement states that it is part of the duties of the foreman to supervise and transport Giumarra's agricultural employees to vineyards and various places of employment where they perform services for Giumarra and that the leased equipment is suitable for the transportation of said workers. All of the 21 agreements provide that the consideration to be paid to the foreman shall be based on a specific amount for the daily transportation of each worker. The amount varies (20, 50 or 70 cents per worker per day) depending upon the area to which the workers are transported. All of the foremen are compensated in accordance with the lease agreement except C. V. Padillo who, pursuant to an oral amendment to his agreement, is paid a flat amount (\$5.00) per day for each unit of his leased equipment used. The consideration received by each lessor is in addition to the foreman's wage paid to him by Giumarra. Each of the agreements also provides that the lease shall continue as long as the foreman is employed by Giumarra; that the leased equipment is under the exclusive control of Giumarra and is to be used solely for the transportation of its workers; that the foreman agrees to drive the leased equipment as the agent and employee of Giumarra for the sole compensation of the foreman's salary paid to him and the amount paid to him under the lease; that the foreman shall not receive any compensation whatsoever from the agricultural workers for their transportation; that the foreman shall pay all maintenance and operating costs for the leased equipment and fees and taxes levied thereon; that the foreman shall

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carry and pay for fire, theft and collision insurance on the leased equipment; that Giumarra will carry and pay for public liability insurance in the amounts of \$20,000 and \$40,000 for personal injury and \$5,000 for property damage, insuring both Giumarra and the foreman during the operation of said equipment; and that the foreman shall not use the leased equipment for any other purpose during the term of the lease.

The testimony by the four Giumarra foremen was as follows: The leased equipment is used exclusively for the transportation of Giumarra employees to and from fields; some of the transportation is over public highways; the foreman takes the leased equipment home but never uses it for his own personal purposes; for such purposes, he uses other means of transportation, including any unleased vehicle he might own; with the exception of Padillo who is paid a flat amount, compensation for the leased equipment and all costs, fees and insurance in connection with the operation thereof are paid in accordance with the terms of the lease; the employees are transported from farm labor camps operated by Giumarra, in Bakersfield and other locations; the workers transported do not pay either the foreman, Giumarra or anyone else for this service, nor does the foreman receive any additional payment from anyone for said service other than the rental amount specified in the agreement and his regular foreman's pay; where the agreement covers more than one vehicle, other Giumarra employees drive the additional equipment but do not receive any additional pay or compensation from anyone for this; benches are provided in the truck equipment for the employees transported; the leased equipment is inspected by the California

Highway Patrol; a report form (Exhibit 23) showing the number of employees transported and amount due under the agreement is submitted by the foreman each week to Giumarra; the foremen were told by their supervisors to sign the lease; generally, the foremen are employed by Giumarra and transport the field workers year round; the number transported varies with the season; more are transported during the harvest season from July through October; during the remainder of the year, fewer employees are required to care for the fields.

The controller of Giumarra for the past 15 years corroborated the testimony by the foremen. He testified that prior to 1960, Giumarra did not have written leases with the foremen; that it was informed in 1960 by the Division of Labor Law Enforcement that the foremen would be required to obtain farm labor contractors' licenses to transport workers unless their equipment used for this purpose was leased to Giumarra on a "full-time-24-hour basis"; that to comply with this directive, the "Foreman's Truck Lease Agreement" was drawn up and executed by each foreman; that the form of the agreement was approved by said agency (Exhibit 24); and that the identical lease form has been used since 1960. The controller stated that when a foreman is employed, it is part of the hiring procedure to have him sign a truck lease agreement; that the agreements have not been translated into Spanish; and that if the foreman cannot read English, it is explained to him in Spanish in Giumarra's office. He did not know whether the foremen have any opportunity to bargain with Giumarra regarding the terms of the lease agreements. However, he stated that it is Giumarra's



policy to have all of the agreements uniform. The witness testified that the majority of the foremen have been employed by Giumarra for two or more years and that they work at least part of the year for said employer (Exhibit 25). He explained that it is the general practice to issue a check to each foreman weekly for the amount due him under the lease; that any amounts expended by the foreman for ice, meals and the like for the workers in the field are included in the check; and that any advances made by Giumarra on behalf of the foreman for insurance or other expenses are deducted from said payment (Exhibit 26). The controller testified that because of the seasonal nature of the agricultural business, it would be impractical for Giumarra to operate its own buses. He stated that during the harvest season 30 buses might be required and during the balance of the year perhaps no more than 15 would be needed. It is noted that the record is devoid of any information as to what economic impact, if any, the seasonal fluctuations in this transportation may have upon the lessors. The witness asserted that the average number of leases in effect during the year is 30 to 35 and that during the height of the harvest season, the number of foremen hired might increase to around 50.

The insurance agent and broker who has handled Giumarra's public liability and property damage insurance since 1939 testified that Giumarra has carried the following insurance with him since 1960: Crew foremen policy which names both the lessors and Giumarra as the insured and covers the leased equipment for \$20,000 and \$40,000 personal liability and \$5,000 property damage (Exhibit 29); a basic policy which insures Giumarra for \$100,000 and \$300,000

personal liability and \$100,000 property damage (Exhibit 28); and . an umbrella liability policy which insures Giumarra for \$5,000,000. The witness explained that the foremen policy covers all of the leased equipment on a 24-hour basis and that the primary and umbrella policies cover all employees operating the leased equipment within the scope of their employment or with the permission of Giumarra. He pointed out that the basic policy takes over at the limits of the foremen policy and that the umbrella takes over at the limits of the primary policy. He stated that prior to 1965 there was a separate foreman policy for each lessor and that subsequent to said date this coverage has been handled by a blanket policy. The witness testified that generally the workers being transported on the leased equipment would be covered by Workmen's Compensation and not the aforementioned policies.

Defendants Ramon Melendez and Lupe Alvarez did not appear at the hearing. A member of complainant organization testified that he had investigated both defendants and observed them transporting workers to and from fields; that they had informed him that they were paid by other growers for transporting the workers in the same manner as Giumarra's crew foremen; and that they had worked for Giumarra in the past.

We are of the opinion that the 21 defendants who are crew foremen employed by Giumarra have not been shown on this record to be performing passenger charter-party carrier operations subject to regulation by the Commission. Although the evidence regarding defendants Ramon Melendez and Lupe Alvarez is somewhat sketchy, we will for the purposes of this proceeding consider them to be in the same category as the 21 Giumarra crew foremen.

The record establishes that the "Foreman's Truck Lease Agreement" was initially drawn up in 1960 to comply with the California Labor Code and that the same lease agreement form has been continually used subsequent thereto. The "Passenger Charter-party Carriers' Act" was enacted in 1961. It is apparent, therefore, that the lease agreements were not a willful attempt by Giumarra or any of the defendants to avoid said act.

The terms and conditions of the lease agreements are set out in detail hereinabove. Said agreements provide that the equipment is leased on a full-time basis and is always under the exclusive control of Giumarra. According to the evidence, the equipment is operated in accordance with the lease, and the crew foremen do not use it for any unauthorized purposes. There are no rules or regulations governing the terms and conditions of agreements for the lease of equipment to be used exclusively for the transportation of passengers. Unless it can be established that the consideration or other provisions of the lease were unreasonable or unlawful or that its purpose was to avoid regulation, there is no basis for our concluding that the lease was a sham and should be disregarded. This has not been established on the record herein. The fact that most of the crew foremen do drive leased equipment does not alter our opinion on this issue. As stated in each of the lease agreements, it is part of the duties of each foreman to transport agricultural workers. They receive no additional pay in their capacity as a foreman nor is any additional amount paid pursuant to the agreement when they do drive. As to those foremen who understand Spanish only, the evidence shows that the lease agreement was explained to them in Spanish, and

it is noted that none of said foremen have alleged in this proceeding that they were misled thereby.

Having determined that the lease arrangements have not been shown on this record to be a device to avoid regulation, it follows that since it has not been established herein that any payment is made either directly or indirectly by the workers to Giunarra or anyone else, the transportation is not for compensation. In the circumstances, the transportation in issue is exempt from the "Passenger Charter-party Carriers' Act." Having so concluded, further discussion of the arguments advanced by complainant would be superfluous.

Although the complaint will be dismissed, it by no means follows that this matter was improvidently brought to our attention. Quite to the contrary, without a thorough inquiry into the facts and circumstances surrounding the transportation in issue, a determination could not be made as to whether said transportation was or was not subject to our jurisdiction.

#### Findings and Conclusion

Upon consideration of the evidence, the Commission finds that:

1. Complainant has moved to dismiss the complaint against Salavadore Reveles and Teresa Arrambide.
2. Defendants Elmo Dock and Jesse Riley are both duly licensed farm labor contractors, and neither of said defendants has received any compensation either directly or indirectly from anyone for the transportation of his employees to and from job sites.

3. Each of the 21 defendants, who are employed as crew foremen by Giumarra, leases to said employer equipment used exclusively for the transportation of its employees.

4. The lease agreements between Giumarra and said 21 crew foremen have not been shown on this record to be subject to regulation by the Commission.

5. The field workers employed by Giumarra have not paid any compensation either directly or indirectly for the transportation to and from job sites furnished to them by said employer.

6. Defendants Ramon Melendez and Lupe Alvarez will, for the purposes of this proceeding, be considered to be in the same category as the 21 defendants employed by Giumarra as crew foremen.

7. The transportation referred to in Findings 3, 4, 5, and 6 has not been shown on this record to be for compensation.

8. Transportation which is not for compensation is not subject to the "Passenger Charter-party Carriers' Act." (Sec. 5360.)

The Commission concludes that the complaint in Case No. 8820 should be dismissed. Having so concluded, it is unnecessary to rule on the motion regarding defendants Salavadore Reveles and Teresa Arrambide.

O R D E R

IT IS ORDERED that the complaint in Case No. 8820 is hereby dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of NOVEMBER, 1968.

William Amos, Jr.  
President  
[Signature]  
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Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceedings