

**ORIGINAL**

Decision No. 75638

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MELVIN C. HENDERSON for certificate of public convenience and necessity to operate passenger stage service between the cities of San Jose, Mountain View, Sunnyvale, Palo Alto, on the one hand, and the United Airlines Maintenance Base at San Francisco International Airport, on the other hand.

Application No. 50583  
(Filed October 1, 1968)

In the Matter of the Application of CLYDE ROBBINS, CLETUS L. ABBOTT, ALLEN ROBBINS for certificate of public convenience and necessity to operate passenger stage service between the cities of San Jose, Santa Clara, Sunnyvale, Milpitas, on the one hand, and the United Air Lines Maintenance Base and United Airlines Service Center at San Francisco International Airport, on the other hand.

Application No. 50656  
(Filed October 30, 1968)

Melvin C. Henderson, Cletus L. Abbott, Allen Robbins and Clyde Robbins, in propria personae, applicants.

John J. Habr, Ralph C. Harmony, for West Valley Charter Lines, protestants.

Ted T. Noguchi, for City of Palo Alto, interested party.

Hilton H. Nichols, for the Commission staff.

O P I N I O N

All applicants are employed at the United Air Lines Maintenance Base at San Francisco International Airport. They live in San Jose and provide transportation for co-workers by driving buses to and from work. Passengers are picked up and deposited at several selected points and pay by the week for the service. The base employs three shifts a day during a five-day week. Applicants

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provide service for all three shifts. The other bus drivers work the same shift as their passengers and are paid by the trip. These two applications were filed as a result of a Commission staff investigation of several parties who were providing this type of service. The applications were protested by John J. Habr and Ralph C. Harmony, doing business as West Valley Charter Lines, a passenger stage corporation, which provides the same service over the same routes. The applications were consolidated for hearing due to similarity of operation and subject matter.

A public hearing was held before Examiner Fraser at San Jose on December 18 and 19, 1968, and both matters were submitted. Applicants and the protestants presented evidence. An engineer from the City of Palo Alto read a letter into and the staff representative assisted in developing the record.

Applicant Henderson testified he is employed at the United Air Lines Maintenance Base at the San Francisco International Airport as an airplane mechanic. He purchased a bus route and equipment from Forrest Crawford on September 9, 1968 and has operated since the date of purchase. He owns three buses; a 1947 Gillig which seats 37 passengers, a 37-passenger 1947 Aero Coach and a 29-passenger 1948 Flexible. The United Air Lines Maintenance Base employs three shifts on a 24-hour basis, five days of the week. The day shift extends from 7:00 a.m. to 3:30 p.m., the swing shift from 3:30 p.m. to midnight and the graveyard from 11:00 p.m. to 7:30 a.m. He testified he transports a busload of workers on each of the three shifts, using only two buses. The 29-passenger Flexible is a spare and is used only if one of the regular buses is inoperative. His passengers pay \$5.00 to ride three to five days; occasional riders pay \$1.00 a day. He collects

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the money every week and prefers serving those who ride on a daily basis.

He testified that he performs his own maintenance on the weekends, in a garage provided by the San Jose Charter Lines; his vehicles all pass annual safety inspections by the California Highway Patrol. He stated he will purchase new equipment as soon as it can be justified, probably within two years. Henderson's balance sheet on the bus operation is dated September 20, 1968. It shows \$1,000 in current and \$6,000 in fixed (the buses and spare parts) assets; there are no current liabilities. His personal financial statement lists assets of \$50,000 and liabilities of \$40,402; net worth is \$9,598; monthly expense is about a third of the income listed. Henderson testified that he transports about 100 passengers a day; he estimates each bus must haul 15 passengers to break even and 30 or more to make the business really pay. He stated he pays his drivers \$30 to \$35 a week and insurance cost is \$900 a year on the two buses he operates. He further testified that his customers are obtained by riders telling others of the service and by notices placed on the bulletin boards at the United Maintenance Base. He stated he does not advertise and will not be transporting anyone who does not work at United Air Lines. All passengers transported so far are traveling on a weekly basis and are known to the drivers. Henderson testified that he drives the swing shift route which starts at Homestead Road and Hollenbeck in San Jose, then along Hollenbeck one block to Fremont, out Fremont to Grant, out Grant to El Camino, along El Camino to San Antonio Road, out San Antonio to the Bayshore Freeway and thence to United; the other routes are slightly different; the night shift route starts further south on Saratoga and Stevens Creek Road; proceeds to the Lawrence Expressway, to Highway 85 and along Fremont to

Grant, to El Camino, to San Antonio and the Bayshore Freeway. He testified that stops on the route are at the same locations on each trip; usually at shopping centers or large parking lots, where it is convenient for a group of riders to wait. ✓

Cletus Abbott testified in support of Application No. 50656. He stated that applicants provide a seven day a week service on all three shifts, to the United Air Lines Maintenance Base; also one bus on the day shift, five days a week, to the United Air Lines Service Center, located about two miles from the Maintenance Base; they have a 1941 37-passenger G.M.C. bus and three 1947 (37-passenger) Aero Coaches. One bus (the G.M.C.) hauls all three shifts to and from the Maintenance Base and a second bus (an Aero Coach) is used on the service center route. He testified all three applicants (in Application No. 50656) are employed at the United Maintenance Base; he drives the graveyard shift (11:00 p.m. to 7:00 a.m.) and Allen Robbins the swing shift (3:30 p.m. to midnight); they hire other United employees to drive the other shift and the route to the Service Center. He testified the bus transporting the day shift to the Maintenance Base runs seven days a week and passengers pay \$5.00 a week or \$1.00 a day; the bus serving the United Service Center runs five days a week and passengers pay \$6.00 a week; the work week is five days but this bus costs more to operate and there are no refunds or reductions for those who ride less than a full week. The application requests authority to raise the round-trip fares to \$1.50 a day for any transportation provided on less than a weekly basis; and to charge \$7.00 a week on the Maintenance Base route and \$8.00 a week to the Service Center. He testified the vehicles are parked in a lot next to the three small buildings used as an

office, storeroom and garage. They have a complete set of tools and some spare parts, although the garage is only long enough to cover the engine compartment of the bus, up to the windshield. The balance sheet on the Robbins-Abbott bus operation lists assets of \$6,343.52 and liabilities of \$770.04. Applicants' individual financial statements show two of the three applicants are purchasing homes and all three list more liabilities than assets. They are all employed at substantial wages, however, and have sufficient financial stability for the operation proposed.

The routes vary slightly but all originate in East San Jose. The day shift bus to the Maintenance Base carries 38 people including the driver, from Tully Road and McLaughlin in East San Jose; down Tully to King Road; along King Road northerly to Story; along Story to the Bayshore Highway and along Bayshore to the Maintenance Base. The Service Center route is slightly different. Starting at King and Story; along Story to Bayshore; north on Bayshore to Highway 17; south on 17 to Santa Cruz, and west on Santa Cruz to Saratoga Avenue, and northerly on Saratoga to Scott; then north on Scott to Central (Kifer) Expressway, and west on Central to Lawrence Expressway, thence north to Duane and west on Duane to Fair Oaks, thence northerly to the Bayshore and the Service Center. Abbott testified that since their application was filed it has become evident that a segment of the public requires service to Whipple Avenue and Bayshore (at Federal) in Redwood City - ten people have requested a pickup at this point - which is not included in their application. He advised that their application should be amended to include Redwood City.

Protestants' evidence developed as follows: Protestants are copartners who have been operating buses between San Jose and

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the United Air Lines Maintenance Base for two and a half years. When they started both partners were employed at United and both drove buses to and from work with a load of co-workers. Business increased and the partners left United and started operating buses as full time employment. They applied for and received a certificate of public convenience and necessity by Decision No. 74413, dated July 16, 1968, in Application No. 50273, which authorized them to operate in the area applicants have applied to serve. Protestants filed their tariff and schedules on September 20, 1968 and they became effective on September 30, 1968. The protestants own ten buses; five are used on the routes to the United Maintenance Base. They employ one full-time driver. The other drivers are employees of United Air Lines. Protestants charged \$5.00 a week, or \$1.00 a day; rising operating costs had to be considered and the weekly rate was increased to \$6.00 on May 31, 1968. Several of the applicants herein worked for the protestants prior to starting an identical service. Applicant Cletus Abbott was hired on June 5, 1967 and Allen Robbins on February 28, 1968. Clyde Robbins does not drive a bus, but he rode with the day shift. Abbott and Robbins left protestants' employ about June 3, 1968, after the weekly charge was increased to \$6.00. Abbott and Robbins advised they were starting a bus service of their own to the United Maintenance Base. Abbott stated they would charge \$6.00 a week and "keep off" protestants' "West Valley runs". When the Abbott group started carrying passengers, however, they were charging only \$5.00 a week and were picking up passengers on streets where protestants operated.

Protestants' service to the Maintenance Base consisted of two full busloads on the day shift; a full bus on the swing and a partial load on the graveyard. Business has declined since Abbott

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started operating and protestants now have one bus on the day shift, nothing for the swing shift and a single bus on the graveyard shift. Business is now divided between protestants and applicants. It is evident that the route will not support two bus operators. Protestants maintain they have the prior right guaranteed by Section 1032 of the Public Utilities Code to provide all regularly scheduled service on all three shifts between East San Jose - Cupertino - Sunnyvale, and the United Maintenance Base. Protestants allege they cannot compete on their selected routes with United Air Lines' employees who transport co-workers by bus as a means of supplementing their income.

Protestants advised they have no objection to the Service Center route of Abbott and Robbins, nor to the day and swing shift Henderson routes to the Maintenance Base. They are protesting the service provided by Abbott-Robbins on all three shifts to the Maintenance Base and the El Camino portion of the route followed by Henderson on the graveyard shift. Their protest is directed to the situation where individuals are requesting authority to serve over protestants' routes, after having developed business by serving for a time without any authority from this Commission. Protestants would not object if Henderson routed his vehicles down Homestead rather than El Camino and expected him to do so after he started operating buses. Nor will they object if Abbott-Robbins are authorized to serve different streets and routes out of San Jose. Protestants testified they contacted the Commission as soon as it became apparent they could not negotiate with the applicants. They mailed a letter of protest dated September 9, 1968 without apparent results and then visited a Commission representative who

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investigated the protest and suggested that Henderson and Abbott file the present applications.

A traffic engineer from the City of Palo Alto advised that any route changes in the city should be submitted to the city for approval prior to scheduling by applicants.

Applicants reacted vigorously to the protestants' suggestions. Henderson advised that Forrest Crawford, from whom he purchased his buses and business, started the El Camino route and he (Henderson) has developed it. Henderson stated he has operated on El Camino since he purchased the business and the protestants' use of the route was subsequent to his. If forced to move off El Camino he will lose all of his passengers who ride the late shift. Abbott advised he is serving the area where he lives. He and Robbins provide a personal service for the men who prefer to ride with them. If they move to other routes all their passengers will be lost. The latter prefer to be picked up near their homes.

#### Discussion

Protestants are operating pursuant to a certificate of public convenience and necessity issued by this Commission which authorizes them to provide service on the routes they have started. They were obliged to satisfy certain requirements to qualify as passenger stage operators. They maintain and provide substantial insurance, safe buses, reasonable rates, qualified drivers and regular service. Their rates and regulations are published and subject to public scrutiny. It is expensive to maintain the status of a certificated passenger stage corporation and they are entitled to the protection afforded by the law. If applicants are granted certificates they, too, will become entitled to like protection. It is equally necessary to discourage those without authority or



regulation from carrying passengers as a means of supplementing their income.

Findings

1. All applicants are employed at the United Air Lines Maintenance Base, San Francisco International Airport.
2. Applicant Henderson and applicants Abbott and Robbins provide a bus service for co-workers on all three shifts to the United Air Lines Maintenance Base. Abbott and Robbins also operate a single bus for day shift employees at the United Air Lines Service Center.
3. Henderson has transported co-worker passengers from East San Jose to the Maintenance Base since September 9, 1968. He purchased the business from a prior operator who provided service for four years without first having received operating authority from this Commission.
4. Applicants Abbott and Allen Roberts were employed as drivers by the protestants prior to June 3, 1968. They resigned on that date and started to transport passengers for compensation over some of protestants' routes.
5. Protestants were granted a certificate of public convenience and necessity on August 13, 1968 which authorized them to provide the service applicants were furnishing without authority.
6. Protestants operate passenger buses as their only business under Commission regulation and authority. Applicants furnish transportation for hire to supplement their wages as employees of United Air Lines.
7. Protestants oppose the Henderson route on the graveyard shift and the Abbott-Robbins routes on all three shifts to the United Air Lines Maintenance Base.

8. Applicants should alter their routes to conform to the authority granted herein.

9. Public convenience and necessity require that the applications be granted as provided in the ordering paragraphs herein.

10. Applicants have the experience, equipment, personnel and financial resources to institute and maintain the proposed service.

Conclusions

We conclude that the applications should be granted with certain modifications so as not to interfere with the operating authority held by the protestants. We further conclude that protestants are entitled to the protection provided by the provisions of Section 1032 of the Public Utilities Code and that the portion of Application No. 50656 which requests authority to serve the United Air Lines Maintenance Base should therefore be denied.

Melvin C. Henderson, Clyde Robbins, Cletus L. Abbott and Allen Robbins are hereby placed on 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. Certificates of public convenience and necessity are hereby granted to (a) Melvin C. Henderson, and (b) to Clyde Robbins, Cletus L. Abbott, and Allen Robbins, authorizing them to operate as passenger stage corporations, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A and B, attached hereto and made a part hereof.

2. In providing service pursuant to the certificates herein granted, applicants shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 101-C.
- (b) Within one hundred twenty days after the effective date hereof, applicants shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.

- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 93-A.
- (e) Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 2nd day of MAY, 1969.

William Amos P.  
President  
August  
Sheel P. Morrissey  
[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A

MELVIN C. HENDERSON

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SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS  
AND SPECIFICATIONS.

Melvin C. Henderson, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers on passenger-carrying vehicles between the United Air Lines Maintenance Base at or near the San Francisco International Airport, on the one hand, and the Cities of Santa Clara, Sunnyvale, Cupertino, Los Altos, Mountain View and Palo Alto, on the other hand, over the routes hereinafter described, subject to the following provision:

No passengers shall be transported  
except those having point of origin  
or destination at said United Air  
Lines Maintenance Base.

Issued by California Public Utilities Commission.

Decision No. 75638, Application No. 50583.

## SECTION 2. ROUTE DESCRIPTIONS.

## Santa Clara Route:

Commencing at the intersection of Kiely Boulevard and Homestead Road in the City of Santa Clara thence via Kiely Boulevard, Benton Street, Los Padres Boulevard, El Camino Real, Bowers Avenue, Monroe Street, Reed Lane, North Fair Oaks Avenue, U. S. Highway 101 (Bayshore Freeway) and San Bruno Avenue to the entrance of the United Airlines Maintenance Base; returning by reverse of route.

## Cupertino-Mountain View-Palo Alto Route:

Commencing at the intersection of Saratoga Avenue and Stevens Creek Boulevard thence via Stevens Creek Boulevard, Lawrence Station Expressway, Homestead Road, Hollenbeck Avenue, West Fremont Avenue, Grant Road, El Camino Real, San Antonio Road, U. S. Highway 101 (Bayshore Freeway) and San Bruno Avenue to the United Airlines Maintenance Base; returning by reverse of route.

Issued by California Public Utilities Commission.

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Appendix B

CLYDE ROBBINS, CLETUS L. ABBOTT  
AND ALLEN ROBBINS

Original Page 1

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS  
AND SPECIFICATIONS.

Clyde Robbins, Cletus L. Abbott and Allen Robbins, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers on passenger carrying vehicles between the United Air Lines Service Center at or near the San Francisco International Airport, on the one hand, and the Cities of San Jose, Santa Clara and Sunnyvale, on the other hand, over the routes hereinafter described, subject to the following provision:

No passengers shall be transported  
except those having point of origin  
or destination at said United Air  
Lines Service Center.

SECTION 2. ROUTE DESCRIPTION.

Commencing at the intersection of King Road and Story Road in the City of San Jose; thence via Story Road, U. S. Highway 101 (Bayshore Freeway), State Highway 17, Interstate Highway 280, Saratoga Avenue, Scott Boulevard, Kifer Road (Central Expressway), Lawrence Expressway, East Duane Avenue, North Fair Oaks Avenue, U. S. 101 (Bayshore Freeway), departing Freeway at Whipple Avenue in Redwood City, thence via Bayshore Freeway to the United Air Lines Service Center; returning by reverse of route.

Issued by California Public Utilities Commission.

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