

ORIGINAL

Decision No. 79623

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of INTRASTATE RADIOTELEPHONE,)
INC. OF SAN FRANCISCO, a California Cor-)
poration; MOBILE RADIO SYSTEM OF SAN JOSE,)
INC., a California Corporation; JOSEPH A.)
SMILEY, dba CENTRAL EXCHANGE MOBILE RADIO;)
AND TEL-PAGE, INC., a California Corpora-)
tion,

Complainants,

Case No. 9305

v.

JEROME GROTSKY, ARTHUR STRICKLER, DOES ONE
THROUGH FIFTY,

Defendants.

Philips B. Patton, Attorney at Law, for com-
plainants.

Robert N. Lowry, Attorney at Law, for defendant
Strickler.

Bertram Silver and John Fisher, Attorneys at
Law, for defendant Grotsky.

Jerome Grotsky, for himself, defendant.

Rufus Thayer, Attorney at Law, and Harold
Seielstad, for the Commission staff.

INTERIM OPINION ON ORDER TO SHOW CAUSE

The Commission, on consideration of the complaint filed by the above complainants on December 13, 1971, issued and duly served a Temporary Restraining Order and Order to Show Cause (Decision No. 79520, dated December 21, 1971), returnable December 29, 1971, requiring defendants to appear and show cause why a cease and desist order should not issue prohibiting defendants from adding, or soliciting, new users or subscribers to their radiotelephone one-way signaling system, with transmission equipment on San Bruno Mountain,

San Mateo County, until such time as the Commission has decided the complaint herein.

Public hearing on the Order to Show Cause was held before Examiner Gillanders at San Francisco on December 29, 1971.

Before the taking of evidence, various motions were made by the parties.

On behalf of defendant Grotsky, it was moved that the staff be "disqualified" and also moved that the temporary restraining order be removed, and if not removed, a bond be required of complainants.^{1/}

On behalf of complainants, it was moved that the temporary restraining order be removed and a temporary injunction issued.^{2/} The staff joined in this motion.

On behalf of defendant Strickler, it was moved that no order be issued which would limit the activities of Strickler regarding sales of radio equipment.

Complainants attempted, through testimony, to present a showing that complainant Intrastate Radiotelephone, Inc. of San Francisco had been, and would be, harmed financially if the relief it requested was not granted. After argument of counsel, its written testimony was not received into evidence. It attempted by oral testimony to present the same information. The presiding examiner sustained numerous objections that most of the proffered testimony was hearsay, whereupon complainants rested. The staff attempted to elicit similar testimony from complainants' witness, and the examiner

1/ Later on the same day (December 29, 1971) Grotsky filed a petition entitled "Petition For Imposition of Indemnity Bond Or In The Alternative Dissolution of Temporary Restraining Order."

2/ Apparently the parties believe the Commission has no authority to impose an ex parte restraining order for more than 15 days.

sustained the numerous objections raised by counsel for defendant Grotsky regarding staff counsel's questions.

Defendants presented no testimony.

The only credible evidence produced by complainants to support their claim of financial injury is that Intrastate has lost a customer - Otis Elevator - which subscribed for twenty pagers.

An injunctive order to preserve the status quo pending final resolution of issues is a procedure that may do more harm than good if not used with discretion.

We find on the record thus made that it is in the public interest to deny complainants' motion for injunctive relief.

We conclude, therefore, that defendants' motion for removal of the temporary restraining order should be granted.

We turn now to defendants' motion to "disqualify the staff". As we understand defendants' position regarding the staff's participation, counsel for defendant Grotsky believes that counsel for complainants and counsel for defendants are quite capable of representing their clients' interests without the staff appearing and acting in concert^{3/} with complainants.

The announced position of the staff is that it must protect the fundamental integrity of certificates of public convenience and necessity issued to radiotelephone utilities.

It is the policy of this Commission not to require its staff to adhere to the written requirements of Rule 53 of our Rules of Practice and Procedure.

^{3/} So called "double teaming".

However, we do require the staff to inform us of its position prior to authorizing it to appear.

In this proceeding, because of its controversial nature, we believe that the staff should be present in the overall public interest. Defendants' motion to disqualify the staff is denied. The staff may intervene and become a party to the proceeding to the degree indicated by the presiding officer at the hearing commencing February 22, 1972.


INTERIM ORDER

IT IS HEREBY ORDERED that:

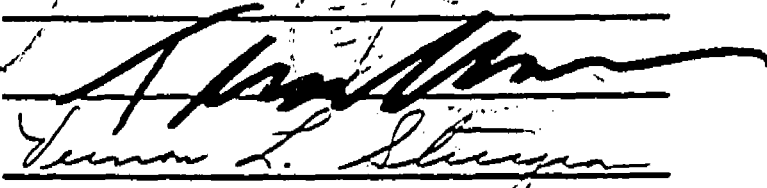
1. The temporary restraining order heretofore issued by Decision No. 79520 is dissolved.
2. The motion of complainants for injunctive relief is denied.
3. The motion of defendant Grotsky regarding "disqualification" of the staff is denied.
4. The staff is a party to the proceeding to the degree indicated by the presiding officer at further hearings to be held in this matter.
5. All other motions are denied in view of ordering paragraph No. 1 above.

The effective date of this order shall be the date hereof.


Dated at San Francisco, California, this 18th day of JANUARY, 1972.



Chairman



L. Sturgeon



Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate.
-4- in the disposition of this proceeding.