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Decision No. 84266

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARGRAVE SECRET SERVICE, a sole
proprietorship, GEORGE E. HARGRAVE,
proprietor,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 9534
(Filed April 6, 1973)

John Eshleman Wahl, Attorney at Law, for George
E. Hargrave, complainant.

Richard Siegfried, Attorney at Law, for The
Pacific Telephone and Telegraph Company,
defendant.

O P I N I O N

This is a complaint by George E. Hargrave (Hargrave) doing business as Hargrave Secret Service against The Pacific Telephone and Telegraph Company (PT&T). The complaint relates to PT&T's eliminating the former yellow page heading of "Detective Agencies" and placing persons listed thereunder under the heading of "Investigators".

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in San Francisco on October 4, 1973 and it was submitted on October 30, 1973.

The complaint stems from a division of opinion among California sleuths over the appropriate heading for them in the yellow pages. The California Association of Licensed Investigators (CALI) believes the heading Investigators is more representative of the activities of the profession. Hargrave and others believe that the heading Detective Agencies is more descriptive of their calling

and that they ought not be compelled to be listed under Investigator, which "is one of those johnny-come-lately names...." (RT 30.)

The material issues presented in this proceeding are:

1. Do listees under a yellow page heading have a property right in the heading which precludes PT&T from changing it without their consent?
2. Has PT&T applied its tariffs, rules, and practices in an arbitrary and unfair way in eliminating the yellow page heading of Detective Agencies?

The term private detective describes persons who engage in certain types of investigative activity. It has no official recognition in the statutes. Business and Professions Code Section 7521 provides for the licensing of private investigators and private patrol operators, insurance adjusters, and repossessors.^{1/} There is no overall license for these groups. Each group has a separate license and in order to be licensed in one or more categories an applicant must qualify in each category. Prior to 1973, PT&T had the following yellow page headings in its directories: Detective Agencies, Investigators, Adjusters, Guard & Patrol Service, and Repossessing Service.

CALI has over 500 members. Its membership includes all types of licensees under Business and Professions Code Section 7521. Prior to 1969 there were discussions in the CALI board of directors about having one yellow page heading for the private investigator group so they would not have to advertise under two headings in the yellow pages. CALI believed that the heading Investigators was more descriptive than Detective Agencies of the work performed by those licensed as private investigators. In 1969, CALI contacted PT&T about deleting the Detective Agencies heading. PT&T considered the request. It determined that there was no practical way to identify

^{1/} The term private investigator has been in the statute since 1947.

persons who were likely to make use of the Detective Agencies or Investigators headings in order to conduct a survey of directory user preferences. PT&T suggested that CALI conduct a survey of licensees to determine the wishes of the profession.

In or about January of 1972, CALI conducted a survey. The questionnaire was sent to all persons licensed by the Bureau of Collection and Investigative Services. The record indicates the following number of persons were licensed by the Bureau in the various categories:

<u>Private Investigator</u> (A)	<u>Insurance Adjuster</u> (B)	<u>Private Patrol</u> (C)	<u>Investigator Adjuster ^{2/}</u> (D)	<u>Repossessor</u> (F)
<u>Licenses in effect on August 31, 1973</u>				
1,404	426	635	219	114
<u>Licenses in effect on January 25, 1971</u>				
1,096	369	391	231	127

The chairman of the CALI board of directors testified that 30 percent of the licensees are inactive at any particular time.

^{2/} An investigator adjuster is one who is licensed as both a private investigator and an insurance adjuster.

The results of the CALI survey were as follows:

No. of Ballots	License Held By Answering Party				
	Investi- gators A&D	Adjusters B	Guard- Patrol C	Repos- sors F	Un- identified
For Detective Agencies					
126	119	1	3	0	3
For Investiga- tors					
416	380	17	7	1	11
For Both Head- ings					
141	104	29	7	0	1
*Not Counted					
34	-	-	-	-	-
Total 717	603	47	17	1	15

* Not tallied because answer vague or not marked.

After PT&T received the results of the CALI survey it gave consideration to discontinuing the Detective Agencies heading and consolidating the advertising under that heading with the Investigators heading. PT&T has six basic principles utilized in determining classified headings which are as follows:

- "1. Headings are provided to identify business as it is generally conducted in the area and in terminology which coincides with the local reference habits of the directory users.
- "2. When a phase of an existing business becomes a separate business and is thought of as such by the user, specific heading classifications may be provided.

- "3. Avoid synonymous or near-duplicate terminology.
- "4. Headings must not be too broad or too limited.
- "5. Registered trade names and coined words are not acceptable.
- "6. Avoid headings which are requested for alphabetical preference."

In applying these principles, PT&T determined that No. 3 was applicable to the situation. The basis for this conclusion was the fact that PT&T's examination of the two headings in sample directories disclosed that 55 percent of the listings under the Detective Agencies heading were duplicated under the Investigators heading and 50 percent of the listings under the Investigators heading were duplicated under the Detective Agencies heading. PT&T also determined, in the light of the CALI survey, that principle No. 1 was also applicable. PT&T eliminated the Detective Agencies heading from all directories published after April 1973.

Several witnesses testified on behalf of Hargrave. In general, their testimony may be summarized as follows. The term private detective is an old and honorable one. Insurance adjusters, process servers, and auto repossessioners do investigative work. These witnesses were proud to be known as private detectives and did not want to be grouped with these other callings. Hargrave introduced in evidence a resolution of the World Association of Detectives, Incorporated. The resolution urged the continuation of the Detective Agencies heading. Hargrave also introduced in evidence the results of the poll which Hargrave conducted among licensees of the Bureau of Collection and Investigative Services in July of 1973. The poll was mailed to approximately 1,500 licensees and the results were as follows:

Heading Preference

	Questionnaires Returned	Percentage
Investigators	126	42%
Detective Agencies	151	49
No Preference, Non-Advertiser	<u>27</u>	<u>9</u>
	304	100%

Hargrave first contends that PT&T does not have the authority to disestablish a yellow page heading. In support of this position, Hargrave cites PT&T's Tariff Schedule No. 39-T, Fifth Revised Sheet 4, Special Condition 6 which provides that "The utility reserves the right to establish or to refuse establishment of any heading in the classified telephone directory." Hargrave argues that under this provision PT&T has no power to change, modify, or eliminate a heading once it is established. There is no merit in this contention.

A tariff "should be given a fair and reasonable construction and not a strained or unnatural one" (Consolidated Vultee Aircraft Corp. v Atchison, Topeka & Santa Fe Railway Co. (1945) 46 CRC 147, 149; California Chemical Co. v So. Pac. Co. (1965) 64 CPUC 590, 594, 596; San Francisco Milling Co. v So. Pac. Co. (1926) 28 CRC 870, 872-73.) Section 455 provides that public utilities may, subject to suspension, file tariff provisions which do not result in increased rates. Section 454 deals with changes which result in rate increases. General Order 96-A deals with the filing of utility tariffs. It clearly contemplates deletions from tariffs. (General Order 96-A, Sections II A(3)(D); III C, V.) In view of the overall statutory and regulatory scheme dealing with tariff provisions, it would be a strained construction of Special Condition 6 were we to hold that once PT&T established a yellow page heading it had to

continue it in perpetuity and that PT&T could not change, modify, or delete a heading.

Hargrave's contention that he has some sort of property right in a yellow page heading is not correct. Hargrave cites no authority in support of this position. We hold that utility customers do not have vested rights in tariff provisions or operating practices. (Nunemaker v PT&T (1969) 70 CPUC 38, 44-45, affirmed, 4 C 3d 288, appeal dismissed for want of substantial federal question 404 US 931; California Water Service Co. (1960) 49 CRC 463, 469.)

The primary issue to be determined is whether PT&T applied its operating practices in an arbitrary and unfair way when it eliminated the yellow page heading of Detective Agencies. The Commission finds and concludes that it did not do so. We base our holding on the following facts. California licenses private investigators not private detectives. Fifty-five percent of the listings in selected directories under the Detective Agencies heading were duplicated under the Investigators heading and 50 percent of those listed under the Investigators heading were duplicated under the Private Detectives heading. CALI, which has a membership in California of more than 500 licensees, supports the consolidation of the two headings under the Investigators heading. The CALI poll, which we find to be the more reliable one, indicates that a majority of licensed private investigators prefer to be listed under the heading of Investigators rather than Detective Agencies. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The term private detective has no official recognition in the California statutes. Business and Professions Code Section 7521 provides for the licensing of private investigators and private patrol operators, insurance adjusters, and repossessors. There is no overall license for these groups. Each group has a separate license and in order to be licensed in one or more categories an applicant must qualify in each category.

2. Prior to 1973, PT&T had the following yellow page headings in its directories: Detective Agencies, Investigators, Adjusters, Guard & Patrol Service, and Repossessing Service.

3. CALI has over 500 members. Its membership includes all types of licensees under Business and Professions Code Section 7521. Prior to 1969 there were discussions in the CALI board of directors about having one yellow page heading for the private investigator group so they would not have to advertise under two headings in the yellow pages. CALI believed that the heading Investigators was more descriptive than Detective Agencies of the work performed by those licensed as private investigators. In 1969, CALI contacted PT&T about deleting the Detective Agencies heading. PT&T considered the request. It determined that there was no practical way to identify persons who were likely to make use of the Detective Agencies or Investigators headings in order to conduct a survey of directory user preferences. PT&T suggested that CALI conduct a survey of licensees to determine the wishes of the profession.

4. The following numbers of persons were licensed by the Bureau of Collection and Investigative Services in 1971 and 1973:

<u>Private Investigator</u> (A)	<u>Insurance Adjuster</u> (B)	<u>Private Patrol</u> (C)	<u>Investigator Adjuster</u> (D)	<u>Repossessor</u> (F)
<u>Licenses in effect on August 31, 1973</u>				
1,404	426	635	219	114
<u>Licenses in effect on January 25, 1971</u>				
1,096	369	391	231	127

5. At any particular time approximately 30 percent of persons licensed by the Bureau of Collection and Investigative Services are inactive.

6. In or about January of 1972, CALI conducted a survey. The questionnaire was sent to all persons licensed by the Bureau of Collection and Investigative Services. The results of the survey were as follows:

<u>No. of Ballots</u>	<u>License Held by Answering Party</u>				
	<u>Investi- gators A&D</u>	<u>Adjusters B</u>	<u>Guard- Patrol C</u>	<u>Repos- sors F</u>	<u>Un- identified</u>
For Detective Agencies					
126	119	1	3	0	3
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416	380	17	7	1	11
For Both Headings					
141	104	29	7	0	1
*Not Counted					
<u>34</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total 717	603	47	17	1	15

*Not tallied because answer vague or not marked.

7. PT&T utilizes six basic principles in determining classified headings. They are as follows:

- "1. Headings are provided to identify business as it is generally conducted in the area and in terminology which coincides with the local reference habits of the directory users.
- "2. When a phase of an existing business becomes a separate business and is thought of as such by the user, specific heading classifications may be provided.
- "3. Avoid synonymous or near-duplicate terminology.
- "4. Headings must not be too broad or too limited.
- "5. Registered trade names and coined words are not acceptable.
- "6. Avoid headings which are requested for alphabetical preference."

8. After PT&T received the results of the CALI survey it gave consideration to discontinuing the Detective Agencies heading and consolidating the advertising under that heading with the Investigators heading. PT&T evaluated the request in the light of the six basic principles. In applying these principles, PT&T determined that No. 3 was applicable to the situation. The basis for this conclusion was the fact that PT&T's examination of the two headings in sample directories disclosed that 55 percent of the listings under the Detective Agencies heading were duplicated under the Investigators heading and 50 percent of the listings under the Investigators heading were duplicated under the Detective Agencies heading. PT&T also determined, in the light of the CALI survey, that principle No. 1 was also applicable.

9. PT&T eliminated the Detective Agencies heading from all directories published after April of 1973.

10. Hargrave conducted a poll among licensees of the Bureau of Collection and Investigative Services in July of 1973. The poll was mailed to approximately 1,500 licensees and the results were as follows:

Heading Preference		
	<u>Questionnaires Returned</u>	<u>Percentage</u>
Investigators	126	42%
Detective Agencies	151	49
No Preference, Non-Advertiser	<u>27</u>	<u>9</u>
	304	100%

11. The CALI poll is more reliable than the Hargrave poll. The Hargrave poll was not in existence at the time PT&T determined to eliminate the Detective Agencies heading. PT&T placed reasonable reliance on the CALI poll.

12. PT&T did not act in an unfair or arbitrary manner when it eliminated the classified heading of Detective Agencies from its directories.

Conclusions of Law

1. PT&T has the right, subject to applicable provisions of law and regulatory principles, to change, modify, or eliminate classified headings under Special Condition 6, Fifth Revised Sheet 4 of its Tariff Schedule No. 39-T.

2. Hargrave had no property or vested right to a continued listing under a classified directory heading of Detective Agencies.

3. PT&T did not act in an unfair or arbitrary manner when it eliminated the classified heading of Detective Agencies from its directories.

4. Hargrave is entitled to no relief.

O R D E R

IT IS ORDERED that complainant is not entitled to any relief.

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

Dated at San Francisco, California, this 1st day of APRIL, 1975.

Vernon L. L. L. L.
President
William L. L. L.
Leonard Ross

Commissioners

Commissioner ROBERT BATINOVICH