

Decision No. 91265 JAN 15 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the definition, criteria and procedure for determining prevailing wages for use in the establishment of carrier-filed rates.

OII No. 53
(Filed July 3, 1979)

(Appearances are listed in Appendix A)

O P I N I O N

Synopsis of Decision

The purpose of this proceeding is to establish a methodology for determining the prevailing wage rate component to be reflected in carrier-filed rates under the Commission's reregulation program. As the following discussion, findings, conclusions, and order will disclose, the Commission has limited the application of the prevailing wage concept to general commodity and tank truck transportation; has limited prevailing wage determinations to only two employee classifications, i.e., drivers and platform workers; has adopted a modified version of the Davis-Bacon Act definition of prevailing wage rate; has adopted the Teamster recommended use of three geographic zones rather than the multiple zone suggested by staff; has distinguished transportation services on the basis of type of equipment operated rather than the type of commodity transported, has adopted complaint and investigation procedures to be employed when carrier-filed rates are challenged, has ordered publication of prevailing wage data commencing July 1, 1980 and has adopted Teamster wages in the interim.

In addition, the Commission has determined that owner-operator data should not be employed in establishing prevailing wage rates for the purposes of the reregulation program and that messenger carriers should be exempted from the operation of the program.

This proceeding was instituted to address certain specific issues relating to the Commission's decision to require the use of

"prevailing wages" in rate justifications under the Commission's reregulation program. When this investigation was commenced on July 3, 1979, a reregulation program had been adopted only in connection with the transportation of commodities in bulk by tank and vacuum tank vehicles. (Decision No. 90354, dated May 22, 1979, in Case No. 5436, OSE 244 et al.) Subsequently, the program was extended to the transportation of general freight. (Decision No. 90663, dated August 14, 1979, in Case No. 5432, Pet. 884, et al.) The Commission anticipated this situation and expressly provided for it in describing the generic scope of this proceeding:

"The implementation of carrier-filed rates in lieu of other minimum rate tariffs is currently under consideration by the Commission. In the event minimum rate tariffs, in addition to 6B and 13, are abolished, the use of prevailing wage levels for the purpose of rate review will be in issue in segments of the industry beyond tank truck transportation. We have concluded the appropriate definition, criteria and procedure for determining prevailing wages for justification and evaluation of individual carrier-filed rates can best be considered generically in a single proceeding. Accordingly, the investigation instituted by this order should encompass all segments of the for-hire motor transportation industry now subject to minimum rate regulation." (OII No. 53, p. 2.)

Six questions were to be answered in this proceeding:

- "1. What methodology should be adopted for determining wage levels?
- "2. What is the relevant data for purposes of determining union and non-union wages, and owner-operator compensation?
- "3. How should the relevant data be developed? What sampling or study technique should be employed?
- "4. How should relevant geographic zones be delineated? Should they reflect labor markets or transportation markets? Should traffic flows be recognized?

- "5. What types or classes of transportation services should be distinguished for purposes of separate analysis?
- "6. What procedure, consistent with the intent and purpose of Decision No. 90354, should be adopted for filing and evaluating complaints filed with respect to individual carrier rates?" (OII No. 53, p. 2.)

A prehearing conference was held on July 24, 1979, followed by 11 days of hearing before Administrative Law Judge Robert T. Baer. Direct evidence was offered by the Commission staff, the Teamsters Union (Teamsters), a group of messenger service carriers (Messengers), Delta Lines (Delta), the California Carriers Association (CCA), and the California Trucking Association (CTA). Hearings concluded on October 12, 1979, and the proceeding was submitted subject to the filing of briefs on November 2, 1979. Briefs were filed by the staff, the Teamsters, the Messengers, Delta, CCA, CTA, and the California Dump Truck Owners Association (CDTOA).

Threshold Questions

Before addressing the six questions propounded in OII No. 53, we should first address three threshold questions:

1. Should the scope of any order issued in this proceeding extend beyond the transportation now subject to the Commission's reregulation program?
2. What use should be made of prevailing wage data?
3. How should "prevailing wage rate" be defined?

With regard to the scope of this order we agree with the arguments of CCA, CDTOA, and California Moving & Storage Association (CMSA) that this order should be limited in application to the transportation thus far subject to our reregulation program.

Different forms of reregulation may be appropriate for other segments of the industry such as dump truck and household goods, agriculture, and cement.

This decision will stand available, if appropriate, for application to other MRTs after the Commission has specifically

reviewed such MRTs. Modification may be appropriate, or a completely different approach may be required depending on the evidence of record in each inquiry.

Regarding the second threshold question, CTA and other parties to this proceeding have expressed concern that the Commission has not explicitly stated how it intends to use the prevailing wages after they are established.

First, the Commission has no intention of requiring carriers to pay the prevailing wage to their employees. We neither have nor want such jurisdiction. The Commission here acts in its ratemaking capacity only, and therefore shuns any suggestion that it intends to interfere in the relations of management and labor by requiring, assuming it had such power, any particular wage actually to be paid. Rather the Commission's prevailing wage will merely constitute a floor for certain elements of the carrier's overall labor cost, as those costs are reflected in the rates of the carrier. We have already spelled this out in some detail in Decisions Nos. 90663 and 90859 at least insofar as carrier-filed tariffs constitute the goal of our program.

Second, although the Commission intends to publish prevailing wage reports semi-annually, consistent with the staff's recommendation, such reports will not necessarily herald proportionate semi-annual increases in the rates of all carriers regulated by the Commission. Whether such proportionate rate increases, or increases of any size, occur will be wholly within the discretion of the carriers. It may be, to use a hypothetical example, that an increase of ten percent in prevailing wages for certain classes of employees will produce a smaller percentage increase in overall costs for a particular transportation service. Some carriers may choose to wholly absorb this cost, others may change their operations to cancel out the effects of increased labor costs with economies affected elsewhere, while still others will seek rate increases more or less proportionate to the increases in prevailing wages published by the Commission. Thus, a single, uniform response by carriers to prevailing wage

increases is not anticipated. Accordingly, the Commission expects that rates for the same transportation services between the same points may well vary from carrier to carrier, depending upon the manner in which the many economic factors impact the individual carriers involved.

Third, the primary use to which prevailing wage rates will be put, will be in justifying rate increase and rate decrease filings, on the part of carriers, and in evaluating rate filings, subject to complaints or to petitions for investigation and suspension.

Fourth, as prevailing wage and subhauler use intertwine we will require that if a carrier filing a rate for transportation service intends to provide such service through the use of a subhauler or subhaulers that carrier must base the cost justification for the rate upon not only his own costs but also those of the involved subhauler or subhaulers including the prevailing wage. Should the rate-filing carrier base its cost justification upon its own equipment and operating costs, including the prevailing wage component for labor, we will expect that the service will actually be conducted by that mode. If the latter described carrier in actual operation provides more than a de minimis portion of the transportation service through the use of subhaulers we will require, either on the Commission's own motion or by way of complaint, that the rate level be justified by the subhaulers costs or the continued use of subhaulers for more than a de minimis portion of the transportation cease.

The result of such a system, as related to subhaulers and as spelled out in Decision No. 91247 issued today, means that the rate level charged the shipper will be based upon actual cost, but including the prevailing wage, of the carrier or carriers performing the service while the payment made to the subhauler will be completely open to public view and subject to market forces that will provide the subhauler a much more favorable bargaining tool than he or she enjoys today.

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Both the staff and the Teamsters offered testimony on the issue of the definition of "prevailing wage rate." The staff offered the following definition:

"'Prevailing wage rate' shall be defined for each classification of employee as:

- (1) the rate of straight-time wage paid to a majority of employees performing comparable transportation services, in the same geographic zone, provided; that
- (2) in the event that less than 50% of these employees receive the same wage, then the average wage rate shall be determined to be the prevailing wage rate." (Exhibit 1, pp. 1-2.)

The Teamsters offered the definition adopted pursuant to the Davis-Bacon Act (40 USC § 276(a)), as follows:

"... The term 'prevailing wage rate' for each classification of laborers and mechanics which the Administrator shall define as prevailing in an area shall mean:

- (1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in construction in the area, similar to the proposed undertaking;
- (2) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number: Provided, such greater number constitutes 30 percent of those employed; or
- (3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate." (29 C.F.R. Part 1, § 1.2(a).)

The federal rule has been adopted in California by the Department of Industrial Relations (DIR) for use in the DIR's administration of California's prevailing wage statutes.

The Davis-Bacon Act and its adoption in California are for entirely different purposes than the Commission will use prevailing wage in establishing transportation rates. Nevertheless from the record before us it is clear that a readily understood methodology for determining prevailing wage will be beneficial to regulator, regulated carriers, and concerned shippers, hence we find it appropriate to adopt the Davis-Bacon concept only slightly modified for use in transportation cost justification.

The term "prevailing wage" for the classification of drivers and platform workers which the Commission shall define as prevailing in a geographical zone shall mean:

- (1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in transportation in the geographic zone, similar to the proposed undertaking;
- (2) In the event there is not a majority paid at the same rate, then the rate paid to the greater number: Provided, such greater number constitutes 30 percent of those employed; or
- (3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate.

The six questions to be answered in this proceeding will now be addressed in order.

1. What methodology should be adopted for determining wage levels?

The staff proposed a four-step procedure for defining, determining, and applying a prevailing wage, as follows:

- "1. Develop the necessary sampling programs which will yield a confidence level of 95 percent with no more than 5 percent error.
- "2. Distribute questionnaires and/or contact carriers regarding data.
- "3. Edit, sort, and compile data received from carriers.
- "4. Determine a prevailing wage according to Commission adopted definitions and procedures."

These steps, together with the staff's proposed definitions comprise the staff's proposed methodology in general terms.

No other party suggested a competing, comprehensive methodology for arriving at prevailing wage determinations. However, the Teamsters' witness recommended that the DIR make the appropriate

prevailing wage determinations. (Exhibit 9, p. 12.) We believe that the staff's expertise in the regulation of rates under our minimum rate tariffs will be indispensable to the proper development of prevailing wage rates to be used as a component of carrier-filed rates. For this reason the suggestion of the Teamsters that the DIR conduct prevailing wage surveys for the highway carrier industry will not be adopted.

2. What is the relevant data for purposes of determining union and non-union wages, and owner-operator compensation?

The question of owner-operator compensation will first be addressed. The staff in Exhibit 8 recommended that data from owner-operators not be used for evaluating prevailing wages. In support of its recommendation the staff cited the results of its study of the availability of factual data regarding owner-operators and certain characteristics of owner-operators which distinguish them from employees. In summary the staff's reasons for recommending that owner-operator data not be used are that:

- (a) Owner-operators do not function as employees.
- (b) Owner-operators do not provide the same service as employees.
- (c) Owner-operators control their own actions.
- (d) Owner-operators do not receive compensation in the same manner as employees.
- (e) Owner-operators do not maintain sufficient factual records to develop net compensation or operating data.

There was no dissent among the parties to the above characterizations of owner-operators, nor to the staff's recommendation, and we conclude that owner-operator data should not be used to establish prevailing wage rates.

It should be noted here, however, that in light of our previous discussion concerning use of cost data to justify tariff filings that in the future factual recordkeeping on the part of owner-operators will take on much more critical significance. We fully expect that our reregulation program will encourage all carriers to be more knowledgeable about the economies of their business rather than depend upon government to support inefficient and fuel wasteful operations.

The staff proposes to collect by sampling the data listed below for selected employees:

- " 1. Basic Wage Rate
- " 2. Wage Type (hourly, mileage, etc.)
- " 3. Straight-Time Hours
- " 4. Overtime Hours/Pay
- " 5. Vacation Hours/Pay
- " 6. Holiday Hours/Pay
- " 7. Sick and Funeral Hours/Pay
- " 8. Health and Welfare Costs
- " 9. Pension Costs
- "10. Workers Compensation Insurance (W.C.I.) Rate
- "11. W.C.I. Experience Modifier
- "12. W.C.I. Dividend Modifier
- "13. State Unemployment Insurance (SUI) Basic Rate
- "14. SUI Balancing Tax Rate
- "15. Base Year Gross Earnings" (Exhibit 1, p. 27.)

The staff proposes to collect such data only as to the following employee classifications:

"(1) Regular Positions

- | | |
|----------------------|-------------|
| a. Driver | e. Rater |
| b. Helper | f. Biller |
| c. Platform | g. Mechanic |
| d. Forklift Operator | h. Packer |

"(2) Casual Positions

- | | |
|-------------|-------------------------------|
| a. Driver | d. Forklift Operator |
| b. Helper | e. Mechanic |
| c. Platform | f. Packer" (Exhibit 1, p. 8.) |

The staff further proposes that all accumulated data be categorized according to employee classification, transportation service, and geographic zone and that the Commission, semi-annually, publish a report containing the following data for each category:

- " 1. Prevailing basic wage
- " 2. Prevailing straight-time hours/pay
- " 3. Prevailing overtime hours/pay
- " 4. Prevailing vacation hours/pay
- " 5. Prevailing holiday hours/pay
- " 6. Prevailing sick and funeral leave hours/pay
- " 7. Prevailing annual health and welfare costs
- " 8. Prevailing annual pension costs[*]
- " 9. Prevailing W.C.I. experience modifier
- " 10. Prevailing W.C.I. dividend modifier
- " 11. Prevailing S.U.I. basic rate
- " 12. Prevailing W.U.I. balancing tax rate
- " 13. Prevailing total labor cost" (Exhibit 1, pp. 8-9.)

* Item 8 was inadvertently omitted from the original list.

It is by no means certain that it is necessary for the Commission's purposes to establish prevailing wages for the eight regular and six casual positions suggested by the staff. Exhibit 6 shows the relative importance of direct labor costs^{1/} to total costs at 100 percent operating ratio for transportation in the Los Angeles Drayage Area, the rates for which are contained in Minimum Rate Tariff 2 (MRT 2). Direct labor costs as a percent of total costs range from 69 percent to 79 percent. The compensation of drivers and platform workers is almost entirely responsible for direct labor costs, while the compensation of raters and billers contribute from as little as 0.7 percent of total costs to a maximum of 6.6 percent of total costs. (Exhibit 6, Table V.)

Since the compensation of drivers and platform workers are so significant and the compensation of raters and billers so insignificant in their respective contributions to total costs,

^{1/} Direct labor costs are the costs for drivers, platform workers, raters, and billers.

it is reasonable to exclude raters and billers from consideration in determining the prevailing wages to be reflected in carrier-filed^{2/} rates. Accordingly, in developing prevailing wages the staff should limit its inquiry to the compensation paid to drivers and platform workers.

3. How should the relevant data be developed?
What sampling or study technique should be employed?

An extensive and detailed showing was developed and introduced into evidence by the staff, which addressed the above two questions. It was designed to implement the staff's program and assumed a large number of relevant geographic zones, transportation services, and employee classifications. The criticisms addressed to the staff's statistical technique by CTA and others have let us to recognize the need for the simplified methodology adopted in this opinion. It would be a useless exercise to explain, discuss, and resolve the criticisms made of the staff's statistical techniques, when a different and much simpler program is now contemplated.

- 4(a). How should relevant geographic zones:
be delineated? (b) Should they reflect
labor markets or transportation markets?
(c) Should traffic flows be recognized?

The staff in answer to question 4(a) stated that:

"Geographic zones should be delineated by counties, the county being the smallest unit that shall be considered as a reference point for computation and application of prevailing labor costs. Counties may be grouped together similarly to territories as described in Distance Table 8, the minimum rate and/or transition tariffs." (Exhibit 3, p. 2.)

During the proceeding the staff developed another exhibit which identified a total of 35 zones, which appeared to the staff to be the least number of geographic zones that can be identified from all the present minimum rate tariffs. (Exhibit 7.)

^{2/} The cost relationships indicated for MRT 2 in Exhibit 6 are reasonably representative of the cost relationships which pertain to transportation performed under other minimum rate tariffs.

Having limited the scope of this proceeding to the transportation furnished under MRT 2, 1-B, 9-B, and 19 (General Commodities) and MRT 6-B and 13 (Tank Vehicles), we may now reduce the staff's proposal of 35 zones down to 6 zones for general commodities and 5 zones for tank vehicles. (Exhibit 7, pp. 6-7, 11-13.)

Even fewer zones were suggested by Thomas F. Herman, the president and chief executive officer of Delta California Industries (Delta). He testified that "there is for Delta but one wage paid statewide for each of its classifications of employees prescribed by the Teamster contract under which all freight handled by Delta must move." (Exhibit 11, p. 3.) He further stated that "for Delta and, in fact, for any multiterminal carrier of general freight in California, there is only one zone and one 'prevailing wage' at any given time for each classification of employee." (Ibid.) Furthermore, he testified that "because of the competitive situation, carriers using nonunion employees still pay wages which are at or near the Teamster rate and that any real difference would be minimal." (Ibid.)

The testimony of Bruce Poyer, an economist, who appeared on behalf of the Teamsters, was similar to that of Delta. Mr. Poyer was critical of the staff's complex methodology. He stated:

"The Commission staff proposes to determine a great variety of different prevailing wages--which may total as many as the number of different job classifications...times a great number of geographical zones times many different transportation services. These variables are treated with great concern in the staff proposals, but other variables that appear to have more relevance to prevailing rates are ignored--like the type of equipment operated." (Exhibit 9, p. 2.)

Consistent with Delta's testimony, Poyer testified that there is a close relationship between union and non-union wages and benefits. He stated:

"Third, prevailing wages and benefits in for-hire trucking in California should be related to labor markets--and particularly to the markets which

predominate in the setting of wages and benefits. The private parties to collective bargaining agreements in the for-hire trucking industry in this state and elsewhere in the country have a long history of determining what prevailing wages and benefits will be for union employees. Their determinations result in readily available data in the form of written contract provisions, which should be the primary starting point in the determination of wages and benefits actually prevailing for employees in the industry.

"Negotiated contract rates also have an enormous impact on non-union wages and benefits. This is particularly true in industries which require skilled workers with good work records. In trucking, not only is expensive equipment involved, but the owners can incur considerable liability from careless operation of this equipment.

"Non-union carriers must bid against negotiated union rates to attract competent employees, and then must stay close to negotiated rates if they want to continue to avoid unionization." (Exhibit 9, p. 5.)

Also Poyer agrees with Delta that there should be very few geographic zones. He states:

"For line work in the for-hire trucking industry, there should be only one geographical zone for the State of California. For pick up and delivery work there should be three (3) zones: (1) the Greater Bay area, as defined in the labor agreement of Joint Council 7 of the Teamsters; (2) the Los Angeles metropolitan area, as defined in the labor agreement of Joint Council 42 of the Teamsters; and (3) the valley areas of the State, as defined in the labor agreement of Joint Council 38 of the Teamsters." (Exhibit 9, p. 6.)

Finally, Poyer proposes the following methodology for determining prevailing wage rates:

"Within each of these zones, it would be appropriate methodology and procedure first to specify the major job classifications set forth in existing collective bargaining agreements (including jobs classified by type of equipment) as those to be used in the prevailing rate determination; and secondly, to relate these classifications to the leading types of trucking services performed in the various zones; and third, to devise machine or computer processing forms on which to record data to be furnished by all employers about the prevailing union or non-union wages and benefits being paid to employees." (Exhibit 9, p. 7.)

The Commission perceives little relationship, if any, between the geographic zones suggested by the staff and the labor costs incurred to perform transportation services within those zones. We, therefore, believe the approach suggested by Delta and the Teamsters to be the more reasonable in that it is simple, easy to administer, and less costly. While one may argue for a single zone based upon the close similarity among the wage rates now employed in the three Teamster zones, there are differences and they could be more significant in the future depending upon labor-management negotiations. We therefore find it appropriate to adopt for purposes of determining the prevailing wage the following:

Line work shall be considered one geographic zone for the entire State of California. Pickup and delivery work shall have three (3) zones which are (1) the Greater Bay area; (2) the Los Angeles metropolitan area; and (3) the valley area of the State or those portions thereof not included in (1) and (2).

5. What types or classes of transportation services should be distinguished for purposes of separate analysis?

Initially, the staff proposed that transportation services should be distinguished as they appear in Appendix B, subject to additions, changes, or deletions depending upon the results of the staff studies. Appendix B consists of a list of between 26 and 39 services, depending upon whether subcategories are considered separate services. In later Exhibit 7 the list of services was reduced to 9 as follows:

1. General Commodities.
2. Property transported in exclusive use of equipment.
3. Petroleum and petroleum products, liquid, in bulk, in tank vehicles.
4. Transportation in vacuum-type and pump-type tank vehicles.
5. Used household goods.
6. Portland or similar cements.
7. Uncrated new furniture.
8. Motor vehicles in secondary movement.
9. Property transported in dump truck equipment.

We believe, consistent with the testimony of the Teamsters, that labor costs, in most cases particularly in the general freight area, vary not as a function of the type of commodity transported, but as a function of the type of equipment operated. As a consequence, it is reasonable for the staff to survey employers to determine prevailing wages on the basis of the type of equipment operated rather than the commodity transported.

6. What procedure, consistent with the intent and purpose of Decision No. 90354, should be adopted for filing and evaluating complaints filed with respect to individual carrier rates?

The staff proposes that complaints with respect to carrier filed rates which are in effect can best be handled by a complaint procedure similar to the one now used by the Commission. Accordingly, the staff proposed that Rule 9 of the Commission's Rules of Practice and Procedure be amended to make the present rule subsection (a) and to add subsection (b) as follows:

- "(b) A complaint may be filed by any interested party, as described in paragraph (a) hereof, setting forth any rate, charge or provision affecting any rate or charge, of any highway permit carrier, in violation, or claimed to be in violation, of any provision of law (including P.U. Code, Section 3662) or of any order or rule of the Commission, except as provided below:
- (1) The complainant must show that it is affected by the rate, charge or provision complained of.
 - (2) No complaint shall be entertained by the Commission as to the reasonableness of any rate, charge or provision of a highway permit carrier if such rate has been specifically found to be reasonable by the Commission, unless the complaint sets forth relevant factors which have changed since the Commission made such finding." (Exhibit 4, p. 4.)

Several parties took exception to the requirement that the complainant must show that it is "affected". It is not clear, from the record what purpose this refinement was intended to serve, nor was the term defined.

Accordingly, subsection (b)(1) will not be adopted.^{3/} CTA contends that subsection (b)(2) is in conflict with certain general statements in Decision No. 90354.^{4/} CTA fears that some rates will be presumed reasonable by virtue of such language and thus be immune from attack by complaint. This result was not intended, as the staff's proposed Rule 9(b)(2) makes clear. Unless the Commission has specifically found a rate to be reasonable it will be subject to challenge. Moreover, a rate previously found reasonable will be subject to challenge if the complaint alleges changed circumstances. Finally, a rate is not specifically found reasonable merely because it is filed with the Commission and becomes effective either upon filing or after a certain time has elapsed. Such a rate is subject to challenge without a showing of changed circumstances. It is only after a rate has been approved by resolution or has been the subject of a contested proceeding and the Commission has issued a formal decision specifically finding that the rate is reasonable that a further challenge to the rate must be accompanied by allegations of changed circumstances.

The Commission concludes that the staff's proposed Rule 9(b)(2) is proper and should be adopted as part (c) to Rule 9 with the following modification: The word "permit" should be struck so that the rule is applicable to both common and permit carriers.

With respect to carrier filed rates not yet in effect the staff proposed that such rates be protested by means of a petition for investigation and suspension. The staff suggested

^{3/} We doubt that in practice complaints will be filed merely to vindicate abstract legal principles.

^{4/} "Rates negotiated by shippers and carriers and evidenced by binding contracts will be presumed reasonable." "Any rate that is reduced to meet the rate of a motor carrier competitor is in the public interest..." (D:90354, at 54.)

minor changes to General Order No. 113-A which would make it applicable to contract carriers as well as to common carriers. (See Appendix C.) The changes are reasonable and should be adopted.

The staff proposed that complaints and petitions for investigation and suspension first be referred to the staff for review and attempted informal resolution. If informal resolution is not possible, the staff will recommend that the matter be dismissed or set for hearing. In the later case, the staff would assist in the development of the record.

The issue of which party to a complaint proceeding should have the burden of proof was not addressed by the staff. CTA is of the opinion that complainants and petitioners in investigation and suspension proceedings will not have sufficient information to allege and prove that a challenged rate fails to support the prevailing wage rates applicable thereto. CTA points out that operational data concerning rate filing carriers is not information of public record or publicly available, neither do CTA nor other carrier associations possess such data.

We believe the answer to this concern was suggested in Decision No. 90354 at page 65 where we stated:

"It would seem odd that a carrier wishing to make an evaluation of a competing carrier's rate filing would not have some sort of comparative data if that were its competitive area of transportation."

Clearly, the comparative data to which we referred was data from the protestant carrier's own operations. Accordingly, allegation and substantiation of the protestant carrier's inability to render a particular transportation service at a particular rate and still support the prevailing wage rates applicable thereto will constitute enough of a showing to support the filing of a petition for investigation and suspension or a formal complaint. Thereafter, the Commission's discovery process is available to complainant to obtain the defendant's actual costs as they relate to the challenged rate. Complainant retains the burden of proving the unlawfulness of defendant's rate.

The Interim Period

Two questions not heretofore posed but nevertheless important in this program are, when will the prevailing wage data be published and what will be utilized in the period before the first prevailing wage study is published?

Based upon this record it is clear that the sampling, data collection, and processing will take some time initially. Thereafter, continuing collection and processing should not involve inordinate delay. We will direct staff to develop and publish prevailing wage data for use in transportation rate justification showings on a semiannual basis on July 1, 1980 and January 1, 1981 and each succeeding six months thereafter. Since the Teamster contracts are presently modified on April 1 and October 1 of each year the dates we have picked will allow for use of the most current Teamster wage date in each prevailing wage publication.

During the period before staff publishes the first prevailing wage determination and after April 30, 1980 the current data on which we anticipate implementing our reregulation program, we find that the wage and fringe benefits currently reflected in the minimum rate tariffs, and which happen to be the Teamster contract rate, should continue to be utilized. This action will cause no disruption in the rate filing process after April 30, 1980 and should provide an easy transition to the use of the published prevailing wage data to be developed by staff.

The Messenger Carriers

Messenger service has been described as a taxi service for packages. It involves radio dispatched small vehicles, which pick up a single shipment, and transport it immediately to its destination. Shipments may weigh from a few ounces to several hundred pounds, but the majority of shipments are under 50 pounds. A survey of a typical month's traffic of one messenger carrier showed that 88% of pickups were made within one hour of the call for service. Rates for the service are generally based on mileage rather than weight. The service is usually provided in small vehicles such as Datsun or Toyota pickup trucks, passenger vehicles, or vans. The driver's vehicle is leased by the messenger carrier for a specified amount per mile. The driver is also guaranteed an hourly wage which is generally close to the legal minimum wage. In addition to the wage and lease payments the driver receives an incentive wage bonus equal to the amount by which 50% of the revenues generated from the shipments handled by the driver exceed the driver's total hourly wage plus lease payments. Depending upon driver efficiency, wages, expressed as hourly pay, vary greatly. In the one case cited payroll records of one messenger carrier were analyzed for one week in September 1979. It was determined that the highest hourly wage paid to a driver was \$10.80, while the lowest was \$4.71.^{5/} The hourly wages of the other drivers were distributed fairly evenly between the high and low hourly wages. These wage levels are in marked contrast to wage levels required by Teamster contracts in California, which require pay of \$10.82 to \$11.50 per hour.

^{5/} The hourly wage for each driver was determined by adding the hourly wages to the wage bonuses and dividing by the hours worked.

It is clear that neither the wages nor the methods of operations of the messenger carrier industry resemble the general freight less-truckload (LTL) industry. While a prevailing wage could be mathematically determined for the messenger carrier industry using a statistical average, that result would not typify the wages paid in the industry, as would the Teamster wages in the LTL industry. Nor would Teamster wages be typical of the wages paid in the messenger industry. In addition, imputation of Teamster wage levels to messenger carriers would necessitate rate increases which would be likely to decrease the volume of for-hire business and increase the amount of proprietary carriage with no net benefit to carriers, shippers, organized labor, or society in general. Because no special vehicles, equipment, licenses, or skills are required to transport packages, customers can easily divert their business to their own secretaries or other employees, although this may prove less efficient and more time-consuming.

In many ways the messenger carrier industry resembles self-employment. While some drivers are earning hourly pay approximating Teamster wages, others accept much lower wage levels in exchange for the psychic benefits of working at their own pace and a sense of relative independence.

The Commission concludes that the prevailing wage concept is inappropriate for the messenger carrier industry and therefore will utilize the actual labor cost of such carriers in determining the reasonableness of the transportation rate level such carriers must justify.

Findings of Fact

1. Factual data and operating statistics regarding the operations of owner-operators are not available in a manner that would be appropriate for making prevailing wage determinations.

2. Owner-operators provide services in a somewhat different manner than do employees.

3. The wages of drivers and platform workers constitute the principle component of direct labor costs. The contribution of raters and billers to direct labor costs is too insignificant to require the determination of prevailing wage rates for these employee classifications.

4. Wages in the highway carrier industry vary principally as a function of the type of equipment operated rather than as a function of the type of commodity transported.

5. Prevailing wage data should be published by our staff semiannually on July 1, and January 1 of each year commencing July 1, 1980.

6. Prevailing wage is:

- (1) The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in transportation in the geographic zone similar to the proposed undertaking.
- (2) In the event there is not a majority paid at the same rate, then the rate paid to the greater number: Provided, such greater number constitutes 30 percent of those employed, or
- (3) In the event that less than 30 percent of those so employed receive the same rate, then the average rate.

7. Geographic zones for prevailing wage determination shall be as follows:

Line work shall be considered one geographic zone for the entire State of California. Pickup and delivery work shall have three (3) zones which are (1) the Greater Bay area; (2) the Los Angeles metropolitan area; and (3) the valley areas of the State or those portions thereof not included in (1) and (2).

8. Prior to publication of the first prevailing wage determination on July 1, 1980 the then current Teamster wage and fringe benefit rates shall be utilized as the prevailing wage in transportation rate justification proceedings.

Conclusions of Law

1. The following order should apply only to the types of transportation now subject to the Commission's reregulation program, i.e., general commodities (MRTs 1-B, 2, 9-B, and 19) and tank vehicles (MRTs 6-B and 13) transportation.

2. The Commission's prevailing wage determinations should not be interpreted to require the payment by a carrier of that wage.

3. The publication of increases in Commission determined prevailing wages should not be interpreted to require rate increases.

4. The primary use to which prevailing wage rates shall be put will be in justifying rate increase and decrease filings and in evaluating such filings when challenged.

5. The staff should administer the prevailing wage studies, rather than the Department of Industrial Relations.

6. Owner-operator data should not be used in determining prevailing wage.

7. Staff surveys and studies to be conducted hereafter should marshal data for determining prevailing wage and fringe benefit rates only for drivers and platform workers.

8. The staff should survey employers to determine prevailing wages on the basis of the type of equipment operated rather than the commodity transported.

9. The staff's proposed complaint procedure, with the amendment mentioned in the discussion, is reasonable and should be adopted.

10. The staff's proposed investigation and suspension procedure and proposed General Order No. 113-B are reasonable and should be adopted.

11. Rates for messenger carriers which transport small shipments in vehicles of a gross weight of 4,500 pounds or less for delivery within 24 hours will be evaluated on the basis of actual labor cost rather than the prevailing wage methodology adopted herein.

12. The staff should be directed to initiate and complete its prevailing wage studies based upon the principles outlined above.

13. In order to provide the industry the greatest time interval with an effective order herein prior to April 30, 1980, this decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The staff is directed to initiate and conclude prevailing wage surveys and studies based upon the principles enunciated herein.

2. General Order No. 113-B, attached hereto as Appendix C, is adopted. However, its effectiveness is hereby suspended until further order or resolution of the Commission. While the effectiveness of General Order No. 113-B is suspended, General Order No. 113-A shall remain in full force and effect.

3. Rule 9 of the Commission's Rules of Practice and Procedure, as modified pursuant to the staff's recommendations and as further modified as described in the discussion, is hereby adopted. However, its effectiveness is hereby suspended until further order or resolution of the Commission. While the effectiveness of Rule 9 (amended) is suspended, Rule 9 as currently framed shall remain in full force and effect.

The effective date of this order is the date hereof.
Dated JAN 15 1980, at San Francisco, California.

John E. Guyon
President

Richard D. Hoelle

Clare T. P. ...

Lawrence M. James
Commissioners

I abstain

Vernon L. Steyer

APPENDIX A

LIST OF APPEARANCES

Respondents: Loughran & Hegarty, by Thomas M. Loughran, Attorney at Law, for Jet Delivery, Inc., One-Two-Three Messenger Service, Inc., ABC Messenger Service, and Rocket Messenger Service; Armand Karp, for Chacon Trucking, Inc., Frank Hlebakos & Sons Transportation Co., Inc., Walton Distribution Services, Marino Brothers Trucking Company, and J. D. Drayage Company; Andrew J. Skaff, Attorney at Law, John McSweeney, and Joseph MacDonald, for California Motor Express and Delta Lines, Inc.; Handler, Baker, Greene & Taylor, by Marvin Handler, Attorney at Law, for Westside Transport, Inc., Noerr Motor Freight, Hawkey Transportation, Lodi Truck Service, Logistics Express, Inc., Harry McKenzie Trucking, Preston Trucking Company, The Paper Transport Company, Ditto Freight Lines, Pozas Brothers Trucking, Bill Rackley Trucking, Pellco Trucking, American Transfer Company, Groskopf-Weider Trucking Company, Osterkamp Trucking, Inc., Conti Trucking, Inc., and Pete Kooyman Trucking; James E. Dellamaggiore, for Viking Freight System, Inc.; and Henry Bartolo, for Jet Delivery, Inc.

Interested Parties: Brundage, Davis, Frommer & Jesinger, by Albert Brundage, Attorney at Law, for Western Conference of Teamsters and California Teamster Public Affairs Council; Richard W. Smith, Attorney at Law, for California Trucking Association; Thomas J. Hays, for California Moving & Storage Association; Asa Button, for Spreckels Sugar Division, Amstar Corporation; Graham & James, by David J. Marchant, Attorney at Law, for California Carriers Association; Philip G. Blackmore, for California & Hawaiian Sugar Company; Richard N. Bona, for Mobil Oil Company; J. J. Butcher, for California Manufacturers Association; Michael W. Harvath, for Hunt Wesson Foods, Inc.; Allen Crown, Attorney at Law, and R. O. Hubbard, for California Farm Bureau Federation; Frank Spellman, for himself; William D. Mayer, for Cannery League of California; Norman I. Molaug, for J. C. Penney Co., Inc.; George Smith, for Smith Transportation; and M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.

Commission Staff: Patrick J. Power, Attorney at Law, and W. P. Campana.

INITIAL STAFF SUGGESTED TRANSPORTATION SERVICES

In response to Issue 5 in OII 53, initially the transportation services should be distinguished as set forth below, subject to additions, changes or deletions depending upon results of the studies outlined under Methodology in the report.

General Commodities:

Less than Truckload (shipments weighing not over 9,999 pounds)

Truckload, (shipments weighing 10,000 pounds and over)

Temperature Controlled Services

Canned Goods

Chips, Wood in bulk

Containers, Packaging Viz.:

Bottles, plastic

Cans, aluminum

Cans, composite, fibreboard, paper or paperboard

Cans, sheet steel

Can Ends, aluminum steel or tin

Glassware viz.:

Bottles, Carboys, Demijohns or Jars

Gypsum, Wallboard

Lumber, Plywood, Forest Products and Related Articles

Poles, Piling and Related articles

Oil, Sewer, Water, Gas or Geothermal Steam Well Outfits and Supplies

Sawmill Refuse

Soap and Related Articles

Sugar, Granulated in bulk

Livestock, ordinary

Used Household Goods, Personal Effects and Office, Store and

Institution Furniture,

Fixtures and Equipment

Petroleum and Petroleum Products, liquid, in bulk,
in tank type equipment

Fresh Fruits and Fresh Vegetables

Portland and Similar Cements

Uncrated New Furniture

Automobiles, in Secondary Movement

Commodities Transported in Vacuum and Pump Type Tank Vehicles.

Hay, Fodder and Straw

Grain, Rice and Related commodities

Oilseeds

Commodities transported in exclusive use of equipment

Mining, Building, Paving and Construction Materials,
in bulk, in dump truck equipment viz.:

Ore

Rock, Sand and Gravel

Asphalt, Asphaltic Concrete

Trailer Coaches and Campers

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Replies to petitions shall include the title of the petition as filed with the Commission and the (I. and S.) case number assigned to said petition by the Commission's Secretary Executive Director. The original and twelve copies of each petition, amendment or reply thereto shall contain a certification that copies have been served in accordance with Rule 3 hereof, specifying the parties so served.

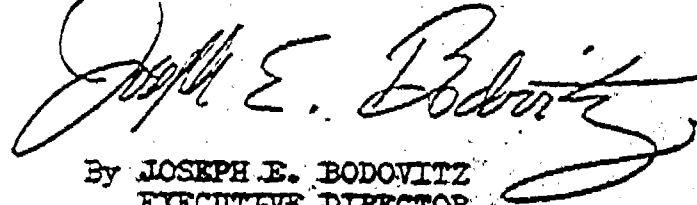
RULE 2 - WHEN FILED. Petitions requesting suspension of tariffs, schedules or contracts will not be considered unless made in writing and filed with the Commission at San Francisco or Los Angeles in accordance with the provisions of these rules. Such requests for suspension of rates or provisions published on statutory at least thirty days' notice shall reach the Commission at least twelve days before the effective dates of the tariffs, schedules, contracts, or parts thereof to which they refer. Petitions for suspension of rates or provisions published on less than thirty days' notice shall be filed with the Commission as soon as possible, and in no event less than five days prior to the effective dates of tariffs, schedules, contracts, or parts thereof to which they refer. Replies to petitions shall be filed and served within five days after service of the petition for suspension, and not later than the day prior to the effective date of the protested tariff schedule, contract, or part thereof.

RULE 3 - SERVICE. In addition to the original and copies to be filed with the Commission, one copy of each petition shall simultaneously be served upon the carriers concerned or their publishing agent, and upon other persons known to be interested, and one copy of each reply shall be served upon each petitioner or the authorized representative of such petitioner, and upon other persons known to

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be interested. Service shall be made personally or by the deposit in the United States mail of a sealed envelope with first class postage prepaid, containing a true copy of the documents to be served and addressed to the party to be served at the last known address of such party.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA



By JOSEPH E. BODOVITZ
EXECUTIVE DIRECTOR