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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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 IN RE: APPLICATION OR ERIC F. :
 WRIGHT : DOCKET NUMBER
 For the right to begin to :
 transport, as a common carrier, by : A-00113409
 motor vehicle, household goods in :
 use, between points in the counties :
 of Bucks, Delaware, Montgomery, and :
 Philadelphia, and from points in :
 said counties to other points in :
 Pennsylvania. :
 :
 Initial Hearing. :
 -----X

Pages 1 through 12

DOCKETED
MAY 14 1997

State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania
Hearing Room #1
Tuesday, April 29, 1997

The above entitled matter met
pursuant to notice at 10:00 a.m.

BEFORE: THE HONORABLE CYNTHIA W. FORDHAM
Administrative Law Judge

KEENAN REPORTING SERVICE
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MANHEIM, PENNSYLVANIA 17545

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1 APPEARANCES:

2 SCHUBERT, BELLWOAR, CAHILL & QUINN
3 BY: RICHARD T. MULCAHEY, JR., ESQUIRE
4 Two Penn Center
5 Suite 1400
6 Philadelphia, Pennsylvania 19102
7 For Eric F. Wright, Applicant

8 WILLIAM H. R. CASEY, ESQUIRE
9 99 East Court Street
10 Doylestown, Pennsylvania 18901
11 For Clemmer Moving & Storage, Inc.
12 and Shelly Moving & Storage, Inc.
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ADMINISTRATIVE LAW JUDGE CYNTHIA W. FORDHAM:

1 Good morning, I'm Administrative Law Judge Cynthia
2 Williams Fordham, and this the time and place for a
3 prehearing conference in the matter of the
4 Application of Eric F. Wright at Docket Number
5 A-00113409. I note for the record the appearance of
6 Richard T. Mulcahey, Junior, Esquire for Eric F.
7 Wright, the Applicant, and William H. R. Casey,
8 Esquire for Clemmer Moving and Storage and Shelly
9 Moving and Storage, Inc.
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11 There has been an application filed by Mr.
12 Wright and protests have been filed by two clients of
13 Mr. Casey, Clemmer Moving and Storage and Shelly
14 Moving and Storage, Inc. After the protest was
15 filed, there was a motion to strike filed by Mr.
16 Mulcahey in December of 1996. That motion was not
17 dealt with, assignment was made to me, and in
18 approximately March of '97, I sent out a prehearing
19 order because this was originally set up for a
20 hearing, not a prehearing conference. Mr. Mulcahey
21 contacted me and indicated that there was an
22 outstanding motion to strike and indicated that Mr.
23 Casey did not have an objection to changing this to a
24 prehearing conference, therefore, this was changed to
25 a prehearing conference to address the motion and any

1 other preliminary matters that we have. Subsequent
2 to the change, Mr. Casey did submit an answer to the
3 motion to strike.

4 At this time I'd like first Mr. Mulcahey and
5 then Mr. Casey to indicate, first of all, any
6 settlement negotiations and whether you want to
7 proceed with the motion at this time or not, Mr.
8 Mulcahey.

9 MR. MULCAHEY: Well, Your Honor, I was sort
10 of placed in an awkward position that there was a
11 pending motion that had been pending since December.
12 While I am inclined to enter into negotiations with
13 Protestants for restrictive amendment, it may not be
14 in the best interest of my client to do so with the
15 pending motion, and that's essentially why I
16 requested a prehearing conference. And I indicated
17 to Mr. Casey that we were certainly willing to enter
18 into negotiations but this pending motion is
19 something that we believe may not necessitate
20 negotiations if it's acted upon.

21 And Your Honor, I just have some regulations
22 that I'd like to hand up to you and to Mr. Casey,
23 just two things that I'd like to point out, Your
24 Honor. Under 5.101 (d), an answer should have been
25 filed back in December, ten days after the filing of

1 the motion, and that under 5.103(d), if the
2 Commission hasn't acted upon the motions, the
3 presiding officer -- in this case, Your Honor --
4 would be authorized to rule on the motion. And if
5 you would just direct your attention to (d)2, that if
6 a motion that would be granted would dispose of a
7 party's rights, it should be acted upon before taking
8 any further testimony, and that is why I essentially
9 asked for this hearing to be scheduled as a
10 prehearing conference.

11 JUDGE FORDHAM: Okay. Mr. Casey?

12 MR. CASEY: That may be why he asked for it,
13 but that's not what he told me. We did intend and I
14 was lead to believe we were entering into
15 negotiations for restrictive motion; after all, this
16 applicant has asked for all the Philadelphia,
17 Delaware Valley region in its initial application.
18 However, the fact that the hearing was scheduled, in
19 my mind I thought the motion was disposed of by
20 nonaction by the board by the PUC by assigning it for
21 a hearing. Only when I saw the letters come did I
22 realize that Mr. Mulcahey was relying purely on his
23 motion and not entering into negotiations. The PUC
24 code, the law itself, aside from the motions -- it's
25 not clear to me that the PUC itself didn't have

1 authority to rule on that motion prior to assigning
2 you to this case. It seems to me their point was
3 based on merits and if the motion was still out,
4 that's why I sent my answer when I realized what he
5 was trying to do.

6 JUDGE FORDHAM: In your answer, you refer to
7 having sent some of the documents that were missing
8 from the initial protest. I don't see those
9 documents. Were they sent to Harrisburg also?

10 MR. CASEY: Yes.

11 JUDGE FORDHAM: Did you also file your answer
12 in Harrisburg?

13 MR. CASEY: Yes, I did. Are you talking
14 about the rights?

15 JUDGE FORDHAM: Yes.

16 MR. CASEY: Okay, I think I sent them to
17 Richard before, I don't think I sent them to
18 Harrisburg.

19 MR. MULCAHEY: That's correct, Your Honor.
20 Mr. Casey sent me copies of the rights on March 20,
21 1997.

22 MR. CASEY: That's when we were starting to
23 talk about a restrictive amendment, but that's what I
24 thought.

25 MR. MULCAHEY: I just want to make sure it's

1 clear that we certainly do not oppose entering into
2 negotiations; in fact, we would like to do that.
3 However, we had this motion that has been pending
4 since December and I think there is a conflict of my
5 client's interest in entering into negotiations
6 before a pending motion is acted upon.

7 JUDGE FORDHAM: I'd just like to say for the
8 record that I did not have the complete record at the
9 time; in fact, when I sent out the prehearing order,
10 I just was aware who the parties were and an
11 application in protest had been filed. I had later
12 received the records from Harrisburg, and as I
13 indicated, the protest was included in the
14 application and the motion, and that's all I got from
15 the Harrisburg office.

16 MR. CASEY: Your Honor, I think certainly in
17 the spirit of the law, the Applicant was notified in
18 a timely manner of my client's protest. It is true,
19 there were some technical problems with the protest
20 but they were identified, and the fact that they
21 encompassed a good portion of the area that he's
22 seeking or all of it was also untimely, and
23 therefore, I think the protest, assuming that the PUC
24 scheduled a hearing, I think they meant to allow it
25 to go to a hearing. The issue is need, the same

1 issue; what is the problem, who has been prejudiced
2 here?

3 JUDGE FORDHAM: Mr. Mulcahey, are you saying
4 that you have been prejudiced or just that you want
5 an answer to the motion prior to proceeding?

6 MR. MULCAHEY: I was hoping, Your Honor,
7 there would be an answer filed to the motion, and
8 eventually the Commission would act upon it, and if
9 the Commission didn't act upon it, then according to
10 the regulations that once a presiding officer was
11 selected, that the Commission would forward the file
12 to him or her and that the Administrative Law Judge
13 would be in a position to review the motion and the
14 answer, and I know that that didn't happen in this
15 case and that's one of the reasons why I requested
16 that it be converted to a prehearing conference.
17 Certainly we didn't want to close the door to
18 negotiations, but I think the Commission has placed
19 this applicant in a very difficult position of
20 bargaining against his own interest with this pending
21 motion.

22 MR. CASEY: I don't agree with that at all.
23 He's got to prove need, he's asked for the whole
24 Delaware Valley.

25 JUDGE FORDHAM: If I understand this right,

1 Mr. Casey, Clemmer Moving and Storage "transports
2 household goods and office furniture in use, between
3 points in the City and County of Philadelphia," and
4 Shelly Moving and Storage "transports household goods
5 in use and furniture between points in the borough of
6 Pottstown, Montgomery County, and within ten (10)
7 miles by the usually traveled highways of the limits
8 of the said borough, and from points in the said area
9 to points within seventy-five (75) miles by the
10 usually traveled highways of the limits of the said
11 borough;" and also, "from points not exceeding
12 twenty-five (25) miles from the borough of Pottstown,
13 Montgomery County, excluding Delaware County, to
14 points in the borough of Pottstown, Montgomery
15 County, to points in the borough of Pottstown,
16 Montgomery County, and within ten miles by the
17 usually traveled highways of the limits of said
18 borough;" and all of these portions are included in
19 the part that Mr. Wright is seeking which is between
20 points in the counties of Bucks, Delaware, Montgomery
21 and Philadelphia, and from points in said counties to
22 points in Pennsylvania, is that correct?

23 MR. CASEY: Yes, Your Honor, except Clemmer
24 basically has the Diamond Authority which is the
25 authority running through the Morrisville and Bucks

1 County through Doylestown then to Norristown then to
2 West Chester, so parts of Bucks County Clemmer does
3 not have rights in and he's asked for the entire
4 Bucks County.

5 JUDGE FORDHAM: Okay. Those were the
6 questions that I had after reviewing the motion and
7 also the answer to the motion. I don't have any
8 other questions right now but I don't want to rule on
9 the motion from the bench, I will issue a written
10 decision regarding that. So at this point, I don't
11 think we can go any further.

12 Are there any other things that we need to
13 discuss before I rule on the motion, Mr. Mulcahey?

14 MR. MULCAHEY: No, Your Honor, but since Mr.
15 Casey is here, we certainly will spend some time
16 discussing maybe a possible resolution to the case,
17 and if we do, we will contact Your Honor, thus
18 necessitating no action on the motion.

19 JUDGE FORDHAM: Okay. Mr. Casey, do you have
20 anything else?

21 MR. CASEY: No.

22 JUDGE FORDHAM: Okay, thank you very much.
23 If you do come to a resolution, please notify me, and
24 as you indicated there will be no need for me to rule
25 on the motion, but if I don't hear from you, I will

1 rule on the motion. Thank you.

2 MR. MULCAHEY: Thank you, Your Honor.

3 - - - - -

4 (Hearing concluded at 10:34 a.m.)

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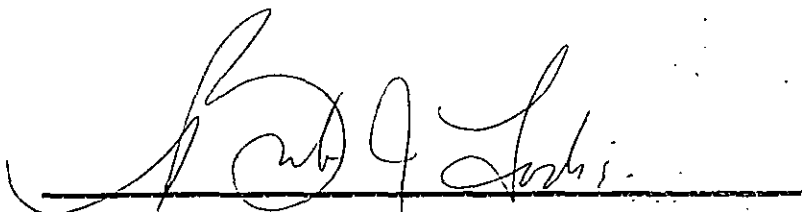
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I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on January 16, 1995, and that this is a correct transcript of same.



Barbara J. Lodise
Court Reporter

Notarial Seal
Barbara J. Lodise, Notary Public
Hulmeville Boro, Bucks County
My Commission Expires March 26, 2001
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