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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00113673 Butcho, Inc. t/d/b/a Thomas Gerrity
Moving & Storage. Initial hearing.

- - - - -

Friday,
July 25, 1997
10:00 a.m.

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In re: A-00113673 Butcho, Inc. t/d/b/a Thomas Gerrity
Moving & Storage. Initial hearing.

- - - - -

Stenographic report of hearing held in
Room 318, State Office Building
Scranton, Pennsylvania

- - - - -

Friday,
July 25, 1997
10:00 a.m.

RICHARD M. LOVENWIRTH, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

KENNETH ZIELONIS, ESQUIRE
Stevens & Lee
208 North Third Street
Suite 310
PO BOX 12090
Harrisburg, Pennsylvania 17108-2090
Appearing on behalf of Applicant

CHRISTOPHER B. JONES, ESQUIRE
406 Jefferson Avenue
Scranton, Pennsylvania 18510
Appearing on behalf of Santoro Enterprises, Inc.

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1 JUDGE LOVENWIRTH: The record will indicate it's now
2 10 after 10. Although, I did receive a call from the young
3 lady who identified herself as Attorney Jones'-- Christopher
4 Jones' secretary who informed me that he is on his way. I,
5 nonetheless, will open the record. But we won't open the
6 evidentiary record.

7 I'll just introduce into the record the pleadings
8 which have been filed. So we will now commence the hearing
9 concerning the application --

10 MR. JONES: Attorney Chris Jones, Santoro Enterprises,
11 Inc.

12 JUDGE LOVENWIRTH: Do you want to sign the appearance
13 sheet, please.

14 MR. JONES: Sure.

15 JUDGE LOVENWIRTH: I'll spread upon the record a
16 summary of the history of these proceedings. In this case,
17 on January 17th, 1997, an application for the approval of
18 the transfer of the rights issued to Fratco, F-r-a-t-c-o,
19 Inc. doing business as Thomas Gerrity Moving and Storage at
20 Docket Number A-00109996 to Butcho, Inc. was filed.

21 More specifically, Butcho Inc.'s application for the
22 transfer of the certificate of Fratco Inc. trading and doing
23 business as Thomas Gerrity Moving and Storage is for the
24 right to begin the transport, as a common carrier by motor
25 vehicle, household goods in use, between points in the City

1 of Scranton, Lackawanna County and within the limits of said
2 city; and household goods in use from points in the City of
3 Scranton and within three miles of said city to other points
4 in Pennsylvania, and vice versa. To be more precise, this
5 is a application of Butcho, Inc. trading and doing business
6 as Thomas Gerrity Moving and Storage.

7 Now, the Commission set as a date for the filing of
8 protest March 3rd, 1997. And an advertisement appeared in
9 the Pennsylvania Bulletin on February 8th, 1997 which
10 advertised both the filing of the application as well as the
11 last date for filing of protest.

12 Thereafter, one letter of protest was filed on behalf
13 of Santoro Enterprises, Inc., a Pennsylvania Corporation
14 trading and doing business as Thomas Gerrity, Jr., Moving
15 and Storage Company which alleges that the said protestant
16 holds operating authority at Docket Number A-00113019.

17 Now, what I'm going to do, gentlemen, so there is no
18 confusion, I'm going to call the protestant Santoro. And
19 I'm going to call the applicant Butcho for the sake of
20 brevity and the sake of confusion. That's all that's
21 happened in this case.

22 Oh, there is one other thing that happened in this
23 case. This case was assigned to Judge Weismandel who
24 entered a prehearing order dated July -- rather issued on
25 May 28th, 1997.

1 MR. JONES: Your Honor, if I may, as a result of that
2 prehearing order entered May 28th, 1997, I would like to
3 present to you a motion to dismiss the application for
4 failure to comply with the prehearing order.

5 JUDGE LOVENWIRTH: We will get to that in a moment. I
6 will address your motion. The hearing notice was sent
7 advising the parties that there would be a hearing on July
8 25th, 1997 at 10 a.m. The appearance sheet reads that here
9 on behalf the applicant is Kenneth Zielonis. Good morning.

10 MR. ZIELONIS: Good morning, Your Honor.

11 JUDGE LOVENWIRTH: And the record will indicate that
12 here on behalf of protestant Santoro is its attorney,
13 Christopher B. Jones. Good morning, Mr. Jones.

14 MR. JONES: Good morning.

15 JUDGE LOVENWIRTH: Is there is a preliminary matter.
16 There is a motion that's just been submitted. Have you
17 filed in motion of record?

18 MR. JONES: I'm submitting it now, Your Honor. And it
19 will be filed with the Commission later in the day.

20 JUDGE LOVENWIRTH: Have you given Mr. Zielonis a copy?

21 MR. JONES: Yes, I have.

22 JUDGE LOVENWIRTH: Give me a minute to read it. It
23 doesn't have a caption on it. Otherwise, they wouldn't know
24 what to do with it.

25 MR. JONES: It's all listed in the body, the re line,

1 Your Honor.

2 JUDGE LOVENWIRTH: Paragraph three is nonsense because
3 Mr. Zielonis is a member of the bar.

4 MR. JONES: He is not a member of the bar?

5 JUDGE LOVENWIRTH: Mr. Zielonis is a member of the
6 bar. So I don't have to address the allegation in paragraph
7 three. Isn't that right?

8 MR. JONES: I never met nor did I speak with Mr.
9 Zielonis, Your Honor. So that ruling is yours and yours
10 alone.

11 JUDGE LOVENWIRTH: Well, if Mr. Zielonis isn't a
12 member of the bar, then he has perpetuated a very big fraud.

13 MR. JONES: I'm not holding that he is not a member of
14 the bar. I just said I'm unfamiliar with him.

15 JUDGE LOVENWIRTH: I understand that, Mr. Jones. Are
16 you a member of the bar?

17 MR. ZIELONIS: Yes, Your Honor, since 1984.

18 JUDGE LOVENWIRTH: You are a cub.

19 MR. ZIELONIS: That's right, Your Honor.

20 JUDGE LOVENWIRTH: I've been a member of the bar since
21 1962.

22 JUDGE LOVENWIRTH: What's your attorney ID Number,
23 please? You don't know it?

24 MR. ZIELONIS: I believe it's 419691.

25 JUDGE LOVENWIRTH: Thank you. Let's address paragraph

1 four. Did you give a list of witnesses, Mr. Zielonis?

2 MR. ZIELONIS: No, I did not, Your Honor. I wasn't
3 aware of the prehearing order.

4 JUDGE LOVENWIRTH: But you are aware of the Public
5 Utility Code.

6 MR. ZIELONIS: Yes, Your Honor. We have one witness
7 today.

8 JUDGE LOVENWIRTH: You have one witness. And who is
9 that witness?

10 MR. ZIELONIS: Mr. Paul Bobersky, who is the president
11 of Butcho.

12 JUDGE LOVENWIRTH: The reason you set forth in
13 paragraph four is not a meritorious reason, Mr. Jones. I
14 don't think. Because you knew or should have known that the
15 company was going to present a witness from the company who
16 was going to describe the company. That you knew or should
17 have known.

18 Now, had Mr. Zielonis had other witnesses here, for
19 example, or other witnesses who would testify other than the
20 company, who would testify as to the fitness, I wouldn't
21 dismiss the application. But I would disallow the testimony
22 of these witnesses.

23 MR. JONES: Thank you.

24 JUDGE LOVENWIRTH: Very Good. Now, I have in front of
25 me document dated June 9th, 1997 which is a notice of

1 appearance by Mr. Zielonis. Didn't you get that?

2 MR. JONES: Never served with that, Your Honor.

3 JUDGE LOVENWIRTH: There is a certificate of service
4 saying that you were. Same thing happened to me yesterday.
5 Somebody from PP&L who was on the certificate of service
6 said, I never got it.

7 MR. JONES: I have correspondence in my file go to
8 Attorney Notarianni. And I have telephone calls to Attorney
9 Notarianni's office as recent as yesterday.

10 JUDGE LOVENWIRTH: I'm not saying that you didn't get
11 it. Things get lost in the mail. Secretaries make
12 mistakes. Things get misfiled.

13 MR. JONES: Absolutely. I understand.

14 JUDGE LOVENWIRTH: I do want to present to you a copy
15 of a notice of appearance by which has attach to it a
16 certificate of service saying that Christopher B. Jones,
17 Esquire, 406 Jefferson Avenue, Scranton, Pennsylvania 18510
18 was served with this notice of appearance by Mr. Zielonis.

19 MR. JONES: Thank you, Your Honor.

20 JUDGE LOVENWIRTH: Would you like to look at that?

21 MR. JONES: I respectfully don't need to. But I'll
22 get a copy from the file.

23 JUDGE LOVENWIRTH: I'm going to deny your motion
24 noting exceptions. However, I don't want to hear from any
25 witnesses on behalf of the applicant expecting the applicant

1 itself.

2 MR. ZIELONIS: That's all the we have, Your Honor.

3 JUDGE LOVENWIRTH: Because that portion of the motion
4 is meritorious it doesn't mean that I'm going to dismiss the
5 application. But that does mean that I won't allow you to
6 present any other witnesses. So are there any other
7 preliminary matters?

8 MR. JONES: Your Honor, may I then request a
9 continuance of today's hearing because we are not in a
10 position to adequately litigate our case. We were not able
11 to exchange any documents, whatsoever, with opposing
12 counsel.

13 We didn't have the opportunity to confer with opposing
14 counsel. We have no idea what they are going to offer today
15 in terms of evidence. And that has hindered our ability to
16 present our case to you.

17 MR. ZIELONIS: We have an attorney here from
18 Harrisburg. The record indicated that you knew of his
19 existence. Judge Weismandel's order also imposed upon you
20 the duty to contact opposing counsel.

21 MR. JONES: I can show you correspondence here by
22 telephone records to Attorney Notarianni who filed the
23 notice.

24 JUDGE LOVENWIRTH: Attorney Notarianni, for the record
25 is N-o-t-a-r-i-a-n-n-i, Joseph Notarianni, Esquire.

1 MR. JONES: For the record, Your Honor --

2 JUDGE LOVENWIRTH: He certainly should have answered
3 your calls and said, Hey, I don't represent these people
4 anymore.

5 MR. JONES: Understood, Your Honor. Not only that, he
6 filed the notice on behalf the applicant. There is no
7 withdrawal of appearance as counsel to the applicant.

8 JUDGE LOVENWIRTH: This is what I'm going to do. I'm
9 going to deny your motion for continuance. I'm going to
10 give you the right to cross examine the witness at a later
11 time, maybe telephonically, because I don't want the
12 protestant to be at a disadvantage.

13 On the other hand, I don't want the applicant to pay a
14 learned, experienced, competent lawyer another time to
15 travel 250 miles. So we are going to take the applicant's
16 case today. There is only one witness. And there will be a
17 further telephonic hearing at which time you will be able to
18 cross examine the applicant's sole witness and present any
19 evidence you want.

20 MR. JONES: Thank you, Your Honor.

21 JUDGE LOVENWIRTH: That's my ruling. That way no one
22 will be prejudiced.

23 MR. JONES: One last procedural matter to address
24 before we move forward, Your Honor, that is with respect to
25 Judge Weismandel's May 28th, 1997 prehearing order. He

1 notes that the registration of the fictitious name Thomas
2 Gerrity Moving and Storage is not in the same name of the
3 applicant. It's registered to individuals.

4 JUDGE LOVENWIRTH: That's a question of fact.

5 MR. JONES: There has been nothing submitted on the
6 record or any document filed, Your Honor, which will
7 indicate that the corporate entity who filed the application
8 is the proper moving party.

9 JUDGE LOVENWIRTH: Maybe there will be. That's why we
10 are here.

11 MR. JONES: Those are the kind of documents that are
12 supposed to be exchanged beforehand.

13 JUDGE LOVENWIRTH: But I'm giving you a opportunity to
14 cross examine.

15 MR. JONES: I'm merely preserving a record.

16 JUDGE LOVENWIRTH: Whether or not the applicant is
17 entitled to a certificate of public convenience as an
18 applicant trading and doing business as Thomas Gerrity
19 Moving and Storage is a question of fact. And I'm here now
20 to receive evidence which will be presented as to resolve
21 factual issues.

22 So maybe you are right. But that's something that I
23 don't know until I hear evidence. Judge Weismandel is not
24 anyone to present facts, by the way. He can't present a
25 record. His letter means nothing. The fact that he can't

1 find the applicant isn't registered, that doesn't mean
2 anything to me. He is not a witness.

3 MR. JONES: Understood, Your Honor.

4 JUDGE LOVENWIRTH: The trouble with the procedure --
5 We are off the record.

6 (Off the record.)

7 JUDGE LOVENWIRTH: Do you want to call a witness,
8 please, Mr. Zielonis?

9 MR. ZIELONIS: The applicant calls Mr. Paul Bobersky.

10 JUDGE LOVENWIRTH: Good morning. Spell your name.
11 Paul, P-a-u-l. Even I know that.

12 MR. BOBERSKY: B-o-b-e-r-s-k-y.

13 PAUL BOBERSKY, called as a witness, having been duly
14 sworn, was examined and testified as follows:

15 JUDGE LOVENWIRTH: Mr. Zielonis.

16 DIRECT EXAMINATION

17 BY MR. ZIELONIS:

18 Q Mr. Bobersky, please state your full name for the
19 record.

20 A Paul Bobersky.

21 Q By whom are you employed and in what capacity?

22 A Butcho, Incorporated.

23 Q What is your position there?

24 A I'm general manager.

25 Q And are you also president of Butcho, Inc?

1 A Yes.

2 Q And what is Butcho, Inc?

3 JUDGE LOVENWIRTH: Please don't lead your witness.

4 THE WITNESS: It's an incorporation which my family
5 and I own.

6 BY MR. ZIELONIS:

7 Q And what kind of work does it do?

8 A Right now we move furniture for Thomas Gerrity
9 Moving and Storage. So we have a couple apartment houses.
10 We have a storage vicinity.

11 Q And what relationship does your company have with
12 Fratco, Inc. trading as Gerrity Moving and Storage?

13 A Fratco, Inc. owns the trading name of Thomas
14 Gerrity Moving. And I bought the warehouses and the
15 apartment houses off of Fratco Inc.

16 JUDGE LOVENWIRTH: What do you mean you own it?

17 THE WITNESS: My warehouses? I own it.

18 JUDGE LOVENWIRTH: So the applicant doesn't own it?

19 THE WITNESS: I am the applicant.

20 JUDGE LOVENWIRTH: No. Butcho, Inc. is the applicant.

21 You better have --

22 BY MR. ZIELONIS:

23 Q Who is the actual owner of the storage warehouses?

24 A Butcho, Inc.

25 Q And what is your function with -- your company's

1 function Fratco Inc. with Gerrity Moving and Storage?

2 A We move furniture.

3 Q Your title.

4 A I'm the president of Butcho, Inc.

5 Q I'm talking about your relationship with Fratco,
6 Inc. Are you the general manager? Is your company the
7 general manager of --

8 A I believe that I said --

9 JUDGE LOVENWIRTH: No you didn't. You said you are the
10 general manager of Butcho, Inc. Please don't led your
11 witness. What position, if any, do you hold with
12 Fratco, Inc.?

13 THE WITNESS: I am the general manager of Thomas
14 Gerrity Moving that belongs to Fratco, Incorporated.

15 JUDGE LOVENWIRTH: When you say you, who do you mean?

16 THE WITNESS: Butcho.

17 BY MR. ZIELONIS:

18 Q Can you describe your duties as general manager of
19 the entity?

20 A I, as president of Butcho, I run the moving
21 company, run the storage. We book jobs, moving jobs. I go
22 out on the trucks. I oversee everything in the trucks. I
23 oversee everything in the office. I oversee the drivers.

24 MR. JONES: Your Honor, may I object and ask for a
25 ruling of clarification as to who is the general manager of

1 Thomas Gerrity. Is it Butcho, Inc., a corporation that
2 serves in a GM capacity? Or is it in the individual, Mr.
3 Bobersky?

4 JUDGE LOVENWIRTH: You can cross examine him and ask
5 him.

6 BY MR. ZIELONIS:

7 Q Do you have any responsibility for the financial
8 matters of your entity.

9 JUDGE LOVENWIRTH: When you say you, these pronouns
10 drive me crazy.

11 BY MR. ZIELONIS:

12 Q Do you, Mr. Bobersky, have any responsibility for
13 financial matters for Butcho, Inc?

14 A Yes, I do.

15 Q What are those?

16 A I, as president, have to make sure that Butcho is
17 taken care of, everything that has to do with Gerrity's, the
18 money wise, the billing wise, all the moving, moving jobs
19 the trucks, all the vehicles. I, as president of Butcho,
20 have to make sure that everything is ran properly.

21 Q Do you also perform a function as now general
22 manager, your corporation as general manager, in regard to
23 the vehicles and the actual movement of furniture?

24 A Yes.

25 Q And what is that?

1 A Well, I said the vehicles in which Butcho, Inc.
2 owns, I said, I have to service them. I said I have to pay
3 for the inspections. I don't pay for them. Butcho pays for
4 them. But I have to see that all the trucks are running
5 properly and all the furniture gets from one destination to
6 another destination. Any complaints, I have to make sure
7 that the complaints are fixed and --

8 JUDGE LOVENWIRTH: I don't understand.

9 MR. JONES: Nor do I.

10 JUDGE LOVENWIRTH: I really don't care what vehicles
11 Butcho owns unless they are going to be used in the
12 operation of the common carrier business if the application
13 is granted. So I don't know what he is talking about.

14 MR. ZIELONIS: Your Honor, we will be getting to that
15 as part of our direct case.

16 BY MR. ZIELONIS:

17 Q Now, you indicated one of your duties was
18 supervising your office staff. What does that supervision
19 include?

20 A I got to make sure that all of Butcho's finances
21 are stable.

22 MR. JONES: Objection to the relevance of Butcho's
23 finances to the pending application on behalf of Thomas
24 Gerrity.

25 JUDGE LOVENWIRTH: Wait a minute. Read back the

1 question and answer, please. Off the record for a moment.

2 (Off the record.)

3 JUDGE LOVENWIRTH: The question has been withdrawn.

4 We are back the record. The question has been withdrawn.

5 MR. ZIELONIS: And the answer too.

6 BY MR. ZIELONIS:

7 Q We are focusing on your duties of supervising an
8 office staff. What do those duties included?

9 A Supervising, okay. It is -- I have a secretary
10 that's the treasurer for Butcho, Incorporated. I oversee
11 her actions. That's my supervision to my office staff. I
12 have one office person. And it's my wife and
13 secretary/treasurer.

14 Q And does Butcho, Inc. employ any other persons?

15 A Yes.

16 Q And how many do you employ?

17 A As of now, four.

18 Q And are they all part-time, all full-time? Can
19 you describe --

20 A There is three full-time workers and one part-time
21 summer help.

22 Q What do those persons do?

23 A One gentlemen is a foreman for my company which is
24 Butcho. He drives my trucks and oversees all the jobs when
25 he is out on the road. He oversees the other men.

1 JUDGE LOVENWIRTH: What does Butcho do for a living?
2 What's its business?

3 THE WITNESS: Butcho is a corporation set up which
4 once PUC, if they grant us rights, is going to be the owner
5 of --

6 JUDGE LOVENWIRTH: What does it do now? Does it do
7 anything unrelated to managing the company owned by Fratco?

8 THE WITNESS: No, we don't.

9 JUDGE LOVENWIRTH: Okay.

10 BY MR. ZIELONIS:

11 Q Did you finish your last answer, Mr. Bobersky,
12 regarding supervision?

13 A The other persons, they move furniture and work in
14 the warehouse, unpack trucks. That's what the other three
15 people do.

16 Q Now, can you tell me prior to your current
17 position, did you have any other employment?

18 A Yes.

19 Q And can you describe for the record that
20 employment?

21 A I was foreman for Fratco, Incorporated.

22 Q And how long were you foreman?

23 A For five, five and a half years.

24 Q And can you tell me the time period?

25 A Roughly after 1991. It was either early '92 --

1 right around there. In '91, I worked a few times for Fratco
2 as part time.

3 Q And what did you do as foreman for that entity?

4 A I was foreman. And when I first came back from
5 Fratco, I was the foreman of the moving company which was
6 Gerrity's Moving and Storage.

7 Q What did your job entail?

8 A Entailed going out -- entailed going out moving
9 customers, driving the trucks for Fratco, making all the
10 bills for Fratco, all the storages, and catch up on all the
11 storages. Anyone that wasn't paying I would have to call
12 them. When there is damage, I would have to explain it, see
13 how it could be fixed.

14 JUDGE LOVENWIRTH: Explain it to who?

15 THE WITNESS: The customer.

16 BY MR. ZIELONIS:

17 Q Please continue if you have anything further.

18 A Pretty much just check and the same as whether the
19 trucks inspections were run out, kind of let the owner know,
20 check the trucks out everyday.

21 Q Did you supervise any employees?

22 A I was the foreman. I supervised three employees.

23 Q Were they all full-time or part-time?

24 A Full-time.

25 Q Now, prior to your position as foreman at Gerrity

1 Moving and Storage, did you have any other employment?

2 JUDGE LOVENWIRTH: He was performing for Fratco.

3 Prior to that, what did you do for a living?

4 THE WITNESS: I was a self-contractor with my father.
5 It was called Paul Bobersky and Son.

6 JUDGE LOVENWIRTH: Bob Bobersky --

7 THE WITNESS: Paul Bobersky.

8 JUDGE LOVENWIRTH: Bob Bobersky --

9 THE WITNESS: No. Paul Bobersky.

10 JUDGE LOVENWIRTH: Paul Bobersky and --

11 THE WITNESS: Son. We did acoustical ceilings, drop
12 ceilings. We were contractors the previous four years with
13 my father, close to four years. And before I did, I have
14 experience with Fratco. At the time, it wasn't Fratco,
15 Incorporated. It was Frank Fratzola trading as Thomas
16 Gerrity.

17 JUDGE LOVENWIRTH: It was what, please?

18 THE WITNESS: At the time, it wasn't Fratco
19 Incorporated. It was Thomas Gerrity Moving and Storage
20 owned by Frank Fratzola.

21 JUDGE LOVENWIRTH: How do spell --

22 THE WITNESS: F-r-a-t-z-o-l-a.

23 BY MR. ZIELONIS:

24 Q And how long were you in that position with Thomas
25 -- Fratzola?

1 A At that time, I worked as a mover. It was roughly
2 between two and four years.

3 Q What was your job as mover?

4 A Namely, I was the one that carried everything,
5 lugged everything, drove trucks, and carried the furniture
6 from peoples' houses to the trucks.

7 Q Did you have contact with the general public --

8 A Yes.

9 Q -- with the customer? What was that contact with
10 the customer?

11 A Just, Hello. Where would you like this piece of
12 furniture?

13 Q Did you have any other involvement with the moving
14 business at this time?

15 A At this time?

16 Q Yes.

17 A Just doing everything that I said earlier.

18 Q You indicated earlier that you had a storage
19 warehouse. Is that correct?

20 A Yes. I do have a storage warehouse.

21 JUDGE LOVENWIRTH: When you say you --

22 THE WITNESS: Butcho Incorporated has a storage
23 warehouse which is at 629 Wheeler Avenue.

24 BY MR. ZIELONIS:

25 Q What is your involvement with that warehouse?

1 A I rent storages out to customers that need
2 storage, short term or long term. I -- you know, we build
3 up persons that come in our warehouse. We park your trucks
4 in that warehouse. Butcho parks the trucks for Butcho in
5 that place. Other than that, I said we keep it tidy. You
6 always have to clean it and stuff, just maintain it and keep
7 insurances on it. That's what our storage is there for, to
8 help the people that need storages.

9 Q Can you explain in detail what goes on in the
10 warehouse in terms of storage?

11 A Storages, people want you to pick up the
12 furniture. They want you to store it, put it in bins, cover
13 it, keep insurance on it. And when they need something out
14 of it, they ask you if you can open up their storage bins.
15 It's kind of what the people want you to do with their
16 storages.

17 Q And how long have you been managing the storage
18 warehouse?

19 A I would say close to five years.

20 Q Your employees, Mr. Bobersky -- and let's leave
21 out the office staff -- how long have your employees worked
22 in the moving business?

23 A They range from like two to -- there is only four
24 of them -- but, I mean, 2 to 25 years. I have one gentleman
25 that's been there I don't know how long. He says he has

1 been there since he was 17 years old. That was at the
2 previous Gerrity's Moving.

3 Q And the other individuals that you employ --

4 A Three of them range from 2 to 10 years. The one
5 part-time just started this year. I said I myself range
6 between 1 and 7, 8 years.

7 JUDGE LOVENWIRTH: You?

8 THE WITNESS: Myself.

9 BY MR. ZIELONIS:

10 Q And how about the part-time person?

11 A The part-time person is going back to college. He
12 has been working now for four months.

13 Q And if Butcho, Inc., is granted a certificate from
14 the Commission, do you intend to use these employees?

15 A Yes. Three and the part-time, yes.

16 Q Now, for purposes of rendering PUC service, will
17 your company, Butcho, Inc., have local offices?

18 A Yes, we will.

19 Q And where will those offices will be located?

20 A 629 Wheeler Avenue, Scranton. That's where Butcho
21 storage place is. And the other office will be at the home
22 of Paul Bobersky, President of Butcho.

23 Q Does Butcho currently have available equipment to
24 equip an office?

25 A We have the standard equipment.

1 Q What does that included?

2 A For the office work, Butcho has the computers,
3 small copier, printer, two phone lines. We have a fax
4 machine coming in, but we do not have a fax number.

5 Q How about desk and chairs? Do you have that?

6 A We have plenty of desks up the warehouse on
7 Wheeler Avenue. That is our one office. Yes, we do have
8 desks. We have a desk at your home office. All of the
9 books -- most the books we need for PUC regulations and
10 hopefully other regulations, we do carry them right now.

11 Q At this point in time, how does Butcho, Inc. stay
12 in touch with its drivers?

13 A Our one truck has a cellular phone in it. The
14 other one, without the cellular phone, myself is usually on
15 it. And I said, we contact by telephone.

16 Q Is there any type of equipment you would need, Mr.
17 Bobersky, for purposes of moving household goods and the
18 future?

19 A You need dependable trucks.

20 Q Other than motor vehicles?

21 A Normal things are moving pads which protects the
22 customer's furniture, and we call rubber bands that holds
23 the pads on. There is plenty of them. There is certain
24 things that you need for pianos, going up and down steps,
25 certain pad for baby grand piano. They are the big ones.

1 Just your basic dollies which you could carry washer,
2 refrigerator on them, your hand trucks. We do have all of
3 them at Butcho's garage -- storage area.

4 Q Did you say you have all of those?

5 A Yes. We do have all of them.

6 Q If you are granted authority under your own name,
7 what kind of vehicles will you utilize to perform service?

8 A Okay. As of now, there is a 24 foot. It's called
9 moving van that has double axle. It's a 1984 GM thing. It
10 has a brand new engine. That was just replaced.

11 JUDGE LOVENWIRTH: Who owns it?

12 THE WITNESS: Butcho, Incorporated.

13 BY MR. ZIELONIS:

14 Q What is its length?

15 A It's roughly 24 foot.

16 Q And what is its height?

17 A That's the 11 foot floor.

18 Q Do you have any other vehicles besides that?

19 A There is a 1989 Ford diesel. And that's 18 foot.

20 And it stands about 10 foot 8.

21 JUDGE LOVENWIRTH: Who owns it?

22 THE WITNESS: Butcho, Incorporated owns it.

23 BY MR. ZIELONIS:

24 Q Are those standard-type vans?

25 A They are standard-type for local moves, which

1 consists a lot of trees and a lot of streets. You know,
2 your big trailers you can't get in the bridges and that.
3 They are standard for moving. They are very nice for moving
4 furniture.

5 Q If necessary, would you purchase additional
6 vehicles?

7 A If it became necessary, yes. But as of now, there
8 would be no reason to buy new vehicles considering all the
9 vehicles we own now have just been totally redone.

10 Q Okay. What kind of procedures will you utilize
11 for future hiring of new employees?

12 A For drivers we have a code that I sent away for
13 that gives you all the information from the Department of
14 Transportation which you can check and file with them. I'm
15 not exactly sure of the name of the paper. But it is a
16 standard application for drivers.

17 JUDGE LOVENWIRTH: Do they have to have a special
18 license?

19 THE WITNESS: For driving the truck -- for smaller
20 vehicles, you need a physical. It's a physical that you get
21 -- it's either once a year or once every two years. I'm not
22 sure exactly. But for the smaller trucks, it's the
23 physical. If you get a bigger truck and you go over the
24 road longer and further, you need your CDL's. And I'm not
25 going into that right now. And I don't intend to.

1 BY MR. ZIELONIS:

2 Q For the vehicles you currently own -- Butcho
3 currently owns --

4 A You need a physical card.

5 Q You do not need CDL's for those drivers.

6 A No.

7 JUDGE LOVENWIRTH: What does CDL stand for?

8 MR. ZIELONIS: Your Honor, it's Commercial Driver's
9 License.

10 BY MR. ZIELONIS:

11 Q Will you do anything, Mr. Bobersky, in terms of
12 reviewing the driver's driving record?

13 A Eventually, if I hire someone new that I'm not
14 sure how their driving record is, we would and then try to
15 find out where these people came from and what kind of
16 person they are, previous job applicant. It's a standard
17 thing. But the workers, it's kind of -- you know, you learn
18 as you go. You can't judge a person by their looks, their
19 size, or anything like that. It's all in a matter of how
20 they act and how they act to other people and physically how
21 they are capable of moving furniture.

22 Q Will they have to fill out some kind of form?

23 A They would fill out a form stating their address,
24 their phone number, their social security number, the basic
25 stuff you need for official use. But it's really tough to

1 hire somebody without looking at them, you know, without --
2 you would hire them part-time before you would say that you
3 are definitely going to work 40 hours. Because you have
4 people come to work for you one day, and then they turn
5 around and don't want to be there the next day. It's a
6 tough situation.

7 Q Do you intend to advertise in the yellow pages?

8 A Yes.

9 JUDGE LOVENWIRTH: We are going to take a five minute
10 recess, please.

11 (Whereupon, a brief recess was taken.)

12 JUDGE LOVENWIRTH: We will return to the record. You
13 are still under oath. Mr. Zielonis.

14 BY MR. ZIELONIS:

15 Q Mr. Bobersky, will you create some kind of dispute
16 resolution procedure for customers that have complaints?

17 A The complaints, I said, are handled through
18 Butcho. You have to go out, and they would have to explain
19 their complaint. If there is a damage, if they feel that
20 they were overcharged, usually you handle it between the
21 customer and myself which would be the general manager of
22 the company which is Butcho.

23 But the complaints, it depends on what kind of
24 complaints the customer would have. If I wouldn't be able
25 to solve it, the insurance company would have to solve it.

1 And, usually, they are all solved within the company.

2 Q Have you had any experience when you were foreman
3 with your prior employee, moving company, with handling
4 customer complaints?

5 A Yes.

6 Q What was that experience?

7 A Well, it's a matter of how my former employee told
8 me how he wanted them handled --

9 JUDGE LOVENWIRTH: You mean your former employer?

10 THE WITNESS: Employer, yes. -- to know how they
11 were handled and to show, you know, what you could tell the
12 people. Usually, the customer is usually right. But there
13 is just the main thing you have to know is how it happened
14 or did you cause it. It's tough situation really to say how
15 -- what the complaint is.

16 BY MR. ZIELONIS:

17 Q Did you have any responsibilities with your former
18 employer as foreman with providing job estimations, job cost
19 estimations?

20 A Yes.

21 Q And what was that experience?

22 A Moving, if it's a local move, there is always an
23 hourly rate. You know, you kind of find out what the
24 customer has, what floor they are located on. You use your
25 better judgement on how long it's going to take. You give

1 them an rough idea. You always maintain that it's by the
2 hour, that you really can't give them the right estimate.
3 It's almost impossible.

4 You know, you just give them some ideas, what to get
5 ready to make it cheaper, and what is going to cost more
6 money, prepare them for, you know, what they are ready for
7 when they move their house.

8 Q And who gave those quotes?

9 A I myself, acting foreman, the secretary for
10 Fratco, Incorporated gave them. The owner of the Fratco,
11 Incorporated gave some quotes. It is kind of who was
12 available at the time to give the quotes and who was
13 available to actually sit and talk to the customer.

14 MR. ZIELONIS: Your Honor, I have an exhibit now that
15 I've already presented to the court reporter. She has a
16 copy for you, Your Honor. It's a multi-page exhibit. And I
17 would like it identified as Applicant's Exhibit Number 1.

18 (Whereupon, Applicant's Exhibit Number 1 was produced
19 and marked for identification.)

20 MR. ZIELONIS: Your Honor, may I approach the witness?

21 JUDGE LOVENWIRTH: Yes.

22 BY MR. ZIELONIS:

23 Q Mr. Bobersky, do you have before you a document
24 that's been identified as Applicant's Exhibit Number 1?

25 A Yes.

1 Q And is that a multi-page document?

2 A Yes, it is.

3 Q And could you explain to me what the first page
4 represents?

5 A It represents what the assets are, what our
6 company really has, what our proposed bills are. Right now
7 it's showing what Butcho Incorporated is worth.

8 Q Is that your company's balance sheet?

9 A Yes.

10 Q And it's effective -- or it shows as of what date?

11 A June 30th, 1997.

12 Q Is the information on their correct, to your
13 knowledge?

14 JUDGE LOVENWIRTH: June 30th, 1997.

15 BY MR. ZIELONIS:

16 Q Is the information correct to your knowledge
17 information and belief?

18 A Yes, to the best of my knowledge, this information
19 is correct.

20 Q Was that created by your accountant?

21 A Yes.

22 Q Now, if you could turn to the second page of that
23 document, could you explain to me what page 2 represents?

24 A Page 2 represents 6 months that Butcho
25 Incorporated was general manager of Thomas Gerrity's moving.

1 Q Does it indicate the revenue?

2 A The revenue that has come in for Butcho
3 Incorporated --

4 JUDGE LOVENWIRTH: I don't understand. I just don't
5 understand any of this. It is very confusing.

6 MR. JONES: That makes two of us, Your Honor.

7 JUDGE LOVENWIRTH: You better explain it in the terms
8 of his employment agreement and Fratco, Inc. Otherwise, I'm
9 going to get very -- I don't understand it at all.

10 MR. JONES: Your Honor, now you understand the
11 disadvantage I'm at without the exchange of any documents,
12 evidence and information.

13 MR. ZIELONIS: Let me try it this way, Your Honor.

14 BY MR. ZIELONIS:

15 Q Does Butcho, Inc. currently have a management
16 agreement with Fratco, Inc.?

17 A Yes.

18 Q And what does that agreement consist of?

19 A The agreement is that Butcho, Incorporated is the
20 general manager of all things that have to do with Thomas A.
21 Gerrity Moving.

22 JUDGE LOVENWIRTH: You may continue.

23 THE WITNESS: And that I, as owner and president of
24 Butcho, Incorporated, will follow all things that have to do
25 with Fratco, Incorporated's part of trading as Thomas A.

1 Gerrity Moving.

2 Fratco, Incorporated is trading as Thomas Gerrity
3 Moving. And I will do everything I have to do as president
4 of Butcho to keep Thomas Gerrity Moving operative according
5 to the PUC regulations.

6 BY MR. ZIELONIS:

7 Q Does that agreement have a provision for
8 compensating your company?

9 A Yes.

10 Q And do you recall what the compensation terms are?

11 A It was one percent I should pay Fratco,
12 Incorporated.

13 BY JUDGE LOVENWIRTH:

14 Q One percent of what?

15 A Of the total income of the company.

16 Q The agreement is that you get paid 99 percent of
17 the total income of the company?

18 A Yes.

19 Q What do you mean income of the company?

20 A After all the expenses are paid, all of the profit
21 that comes in and then all the expenses that go out, right
22 now 99 percent I get the assets of.

23 Q So this exhibit here in front of me, page 2,
24 indicates that Butcho, Inc. received operating profit of
25 \$7655.00. Is that 99 percent of the total operation --

1 operating profit for the 6 month period?

2 A That is the final operating profit.

3 Q For Butcho, Inc. or for the total operations?

4 A For the Butcho, Inc.

5 Q So 1 percent went to the other -- went to Fratco.

6 Is that correct?

7 A As of now, 1 percent has not.

8 Q When do you pay its 1 percent?

9 A At the end of the year.

10 JUDGE LOVENWIRTH: Thank you.

11 BY MR. ZIELONIS:

12 Q Does this exhibit show the total revenues for your
13 company for the six months ending June 30th, 1997?

14 A Yes.

15 Q And the expenses?

16 A To the best of my knowledge, yes.

17 Q And please explain what the third page shows of
18 the exhibit?

19 A It says that the statement of retained earning,
20 cash basis.

21 Q For your company?

22 A For Butcho, Incorporated. On 11/1/97, the cash
23 was like \$1791.00. So the operating profit is \$7655.00.

24 The distributions that we paid out --

25 JUDGE LOVENWIRTH: Who did you pay the distributions

1 to?

2 THE WITNESS: As of right now, I'm not exactly sure.

3 BY MR. ZIELONIS:

4 Q Let me ask you this question: Do you have
5 stockholders of Butcho, Inc?

6 A Yes.

7 Q And who are they?

8 A Leanne Bobersky.

9 JUDGE LOVENWIRTH: Wait a minute. Leann, L-e-a-n-n?

10 THE WITNESS: E.

11 JUDGE LOVENWIRTH: L-e-a-n-n-e.

12 THE WITNESS: Yes. And Paul Bobersky.

13 BY MR. ZIELONIS:

14 Q Do you share equally in the shares?

15 A Yes.

16 Q Has this distribution been paid to the
17 stockholders in the company?

18 A That's most likely what the distribution meant.

19 Q Now, have you, Mr. Bobersky, has your company
20 Butcho, Inc., filed a fictitious name registration?

21 A Yes, we have.

22 Q Was it filed, to your knowledge, with the
23 Pennsylvania Department of State?

24 A To my knowledge, it was filed.

25 MR. ZIELONIS: Your Honor, I have a copy of that

1 document in my office. I neglected to that bring that today.
2 I would like to have the opportunity to submit that as a
3 late-filed exhibit or as -- since the record not closing --
4 as an exhibit and provide you and the court reporter and Mr.
5 Jones with a copy.

6 JUDGE LOVENWIRTH: All right. You will do that by the
7 end of next week because the court reporter won't have the
8 transcript anymore. Send two to the court reporter and one
9 to me and one to Mr. Jones.

10 MR. ZIELONIS: Your Honor, I'll mark it has
11 Applicant's Exhibit Number 2.

12 JUDGE LOVENWIRTH: Very well.

13 (Whereupon, Applicant's Exhibit Number 2 was produced
14 and marked for identification.)

15 JUDGE LOVENWIRTH: I have a copy of it right here
16 because -- Mr. Notarianni, he didn't bother sending it,
17 apparently to Mr. Jones. He didn't -- sent it to Judge
18 Weismandel.

19 MR. ZIELONIS: That was my understanding Your Honor.

20 JUDGE LOVENWIRTH: Mr. Notarianni didn't exactly
21 operate according to go a standard operating procedure, you
22 know. You are supposed to send things to your adversary.
23 Moreover, you are not supposed to send things to the judge
24 before the hearing. But nonetheless, I have it here if you
25 want to use it.

1 MR. ZIELONIS: Your Honor, that's all the questions I
2 have for the witness. My understanding is that that will
3 conclude today's hearing.

4 JUDGE LOVENWIRTH: Why don't you use this thing here,
5 and we will make it part of the record and show it to Mr.
6 Jones. And tell Mr. Notarianni that I'm not exactly
7 overjoyed with his participation in these proceedings so far
8 he having failed to send you a copy, Mr. Zielonis, as a
9 prehearing order, having failed to advise -- to answer Mr.
10 Jones' telephone calls, he having sent a document ex parte
11 to the judge and not to his adversary. I would be grateful
12 if you tell him that that's not what I'm accustomed to.

13 MR. ZIELONIS: I will do that, Your Honor.

14 JUDGE LOVENWIRTH: Not that he cares what I'm
15 accustomed to. I've been in this game since 1962. I think
16 that's what everybody is accustomed to practices of law.
17 All right. Do you want to give it to the court reporter.
18 She'll mark it Applicant's Number 2. And I will make
19 photocopies of it before we leave. We will go off the
20 record for that purpose.

21 (Off the record.)

22 JUDGE LOVENWIRTH: You have no further direct
23 examination of this witness?

24 MR. ZIELONIS: No.

25 JUDGE LOVENWIRTH: You have no other witnesses?

1 MR. ZIELONIS: No, Your Honor, not at that time not
2 knowing what the protestant --

3 JUDGE LOVENWIRTH: Other than rebuttal witnesses that
4 may come up later on --

5 MR. ZIELONIS: Yes, that's it.

6 JUDGE LOVENWIRTH: All right. Then what we will do is
7 there being no further business -- is there any other
8 business you want to transact?

9 MR. JONES: Your Honor, could I have the opportunity,
10 while certain questions are fresh in my mind, to have
11 limited cross examination with the rights to recall Mr.
12 Bobersky during our telephone conference which you indicate
13 that you will schedule.

14 JUDGE LOVENWIRTH: Yes.

15 MR. ZIELONIS: Your Honor, may I pose an objection. I
16 don't think it's fair to have Mr. Jones have the ability to
17 do cross examination twice, either once now or once during
18 the telephonic --

19 JUDGE LOVENWIRTH: The trouble is. I agree with you,
20 Mr. Zielonis. But he hadn't had an opportunity to look at
21 the financial statement, which has been marked Applicant's
22 Exhibit Number 1, to study them and prepare himself to cross
23 examine the witness on them.

24 Originally, he just wasn't prepared. And there was a
25 prehearing order that Mr. Notarianni apparently didn't

1 bother sending to you that said that information has to be
2 presented.

3 MR. JONES: In addition, Your Honor --

4 JUDGE LOVENWIRTH: On the other hand, Mr. Jones, you
5 could have engaged in prehearing discovery and asked for
6 that information.

7 MR. JONES: I have got correspondence requesting
8 information, Your Honor. Nothing has been answered. In
9 addition to that, on the service list of the prehearing
10 order, Butcho, Inc. was served. Therefore, their counsel,
11 who is here today at hearing, should have been in compliance
12 with the order. The applicant could have just as easily
13 given the order to his new counsel because they did receive
14 it directly from the service list.

15 JUDGE LOVENWIRTH: I agree with you a hundred percent.
16 Nonetheless, your objection to his cross examination of the
17 witness as to the things that he said today, other than the
18 financial stuff, is overruled. And the when we have a
19 further hearing, if you want to cross examine him on the
20 exhibits, you will be limited to that. That is agreeable?

21 MR. JONES: Absolutely, Your Honor. Thank you.

22 JUDGE LOVENWIRTH: That's agreed by everybody then.

23 CROSS EXAMINATION

24 BY MR. JONES:

25 Q Butcho, Inc., you testified that you are the

1 president of, correct?

2 A Yes.

3 Q That is a properly filed Pennsylvania corporation?

4 A Yes.

5 Q Do you know when the articles of incorporation
6 were filed?

7 A Offhand, no.

8 Q Who filed the articles of incorporation for
9 Butcho, Inc?

10 A Joseph Notarianni.

11 Q Junior, correct?

12 A Yes.

13 Q Fratco, Inc., do you know who the owners of that
14 corporation are?

15 A Yes.

16 Q Who are they?

17 A I know the president of the Fratco, Inc.

18 Q Who is it?

19 A Frank Fratzola.

20 Q Do you know any other officers or directors of
21 that corporation?

22 A I know a few but not --

23 JUDGE LOVENWIRTH: You don't know --

24 THE WITNESS: I don't know their titles.

25 BY MR. JONES:

1 Q Do you know when they were incorporated?

2 A No.

3 Q What is Fratco, Inc.'s primary business concern?

4 A Ethan Allen, which is a furniture store.

5 Q Do they own Ethan Allen?

6 A They own a franchise of Ethan Allen.

7 Q How long has Fratco, Inc. owned that Ethan Allen
8 franchise?

9 A I don't have no idea.

10 Q Give me your best estimation.

11 MR. ZIELONIS: Objection, Your Honor. He said he
12 doesn't have any idea. He would be purely speculating.

13 MR. JONES: Your Honor, I don't see how it's
14 speculation when we as a former employee.

15 JUDGE LOVENWIRTH: Do you have an estimate?

16 THE WITNESS: I would say 7 to 10 years.

17 BY MR. JONES:

18 Q Seven to 10 years they have owned Ethan Allen.

19 Now --

20 JUDGE LOVENWIRTH: He is guessing now.

21 BY MR. JONES:

22 Q Fratco, Inc. also owns Thomas Gerrity Moving and
23 Storage?

24 A Yes.

25 Q And do you know how long they owned that?

1 A I would say -- again, I'm estimating which I would
2 say somewhere around 14 years.

3 Q Fourteen years. And you were employed by Fratco,
4 correct?

5 A Yes.

6 Q And would you, again, clarify your employment with
7 Fratco for me, please?

8 A I was -- my employment with Fratco, Incorporated,
9 I was a foreman for half of his personnel which participated
10 in Gerrity's Moving and Storage.

11 Q When did you stop your employment with Gerrity's
12 Moving and Storage?

13 A I would say November.

14 Q Of?

15 A 1990 --

16 JUDGE LOVENWIRTH: Six?

17 THE WITNESS: '96.

18 BY MR. JONES:

19 Q Fratco, did they offer any other business concerns
20 besides the Ethan Allen and the Thomas Gerrity?

21 A I honestly couldn't tell you.

22 Q Okay. Is Ethan Allen, in your opinion, would
23 Ethan Allen be the primary business concern of Fratco, Inc.?

24 MR. ZIELONIS: I'm going to object.

25 JUDGE LOVENWIRTH: Sustained.

1 MR. JONES: Okay.

2 BY MR. JONES:

3 Q How many employees does Butcho, Inc. have?

4 A Six.

5 Q What are there their names?

6 A Paul Bobersky, Leanne Bobersky, Sean Tompkins.

7 JUDGE LOVENWIRTH: S-h-a-w-n?

8 THE WITNESS: S-h-e-a-n -- S-e-a-n.

9 JUDGE LOVENWIRTH: S-e-a-n. And what's his last name?

10 THE WITNESS: T-o-m-p-k-i-n-s.

11 BY MR. JONES:

12 Q Okay. That's three.

13 A James Werner, W-e-r-n-e-r, Jr. and James Werner,
14 Sr.

15 Q That's five.

16 A Bob Howard -- Gordon, G-o-r-d-o-n. He is the
17 part-timer.

18 Q And all six of these people are on Butcho, Inc.
19 payroll?

20 A Yes.

21 Q Okay. Does Mr. Fratzola or his business concern,
22 Fratco, Inc., currently operate Thomas Gerrity Moving and
23 Storage?

24 A I'm the manager, yes.

25 Q Yes, it does. Okay. Now, Exhibit 1 that was

1 offered by your attorney, your financial statement, page 2,
2 why is Butcho, Inc. holding itself out as doing business as
3 the original Thomas A. Gerrity Moving and Storage of
4 Scranton?

5 A This way that it could stay in the same all to one
6 part of the business. This is what we needed for the --
7 what pertains to Thomas Gerrity Moving and Storage.

8 Q Okay. But Butcho, Inc. is currently operating the
9 original Thomas A. Gerrity Moving and Storage?

10 A 99 percent of it.

11 JUDGE LOVENWIRTH: You mean you are keeping 99 percent
12 of the money?

13 THE WITNESS: Yes.

14 BY MR. JONES:

15 Q By what means? Did you purchase Thomas A. Gerrity
16 Moving and Storage?

17 A As of yet, no. I'm in the process of purchasing
18 it. That's what the hearing is --

19 Q You are in the process of purchasing it. So you
20 have no ownership interest whatsoever in Butcho -- excuse me
21 in Fratco, Inc. and/or Thomas A. Gerrity Moving and Storage.
22 Is that correct?

23 A Do I have any interest in it?

24 Q Yes.

25 A Yes.

1 Q An ownership interest?

2 A You mean do I wish to own it?

3 JUDGE LOVENWIRTH: He doesn't mean -- he doesn't mean
4 do you have an interest in owning it. The word interest is
5 a very complicated word.

6 BY MR. JONES:

7 Q I'm asking if you currently have any ownership
8 interest in Fratco, Inc. or Thomas A. Gerrity Moving and
9 Storage.

10 A I'm the manager.

11 Q I'm asking you --

12 JUDGE LOVENWIRTH: Wait a minute now, he can answer
13 the question.

14 THE WITNESS: I'm a general manager of Thomas A.
15 Gerrity Moving that is owned by Fratco, Incorporated that is
16 being leased by Fratco, Incorporated.

17 JUDGE LOVENWIRTH: Do you have any shares of stocks in
18 Fratco, Inc.?

19 THE WITNESS: No.

20 BY MR. JONES:

21 Q So you own no part of the business?

22 A I own no part of Fratco, Inc.

23 Q Why then is Butcho, Inc. listing on its financial
24 statements doing business as the original Thomas A.

25 Gerrity? Under what authority are you doing that business?

1 A The authority of Fratco Incorporated.

2 Q You testified there is a management agreement,
3 correct?

4 A Yes.

5 Q Management agreement between Butcho, Inc. and
6 Fratco, Inc.?

7 A Yes.

8 Q Is that management agreement filed with the PUC?

9 A As far as I'm sure, yes, it is.

10 Q Do you have a copy of that management agreement
11 with you?

12 A Do I have one on me?

13 JUDGE LOVENWIRTH: Just a moment, please.

14 MR. JONES: Excuse me? Your Honor, I'll request that
15 during discovery.

16 BY MR. JONES:

17 Q You just testified that --

18 JUDGE LOVENWIRTH: You want to make an on the record
19 request for that now?

20 MR. JONES: Absolutely, Your Honor.

21 JUDGE LOVENWIRTH: Would you accommodate Mr. Jones?

22 MR. ZIELONIS: I will.

23 JUDGE LOVENWIRTH: Now, you must understand that it
24 doesn't become part the record just because they show it to
25 you.

1 MR. JONES: Absolutely.

2 BY MR. JONES:

3 Q You just testified that you are sure that
4 management agreement is filed with the PUC, correct?

5 A Yes.

6 Q Who filed it?

7 A As far as I know, Joseph Notarianni.

8 Q Do you have any idea what date that was filed?

9 A To my knowledge, no.

10 Q You testified that your employees have been
11 involved in the moving business for many years, correct?

12 A Yes.

13 Q Are you currently engaged in the moving business?

14 A Am I currently engaged? Yes.

15 Q Okay. You are operating Thomas A. Gerrity,
16 correct?

17 A I am not operating. I'm -- you could say
18 operating it. It's not my company yet. But I do run the --
19 operating them, yes.

20 Q If somebody calls Thomas Gerrity and wants to
21 coordinate a move of a residence, who would answer the
22 phone?

23 MR. ZIELONIS: Your Honor, I'm going to object. There
24 are two Thomas A. Gerrity Moving companies in Scranton.

25 JUDGE LOVENWIRTH: Let's stick to the designation of

1 Butcho and Santoro.

2 MR. JONES: To clarify, there is not two Thomas A.
3 One is Thomas Gerrity and one is Thomas A.

4 JUDGE LOVENWIRTH: An one is a junior and one isn't a
5 junior. But the record is going to get all mixed up. I
6 agree with Mr. Zielonis. So let's say Butcho and Santoro
7 just for the sake of clarity.

8 BY MR. JONES:

9 Q The Butcho entity operation Thomas Gerrity, how
10 long have you been operating that business?

11 A How long have I or Butcho?

12 Q How long have you and/or Butcho been operating the
13 Thomas Gerrity business?

14 JUDGE LOVENWIRTH: When did Butcho start operating is
15 the question, isn't it?

16 MR. JONES: Yes, Your Honor.

17 JUDGE LOVENWIRTH: You are not saying operating as
18 foreman?

19 MR. JONES: I don't want his employment with Fratco.
20 I want Butcho's involvement.

21 THE WITNESS: November, January.

22 JUDGE LOVENWIRTH: November '96? Somewhere between
23 November '96 and January '97?

24 THE WITNESS: Yes.

25 BY MR. JONES:

1 Q How many moves would you say you involved yourself
2 in on behalf of Butcho or Thomas Gerrity?

3 A The thing is I haven't been exactly doing it since
4 then. I, you know, I still have to check with Fratco,
5 Incorporated on things that have to be done.

6 JUDGE LOVENWIRTH: How many moves were made since
7 Butcho became general manager? Isn't that your question?

8 MR. JONES: Correct.

9 JUDGE LOVENWIRTH: Do you know?

10 THE WITNESS: No.

11 JUDGE LOVENWIRTH: Can you give an estimation; 2, 10,
12 20, 50?

13 BY MR. JONES:

14 Q From January '97 to the present day, give me your
15 best estimation.

16 A About a thousand.

17 JUDGE LOVENWIRTH: A thousand moves in six months?

18 THE WITNESS: You do so many in a day, you don't know
19 how many you do. It's like, how many days are in a half a
20 year?

21 BY MR. JONES:

22 Q I'm just asking your best estimation. How many
23 moves has, your company, Butcho, Inc. engaged itself on
24 behalf of Thomas Gerrity.

25 A Four hundred.

1 Q And the customer -- generally, would the customer
2 pay you by check?

3 A Yes.

4 Q How would the check be made payable?

5 A Thomas A. Gerrity's Moving, Gerrity's Moving

6 Q Thomas A. Gerrity or Gerrity's Moving?

7 A Yes.

8 Q Okay. You mentioned that you have two vehicles
9 and employee certain people as drivers of those vehicles.

10 A Yes.

11 Q Who are your drivers?

12 A Paul Bobersky and Sean Tompkins, T-o-m-p-k-i-n-s.

13 Q Okay. Do you currently do any advertising?

14 A There is advertisement in the yellow pages.

15 Q Who pays for that advertising?

16 A Thomas Gerrity Moving.

17 Q Moving and Storage?

18 A Yes.

19 Q Who writes the checks?

20 A Thomas Gerrity Moving and Storage.

21 Q Who signs the checks?

22 JUDGE LOVENWIRTH: Fratco or Butcho?

23 THE WITNESS: Butcho.

24 BY MR. JONES:

25 Q Butcho is writing the checks for Thomas A.

1 Gerrity?

2 A Yes.

3 Q But you have no ownership interest. You never
4 bought the business. You allegedly have a management
5 agreement, correct?

6 A Yes.

7 JUDGE LOVENWIRTH: He didn't have to enter an
8 agreement.

9 MR. JONES: I just have no understanding as to how his
10 financial statements holds Butcho, Inc. out as doing
11 business as the original Thomas A. Gerrity Moving and
12 Storage when he never purchased the business.

13 JUDGE LOVENWIRTH: He testified that he purchased
14 trucks. He purchased the equipment.

15 MR. JONES: He purchased those things. I want to know
16 the business. He is operating a business under a fictitious
17 name that he has no ownership interest in. I'm just trying
18 to clarify his interest there.

19 JUDGE LOVENWIRTH: He said that Butcho purchased those
20 things. The record is clear on that. Butcho owns the
21 warehouse.

22 BY MR. JONES:

23 Q In the 1997, 98 Bell Atlantic yellow pages, there
24 is an ad for Thomas A. Gerrity, correct?

25 A Yes.

1 Q Who placed that ad for the yellow pages?

2 A I'm pretty sure if that's the same ad -- I'm not
3 sure if it's the same one that's been their for the last two
4 years.

5 JUDGE LOVENWIRTH: It has to be marked unless you
6 don't want it part the record.

7 MR. JONES: I would like that marked.

8 JUDGE LOVENWIRTH: Then we will take a moment and ask
9 the court reporter to mark it Protestant Cross Examination
10 Exhibit Number 1.

11 MR. JONES: She is already in possession of it.

12 (Whereupon, Protestant Cross Examination Exhibit
13 Number 1 was produced and marked for identification.)

14 BY MR. JONES:

15 Q I'm going to show you the yellow page ad, a copy
16 of the yellow page which has been marked Protestant Exhibit
17 Number 1. Who place that ad, Thomas A. Gerrity Moving and
18 Storage?

19 A At this point, I'm not sure if Butcho did or if
20 Fratco did. At the time, the book came out, Fratco,
21 Incorporated -- I'm almost positive Fratco, Incorporated
22 still was doing everything for Thomas A. Gerrity Moving and
23 Storage.

24 Q Are you sure that you didn't contract with Bell
25 Atlantic for that ad?

1 A Maybe at the time of working for Fratco,
2 Incorporated. I'm not exactly sure when that ad came out.

3 Q Butcho, Inc. has no involvement behind the request
4 for advertising in this 97, '98 Bell Atlantic book?

5 A I honestly couldn't tell you if it came out in
6 '96.

7 JUDGE LOVENWIRTH: This purports to be the one that
8 came out in the summer of 1997.

9 MR. JONES: Correct.

10 THE WITNESS: Yes. They start that book -- I'm not
11 sure if they start it in the end of '96 or they start it in
12 '97.

13 JUDGE LOVENWIRTH: So you don't know whether you
14 placed the ad or Fratco placed the ad?

15 THE WITNESS: Right. The books come out earlier. I'm
16 not exactly sure when they come out. They talk to you in
17 mid-July for the next year. That's why I'm not sure.

18 BY MR. JONES:

19 Q That's not right. The books come out in the
20 summer. They just came out. I just want to know who paid
21 Bell Atlantic for this ad, Butcho, Inc. or Fratco, Inc.

22 MR. ZIELONIS: I believe he has answered. That
23 question has asked and answer. He testified to his to
24 knowledge, Fratco, Inc. paid the bill.

25 MR. JONES: That's not what he testified to.

1 JUDGE LOVENWIRTH: Who paid the bill?

2 THE WITNESS: I testified, Your Honor, I'm not sure.

3 JUDGE LOVENWIRTH: I don't care what you testified to.

4 Who paid the bill?

5 THE WITNESS: Your Honor, I'm not sure. It's either
6 Fratco or Butcho.

7 JUDGE LOVENWIRTH: Do you have another question?

8 BY MR. JONES:

9 Q Have you ever written any checks whatsoever for
10 Bell Atlantic?

11 A Yes.

12 Q For advertising purposes?

13 A Yes.

14 Q Drawn on a Butcho, Inc. account?

15 A Yes.

16 Q You are paying for this ad?

17 A Now, yes. You asked if I made up that ad. I'm
18 not sure if I made that ad up. You didn't ask --

19 Q That's fine. You clarified. Your position is
20 very clear as to you're uncertain as to whether Butcho or
21 Fratco placed the ad. But you are testifying that you are
22 responsible for the payments of it, correct?

23 A Butcho is responsible for paying the advertising
24 for Thomas A. Gerrity.

25 Q Who is your accountant?

1 A Neil -- I'm not exactly sure what his last name is
2 now.

3 MR. JONES: A little leniency, if I may, I believe
4 other shareholder, Leanne Bobersky is here. If she can
5 clarify that --

6 MR. ZIELONIS: Your Honor, I'll stipulate. It's Neil
7 C. Trama, T-r-a-m-a.

8 MR. JONES: Thank you.

9 BY MR. JONES:

10 Q Did Mr. Trama prepare the financial statements
11 that were offered as Applicant's Exhibit 1?

12 A Yes.

13 Q Okay. Mr. Bobersky, do you have a criminal
14 record?

15 A Criminal?

16 Q Yes.

17 A No.

18 Q Never in any trouble with the law?

19 A There was trouble with the law.

20 Q Expand on that for me from the age of 18 to
21 present day.

22 A To the age of 18 to present day, one DUI.

23 Q You had a driving under the influence charge?

24 A Yes.

25 Q When was that?

1 A When I was like 22 which happened about 10, 15
2 years ago.

3 JUDGE LOVENWIRTH: You and I are the same age.

4 BY MR. JONES:

5 Q What is the disposition of that charge?

6 A I went through classes. And I got an ARD program.
7 And since then --

8 Q No more DUI's?

9 A No.

10 Q Any other problems with the law?

11 A After 18?

12 Q Yep.

13 A Not to my knowledge, no.

14 Q How old are you right now?

15 A Thirty-three.

16 Q So from the age of 18 to the age of 33, your only
17 problem with the law was this single DUI incident, correct?

18 A Yes.

19 Q Do you have any PUC authority right now? Does
20 Butcho, Inc. have any PUC authority present day?

21 A No, it doesn't.

22 Q Yet, your financial statements indicate that you
23 are doing business as the original Thomas A. Gerrity Moving
24 and Storage. Would you agree with me to do business like
25 that you would have to file for approval and authority?

1 MR. ZIELONIS: Objection.

2 JUDGE LOVENWIRTH: Calls for a legal conclusion.

3 Sustained.

4 BY MR. JONES:

5 Q Are you familiar with an entity Thomas Gerrity,
6 Jr. Moving and Storage?

7 A Yes.

8 Q Are you familiar with the owner of that company?

9 A Yes.

10 Q And who is that owner?

11 A Chris Santoro.

12 Q In your opinion, has there ever been any confusion
13 for the general public between your business operation,
14 which I don't even know what it is. Your application says
15 Thomas Gerrity Moving and Storage. Your financial statement
16 Exhibit 1 say you are doing business as the original Thomas
17 A. Gerrity Moving and Storage of Scranton.

18 JUDGE LOVENWIRTH: Has there been any confusion
19 between the two companies?

20 MR. ZIELONIS: Your Honor, I'm going to object to the
21 relevancy of this issue. If Mr. Jones feels that there is
22 some kind of infringement, then he has to go a court of law
23 for relief there. But I don't see how public confusion,
24 which may hurt the protestant -- allegedly hurt the
25 protestant financially, has any relevancy to whether this

1 applicant has the technical and financial ability to render
2 service.

3 MR. JONES: That's the reason we are here. One of the
4 conditions is general public confusion, two business
5 entities under the same or extremely similar name.

6 JUDGE LOVENWIRTH: That's been going on for the last
7 13 years because I had Thomas Gerrity, Jr. come in here.
8 And I issued him a certificate. I rendered a decision.
9 Actually, I rendered a decision denying his application for
10 a certificate, and I got reversed now that I think about it.

11 And at that time, his father had a business, had a
12 retail store. And he had a moving and storage business.
13 And then his son had one. Of course, they loved each other,
14 they didn't care. The Commission issued the certificates.

15 The Department of State, apparently, issued a
16 fictitious name registration to Butcho. I don't know, but I
17 assume -- and also issued one to the applicant -- the
18 protestant. Sustained.

19 MR. JONES: Thank you, Your Honor.

20 JUDGE LOVENWIRTH: I think it's confusing myself.

21 MR. JONES: As do I.

22 JUDGE LOVENWIRTH: But I don't think I have
23 jurisdiction to -- I don't think I have jurisdiction to
24 adjudicate the question of whether or not there should be
25 two such fictitious names.

1 MR. JONES: I was merely asking if he was aware of any
2 personal confusion.

3 JUDGE LOVENWIRTH: I sustain the objection.

4 BY MR. JONES:

5 Q Mr. Bobersky, on any jobs that you may have
6 engaged on behalf of Thomas A. Gerrity Moving and Storage,
7 has anyone indicated any element of surprise when you
8 arrived as opposed to Mr. Santoro's business operation?

9 MR. ZIELONIS: Your Honor --

10 JUDGE LOVENWIRTH: Overruled.

11 MR. JONES: Thank you, Your Honor.

12 BY MR. JONES:

13 Q You can answer that.

14 A They were surprised? I mean --

15 JUDGE LOVENWIRTH: Did they tell you they were
16 surprised?

17 THE WITNESS: Actually, no.

18 BY MR. JONES:

19 Q No one has ever said to you, I thought Mr.
20 Santoro's business was coming?

21 A After talking to Public Utility Commission, our
22 jobs now that we do for Thomas A. Gerrity Moving, we do send
23 estimates out?

24 Q Who is talking to the Public Utility Commission?
25 What are you getting at?

1 JUDGE LOVENWIRTH: The question is: Did any customer
2 ever tell you that he or she or it was surprised?

3 THE WITNESS: I would say I'm not sure.

4 BY MR. JONES:

5 Q You're not sure? It was a simple yes or no.

6 A Surprised that they got them confused on the
7 phone. They know when they are there they are confusing.

8 Q So you are acknowledging confusion, correct?

9 MR. ZIELONIS: Objection, that's not what the witness
10 testified.

11 MR. JONES: Thank you, Your Honor. Asked and
12 answered, Your Honor.

13 JUDGE LOVENWIRTH: Just a moment, please. I've
14 already sustained the objection. I would be very grateful
15 if you, Mr. Jones, if you wouldn't ask questions to which I
16 correctly or incorrectly sustained an objection. The answer
17 is stricken.

18 MR. JONES: You just overruled the objection. Is
19 there an overruled on that record?

20 JUDGE LOVENWIRTH: No, I didn't. I sustained the
21 objection to the question of whether or not there was any --
22 I don't remember the question. But I think the first
23 question was: Is there any confusion, do you think, as to
24 whether or not -- because there is two Thomas Gerrity's. I
25 sustained the objection.

1 The next question was: Did any customers express any
2 confusion. I overruled the objection. Then you asked him
3 and again. Then you asked him again, You acknowledge that
4 there is confusion. The I already sustained an objection to
5 that question. So the answer, whether or not the court
6 reporter got it, is stricken.

7 MR. JONES: Okay, thank you.

8 JUDGE LOVENWIRTH: Is my chronology correct?

9 MR. JONES: Your Honor, this whole hearing has been --
10 I can't even comment on the chronology. But I have nothing
11 further of the applicant or Mr. Bobersky at this time. I
12 would, on the record, like to reserve my right to recall him
13 during our telephonic conference or reconvening of this
14 meeting -- hearing. Excuse me.

15 JUDGE LOVENWIRTH: You are finished with your cross
16 examination now?

17 MR. JONES: At this point in time, yes, Your Honor.

18 JUDGE LOVENWIRTH: I ruled, and everyone has agreed to
19 the procedure, that at the next hearing, which will be a
20 telephonic hearing, you will be limited to cross examining
21 him on the two exhibits which you didn't see before today.
22 Is that correct?

23 MR. JONES: I requested a reservation of rights to
24 exchange documents with opposing counsel and to recall Mr.
25 Bobersky for any examination that I may be entitled to as a

1 result of the discovery process.

2 This is totally unfair for us to come in here today
3 and try to conduct a protestation hearing without having any
4 documents exchanged, without having any entry of appearance
5 forwarded by counsel. We are totally, totally prejudiced by
6 this process.

7 JUDGE LOVENWIRTH: Well, I think the prejudice, some
8 of the prejudice, should be placed at your doorstep, Mr.
9 Jones. After all, this Commission and the 52 Pennsylvania
10 Code has extensive discovery.

11 MR. JONES: Your Honor, what more can I do but send
12 letters out to counsel of record --

13 JUDGE LOVENWIRTH: Excuse me. I wasn't finished.
14 Excuse me. What you can do is file written interrogatories,
15 make a request to take oral depositions. All of these
16 procedures are in the Commission's regulations 52
17 Pennsylvania Code. So the fact that you refrained from
18 doing so is something that could be layed partially at your
19 doorstep. That's the first thing.

20 The second thing is I have a question. What did you
21 mean a moment or two ago when you said -- and I can't quote
22 because I don't remember exactly what you said. I can
23 merely paraphrase -- that this entire proceeding is
24 something which the propriety of which you call into
25 question. What did you mean by that?

1 MR. JONES: I meant that the prehearing order has not
2 been complied with by opposing counsel. I have
3 correspondence to counsel of record. I have telephone calls
4 that went unanswered attempting to comply with the
5 prehearing order.

6 JUDGE LOVENWIRTH: I'm sorry, Mr. Jones --

7 MR. JONES: The applicant's counsel is not in
8 compliance with the prehearing order.

9 JUDGE LOVENWIRTH: Neither are you. Counsel of record
10 -- excuse me. I beg your pardon. Counsel of record is Mr.
11 Zielonis. There is a certificate of service here wherein he
12 says that he served you.

13 MR. JONES: We have addressed that.

14 JUDGE LOVENWIRTH: We have already gone over all of
15 it. Is there anything else that you object to that you
16 haven't already placed on the record.

17 MR. JONES: No, further objections, Your Honor.

18 JUDGE LOVENWIRTH: Very Good. And if you don't like
19 the procedure which has been employed in the conduct of this
20 hearing, you may, of course, file exceptions, Mr. Jones.
21 You know that, don't you?

22 MR. JONES: Understood, Your Honor.

23 JUDGE LOVENWIRTH: Very good. However, you have a
24 right to do that. But you don't have a right to insult the
25 tribunal by after making your objection, after having been

1 given the opportunity to argue your objection, and after the
2 objection has been ruled on, you don't have the right to
3 insult a tribunal. I think it's sterilise to do so.

4 MR. JONES: With all due respect, there was never my
5 intend to insult the tribunal. And I apologize for the
6 Court interpreting it this way.

7 JUDGE LOVENWIRTH: All right. This is my ruling. You
8 may cross examine the witness on any topic whatsoever. But
9 if there is an objection made at the future telephonic
10 hearing, if there is an objection made as to your question,
11 my present inclination is to sustain any objection to any
12 question that doesn't deal with these two documents.

13 That's my present inclination. Because the only
14 prejudice to which you alluded I can recall is the fact that
15 you haven't exchanged documents.

16 MR. JONES: Will the Court allow us to -- now that the
17 protestant is aware of current counsel for the applicant,
18 may we be allowed to engage in discovery?

19 JUDGE LOVENWIRTH: It's a good question. Yes, you
20 may. Commission says that in rate case -- and this is not a
21 rate case -- discovery is allowable until the very end,
22 until the record is closed and at the discretion of the
23 presiding officer -- that's me -- in other cases as well.
24 So I think it's an appropriate question. And the answer is,
25 yes.

1 MR. JONES: Thank you, Your Honor.

2 JUDGE LOVENWIRTH: Is there any other business we
3 should transact?

4 MR. JONES: None at this time.

5 JUDGE LOVENWIRTH: Do you have any other business, Mr.
6 Zielonis?

7 MR. ZIELONIS: The only thing I have is it may be
8 inappropriate to do this at this time. But I would move for
9 the admission of Applicant's Exhibits 1 and 2 subject to any
10 statement or motion to strike, et cetera, in the future.

11 JUDGE LOVENWIRTH: Subject to cross examination and
12 any motions which are elicited. Do you object?

13 MR. JONES: No objection.

14 JUDGE LOVENWIRTH: All right. Then Exhibits 1 and 2
15 are made part of the record under that proviso.

16 (Whereupon, Applicant's Exhibits 1 and 2 were
17 admitted.)

18 MR. ZIELONIS: And my second question is does the
19 protestant intend to present testimony today?

20 JUDGE LOVENWIRTH: Well, the protestant said that he
21 felt prejudiced because he hadn't received any information,
22 hadn't received any documents. And I think that
23 accordingly, as an abundance of caution, that he will be
24 allowed to present testimony at the telephonic hearing which
25 will be scheduled.

1 MR. JONES: Your Honor, may I ask you to please
2 clarify as to what date Mr. Zielonis filed his entry to the
3 Commission?

4 JUDGE LOVENWIRTH: Why don't you look at it? I
5 offered to show it to you earlier. Is that it? Did I give
6 you the right thing?

7 MR. JONES: Yes, you did. And it indicates June 9 it
8 was filed and received.

9 JUDGE LOVENWIRTH: And does it indicate on the
10 certificate of service that you were sent a copy of it?

11 MR. JONES: Yes, it does, Your Honor. And I would
12 like to the record to reflect that I never was in receipt of
13 that, Your Honor.

14 JUDGE LOVENWIRTH: Very Good. It's unfortunate. The
15 same thing happened in a hearing that I had yesterday. Off
16 the record.

17 (Off the record.)

18 JUDGE LOVENWIRTH: Is there any other business we
19 should transact?

20 MR. ZIELONIS: Applicant has none, Your Honor.

21 MR. JONES: Just to move for the admission of
22 Protestant's Exhibit 1.

23 JUDGE LOVENWIRTH: Protestant's Exhibit Number 1 was a
24 telephone directory page. Any objections to the admission
25 of that exhibit?

1 MR. ZIELONIS: I have none, Your Honor.

2 JUDGE LOVENWIRTH: Very good. There being no
3 objections, it is made part the record.

4 (Whereupon, Protestant's Exhibit 1 was admitted.)

5 JUDGE LOVENWIRTH: Is there any other business?

6 MR. JONES: Does the Court have any idea when the
7 future telephonic hearing may be scheduled?

8 JUDGE LOVENWIRTH: Do you have vacation plans you want
9 to bring to my attention?

10 MR. JONES: Depending how far out you anticipate the
11 scheduling, Your Honor.

12 JUDGE LOVENWIRTH: Let me get on the horn right now.
13 We are off the record.

14 (Off the record.)

15 JUDGE LOVENWIRTH: Is there any other business we
16 should transact?

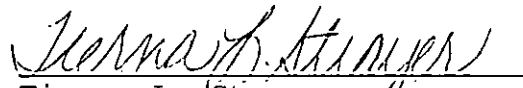
17 MR. ZIELONIS: The applicant has none.

18 MR. JONES: We rest as well.

19 JUDGE LOVENWIRTH: There being none, we stand
20 adjourned.

21 (Whereupon, at 12:05 p.m., the hearing adjourned.)
22
23
24
25

1 I hereby certify that the evidence and proceedings are
2 contained fully and accurately in the notes taken by me
3 during the hearing of the within cause, and that this is a
4 true and correct transcript of the same.

5
6
7 
8 Tierna L. Strayer
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