

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

KJR 1

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Application of Stacia Grove, t/d/b/a :
Central Pennsylvania Limousine :
Service For the right to :
begin to transport, as a common :
carrier, by motor vehicle, persons, in :
limousine service, between points in :
the counties of York, Lancaster, and :
Dauphin, and from points in the said :
territory, to points in Pennsylvania, :
and return. :

Docket No.
A-00114058

DOCKETED
NOV 4 1997

Initial Prehearing Conference :

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Pages 1 through 21

Hearing Room No.2
North Office Building
Harrisburg, Pennsylvania

Friday, October 17, 1997

Met, pursuant to notice, at 10:02 a.m.

BEFORE:

WAYNE L. WEISMANDEL, Administrative Law Judge

APPEARANCES:

DOCUMENT
FOLDER

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White Rose Limousine)

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C O N T E N T S

WITNESSES

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E X H I B I T S

NUMBER

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None

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FORM 2

9/97D

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE WAYNE L. WEISMANDEL: This is
3 the day, time and place set for the prehearing conference in
4 the matter of the Application of Stacia H. Grove, trading and
5 doing business as Central Pennsylvania Limousine Service,
6 Pennsylvania Public Utility Commission Docket Number
7 A-00114058.

8 I am Administrative Law Judge Wayne L. Weisman del,
9 assigned by the Commission to preside in this matter. I
10 would like to begin by having the party's representatives
11 enter their appearance on the record.

12 Mr. Dunlap.

13 MR. DUNLAP: Benjamin C. Dunlap, Jr., appearing on
14 behalf of Stacia Grove.

15 JUDGE WEISMANDEL: Mr. Pohlman.

16 MR. POHLMAN: Scott W. Pohlman with Robinson and
17 Geraldo, appearing on behalf of Superior Transportation
18 Services, Inc., White Rose Limousine Service, Inc., Unique
19 Limousine Service, Inc., Salgals, Inc., t/d/b/a Villa
20 Limousine, Keystone Limousine Service, Inc., and actually,
21 let me correct Superior Transportation Services, Inc., t/a
22 Superior Limousine Service, Inc.

23 JUDGE WEISMANDEL: Good morning.

24 The first thing that I want to talk about this morning
25 is the motions to strike the protests that have been filed.

1 Actually, I do have a tangential matter that we ought to deal
2 with before that and that has to do with one of the
3 Protestants. Mr. Pohlman's Superior Transportation Services,
4 Inc., as best as I am able to determine from both Lexus
5 Research with the Corporation Bureau and the Commission's
6 main frame files, the Certificate of Public Convenience is
7 held by Raymond D. Bensch, B-E-N-S-C-H, individually, rather
8 than Superior Transportation Services, Inc., a corporation
9 that was apparently formed June 13th of this year.

10 MR. POHLMAN: Correct.

11 JUDGE WEISMANDEL: The protest, however, is presented
12 by Superior Transportation Services, Inc., which, at least as
13 far as I can determine, has no authority from the Commission.

14 MR. POHLMAN: We are in the process and have signed a
15 verified letter to transfer that; the ownership has not
16 changed. It is still the same. The bank has the owner along
17 with his wife, and so to clarify things we just filed as
18 Superior Transportation Services, Inc., at that time. If you
19 would like me to correct it --

20 JUDGE WEISMANDEL: I guess what I am saying to you is,
21 right now at least, it seems to me that that may be a fatal
22 mistake. The Protestant, as listed in the Protest is the
23 corporation, and the corporation has no authority. Therefore
24 it would have no standing to be a Protestant.

25 MR. POHLMAN: Okay. Well, I guess it would all depend

1 as to what you would like to do then because it is still
2 Superior Limousine Services, Inc., t/a -- I guess the main
3 flaw there was just in the timing of the filing of the
4 verification letter.

5 JUDGE WEISMANDEL: Agreed, however -- lay that aside
6 for a moment, but right now my feeling is that a protest is
7 filed by an entity that doesn't have authority and therefore
8 doesn't have standing. Now, with respect to the other -- I
9 guess I will include that one in for the sake of this
10 discussion, because they're all the same, and I think you can
11 acknowledge that all five of the protests generally read the
12 same, with obvious differences for the name and certificate
13 numbers, etcetera of the various Protestants and where their
14 authorities lie. It appears, wit the exception of the one we
15 just discussed, the other four each have limousine authority,
16 at least in some portion of the area for which the Applicant
17 seeks authority; however, one of the basis for the motions to
18 strike, in all five cases, is that the protest does not
19 adequately state the adverse impact that would be produced on
20 the Protestant if the application was approved.

21 Quite frankly, having read all five of the protests
22 and read the submissions of the Applicant, I'm inclined to
23 agree.

24 MR. POHLMAN: If I may, Your Honor, it's not just
25 under 52 Pa. Code § 41.14(c). They not only have to show an

1 endangerment or impairment of their operations, which they
2 did not allege in their protest, but they need to also show
3 the unbalance, the granting of that authority would be
4 contrary to the public interest. So it is even a higher
5 burden.

6 JUDGE WEISMANDEL: The two specific portions of the
7 Commission's regulations that I think bear on this are 52 Pa.
8 Code § 3.381 (c)14, which gives the specific contents of a
9 motor carrier protest, what is to be set out in that protest
10 and says in relevant part, "A statement of the nature of the
11 Protestants interest in the application, including a
12 statement of any adverse impact, which approval of the
13 application can be expected to have on the Protestant." And
14 then also, 52 Pa. Code § 5.52(a), which talks about the
15 content of a protest to an application and says in relevant
16 part " A Protestant to an application shall on its face set
17 out clearly and concisely the grounds of the protest."

18 Having looked at both of those regs and having looked
19 at the protests that were filed here, and I believe the
20 language is the same in all five of the protests, with the
21 obvious difference of the reference to the appropriate
22 Certificate of Public Convenience information, each one in
23 Paragraph 3, states that Protestant possesses authority and
24 then gives the reference to the Certificate of Public
25 Convenience by which the authority is conferred, copies of

1 which are attached. Thereunder it may provide service sought
2 by the Applicant. Quite frankly, I don't believe that that
3 complies with either of the two regulation provisions that I
4 just reviewed with you.

5 I will be willing to listen, Mr. Pohlman, but quite
6 frankly, I'm inclined to go ahead and strike all of the
7 protests with the understanding that there are two basis for
8 striking Superior Transportations and refer this application
9 for a modified procedure in accordance with the Commission's
10 regulations.

11 MR. POHLMAN: Will we have the opportunity to amend
12 those protests within the ten-day pleading period? We can go
13 forward and amend them and just correct them right to your
14 needs and go forward right from there.

15 MR. DUNLAP: I would object to that, Your Honor. The
16 Protestants have had the opportunity to do that in response
17 to our motions to strike and in the prehearing memorandum
18 they have come forward with nothing on that line.

19 JUDGE WEISMANDEL: Do you have the regulation there
20 before you with respect to the motion to strike?

21 MR. POHLMAN: Yes, I do. It's § 5.101, preliminary
22 motion § (f). It's a preliminary motion to strike as
23 granted. The participant who submitted the stricken pleading
24 has the right to file an amended pleading within ten days of
25 service of the order.

1 I was --

2 JUDGE WEISMANDEL: Since there hasn't been an order
3 served, the ten day period hasn't run.

4 MR. POHLMAN: Correct.

5 MR. DUNLAP: May I see that?

6 (Document handed to Mr. Dunlap.)

7 JUDGE WEISMANDEL: Anything further, Mr. Dunlap?

8 That was my recollection that that was the case.

9 MR. POHLMAN: We went forward from there and answered
10 his motion with the understanding we were waiting for your
11 decision.

12 JUDGE WEISMANDEL: I understand and all I can say is
13 perhaps other proceedings have not been -- Mr. Dunlap has not
14 been representing the Applicant and perhaps the attorney was
15 not as conscientious as he or she should have been about
16 filing the proper motion. I don't know.

17 MR. POHLMAN: He filed his motion.

18 JUDGE WEISMANDEL: Yes, but I'm saying -- you said
19 that you used the standard language that you have used in
20 other protests --

21 MR. POHLMAN: Correct, yes.

22 JUDGE WEISMANDEL: -- and perhaps the attorneys
23 representing the Applicants in those cases weren't as
24 conscientious as they perhaps ought to have been.

25 MR. POHLMAN: Very true.

1 MR. DUNLAP: Your Honor, unfortunately, it's hard to
2 argue with regulations.

3 JUDGE WEISMANDEL: Yes, I think Mr. Pohlman's point is
4 well made that he has ten days from when the Order is issued
5 and perhaps everyone would have been better served if I had
6 gotten an Order out, but I really wanted to get you gentlemen
7 together and see if there wasn't some room here for some kind
8 of a restrictive amendment that might satisfy everybody's
9 needs.

10 What I would propose to do is go ahead and issue an
11 Order granting Mr. Dunlap's motion to strike.

12 As you have pointed out, Mr. Pohlman, you have ten
13 days thereafter to replead.

14 In all candor, I guess, I feel constrained to say that
15 I think this is somewhat unfair to the Applicant to have to
16 be delayed like this; however, the rules are the rules and we
17 all must abide by them. Is there any possibility of a
18 negotiated settlement of this matter, a restrictive
19 amendment?

20 MR. POHLMAN: I don't believe so; we've talked already
21 fairly extensively, Mr. Dunlap and I have, to try and reach
22 some type of agreemnt. And we have actually made some offers
23 in some directions from some of my clients. However, we have
24 not had the opportunity to reach a common understanding and I
25 don't believe that exists.

1 MR. DUNLAP: Just as a clarification, what has been
2 discussed so far, Your Honor, there's an offer by one of the
3 Protestant's -- I believe it is Superior; am I correct?

4 MR. POHLMAN: Yes.

5 MR. DUNLAP: That if we would drop Dauphin County from
6 the area of operation, that they would drop their protest,
7 but the other four protests would stand, so there was no
8 purpose in agreeing to that.

9 MR. POHLMAN: Can we go off the record for just a few
10 moments? May I have a few moments with my clients.

11 JUDGE WEISMANDEL: Sure.

12 (Discussion off the record.)

13 JUDGE WEISMANDEL: Back on the record.

14 MR. DUNLAP: Your Honor, I just spoke with my clients
15 and my clients are willing to offer an amendment to operate
16 just out of York County to points throughout Pennsylvania and
17 return if all protests are dropped.

18 JUDGE WEISMANDEL: I would suggest that the way to
19 proceed would be to go off the record and let you and Mr. --
20 let Mr. Pohlman, first of all, caucus with his clients and
21 then let you and Mr. Pohlman talk. So why don't we do that.

22 Back off the record.

23 (Discussion off the record.)

24 JUDGE WEISMANDEL: Back on the record.

25 Counsel for Applicant and Protestants have had an

1 opportunity to discuss the proposed restrictive amendment of
2 Applicant to change the authority sought to the provision of
3 limousine service from within York County, Pennsylvania and
4 from points within York County to points in Pennsylvania and
5 return. Counsel for Protestants has advised that that
6 restrictive amendment is not satisfactory to his clients,
7 sufficient to cause them to withdraw their protests. That
8 being the case, we have some other matters that we need to
9 talk about at this time in an effort to move this thing
10 along.

11 I gather, since Mr. Pohlman, you told me that you did
12 receive a copy of Mr. Dunlap's prehearing conference
13 memorandum, that at least, satisfies your request for a
14 witness list and a brief synopsis of their proposed
15 testimony. There are other matters that you have requested
16 which -- I guess Mr. Dunlap is in the position right now of
17 saying that I have already announced that the protests are
18 going to be stricken and probably has, at least until the
19 time that they are refiled, to comply.

20 Mr. Dunlap, again, in an effort to move this matter
21 along, assuming that proper protests are refiled, would you
22 be able to then provide the other information that Mr.
23 Pohlman has requested on behalf of his clients?

24 MR. DUNLAP: We recognize that it is our burden; it's
25 my client's burden to prove that she has the financial

1 ability to operate the service and we will, of course, supply
2 that information. However, I'm a little bit at a
3 disadvantage here not knowing what the basis of their protest
4 is going to be. What the nature of the harm is that they're
5 going to allege. If it is going to be that it will somehow
6 hurt their business to such an extent that it is not in the
7 public interest; I would want their financial data also.

8 I'm a little reticent to supply our financial data
9 without knowing whether we are going to have any trouble
10 getting theirs.

11 MR. POHLMAN: My clients do not need to supply their
12 financial data, purely because they're in an existing
13 operation or businesses that are operating. Our concern with
14 any company that is going to be started is their financial
15 ability to operate their company. Because if their company
16 fails, if they're not productively operating, that adversely
17 affects any limousine company that's operating.

18 The day a limousine company is seen on the side of the
19 road my clients receive telephone calls saying that we've
20 seen a car on the side of the road, is that one of your cars?
21 It adversely affects our drivers. We have examples of that.

22 MR. DUNLAP: Your Honor, that's pure speculation.

23 JUDGE WEISMANDEL: Well, I'll tell you, folks, I think
24 in my order, in my prehearing conference order, one of the
25 things I pointed out was that the Commission has both formal

1 procedures for conducting discovery and a policy favoring
2 informal information exchange. It would go a long way toward
3 keeping this case moving on a proper track, and an even
4 longer way to keeping the presiding Administrative Law Judge
5 in a relatively good humor if everybody took that informal
6 information exchange provision seriously.

7 You are free to play hardball if you choose to do so.
8 However, if a proper discovery request is made, a motion to
9 compel will flow in due course thereafter. If we have to
10 play the whole thing out that way we can certainly do so. I
11 would encourage the parties not to make that necessary.

12 I will go on record right now, Mr. Pohlman, and say
13 that one of the things that I find very troubling in these
14 motor carrier application cases is the mere averment that
15 another entrant is going to cause an existing certificated
16 carrier economic detriment to the extent that granting the
17 application would be contrary to the public interest without
18 some kind of factual basis to back that up.

19 Those are easy averments to make, but they carry very
20 little probative value in my mind, at least. I venture to
21 say that any recent motor carrier application decisions that
22 I've seen by other Administrative Law Judges and by the
23 Commission would tend to make me feel that I'm on pretty
24 solid ground feeling that way, that that seems to be the
25 position of other judges and of the Commission itself.

1 We all know a new day is dawning in the Public Utility
2 field. Competition is the name of the game. Obviously the
3 Federal Government has made that clear with respect to motor
4 carrier transportation, to the extent that the Commission
5 still regulates motor carrier persons, competition is clearly
6 a desired goal of this Commission in that area also. Merely
7 saying that we believe a new entrant is going to cost us to
8 lose some business, is not going to carry today. Food for
9 thought.

10 I would expect, as I said, that the parties would
11 cooperate as to the exchange of information informally. If
12 not, then use the regulations provisions to get the
13 information you need to put your cases on.

14 A problem that I have, and again, I find it troubling
15 that applications can be, in some cases, unduly delayed and I
16 won't go so far as to say that's what's going on here, but
17 they can be unduly delayed merely by the filing of protests.
18 I would like to try to move this case along as quickly as
19 possible. However, having said that, the earliest I can
20 schedule hearings in this matter is the week of December 8th.
21 I just can't do anything before that and quite frankly, if
22 you folks are going to engage in discovery, whether it be
23 amicable or not, it's probably going to take you that long to
24 get that completed anyhow.

25 Am I correct, Mr. Dunlap, that you are, at least

1 tentatively, proposing that you would have something on the
2 order of 19 witnesses?

3 MR. DUNLAP: Yes, we could -- that's correct. We
4 could shorten that somewhat if we could get agreement from
5 counsel either today or later regarding certain exhibits,
6 regarding so that we wouldn't have to bring in people to, for
7 instance, to show that my client is eligible to obtain
8 insurance and is eligible to obtain the leasing of a luxury
9 vehicle.

10 JUDGE WEISMANDEL: Yes, I think there are a certain
11 amount of things that are fairly standard in counsel being
12 able to work out, either to stipulate to or to take evidence
13 in the form of affidavits. I've even had that procedure
14 before.

15 I would ask Mr. Pohlman and Mr. Dunlap to try and
16 cooperate, to the extent you can without jeopardizing your
17 clients' interests, to simplify those things.

18 Mr. Pohlman, I gather you are proposing at least four
19 witnesses?

20 MR. POHLMAN: Four witnesses, yes, correct.

21 JUDGE WEISMANDEL: I guess what I am getting at is I
22 am trying to figure out how many hearing days we are going to
23 need.

24 If we really are talking about 23 witnesses I would be
25 loathe to schedule less than two days of hearings, quite

1 frankly.

2 MR. DUNLAP: One comment, Your Honor. Most of our
3 witnesses will be to show need for the service and they would
4 be relatively short.

5 JUDGE WEISMANDEL: I understand, but it still takes a
6 certain amount of time just to swear the witness, get them
7 started on who they are and what their relationship is to the
8 case at hand, etcetera, etcetera.

9 While I recognize that some of them will be of
10 relatively short duration both on direct and cross-
11 examination, it still does take time. When you start talking
12 about numbers like 23 people, just running them back and
13 forth to the witness stand takes some time. I am pretty slow
14 at administering the oath sometimes.

15 I guess we would be well advised to schedule two days.
16 If it turns out we don't need the second day, then that can
17 always be dropped.

18 What do your schedules look like for either the week
19 of December 8th or the week of December 15th, excluding
20 December 19th?

21 MR. POHLMAN: That second week is much better. We
22 have other Commission hearings on the first week.

23 MR. DUNLAP: I don't have my calendar in front of me,
24 but off the top of my head I believe that would be okay. If
25 I could, please, get back to you when I get to the office to

1 double check. I will get back to you.

2 JUDGE WEISMANDEL: Why don't we tentatively set
3 December 16th and 17th. I will wait to hear.

4 Is that satisfactory to you, Mr. Pohlman?

5 MR. POHLMAN: Yes, sir.

6 JUDGE WEISMANDEL: Mr. Dunlap, I will wait to hear.

7 MR. DUNLAP: Just a minute.

8 JUDGE WEISMANDEL: Sure.

9 (Mr. Dunlap speaking with his clients.)

10 MR. DUNLAP: My client advises me that in order to be
11 in the Yellow Pages next year, she would need to have some --
12 she would need to know the first week of December.

13 I told her that even if we had the hearing --

14 JUDGE WEISMANDEL: I can't accommodate that. That's
15 just not doable, from a very practical standpoint. Even if
16 my schedule would accommodate that, that certainly isn't
17 enough time for exceptions to be filed and reply exceptions
18 and briefs and a decision and then go up to the Commission.
19 That just isn't going to happen.

20 MR. DUNLAP: That's what I thought, Your Honor.

21 JUDGE WEISMANDEL: The only way that's going to happen
22 is if there was a settlement, and then that would still be
23 pushing Transportation and Safety, and I'm not sure I
24 could -- I certainly couldn't speak for them, but I doubt
25 that that would even be possible under those conditions. I'm

1 sorry, I apologize for that, but there's nothing that can be
2 done.

3 I will wait to hear from you then, Mr. Dunlap, with
4 respect to the 16th and 17th.

5 I guess one other thing that ought to be noted about
6 the schedule for hearings on the record is that presumably
7 one or more of the Protestants are going to refile protests.
8 Mr. Dunlap obviously will again have the opportunity if
9 there's a sufficient basis to file a preliminary motion
10 against those protests. We are setting these hearing dates
11 assuming that protests are going to be filed; they are going
12 to be in proper order and either Mr. Dunlap is not going to
13 file anything against them or it's going to be ruled against
14 him.

15 That's a lot of "ifs" and we all have to recognize
16 that.

17 MR. DUNLAP: To that end I would ask if he wants to
18 withdraw that motion with the understanding, however, it is
19 going to be the same protesters turning around and it could
20 potentially delay it and just leave the protest as it stands
21 and allow for -- that way the scheduled hearings can go
22 forward without a problem.

23 MR. DUNLAP: Your Honor, I won't agree to that. That
24 will give me no basis, once again to know what the basis of
25 the protest is.

1 JUDGE WEISMANDEL: Yeah, I recognize your point, Mr.
2 Dunlap.

3 You got his answer.

4 Anything else that we need to do at this time,
5 gentlemen?

6 MR. POHLMAN: At this point we want to know -- One, we
7 will agree to the C and D on here so those witnesses don't
8 have to come -- I don't want to say that at this time.

9 JUDGE WEISMANDEL: Yes, unfortunately I have Mr.
10 Dunlap's memo. Why don't you handle this after we're off the
11 record, just among counsel.

12 MR. POHLMAN: Is the Applicant still applying for all
13 three counties that she originally applied for or is she
14 going to withdraw for just York County as they proposed in
15 their amendment?

16 MR. DUNLAP: Our offer to withdraw was based upon the
17 protests being dropped.

18 MR. POHLMAN: One third one is -- did Mr. Raymond D.
19 Bensch have the opportunity of filing a motion to intervene
20 for his protest singly instead of Superior Transportation
21 Services, Inc.

22 JUDGE WEISMANDEL: He will certainly have the
23 opportunity to file such a request, whether the request will
24 be granted or not remains to be seen.

25 MR. POHLMAN: Okay.

1 JUDGE WEISMANDEL: I would urge you to get the
2 operator and the Certificate of Authority straightened out as
3 quickly as possible.

4 Anything further that we need to do at this time?

5 MR. DUNLAP: Nothing I can think of, Your Honor.

6 JUDGE WEISMANDEL: Thank you all. I will try to get
7 an order with respect to the outstanding motions out. I will
8 try to get it out today; it may, more likely, be Monday till
9 I get it out and then we will move along in accordance with
10 whatever is filed.

11 MR. POHLMAN: Thank you, Your Honor.

12 JUDGE WEISMANDEL: Thank you very much.

13 That will conclude this prehearing conference.

14 I guess I should ask you. Do you see any need,
15 gentlemen, for a second prehearing conference at this time?
16 I realize that is asking you to crystal ball things a little
17 bit, but --

18 MR. POHLMAN: No.

19 MR. DUNLAP: No, not if there's cooperation.

20 JUDGE WEISMANDEL: I will also tell you that if
21 further preliminary motions are filed I will wait the
22 allotted time for an answer to those preliminary motions and
23 then I will rule on them so that we don't further delay
24 things.

25 MR. POHLMAN: Thank you.

1 MR. DUNLAP: Okay.

2 JUDGE WEISMANDEL: Thank you very much. That will
3 conclude this prehearing conference.

4 (Whereupon, at 10:39 a.m., the hearing was adjourned.)
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8 C E R T I F I C A T E

9 I hereby certify, as the stenographic
10 reporter, that the foregoing proceedings were reported
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