

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1714
Of Caring People Sudan, Omaha,) SUPPLEMENT 1
Nebraska, seeking authority as a)
contract carrier in open class)
service providing transportation)
of passengers and their baggage) GRANTED AS MODIFIED
by van for the Nebraska)
Department of Health and Human)
Services clients between points)
in Douglas and Sarpy counties,)
and between points in said)
counties, on the one hand, and,)
on the other hand, points in)
Nebraska over irregular routes.) ENTERED: OCTOBER 27, 2009

APPEARANCES:

Robert Dorton
1941 South 42nd Street
Omaha, NE 68105
Attorney for Applicant

John Boehm
811 South 13th St.
Lincoln, NE 68508

Mark Breiner
Commission Staff

Michael Polk
246 Golden Gate
Drive, Suite 1
Papillion, NE 68046

BY THE COMMISSION:

On April 21, 2009, an application was filed by Caring People Sudan, Omaha, Nebraska, seeking authority as a contract carrier. The application was published in the Daily Record on April 23, 2009. Timely protests were filed by R&F Hobbies, Inc., d/b/a Prince of the Road, Servant Cab Company, d/b/a Yellow Cab Company and Capital Cab Company, SMC Shared Mobility Coach, Yellow Cab Company, Checker Cab Company, Happy Cab Company DonMark, Inc., d/b/a Cornhusker Cab Company. A restrictive amendment regarding transportation in Lancaster County was filed on July 22, 2009. Pursuant to the Commission adopting the restrictive amendment, Servant Cab withdrew its protest. Notice of the hearing was sent to all parties on July 14, 2009, and the application was heard on September 2, 2009.

The Authority sought reads as follows:

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Transportation of passengers and their baggage by van for the Nebraska Department of Health and Human Services clients between points in Douglas and Sarpy counties, and between points in said counties, on the one hand and, on the other hand, points in Nebraska over irregular routes.

APPLICANT'S EVIDENCE

Kitcki Carroll testified first. He is the Director of Community Services with the Lutheran Family Services of Nebraska. He has worked with immigrants, refugees and asylees with Community Services for the past four years. Community Services has worked with the applicant as its fiscal agent and working with Services on community issues.

Mr. Carroll testified that there is a need for transportation services in the immigrant/refugee/asylee population that is currently not being met. The barriers that this population experiences are many, according to Mr. Carroll. Language and cultural barriers are significant for a large portion of this population. Most do not have drivers licenses, and are not experienced with the modes of transportation available to them in the United States. All of these factors weigh on the transportation difficulties experienced by this population.

On cross-examination by Mr. Boehm, Mr. Carroll detailed that the ethnic groups involved in the population include Sudanese, Somalian, Somali Bantu, Liberian, Mexican, Central American, and South American. More recent resettlement programs have included individuals from Southeast Asia, including the Bhutanese and the Karen. He stated that the applicant has extensive experience with the Sudanese and Somalis, but that the problem issues are similar across the ethnic spectrum, and the background and experience that the applicant possess would be helpful in all similar situations.

Mr. Carroll also stated that the applicant would have direct access to other language services that are provided by Lutheran Family Services. He further said that the applicant has received training from and has worked with Lutheran Family Services to assist them in dealing with

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cultural issues and barriers that is not limited to those of the Sudanese and Somalis but also to the Hispanic and Southeast Asian issues as well. Mr. Carroll did admit that he did not have knowledge of other service providers in the area, but also said that he had run into barriers with the services provided by some other carriers.

On cross-examination by Mr. Polk, Mr. Carroll stated that most people in this population are expected to provide or find their own transportation for their health needs. He estimated that the transportation needs of the clientele of his program were not being met approximately sixty percent of the time. Mr. Carroll stated that the only transportation company that they had partnered with was the applicant. They have not partnered with Prince of the Road, the cab companies or with Papio Transportation. His programs have only partnered with Caring People Sudan because of their proximity to the programs and their experience with relevant issues to transportation of this population.

On examination by Commissioner Schram, Mr. Carroll stated that his programs are involved with people who speak over fifty different languages and dialects.

Pat O'Hanlon testified for the applicant. He is an employee of One World Community Health Centers in Omaha. He testified as to issues regarding transportation with the immigrant population that he has experienced. He noted that knowledge of the transportation system was lacking in many instances, as well as the knowledge of the layout of Omaha. There are also language and cultural barriers that create a need for the services that are proposed to be provided by the applicant.

Malakal Goak was the next witness. Mr. Goak is the Executive Director for the applicant. He said that the mission of the applicant is to serve all people in need. The applicant currently has a contract to provide transportation services to the clients of Employment First.

Mr. Goak was questioned as to statements made to him by Health and Human personnel regarding providing transportation services for the Department. This line of

questioning was objected to by the protestants. The objection is sustained and this portion of the testimony will be stricken from the record.

Mr. Goak did testify that he personally knew of two families that had experienced transportation difficulties due to language. The language barrier can prevent these individuals from accessing services as they are not sure who to call for transportation and the difficulties in interpretation and understanding of English in other circumstances.

Mr. Goak stated that he has been an asylee in the United States for seven years, and has been working with the immigrant population for five years. He estimated that there are around 20,000 in the state of Nebraska, most of them in Omaha. He has directly seen and has been involved in assisting individuals who do not speak English and are in need of assistance to overcome the language barrier. His background and the experience he brings to the applicant help him in assisting these individuals.

The applicant currently has four drivers. These drivers are aware that the goal of the applicant is to provide transportation and to assist in overcoming other barriers that their clientele face. The drivers are expected to make contact with the person needing transportation to arrange the proper language assist, to ensure that the individual and the driver know where and when the transportation is to occur, and to ensure that the individual gets to the right location. They are to be available when the appointment is finished and to get them home.

On cross-examination by Mr. Boehm, Mr. Goak said that his four drivers between them are able to speak Karen, Burmese, Somali, Maimai, Nuer and Arabic. Mr. Goak can speak Arabic, Somali, Nuer, Dinka and English. He admitted that he did not know if other transportation providers had drivers or other employees that spoke non-English languages.

Mr. Goak further stated that the heaviest concentration of his proposed operation would be in Douglas and Sarpy counties, but that he hoped to serve other

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communities but was not sure whether I would have need to operate in other locations.

On cross-examination by Mr. Polk, Mr. Goak said that he had access to different language speakers through Lutheran Family Services if an order or request for transportation was received in a language that he did not understand such as Spanish. He further stated that he expected to provide more than ten to fifteen trips per week, although he did state that he did not have any specific number of rides.

On examination by Commissioner Schram, Mr. Goak stated that his company currently owns four vans for its use in operations. He also stated that has \$2 million in insurance coverage at the present time.

PROTESTANTS' EVIDENCE

Jim Laudenklos is the CEO and president of the protestant R & F Hobbies. He testified that Prince provides transportation of passengers statewide, including in Douglas and Sarpy counties. Prince of the Road operates as a common carrier of passengers and has a contract with the Nebraska Department of Health and Human Services. The protestant has 103 drivers and 106 vans in service.

Mr. Laudenklos stated that some of his drivers are able to speak languages other than English. The languages that are spoken by various employees of Prince include Spanish, Sudanese, Arabic, Czech, Russian, Korean and Thai. Prince also has access to other outside sources to assist with translation. According to Mr. Laudenklos, six drivers are fluent in Spanish and two in Arabic and Sudanese. Prince has provided transportation for members of the immigrant population in the past and they intend to continue to do so. Prince has all of their employees undertake training including how to deal with cultural and language barriers.

Prince currently provides around 390 trips per day in the Omaha area. Approximately sixty-three percent of these trips are medical transportation trips with the Department of Health and Human Services. Mr. Laudenklos stated that he has not received any complaints from HHS regarding their

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service in the Omaha area. He believes that they are adequately meeting the needs of HHS in the Omaha area, and they have in the past and are able in the future to expand their fleet as needs require.

On cross-examination by Mr. Dorton, Mr. Laudenklos admitted that there are peak times that they are not able to meet demand, but that they do have an agreement with the local cab companies to assist during these times.

On examination by Commissioner Landis, it was discussed whether two drivers were enough to service a community the size of the immigrant population in the Omaha area. Mr. Laudenklos stated that they were meeting what demand they were seeing, but did acknowledge the possibility that this demand was low due to the barriers that have been discussed during the hearing.

Mr. Frank Schumacher from the Protestant Shared Mobility Coach was present but declined to testify.

OPINION AND FINDINGS

Applications for contract carrier authority are governed by Neb. Rev. Stat. § 75-311(2), which provides:

"(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of section 75-302. Otherwise the application shall be denied."

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The Commission's consideration of an applicant's fitness is comprised of two tests. The first part of the test is whether the applicant is fit, willing and able properly to perform the service of a contract carrier by

motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules and regulations of the commission under such sections.

Applicant is a company that is operating as a provider of transportation and translation services. It recently received a permit as a contract carrier for Employment First. It offered testimony that it is properly equipped to perform the service. The testimony established the fitness of the Applicant and we find that the Applicant is fit in these areas.

The second part of the two-part test is whether the proposed operation, to the extent authorized by the permit, will be consistent with the public interest. In Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 188 Neb. 584, 198 N.W. 2nd 195 (1972) the Court established the following criteria to be considered in determining whether a proposed contract carrier operation will be consistent with the public interest:

"In considering an application for a permit to operate as a contract carrier, the burden is upon the applicant to show that the proposed service is specialized and fits the need of the proposed contracting shippers, that the applicant is fit, willing, and able to perform the service, and that the proposed operation will be consistent with the public interest. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., 183 Neb. 229, 159 N.W.2d 310. Where the transportation of specified commodities can be performed as well by common carriers as by contract carriers, a need for contract carriers is not established. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., *supra*. If competent proof is made by the applicant showing the proposed service to be specialized and needed, and is protested by common carriers showing a willingness and ability to perform

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it, the applicant must then establish that he is better equipped and qualified to meet the special needs of the proposed contracting shippers than the protesting common carriers. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., supra. The adequacy of existing services to perform the normal needs of proposed contracting shippers is not conclusive where the new service is better designed to fit the special requirements of the proposed contracting shippers. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., supra.

In the application before us, the proposed operation is one that can facilitate the transportation needs of the immigrant community in the Omaha area through the application of a specialized service provided by the Applicant. The transportation needs of this community can be enhanced by the training and experience offered by the Applicant. It appears that the Applicant has made sufficient showing that the proposed service is designed to meet needs of the relevant population.

Regarding whether the transportation of specified commodities can be performed as well by common carriers as by contract carriers (see Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., supra.), an examination of the evidence shows that there was sufficient evidence that common carriers are unable to perform the transportation of the population as well as the applicant. The Applicant offers services, experience and resources that are not readily available to the Protestants and can be of good effect in the transportation needs of the immigrant population.

The Wells Court set forth a third area of consideration as to whether the proposed service is in the public interest. Where competent proof is made by the Applicant showing the proposed service to be specialized and needed, and the application is protested by common carriers showing a willingness and ability to perform it, the Applicant must then establish that it is better equipped and qualified to meet the special needs of the proposed contracting shippers than the protesting common carriers. Wells Fargo Armored Service Corp. v. Bankers

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Dispatch Corp, 188 Neb. 584, 198 N.W. 2d 195 (1972); see also In re Application of Northland Transportation, Inc., Northland Transportation v. Herman Brothers, Inc., et. al. 239 Neb. 918, 470 N.W. 2d 764 (1992).

The evidence before the Commission is that the proposed service is specialized. The Protestant made a showing that it is willing and able to perform the service. The burden then shifts back to the Applicant to show that it is better equipped and qualified to meet the special needs of the proposed contracting shippers than the protesting common carrier.

In this case, the Commission finds that the Applicant has established that it is better equipped and qualified to meet the special needs of the shipper than the Protestant. While there was evidence put forth that the Applicant is equipped to properly perform the service and has the requisite qualifications to perform the service, the evidence shows that they are better qualified to provide the specialized transportation than the Protestants. The Applicant made a showing that the services it can provide would assist in the transportation needs of the immigrant population in a more effective and efficient manner than the Protestants can offer at this time. The needs of immigrant population are better met by the Applicant than by the Protestant.

The Commission finds that the evidence was sufficient in support of a grant of the application in the Omaha area, but not as strong statewide. While the applicant did state that it had plans to operate statewide, it also stated that it planned to primarily concentrate in the Omaha area. Therefore, the Commission finds that a permit should be authorized that would include Douglas and Sarpy counties, but not more than those counties.

Therefore, the Commission finds that the applicant is better qualified than the protestant to provide transportation services as a contract carrier for the Nebraska Department of Health and Human Services in Douglas and Sarpy counties in Nebraska. The Commission finds that the application should be granted as modified..

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After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. The proposed contract carrier operation is consistent with the public interest.
2. The application should be granted to the following extent:

Contract: Transportation of passengers and their baggage by van for the Nebraska Department of Health and Human Services clients between points in Douglas and Sarpy counties, and between points in said counties, on the one hand and, on the other hand, points in Nebraska over irregular routes. HHS Designation: Yes. Restricted against the transportation of railroad train crews.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1714, Supplement 1 be, and it is hereby, granted as modified above and that a permit shall be issued to Caring People Sudan authorizing the services of a contract carrier by motor vehicle as set forth above.

IT IS FURTHER ORDERED that applicant shall not be issued the permit authorized by the Commission unless and until the applicant has fully complied within 90 days from the effective date of this Order with NEB. REV. STAT. §§75-305 (fees), 75-307 (insurance), and 75-308 (rates), (Reissue 2006), and with the rules and regulations of the Commission, and if upon expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to the applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct operations until a permit is issued.

IT IS FURTHER ORDERED that the permit authorized shall be subject to the terms, conditions, and limitations which

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have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of October, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald L. Vay

Frank E. Landis
Chairman

Ray Johnson

ATTEST:

Shirley J. Hoff
Executive Director

Tim Schram

//s// Frank E. Landis