

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,)
Nebraska, seeking authority as a)
contract carrier in open class)
service providing transportation))
of passengers and their baggage) GRANTED
by van for Employment First)
clients between points in)
Douglas and Sarpy Counties)
Where public Transportation is)
Not available due to bus line)
Restrictions over irregular) ENTERED: OCTOBER 29, 2008
Routes.)

APPEARANCES:

Dave Pantos
Kelly Boswell
1904 Farnam St. #500
Attorney for Applicant

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

Shana Knutson
Commission Staff

BY THE COMMISSION:

On December 18, 2007, 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 December 18, 2007. A timely protest was filed by R&F Hobbies, Inc., d/b/a on December 27, 2007. Notice of the hearing was sent to all parties on April 15, 2008, and the application was heard on June 11, 2008.

The Authority sought reads as follows:

Transportation of passengers and their baggage by van for Employment First clients between points in Douglas and Sarpy counties, and between points in said counties, where public transportation is not available due to bus line restrictions.

APPLICATION NO. B-1714

PAGE 2

APPLICANT'S EVIDENCE

Malakal Goak testified first. He is the Executive Director of Caring People Sudan, and has been in his position for the last three years. Caring People Sudan provides translation services under contract with the Nebraska Department of Health and Human Services.

The Applicant proposes to provide transportation in open class service under contract with and for the clients of Employment First. Mr. Goak said that the Applicant will use vans in this proposed service. Currently the Applicant owns a 2003 Dodge Caravan that would be used in the proposed service.

Mr. Goak informed the Commission that the Applicant would retain MJS to perform the required maintenance on the van. Upon questioning by Mr. Pantos, Mr. Goak stated that he would follow all rules of the road as Commission Rules and Regulations.

The Applicant currently owns the 2003 Dodge Caravan. Mr. Goak said that the Applicant would be able to place additional vans into the service as they may be needed.

Mr. Goak testified that Employment First had clients that faced special difficulties. Their clients need to have assistance in transportation due to these difficulties. These difficulties included language barriers as well as accessibility issues related to unfamiliarity with and access to the local transportation system.

Caring People Sudan provides translation services under contract with the Nebraska Department of Health and Human Services. It also provides some training to refugees on how to access the local transportation system. Many of the individuals that Caring People Sudan are serving do not have access to a public bus line and therefore must rely upon friends for their transportation needs. It is these people that the Applicant seeks to provide transportation for in connection with the services provided by Employment First.

APPLICATION NO. B-1714

PAGE THREE

Refugees are having particular difficulties due to language and cultural barriers. It is these barriers that the Applicant states it can be very helpful with.

On examination by Commissioner Schram, Mr. Goak stated that CPS is currently working with around 200.

On cross-examination by Mr. Boehm, Mr. Goak stated that CPS has seven employees. Four of those employees are case managers. CPS currently does not have a contract to provide transportation with HHS.

When queried about the financial position of the Applicant, Mr. Goak stated that the 2003 Dodge van was owned outright. He also said that the Applicant had \$2,500 in the bank for operations. Mr. Goak did admit that he was unsure of the operating costs of the van.

Barry DeJong next testified for the Applicant. He is the administrator for the eastern service areas for the Nebraska Department of Health and Human Services. He has held the position for seven months

Employment First is an agency that has a contract with HHS. Employment First helps facilitate employment training, transportation services and the transition from services to independent living for individuals. There is no typical client of Employment First, but most are people who are on need of some type of assistance. Ordinarily these individuals would not be able to afford to own a car or use taxi service on a regular basis. HHS requires that people on assistance attend sessions and training through companies such as Employment First.

According to Mr. DeJong, HHS contracts with various transportation providers. He testified specifically about the lack of public transportation available in certain areas of Douglas and Sarpy counties. Mr. DeJong stated that parts of Douglas County are well covered, but that other areas are not. He also stated that Sarpy County has "skeleton-like structure" regarding its public transportation system in that area.

APPLICATION NO. B-1714

PAGE FOUR

Mr. DeJong further said that western Douglas and all of Sarpy did not have enough foundational transportation pieces in place to get employees to job sites. These were all areas cited by Mr. DeJong as areas where many of the clients of his program are not being adequately served by public transportation.

On examination by Commissioner Schram, Mr. DeJong stated that Employment First currently meets its transportation demands by use of private contractors, public transportation and other vehicle services. The private contractors are those with contracts with the Department of Health and Human Services.

On cross-examination by Mr. Boehm, Mr. DeJong stated that he did have contracts with other providers including Prince of the Road as well as Midwest and one or two others. He did state that he thought that Employment First was using these other services. He also stated that HHS could use the existing services more.

Dianne Stewart testified next for the Applicant. She is the Employment First administrator for the eastern services area. Her letter to the Commission in support of the application was entered into the record.

On cross-examination by Mr. Boehm, she stated that Caring People Sudan would have the same opportunity to provide transportation as other carriers in the state. She stated that Employment First is currently using other carriers such as Prince of the Road and Midwest Special Services as well.

Ms. Stewart said that the purposes of the transportation include getting clients to keep interviews with Employment First specialists, to seek employment and to get the clients to job sites when hired. When asked by Mr. Boehm if Employment First could use the other transportation providers more, she replied that they could in some cases but in other cases there were specific needs based on cultural and language barriers that exist that result in an underserved population.

Ms. Stewart addressed some specific cultural issues. They primarily revolved around an issue with females riding

APPLICATION NO. B-1714

PAGE FIVE

in public transportation modes, and that there is a comfort level with transportation provided by people that are known to them. Mr. Boehm did point out that if the driver was not known to the passenger or did not speak the language that the problem would still be present and Ms. Stewart agreed with that assessment.

On redirect by Mr. Boswell, Ms. Stewart stated that there are approximately 320 clients of Employment First living in Sarpy County that have no bus service at all, and another 1,000 in other places that are not served well by the public transportation system. Without access to transportation, Ms.

Stewart stated, their clients have difficulties in getting to interviews, counseling and to the job sites when hired.

Gloria Sivertson testified for the applicant. She is the site manager for Employment First in the Omaha area. She has known the Applicant for about one year as a provider of translation and interpretation services. She reported that she considers the reputation of the Applicant to be excellent.

Ms. Sivertson said that she was not aware of other service providers for immigrant and refugee populations in the Omaha area. She said that her company currently serves 350 immigrants, and that transportation services are needed for this group of people daily.

Ms. Sivertson stated that she had called Prince of the Road once and was told that they do not provide services to the Employment Services population. She has not made any further efforts to work with Prince of the Road since that time.

Ms. Sivertson said that there is an unmet need in the Omaha area for transportation services. She said that the language barrier and a lack of knowledge of how to use the services of public transportation were issues that many of her clients have to deal with.

On cross-examination by Mr. Boehm, Ms. Sivertson said that she had last contacted Prince of the Road in June 5,

APPLICATION NO. B-1714

PAGE SIX

2008. She initially thought, based on a conversation with Prince staff, that Prince did not provide such transportation as they only provided medical transportation. It has now been determined that Prince of the Road can provide transportation to the Employment First clients. Payments for the services will be made by Health and Human Services.

On cross-examination by Mr. Boehm, Ms. Sivertson stated that Employment First is currently using Caring People Sudan for translation services through a contract with HHS. She also said that they could also use other service providers in addition to CPS.

PROTESTANT'S EVIDENCE

Tim Greger is the office manager in Omaha for Prince of the Road. He testified that Prince provides transportation of passengers in Douglas and Sarpy counties. Prince of the Road has thirty-three vans and drivers in the Omaha area. It receives predetermined appointments on a twenty-four hour, seven days a week basis, including holidays. Prince of the Road provides approximately 300 trips per day.

Prince of the Road currently provides trips for all types of people. The trips include medical appointments, counseling sessions, nursing care transportation and day care trips. Prince of the Road currently does operate under a contract with Health and Human Services. Mr. Greger estimates that seventy percent of Prince of the Road's business is HHS related.

Mr. Greger detailed that the information received by Prince of the Road for transportation includes destination locations and times. In most instances there is no need for information from the passenger. He noted that Prince currently provides transportation for individuals who do not speak English, and also noted that translators can ride free of charge if they are needed by the passenger.

Mr. Greger believed that there was a misunderstanding between Prince and Employment First regarding Prince's ability to transport their clients. He said that Prince

APPLICATION NO. B-1714

PAGE SEVEN

can provide such transportation. Mr. Greger stated that Prince can add to their fleet of vehicles as necessary.

On cross-examination by Mr. Pantos, Mr. Greger noted that Prince has one Spanish speaking and one Czech speaking driver in their employ, and that no other languages are spoken by other employees. He also said that Prince's training program does address some cultural issues.

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."

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 translation services. It offered testimony that it is properly equipped and has the financial capability to perform the proposed contract service. It is aware of

APPLICATION NO. B-1714

PAGE EIGHT

insurance requirements and testified as to maintenance issues. The applicant stated it is aware of Nebraska Public Service Commission Rules and Regulations and will abide by them. 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 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

APPLICATION NO. B-1714

PAGE NINE

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 Employment First through the application of a specialized service provided by the Applicant. The transportation needs of Employment First can be enhanced by the translations services already offered by the Applicant. It also appears that the Applicant has made sufficient showing that the proposed service is designed to meet needs of Employment First.

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 crews as well as the contract carriers. Employment First and the Applicant offered testimony that the Applicant offers services that are not readily available to the Protestants and can be of good effect in their transportation needs.

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 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

APPLICATION NO. B-1714

PAGE TEN

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 Protestant. The Applicant made a showing that the translation services it provides would assist in the transportation needs of Employment First better than the Protestants can offer at this time. The needs of Employment First are better met by the Applicant in the transportation of their clientele than by the Protestant.

Therefore, the Commission finds that the applicant is better qualified than the protestant to provide transportation services for Employment First. The Commission finds that the application should be granted.

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 Employment First clients between points in Douglas and Sarpy counties, and between points in said counties, where public transportation is not available due to bus line restrictions. 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 be, and it is hereby,

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1714

PAGE ELEVEN

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

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of October, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald D. Vap
Frank E. Landis
Tim Schram

Anne C. Boyle
Chair

ATTEST:

Paul G. Hill
Executive Director

//s// Anne C. Boyle
//s// Frank E. Landis