

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Petition of DAKT  
Enterprises, Inc., d/b/a Local Motion for  
Expanded Household Goods Mover  
Permit Authority

FINDINGS OF FACT,  
CONCLUSIONS,  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on February 9 and 10, 1999, at the Office of Administrative Hearings in Minneapolis, Minnesota. Jeffrey W. Post and Cynthia M. Klaus, Doherty, Rumble & Butler, P.A., 2800 Minnesota World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101, appeared on behalf of the Petitioner DAKT Enterprises, Inc., d/b/a/ Local Motion ("Local Motion," Petitioner). Douglas B. Bester, Owner and Manager, Bester Brothers Transfer and Storage Company, 260 Hardman Avenue South, South St. Paul, Minnesota 55075, appeared on behalf of Protestant Bester Brothers Transfer and Storage Company. Daniel Brady, Owner, The Movers, Inc., 2109 Pleasant Avenue South, Minneapolis, Minnesota 55404, appeared on behalf of Protestant The Movers, Inc. The record in this matter closed on March 30, 1999.

**NOTICE**

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Department of Transportation, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with Deputy Commissioner/Chief Engineer Darryl E. Durgin, Minnesota Department of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before the Commissioner of Transportation or his designee may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Commissioner or his designee.

The Commissioner or his designee will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commissioner or his designee may accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner or his designee as the final order in this matter.

### **STATEMENT OF ISSUE**

Whether Local Motion's Petition for expanded territorial authority should be granted to include any, all, or only part of the territory sought?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### **Procedural and Notice Requirements**

1. On September 21, 1998, Local Motion filed with the Minnesota Department of Transportation a Petition for extension of Household Goods Mover Permit Authority to transport household goods between all points in Minnesota. The petition was later amended to request authority in thirteen counties: Anoka, Chisago, Dakota, Goodhue, Isanti, LeSueur, McLeod, Ramsey, Rice, Sherburne, Sibley, Washington, and Wright.

2. On September 25, 1998, the petition was published in the Rail and Motor Carrier Proceeding Notice and Hearing Bulletin.

3. Timely protests were made by Bester Brothers Transfer and Storage Company and The Movers, Inc.

#### **Description of Petitioner and Proposed Transportation Service**

4. Local Motion was incorporated on January 1, 1991. The owner and sole shareholder is David Seeley. Local Motion currently has 53 employees. Since its beginning, Local Motion has operated as a household goods mover with authority to operate in Hennepin, Scott, and Carver Counties.

5. Mr. Seeley has eight years of experience in the moving industry and has participated in all aspects of the moving business. Local Motion is organized in several departments and provides training for each employee.

6. Local Motion's Company Balance Sheet for December 31, 1998 indicates that the Petitioner is operating at a pretax profit of \$210,677. Local Motion has been able to expand its fleet from 1 to 12 moving vans and its number of employees from 3 to 53 in the last eight years without experiencing financial difficulties.

7. Local Motion currently has 12 moving vans. The vehicles are inspected every day, and a vehicle is not used if it fails the inspection. Steve Corpron, Operations Manager for the Petitioner, administers a program to assure that all company vehicles meet all safety standards required by the Minnesota Department of Transportation.

8. Exhibit 9 is a log of customer comments regarding Local Motion's quality of service. More than 95% of the customers' comments are positive. State Representative Jim Rhodes wrote a letter in support of Local Motion's petition, stating that Local Motion offers high-quality services and should be granted expanded authority. Ex. 10.

9. April Burton is a real estate agent who refers business to Local Motion. She has confidence in Local Motion because she knows David Seeley personally and because of Local Motion's excellent reputation in the community. She would like to refer more of her clients to Local Motion, but is limited in doing so because of Local Motion's limited territorial authority.

10. Mr. Seeley admits that Local Motion has been cited twice for operating outside its authorized territory. The unauthorized moves were scheduled by a new employee who did not understand the boundaries of Local Motion's authority, and Local Motion has taken further steps to train employees and ensure compliance since that time.

11. Local Motion's services include a box rental program, no charges for travel time, a pallet storage system (called "Direct Control Storage") supported by a fully-integrated software system, trucks reserved for last-minute scheduling for end-of-the-month moves, (planned) discounts for the physically disabled, and a TTY machine to aid in communication with the deaf. Local Motion maintains that these features are unique and that existing authorized carriers are not meeting the needs for these services.

### **Need for the Proposed Household Goods Moving Service**

12. Local Motion turns down over 500 moves a year from territory outside its authority.

13. Jeremiah (Jerry) Fruin, Ph.D., an economist from the University of Minnesota, explained his analysis of need for moving services in the thirteen-county area. The metro area has grown from two core cities to a broad, integrated area. There is an extremely large gap between the number of moves in the area and the number of shipments by intrastate movers in recent years. The number of households is increasing at a faster rate than population. Dr. Fruin maintains that the growth in households means that the demand for moving services is increasing. There are a number of "gray market" (unlicensed) carriers operating in the metro area. Dr. Fruin maintains that the presence of "gray market" carriers indicates that the licensed carriers are not meeting the public demand for moving services. The number of intrastate household goods shipments increased almost 20% from 1995 to 1997, but the metro area fleet dedicated to intrastate shipments only increased by 5% in the same period. In Dr. Fruin's opinion, this is another indicator that the intrastate household goods carriers in the metro area are not meeting the demand for moving services.

14. Exhibit 16, presented by Dr. Fruin, indicates that the number of households in 12 of the 13 counties for which Local Motion seeks authority will grow

between 1995 and 2020. Sibley County is projected for “negative growth” in the number of households during that time.

15. Ron Kilgore, president of 1st Choice Movers, testified in support of the petition. He believes that his business will not be affected adversely if Local Motion’s petition is granted. His company has experienced growth in recent years. Mr. Kilgore testified that 1st Choice Movers is unable to meet the public need for household moving services, especially from the spring through fall, and is forced to turn down moving jobs.

16. John Schwartz, president of AAA Movers, testified in support of the petition. He believes that his business will not be affected adversely if Local Motion’s petition is granted. His company has experienced growth in recent years. Mr. Schwartz testified that AAA Movers is unable to meet the public need for household moving services, especially from the spring through fall, and is forced to turn down moving jobs.

17. Peak service periods for movers are the end of each month and summer months, from approximately April to October. Every mover who testified, including the Protestants and the Protestants’ witnesses, has been forced to turn away business during those times because their workers and equipment were fully booked.

18. Elizabeth Straub hired Local Motion for her move. Her belongings were then put in storage at the Local Motion warehouse. Because of its limited authority, Local Motion cannot move Ms. Straub’s belongings to her new home in Wright County. Ms. Straub called twelve movers to move her belongings. All of the movers she contacted were booked for her moving date. At the time of the hearing, Ms. Straub was still in need of moving services.

19. At the time of the hearing, Shirley Shumate had recently moved. She called seven or eight moving companies to schedule her move, but everyone she talked to was fully booked for her moving date. She ultimately moved without the assistance of a moving company.

20. Exhibit 19, an affidavit from Kim Spoden of Buffalo, Minnesota, indicates that Ms. Spoden contacted three movers, but was unable to find one that was available on her moving date.

21. It is Ms. Burton’s observation and experience that there is a need for additional moving services because the real estate market has been extremely active.

22. Mr. Seeley maintains that Local Motion offers unique services, specifically those noted at Finding #11. All of the services are well-received by the customers, and Mr. Seeley does not know of other companies that offer them.

23. Local Motion offers Dime-A-Day Box Rental, which saves customers money because they would ordinarily have to buy boxes. None of the Protestants testified that they offer this service.

24. Local Motion uses True-Time Billing, which does not charge for the movers’ travel time between Local Motion’s office and the customer’s home. Ms. Straub

and Ms. Shumate prefer this billing method over other methods. None of the Protestants testified that they offer this service.

25. Local Motion has a Direct Control Storage system, which avoids extra handling of customers' belongings and saves time and money. The Direct Control system also offers greater protection to a customer's goods. The storage system is supported by an individualized software package, which allows immediate access to any stored item. Ms. Straub currently has her belongings in Local Motion's storage vaults.

26. Under the Minute-Move policy, Local Motion reserves two trucks for use at the end of the month, keeping them unscheduled for last minute moves until the 19th of each month. Both Ms. Straub and Ms. Shumate scheduled their end-of-the-month moves only two weeks in advance, and both had difficulty finding an available mover. All of the carriers who testified agreed that they often cannot accommodate people who want to move at the end of the month and call at the last minute. Mr. Cas Prokop, a witness for Protestant Bester Brothers, testified that no one in the industry offers this service. Specifically, none of the Protestants testified that they had a reserve truck policy.

27. Local Motion intends to offer price discounts for physically disabled customers. It also has a TTY machine to allow telephone communication with hard of hearing individuals. Jody Dunlap, the Director of Education, Training, and Parenting at a human services organization believes that there is a need for respectful, efficient services for the deaf. None of the Protestants testified that they offer discounts for disabled individuals or a TTY.

### **Protesting Carriers**

28. Protestant Bester Brothers Transfer and Storage has been in the motor carrier business since 1917. Protestant The Movers, Inc. has been in the motor carrier business since 1986. Both Protestants hold statewide motor carrier operating authority. The Protestants are opposed to the expansion of authority, but would not oppose Local Motion if it purchased an existing license from another carrier.

29. Mr. Bester believes that the moving industry suffers from over-capacity. Mr. Bester believes that there is no need for another moving company and that his business can handle the existing need. Several moving companies have gone out of business. He is sometimes forced to turn away business, because his schedule is fully booked. His company has expanded and been profitable in recent years. Bester Brothers does not offer box rental, no charge for travel time, a reserve truck policy, or disability services. It does have a pallet storage system, but it is not fully integrated with computer software.

30. Mr. Brady believes the moving industry suffers from over-capacity. He admitted that at least some of the over-capacity is a result of unlicensed moving companies. Mr. Brady testified that he has observed numerous "gray market" carriers operating in Hennepin and Ramsey Counties. He is sometimes forced to turn away business because his schedule is fully booked. His company has been profitable in

recent years. The Movers does not offer box rental, no charge for travel time, pallet storage, a reserve truck policy, or disability services.

31. Dennis Backdahl of Uptown Transfer and Storage testified in support of the Protestants. He testified that his trucks are not busy all of the time, and his company would be adversely affected if Local Motion were granted expanded authority. Uptown is forced to turn away business when his trucks and workers are booked. Although he believes there is over-capacity in the industry, he admitted that his company has expanded by adding a truck and there are plans to purchase additional vehicles. The company does not offer box rental, no charge for travel time, a reserve truck policy, or disability services. They have partially-containerized storage, but the goods are not moved on pallets and must be unloaded into containers at the warehouse.

32. Cas Prokop of Metcalf Moving and Storage testified in support of the Protestants. Mr. Prokop believes that the moving industry suffers from over-capacity. Mr. Prokop believes that there is no need for another moving company and that his business can handle the existing need. Several moving companies have gone out of business. Metcalf Moving and Storage is sometimes forced to turn away business, because its schedule is fully booked. Metcalf Moving and Storage has been profitable in recent years. The company does not offer box rental, no charge for travel time, a reserve truck policy, or disability services. It does have a pallet storage system, but it is not fully integrated with computer software, and there is not immediate access to stored items. A customer must request a stored item 24 hours in advance. Local Motion can retrieve any item within 15 minutes.

33. Edward Kocourek of Lovelette Transfer Company testified in support of the Protestants. His trucks are usually booked, except during the second week of each month. Mr. Kocourek has been the owner of Lovelette Transfer Company for 18 months. In that time, the volume of business has grown and his fleet has increased. The company has been forced to turn away customers when the schedule is booked.

34. The Protestants and their supporting witnesses frequently rent trucks at times of high business demand in an effort to meet the needs of the moving public.

35. Neither Mr. Backdahl, Mr. Prokop, nor Mr. Kocourek filed protests to this petition or intervened in the proceeding.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Department of Transportation and the Administrative Law Judge have jurisdiction of the subject matter of the hearing herein pursuant to Minn. Stat. §§ 14.57 - 14.62, 174A.02, subd. 4, and 221.121, subd. 1.

2. The Minnesota Department of Transportation gave proper notice of the hearing in this matter, has fulfilled all relevant substantive and procedural requirements of law or rule, and has the authority to take the action proposed.

3. The Petitioner is fit and able to conduct the operations proposed.
4. The Petitioner's vehicles meet the safety standards of the Minnesota Department of Transportation.
5. The area proposed for service in the Amended Petition has a need for the services proposed by the Petitioner, except for Sibley County.
6. Carriers shall be admitted into the marketplace when it appears that they offer services that are not offered by others. Appeal of Signal Delivery Service, 288 N.W.2d 707, 711-12 (Minn. 1980). If a petitioner shows that it is planning to target an underserved market, a need for services is established. Petition of 1st Choice Movers, HHG 74541/A-93-315 (Aug. 16, 1994). The Petitioner has demonstrated that there is a need for moving services that provide box rental, no travel time charges, pallet storage supported by an integrated software system, trucks reserved for the end of the month, and services for persons who are physically disabled.
7. The Protestants have failed to prove that existing carriers offer sufficient services to meet fully and adequately the needs identified.
8. Any Findings of Fact more properly considered Conclusions are hereby adopted as such.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

**RECOMMENDATION**

That the Petition of DAKT Enterprises, Inc., d/b/a Local Motion for expansion of household goods mover permit authority shall be GRANTED, IN PART, with the geographical restriction that such services may be provided only within Anoka, Carver, Chisago, Dakota, Goodhue, Hennepin, Isanti, LeSueur, McLeod, Ramsey, Rice, Scott, Sherburne, Washington, and Wright Counties. Extension of permitted service to Sibley County should be DENIED.

Dated this 30th day of April, 1999

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RICHARD C. LUIS  
Administrative Law Judge

Reported: Taped  
No Transcript Prepared

**NOTICE**

- Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

The Administrative Law Judge concludes that Local Motion has met its burden of establishing that it is fit and able to handle the proposed expansion sought in the application for extension of authority. It has established further that its vehicles meet all safety standards applicable, and that there is a need for the proposed expansion. It is concluded further that the Protestants have failed to establish that existing carriers can meet the needs shown.

One issue raised regarding the Petitioner's fitness and ability regards two moves it made outside its authorized territory of Hennepin, Carver and Scott counties. Mr. Seeley, Local Motion's President, admits the violations took place, but explains that a new employee scheduled two moves without knowing that the territory Local Motion agreed to serve was unauthorized. The evidence shows clearly that it is against company policy to operate outside of its authorized territory, that the company has instituted a training program to assure no further such mistakes are made and that no other violations have occurred. A petition should be denied based on illegal operations only if the violations evidence a "continuing willful disregard for the law." Brinks v. Public Utilities Commission, 355 N.W.2d 446, 450 (Minn. App. 1985.) Such evidence has not been shown here.

The Protestants argue that Local Motion provides illegal discounts to physically disabled individuals, and that this should have a bearing on a determination of fitness and ability. This argument is misplaced. Local Motion does not offer a discount now, it merely plans to do so in the future, provided the discounts are approved by the Transportation Regulation Board for inclusion in a tariff. Apart from the facial allegation of illegality, there is no evidence that such discounts are illegal.

The Protestants' argument that the Petitioner's Yellow Pages advertising constitutes an offer of services that Local Motion is not authorized to perform is likewise misplaced. The evidence shows the Petitioner advertises only in Yellow Pages serving areas where it has authority. They do not place ads, for example, in the St. Paul yellow pages, because they do not yet have operating authority in Ramsey County.

Regarding a need for the services proposed, the Protestants argue that there is no evidence to support that Local Motion has turned down moves due to its limited area of authority. However, Petitioner's Exhibit 10A (phone logs covering several years) indicates that Local Motion received approximately 500 jobs a year which involved moving persons in, out or within areas where it is not authorized to operate. This document supports the testimony of Mr. Seeley, who testified his company turns down those requests, which testimony the Administrative Law Judge finds credible on this point.

The Protestants challenge one of the conclusions of Dr. Fruin, the Petitioner's expert witness, regarding the alleged showing of need because of the existence of an

upward trend in household moves for most of the thirteen counties into which Local Motion seeks to expand its authorized operations. Fruin indicated there was an unmet demand because the growth in the number of trucks owned by authorized carriers was not keeping pace with the growth in the number of households, or, more specifically, the growth in the number of household moves. The Protestants challenged Fruin's conclusion on this point by noting that they can rent additional trucks during peak times. They admit, however, that rental trucks are limited. It is noted further that all carriers admit that they turn away business during peak times.

The Protestants contend that Local Motion's fleet schedule data for the last days of January in 1999 support their testimony about over-capacity in the industry. The data show that the Petitioner had idle trucks each day during the last part of January. The Administrative Law Judge cannot agree with the Protestants' interpretation of the evidence in light of the fact that every carrier who testified, including the Protestants, agreed that January is one of the slowest months in the moving industry. As noted above, all the movers testifying in this proceeding, including the Protestants and movers who supported them, admit that they cannot serve all the demand they receive at peak times.

The fact that carriers could handle more demand during slower periods does not diminish the need for additional moving services at other times. The Protestants argue further that the small number of witnesses (2) who testified, in support of the Petition, that they were unable to find movers when they wanted to move, is an inadequate showing of need to justify granting authority in a territory so large. The Administrative Law Judge cannot agree. Because of unique problems of proof, including finding witnesses from the general public who are willing and able to testify, there is a relaxed showing of need in the household goods moving context. Five Star Trucking v. Minnesota Transportation Regulation Board, 370 N.W.2d 666, 669 (Minn. App. 1985). It is noted also that representatives of two other moving companies testified in support of the Petitioner on the need issue, specifically that additional moving services are needed to meet the public demand and that their businesses would not be affected adversely if the territorial extension is granted to Local Motion.

Need can also be established by showing that a petitioner offers a unique service not offered by existing authorized carriers. Appeal of Signal Delivery Service, 288 N.W.2d 707, 711-712 (Minn. 1980). While agreeing with the Protestants that the primary consideration regarding need for the expansion of moving service into new territory is whether the territory is under-served, the ALJ notes that the fact a Petitioner may be able to offer unique services not offered by others is relevant to the granting of authority regardless of the extent of the territory into which expanded service is sought. The Protestants contend that Local Motion's "True Time Billing" is not unique because other carriers advertise no charges for travel time. In the absence of more evidence about these carriers, and absent the opportunity to cross-examine them to ascertain whether their billing methods are similar to Local Motion's, the Protestants have not established that existing carriers meet the need for the unique service offered.

Regarding the software used by Local Motion which allows immediate access to stored goods, the Administrative Law Judge concludes that that service is unique because the software is custom-made to fit the Petitioner's storage system and there is no evidence that existing authorized movers allow access more quickly or efficiently.

The Protestants do not dispute that Local Motion's Minute Move policy (which reserves two trucks for moves at the end of the month) is unique. All carriers who testified agreed, and the Protestants admitted in their Brief, that current carriers cannot meet demands for moving services during peak times, such as the end of the months of April - October. The reservation of trucks dedicated to the service of end-of-the-month moving customers obviously addresses a need.

Regarding services for deaf individuals, the Protestants argue that the same services can be handled by the Minnesota Relay System. However, that service does not meet the need for respectful, direct communication with deaf persons. The Petitioner established that approximately 20,000 such persons exist in the Twin Cities Metropolitan Area, and only Local Motion uses a TTY system so deaf persons can communicate directly with the company if they need moving services. This evidence indicates both the existence of a need and that existing authorized movers are not meeting that need.

Local Motion argues that because only two movers filed protests to its Petition and only three others testified at the hearing, that it should be presumed as a matter of law that none of the other carriers can meet the need for moving services. In support of this argument, the Petitioner cites the Supreme Court's decision in Five Star Trucking v. Minnesota Transportation Regulation Board, 370 N.W.2d 666 (Minn. 1980). The Administrative Law Judge declines to give such a broad reading to the holding in Five Star Trucking. The Court's language "If existing carriers do not testify, it must be concluded as a matter of law that they cannot adequately meet the need shown.", 370 N.W.2d 672, comes within the context of a case where no one filed a protest to the petition and no one testified against the granting of the petition. That is not the case here.

Minn. Stat. § 221.121, subd. 1(b) provides that (if other criteria are met) a permit may be granted if "existing permit and certificate carriers in the area to be served have failed to demonstrate that they offer sufficient transportation services to meet fully and adequately those needs. . .". The question of whether protesting parties can use evidence that, taken together with other existing permitted carriers, they are meeting the needs established by the petitioner, has not been decided. The Administrative Law Judge believes the statute allows testimony about how carriers that have not filed protests are meeting the needs at issue. Consistent with that, he has considered the evidence presented by the Protestants on those points and assigned to it the weight he feels is appropriate in each such instance.

The ALJ has recommended against granting the extension of authority into Sibley County because the projection by the Protestants' expert witness is that Sibley

County will experience a decline in households from now through the year 2020. The Judge is aware that applicable case law holds that the need for moving services in a large geographical area can be established by evidence that the need exists at various representative points. That type of evidence was produced by the Petitioner. In addition, the expert testimony of Dr. Fruin allows for an inference that the same need exists in areas not testified about specifically (all 12 counties sought except for Sibley) if it is shown that the areas are growing in the projections for number of households and/or the number of household moves. The problem is that no such inference can be drawn fairly for Sibley County (where the household numbers are projected to be in decline).

R.C.L.