

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
BAYWOOD TRUCK AND EQUIPMENT COMPANY,)
Protestant,) Protest No. PR-112-76
v.) FILED: February 25, 1977
INTERNATIONAL HARVESTER,)
Respondent.)

DECISION

Procedural Background

1. Respondent, International Harvester Company ("International") gave notice pursuant to Section 3060 of the Vehicle Code of its intention to terminate its franchise relationship with protestant, Baywood Truck and Equipment Company, 2016 Broadway, Eureka, California 95501 ("Baywood").
2. On July 20, 1976, Baywood filed a protest with this board, under Vehicle Code §3060 and §3066.
3. A hearing was held pursuant to Section 3066 before Anthony Skrocki, Hearing Officer of the New Motor Vehicle Board in Sacramento, California, on Tuesday, October 26, 1976, at 9:55 a.m. The protestant was represented by John C. Davis,

Esq. The respondent was represented by Jeffery L. Brown, Senior Attorney, International Harvester, and Norman Abreau of the law offices of Hanna, Brophy, MacLean, McAleer & Jensen.

4. The Board considered the hearing officers proposed decision at its meeting of January 12, 1977, in Sacramento, California.

Issues Presented

5. International contends that the Baywood franchise is terminable because:

- a) Baywood has not obtained a reasonable share of the normal market area since becoming an International Harvester franchisee in 1973. (§3061(1).)*
- b) Baywood failed to comply with the terms of the franchise agreement. (§3061(7).)

6. International also contends that termination is not precluded since:

- a) it will not be injurious to the public since International intends to replace the protestant franchisee, (§3061(4).) and;
- b) Baywood has not incurred substantial obligations as a result of the franchise agreement. (§3061(2) & (3).)

* All references are to the Vehicle Code

Facts Relating to Business Transacted by Franchisee (3061(1).)

7. International defines a market area in the same terms as those set forth in the R. L. Polk Report of New Registrations ("Report"). The Report is prepared for International, and is provided to all its dealers, including Baywood, by International.

8. The "Western Region" is the market area defined by International to include California, Hawaii, Nevada, Utah and Arizona. The Report further subdivides the western region into submarket areas, among which is Eureka, serviced by Baywood.

9. International measures market penetration by registrations within the market.

10. International has achieved its goal of a market penetration of approximately 25 - 30% of the heavy duty and medium duty truck market in the western region. Registrations for the 1973-1976 period show the following percentages of International products as compared to total registrations of heavy and medium duty trucks:

<u>Heavy Duty</u>	<u>Yr.</u>	<u>Medium Duty</u>
25.9%	73	No Data
23.0	74	No Data
29.6	75	23.8%
25.0	76	21.6

11. The Eureka submarket served by Baywood showed the following percentages of International registrations to total registrations of heavy and medium duty trucks:

<u>Heavy Duty</u>	<u>Yr.</u>	<u>Medium Duty</u>
4.0%	73	-
11.3	74	21.7%
9.4	75	5.0
5.7	76	25.0

12. In the 1973-1976 period Baywood has delivered to registered owners 8 medium duty and 1 heavy duty trucks manufactured by International.

13. Baywood was, and has continued to be, a Peterbilt truck franchisee since approximately 1962.

14. In the period 1973-1976 Baywood sold the following quantities of Peterbilt trucks:

<u>Yr.</u>	<u>Number</u>
73	116
74	101
75	(at least 8)
76	20 (through June)

15. Baywood, as of the hearing date, had three medium duty International Harvester trucks in stock, and one heavy duty International truck on order.

16. Baywood sold six additional heavy duty international trucks in the 1973-1976 period, but these were to other dealers, not to the ultimate user which, therefore, had no effect on market penetration measured by registrations.

17. Baywood has not been able to sell International Harvester trucks despite advertising and sales effort.

Facts Relating to Failure to Comply With
Terms of the Franchise Agreement (§3061(7).)

18. Baywood has not placed orders for medium duty or

heavy duty trucks in accordance with International advance ordering programs as required by the franchise agreement §16(k).

19. Baywood did not supply monthly financial information from May 1974 to August 1976 as required by the franchise agreement §16(1).

20. Baywood sold one heavy duty and eight medium duty International trucks in three years.

Facts Relating to Permanency of Investment (3061(3).)
and Investment Obligations Incurred (3061(2).)

21. Baywood was at the time of International franchise, and at all times material hereto continued to be, a franchised Peterbilt truck dealer.

22. International provided some promotional material, and shared advertising expenses.

23. Baywood has a \$30,000 stock of International parts.

24. The International sign is leased by Baywood from International Harvester.

Facts Relating to Public Welfare (§3061(4).)

25. Baywood has a good service facility, adequately fulfilling International warranty and repair requirements.

26. The nearest existing International dealer is in Ferndale, twenty miles from Eureka and Baywood.

27. The Eureka area does not have a Chevy truck or GMC truck dealership.

28. International does not intend to abandon the Eureka area, but will seek to replace its franchise.

Determination of Issues

International has established that:

1) Baywood has failed to obtain a reasonable share of the available market. (5a)

2) Baywood failed to comply with the terms of the franchise agreement. (5b)

3) The public welfare will not be adversely affected by the replacement of Baywood with a new International franchisee, and local competition may be stimulated. (6a)

4) With the exception of International Harvester parts inventory, Baywood has not incurred substantial obligations because of the International franchise, and no appreciable permanent investment. (6b)

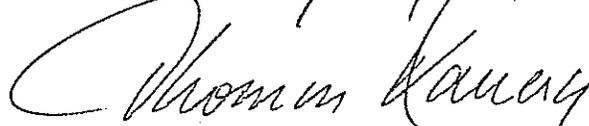
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WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest is overruled. The respondent is entitled to terminate the franchise.

The foregoing constitutes the decision of the NEW MOTOR VEHICLE BOARD.

Dated: 2/18/77



THOMAS KALLAY, President