REPORT

to the

GOVERNOR

by the

STATE OF NEW JERSEY

COMMISSION OF INVESTIGATION

on

TRUCK UNLOADING PRACTICES

July/1980

TRUCK UNLOADING PRACTICES IN NEW JERSEY

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Truck Unloading Practices in New Jersey

I. INTRODUCTION

The New Jersey State Commission of Investigation (S.C.I.) has concluded an investigation of truck unloading practices in New Jersey. This investigation was requested by Governor Brendan T. Byrne on July 5, 1979, in the following letter to Arthur S. Lane, Commission chairman:

Dear Judge Lane:

At a recent meeting held in my office with representatives of the Independent Truckers Association,
allegations were made of certain questionable unloading fees being imposed on truckers at truck
loading docks. Those allegations included references
to requirements of a cash fee for unloading being
requested by the gate guards in the dock areas; if
payment was not made by the truckers, their trucks
were placed on side lines and other trucks were
routed in front of them for speedy unloading.

I believe that this is a matter warranting investigation by the State Commission of Investigation and, accordingly, pursuant to my authority under N.J.S.A. 52:9M-3, I ask and direct you to investigate this matter.

Attached is a list of the three representatives from the Independent Truckers Association who met with me. My Chief of Staff, Robert E. Mulcahy III, was present at this meeting and can answer any specific questions you may have.

Sincerely,

(Signed)

Governor

The attachment to the Governor's letter listed the following three representatives of the Independent Truckers Association:

Richard Solano 2438 S. Hutchins Street Philadelphia, PA

Bernadette Bond 118 E. Park Avenue Collings Lake, N.J. 08094

John E. Flath, Sr. 191 Cherry Quay Rd. Bricktown, N.J. 08723

For reasons cited in this report's conclusions, the Commission has determined that, although lumping occurs at many terminals throughout the State, the allegations referred to the Commission cannot be substantiated and the facts, as they apply in New Jersey, do not warrant legislative or regulatory action by this state.

II. DEFINITIONS

Lumping: A practice in the industry whereby a truck driver hires an individual to help him load or unload his truck. The person so hired is referred to as a "lumper," a "helper," a "shape," a "swamper."

Trucker: Trucker as used in this report refers to independent truckers who drive their own trucks and are not employed full time by any shipping or other company.

Exempt Freight: "Exempt freight" is freight which is not subject to Interstate Commerce Commission regulations affecting the cost of shipping, including loading and unloading charges.

Ordinary livestock, fish and shellfish, fresh agricultural commodities and used household goods are examples of exempt freight.

Non-exempt freight: "Non-exempt freight" is freight which is regulated by the Interstate Commerce Commission. Loading and unloading charges for non-exempt freight are a specific part of ICC-imposed freight tariffs. A trucker or carrier not licensed by the ICC cannot legally transport non-exempt freight. Such freight includes products that have undergone processing or manufacturing, such as canned food.

Floor Load: Cargo that is carried on the floor of a truck without being organized in pallets.

In-House: "In-house" unloading occurs where a terminal permits unloaders to remain inside the terminal. In-house unloaders are generally supervised by the terminal.

Pallets: These are wooden platforms varying in size but approximately 5 x 5 feet in dimension, upon which cargo is stacked for easy handling, storage or transfer by a forklift vehicle that is also called a "hi-lo" or "jack." A palletized load refers to truck freight that is stacked upon pallets so it can be transferred by a hi-lo vehicle.

III. INVESTIGATIVE STEPS

The investigation began with an invitation to the three complainants on the Governor's list to appear before the Commission for questioning. Only Mr. Flath appeared, on July 17. He reiterated the allegations mentioned in the Governor's letter. Registered letters subsequently were sent to the three complainants requesting them to testify under oath at the S.C.I. but there were no responses. The Independent Drivers Association of America, which promised to conduct a survey of lumping practices and submit the results to the S.C.I., failed to respond to several requests for such data. Since relatively few truckers volunteered information, the Commission developed its own investigative program and initiated an extensive surveillance of terminals where lumpers work.

Of the hundred of locations where truck loading and unloading takes place throughout New Jersey, 32 were inspected by S.C.I. agents. Some of these docks were visited repeatedly. On certain occasions, covert surveillance was conducted. More than 150 interviews of drivers, lumpers, warehousemen and others involved with lumping were made in the field. Ten witnesses testified at executive session hearings conducted by the S.C.I. Certain materials, including financial records and telephone tolls, were subpoenaed.

In addition, current and background information was obtained from U.S. Interstate Commerce Commission offices in Washington and New York, the New Jersey-New York Waterfront Commission, the FBI, the U.S. Attorney's Office in Newark, the New York City Police Department, and the U.S. and N.J. Departments of Agriculture. Copies of federal legislation affecting industry-wide lumping practices were sent to the S.C.I., including a measure pending in the House Subcommittee on Surface Transportation chaired by Representative James J. Howard of New Jersey. Officials in California were queried about their state's efforts to regulate lumping.

IV. FINDINGS

A. The Lumping Process

The extent of lumping and the reasons for utilizing lumpers vary widely throughout the industry. By custom and practice, drivers are responsible for loading and unloading trucks. Many drivers employ lumpers to fulfill this responsibility. Some shippers of freight which is exempt from ICC unloading tariffs nonetheless agree to pay unloading charges by prior agreement with drivers. Some terminals require the use of lumpers. Generally, however, a driver himself decides whether to hire a lumper. At all terminals that were inspected by the S.C.I., including those where utilization of lumpers was required, drivers could employ helpers of their own choosing. At most terminals, lumpers gather at the entrance gates to solicit unloading jobs from, or wait to be picked for such work by, incoming truckers. In the process of transferring cargo from shippers to receivers, lumpers often provide a necessary if controversial service.

Fees paid to lumpers generally ranged from \$20 to \$50 depending upon the number of lumpers used, volume and/or weight of the load, time estimated for unloading a truck, type of terminal, or any combination of these factors. At all but a few locations, the hiring of lumpers took place outside the terminals. At two major terminals, in-house unloading was arranged by terminal operators to assure a steady supply of helpers to expedite the transfer of cargoes to warehouses. At some terminals notices were posted at the gates stating that helpers were required if incoming trucks contained a specified weight or quantity of cargo. In other instances, a notation of this requirement was printed on freight bills.

B. Testimony on Lumping Practices

Why are lumpers utilized? For whose primary benefit? At whose expense? Somewhat varying responses to such questions came from those principally involved in the process -- truckers, receivers and lumpers themselves. The following excerpts from sworn testimony at the S.C.I. and from taped recording of field interviews provide a tripartite view of the process.

1. Truckers

Frank Brown of Williamstown said he had served for six years as chairman of the Independent Truckers of South Jersey. He was questioned by S.C.I. Counsel Peter M. Schirmer, who directed the Commission's inquiry:

- Q. Let me go directly toward the matter that the Commission is investigating, lumping. What is your definition of lumping?
- A. Where you go into a place to make delivery and you've got to hire somebody to unload it.
- Q. When you say, "You have got to hire somebody to unload it," does that mean the company forces you to hire somebody?
- A. The company requires two men on a truck and we usually travel solo, so you would have to hire somebody if you want help. If you don't want to help, you have to hire two men to unload a truck.
- Q. Now, why would a driver not want to help unload his truck?
- A. After you have run twenty-five, twenty-eight hours, you are a little bit tired.

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- Q. Let me ask you, you said you have had fortytwo years experience in the trucking business. Is it your experience that under normal circumstances the driver is responsible to unload his own truck for exempt freight? A. Right.
- Q. When you carry freight that is non-exempt, is it normal to include in the tariff the loading and unloading charges as separate items or as specific items?
- A. In some instances, the loading and unloading is included in the tariff, and in some instances right on the bill of lading it tells you, "Shipper will load and receiver will unload."
- Q, That is included in the tariff?
- A. Included in the tariff.
- Q. A certain amount of money for unloading?
- A. It's figured in their rates.
- Q. You mentioned before that another reason a driver might not want to unload his truck is because of ICC regulations?
 A. Right.

- Q. What does that mean?
- A. You're allowed ten hours driving time and you should be allowed something like three hours on duty, but not driving, and sometimes you get drivers that is not able to unload.
- Q. Physically not able to unload?
 A. Physically. You sometimes got drivers that have an arrangement made with the man they are working for, where he pays for the unloading. That's a thorn, because that way these guys will pay anything, but it ain't coming out of their pocket.

Larry Watson of Edison is vice president of the Council of Independent Truckers of New Jersey, the membership of which consists mostly of North Jersey truckers. The interview with Mr. Watson was recorded at a roadside diner in Central Jersey:

- Q. When you sign a contract to take a load somewhere -- say you are taking a shipment of stuff to Chicago -- your cost for loading and unloading is in that contract? Would it be figured in yourself?

 A. I figure it in myself.
- Q. So if you have to pay an unloading charge, even though you probably have the right to choose who you wanted to do the unloading, you know it's part of your contract?

 A. I do it myself. What I am doing now.

 I get drum loads now and I just do it myself, but they give me somebody to help me anyway.
- Q. Is it common in the industry that the truck driver is responsible to get this truck loaded and to get it unloaded -- there are some exceptions, but normally that's what is understood?
- A. That's normal. See, some freight rates have that built in. Some of the loads of meat that I get or that I have been getting I get reimbursed like Chicago Foods. He'll give you \$40 which is the going rate.
- Q. So if it costs you \$50, it really cuts into your profit, right?
- A. Yeah, if it costs you \$50, you've lost ten bucks.

- Q. Cost you thirty, you made ten?
 A. You made ten. But it doesn't cost you thirty, it costs you forty. You know they're not going to give you something for nothing.
- Q. But sometimes you might, and I guess you don't, but some time some of the drivers may have to hire someone and that cuts into their profits?
- A. That comes right off the top.
- Q. Is that one of the reasons that there are more and more complaints about these unloaders now that the drivers profits are going down?
 A. Yeah.
- Q. That they're really looking for any where that they can increase their profits?

 A. That's always been a problem because I -- what happens they'll give you a load and you know they'll want it there yesterday. So it's one of these deals where you got to drive all night to get to your destination, right. Now you have been up all night driving. You have already done your job.
- Q. Not really, because your contract calls for you to assume the unloading responsibility. So your job is not done until you get the stuff off your truck?
- A. Two can play that game. I know, but I get to the destination on time. They can be in desperate hurry -
- Q. You just said the contract includes unloading costs. That's part of your responsibility.
- Very good. Now go one step further. supposed to transport it there and I'm supposed to have to provide safe and efficient unloading or loading, right. Alright, I just drive all night and when I get to XYZ warehouse and they need this stuff, bad, right? They want me to I'm going to take an eight-hour unload it. break. I'm too tired which according to the ICC or the Department of Transportation regulations I'm supposed to have eight hours off between each driving shift to ten. So I have been on duty for ten, driving, I'm required by law to take my eight-hour break. They'd go bananas. They'd go nuts, especially if it's two o'clock in the afternoon.

- Q. All right. Let me ask you this question. If you knew that you were not going to unload because let's say that you're disabled or you're possibly tired. Are you going to figure into what you're willing to accept as a rate (for) how much it's going to cost you to unload that truck?
- A. Well, whether I do it or pay somebody to do it, it's still worth \$40 \$50. If it's a load I have to handle, I'm going to figure in my time to unload it. And when I get to the stop if I'm too tired and I need to rest, I've got that money to use and not come up the loser.
- Q. But you'll make more money if you're able to unload that truck yourself. You'll save that \$40 or \$50.
 A. Oh, yeah.
- Q. If you want to unload it.
- A. If I want to do it.
- Q. Then, I guess what you're saying to me is where in tariff freight non-exempt freight sometimes that is specially figured in how much it's going to cost to unload or load it a reasonable figure but with exempt freight they just give you a fee.
- A. That's right.
- Q. And hopefully that's going to be enough that you can cover all your costs including if you have to hire any helper.
 A. Yeah.

2. Warehousemen

Another perspective on lumping practices came from warehouse operators or managers charged with expediting the transfer of incoming truck cargoes into and through their terminals. One was Norman R. Bailey, receiving supervisor, frozen food section of Wakefern, the buying division of Shopright at Elizabeth:

- Q. If the driver has palletized freight, how is that taken off the truck?
- A. He is given the equipment and he pulls it off onto the dock.

- Q. If the driver needs assistance to unload his truck, for instance, if it's a floor load, how is that arranged for him to get assistance?
- A. He makes his own arrangements. We have nothing to do with it.
- Q. Are there any people not affiliated with Wakefern inside the plant who offer assistance to the drivers?
- A. The people who offer assistance to the drivers are normally picked up at the gate as they come in. There are some who are permitted to come into the plant by our security division. They have the opportunity to go around and ask the driver if he needs help.
- Q. Now, these individuals that are allowed to come into your plant, are they regulars? A. Yes, they are.

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COMMISSIONER FRANCIS: What's the arrangement between the driver and this helper? How much money is he paid?

THE WITNESS: That I have no answer for. I -we do not get involved in price. I have nothing
to do with pricing whatsoever. The -- any helper
who helps a truck driver helps him at his own -how would I say it? They negotiate their own
terms. I have nothing to do with it. He may
charge one man more, one man less. It depends
on the amount of freight to be unloaded, and
we have had no regulation on that whatsoever.

COMMISSIONER FRANCIS: Have you ever had any disagreements with any, or discussions, with any truck driver about who should bear the cost of unloading?

THE WITNESS: Have I? Yes.

COMMISSIONER FRANCIS: Tell us what those discussions were.

THE WITNESS: If a man comes in and we tell him he needs a helper and he said to me, "I have no money," then we tell him, "Call up your company."

If he says to me, "Why should I pay?", I'm sorry, our company makes arrangements with their brokers and they have the stipulation that anything over a thousand pieces which comes in floor loads requires a helper. If the driver's unhappy

about the situation, he simply calls up his company to verify it.

COMMISSIONER PATTERSON: So there is a company policy that requires a trucker to have a helper if it's a floor-loaded with more than a thousand pieces?

THE WITNESS: With more than a thousand pieces, yes. We try -- we have to turn our doors in order to receive. If we --

COMMISSIONER PATTERSON: That driver has no choice but to bring with him a helper or to use the helper that's floating around your yard?

THE WITNESS: We -- if there is no helper available, the man backs in and unloads regardless. We do not turn a man away if he does not have a helper.

COMMISSIONER PATTERSON: Despite the policy?

THE WITNESS: Despite the policy. We simply inform them anything over a thousand pieces does require a helper. If there's no help available, it's like if you walked in here and it was a job to do that needed two people and I said to you, well, I'm going to stop you from doing it because you're only one person. We do not do that.

BY MR. SCHIRMER:

Q. If there's help available but he refuses to use that help, then you ask him to move away from the dock?

A. Then we may ask him to pull out until he gets one or until he gets in contact with his company. We won't chase him out of the yard. We'll ask him to pull out of the door until he can square it away with his company and set up a policy.

COMMISSIONER PATTERSON: Does that happen often?

THE WITNESS: No, sir.

COMMISSIONER PATTERSON: Is it normal for a -we have heard that the drivers frequently don't
want to unload because they've driven X number
of hours and they'd just as soon have the five
hours that it takes to unload to rest.

THE WITNESS: Yes.

COMMISSIONER PATTERSON: So would it be common to have the driver hire two unloaders -- and put it another way, do most of the drivers help unload their own loads?

THE WITNESS: Most of the drivers help unload their own. We do get occasion where you stipulated a man comes in and decides he doesn't want to do it and he may hire someone to do it for him.

Richard McEnroe, vice president for warehousing and distribution for White Rose Frozen Foods, was asked about lumping conditions at his company's Secaucus terminal. Counsel Schirmer:

- Q. What is that policy?
- A. Anything over 800 cases on the floor requires two people on the truck.
- Q. And do you provide the helper?
- A. No, we don't.
- Q. Where does that helper come from?
- A. He either brings it in with him, brings -picks someone up, or helper, his helper, at
 his expense.
- Q. Are there any people inside the terminal, who remain inside the terminal, that would help?
- A. Inside the terminal? No.
- Q. Where are these individuals? Are they outside around the warehouse gates?

 A. Well, a driver may bring someone in with him or he maybe picks someone outside the facilities.
- Q. Other than 800 pieces, are there any other requirements? For instance, if there's 2,000 pieces, do you require three people?

 A. No sir.

- Q. 800 is the point at which one helper must be hired, about that?
- A. Approximately 800. It would all depend.
- Q. Now, how much are these helpers paid for their services?
- A. I -- just by hearsay -- we don't have any regulation or anything involving the charges the helpers charge.
- Q. What is the hearsay?
- A. It will all depend on what freight, on what commodity that comes in.
- Q. Approximately how much?
- A. \$30.

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COMMISSIONER FRANCIS: Have you ever considered using your own forces to unload, your own employees, rather than these lumpers?

THE WITNESS: No, not in the distribution business.

COMMISSIONER FRANCIS: Why not?

THE WITNESS: It's more money, more people. More labor cost.

COMMISSIONER FRANCIS: Do these lumpers appear, so far as you know, to have any organization when they go about asking a driver for help? In other words, do they have a leader? Do they have somebody who solicits the driver, or is it one big mob scene?

THE WITNESS: In my knowledge, I think it's mostly random. I don't think there's any type of organization or anything like that because most of the time it's on a bidding, bidding procedure.

COMMISSIONER FRANCIS: Are there any disputes among these lumpers as to who's to get the job?

THE WITNESS: There's been occasions that I hear that there's been disputes between them.

BY MR. SCHIRMER:

- Q. In a sense, your company policy does coerce the driver to hire someone?
- A. It's not -- I don't feel it's coercion. It's a requirement. If you're receiving forty and fifty trucks a day there's no way I'll be able to accept 50 and 60,000 cases in the time element that I have. See, it's not only receiving merchandise. The merchandise has to be received, has to be put on shelves, put on selecting lines for that night's business.
- Q. What's a consequence if a driver refuses to hire someone and he has over 800 pieces?

 A. Basically, the broker will be called, the broker that handles that account, and he knows, he knows what the rule is. The driver here refuses to get a helper. He'll either say,

 "All right. I'll call his dispatcher," because the dispatcher was notified that a helper was required. Nine times out of ten, he'll call back and say, "Okay, put a helper on and bill me," or bill the trucking outfit. The dispatcher will call me and he'll say, "The driver doesn't have any money. Can you lay the money out and send me a bill and I'll send you back the money?"

Frederick N. Knoch of Paramus is the warehouse/produce manager at Edison for Transco Service Corp., which operates warehouses for the A & P. He reviewed the lumping situation at Edison:

- Q. Could you describe that condition to the Commission?
- A. Well, I would say we have anywhere from four to six, when I say regular lumpers or whatever term you want to use, that do work the trucks coming in. They are not part of our warehouse. They do not remain on our property. They come in with the truck and they leave with the truck.
- Q. Do you know where they solicit rides with the drivers?
- A. Right outside the gate.

COMMISSIONER FRANCIS: They are not employees?

THE WITNESS: No.

- Q. Have you ever been approached by truck drivers speaking about whose responsibility it is to unload a truck?
- A. I've never had that conversation, no.

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- Q. Is it the understanding in the industry that the driver's responsible to unload his own truck or make arrangements for the unloading of that truck?
 A. It has been, yes.
- Q. Has there ever been an instance where a driver comes to your dock and refuses to hire someone and refuses to unload his own truck?

 A. No. Again, like I say, I've had them come and ask us if we could get an unloader for him because there wasn't any outside the gate, which we told him, no, we don't get into the middle of that.
- Q. That's their complete responsibility as far as you're concerned?
 A. Yes.
- Q. Are there any arrangements with a guard check which allows these unloaders to come in?

 A. They have to sign in. Like I say, if -how can I say it? Like I said before, if they
 picked the truck up outside the gate, okay,
 and they come in and there's any kind of a delay,
 in other words, before they start unloading, if
 the loader goes out for coffee or comes through
 the gate, he must sign in and sign out, as a
 visitor.
- Q. You have never had a problem with approving certain people as being acceptable to Transco to unload trucks?

 A. No.

Michael Wuhl of the Wuhl, Shafman, Lieberman Co, a wholesale produce business, discussed lumping procedures at his terminal in the Farmer's Market in Newark:

Q. When a truck comes in with a delivery, what happens as far as unloading that truck?

A. Well, in our place one of three things can happen.

We give the truck driver or the man driving the truck the opportunity to unload this truck if he doesn't want to pay our unloading fee. If we got to put our own men on, who are all union men, we charge the driver. If he doesn't want to pay, we give him the option. In other words, we don't force him to use our people. In fact, we prefer him not to.

Q. Why is that?

A. Because we got -- we don't have that much help to start with. But most of the time if our help is busy, and which is most of the time, and in -- he doesn't want to unload it himself, then he just picks somebody up. There's people that hang around the market that unload trucks, and he justs picks them up. We have nothing to do with that.

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- Why was it that this provision went into the union contract; do you know? A. Well, we asked for that provision because we were getting to have a lot of undesirable people hanging around our warehouse waiting to unload these trucks and we were trying to get rid of this from hanging around. We felt a lot of our pilferage was coming from this and everything else, and we asked the union and we asked our men, who at one time wouldn't unload a truck, you know, an over-the-road truck, if they could do it so we could get rid of this help and we told them it's better for you because it keeps you guys working all the time when we're slow, and they agreed for the new contract in '79. Just the way it's worked out, most of the time we're so busy they still have to hire these people that hang around the market.
- Q. But you have the option at this point?
 A. The driver has the option of unloading or paying to unload.

COMMISSIONER FRANCIS: Have you witnessed an occasion when the driver has chosen to do the unloading himself?

THE WITNESS: Yes.

COMMISSIONER FRANCIS: How does he go about getting his help then?

THE WITNESS: A lot of them comes in two drivers on the same truck. We supply him the pallets, we'll supply him the handjack to pull them away. A lot of them don't want to pay that forty-dollar unloading fee.

COMMISSIONER FRANCIS: Is this a cash transaction?

THE WITNESS: Well, we do it either way they want. If they want to pay cash, fine, or if we deduct it off the freight. Most of them work for trucking companies. Whatever way. Most prefer we deduct it off the freight.

COMMISSIONER FRANCIS: What kinds of back-up do you have in trucks waiting to be unloaded?

THE WITNESS: Very little. Most of the truckers -- we pride ourselves, most of the people on the West Coast and Florida like to come to us, for We've got guys that have been riding two reasons. to us for many years. They don't have a problem with pilferage. They can walk away from their truck. They go over to the New York market, they're afraid. They can't walk away from the truck two minutes. They walk over to the coffee shop. They get an honest count, an honest shake when they're unloaded. A lot of drivers -- we've had the same drivers coming to us for four, five, six years. They know when they come in, get unloaded, we don't hassle them around as far as waiting 24, 36 hours. Occasionally that will happen, but it's rarely. They know they get an honest shake and don't ever have to worry about anything being pilfered. That's why they like to come to us.

3. Lumpers

Commission agents, sometimes posing as helpers, questioned scores of lumpers in the field. Most of these encounters were taped-recorded at various places — at the gates of terminals where lumpers congregated to await unloading jobs, in truck cabs with drivers as they negotiated unloading assignments, and on terminal platforms as unloading tasks were being performed. However, the Commission selected certain lumpers for executive session discussions of the process because of their numerous contacts with independent truckers over the years. This executive session testimony generally corroborated the observations that the S.C.I. agents recorded in their impromptu contacts in the field.

Carmen Dolese, Jr., is a \$350-a-week supervisor of an unloading service utilized by the Pathmark warehouse in Woodbridge for the purpose of making the system function more efficiently for both the receiver and the truckers. This service, he said, was available to incoming drivers if they desired to utilize it. He testified, in part:

BY MR. SCHIRMER:

- Q. Now, you stated that there's a notice outside the quard house or outside the --
- A. Right. There's like a sign that states, if you are wishing to unload or have your truck unloaded, there's an unloading service.
- 95 percent of the drivers that come in there, you know, they've been coming there for years and they look for us, and then there are drivers that, you know, we -- when we -- like, what I do, when I approach them, I say, "You have the right to unload your own truck." I says, "If you wish to have somebody do your truck, this is what we get." And then I wait for the driver's response and the driver will turn around and say, "No, I'll do my own truck," and I'll walk away.
- Q. Is there any requirement that a driver be accompanied by a helper?

 A. No, no. He's got the maximum time that the I.C.C. or whatever they call them people allow them to unload the truck.
- Q. What is that?
- A. I don't know. It varies on weight and pieces and all that. See, that has nothing to do with me. Also I'm interested in, if the driver wants the help. I don't -- if the driver don't want the help, I still get my same money. I'm salaried.
- Q. And the truck drivers are absolutely given their option -- A. Oh, yes.
- Q. -- to unload their own trucks?
 A. Yes.
- Q. Are there any signs inside the warehouse stating that the drivers have an option to unload their own trucks?
- A. I know it's out on the gate. I don't really know if it's inside. But as -- like I say, everytime we approach a driver, we let the driver know that he has the right to do his own truck. He's not mandatory to do his -- you know, hire us, you know, and a lot of the drivers that come in there, they know that, you know.

Ronald Garriques, 34, has been an independent lumping contractor working for a supervised unloading operation at M & M Mars, Inc., in Hackettstown. At this place, M & M's own employees unload only palletized cargoes. So-called floor loads are moved by lumpers working with Garriques. He testified, in part:

- Q. What is your experience with drivers?
 Do they want to unload their own trucks?
 A. I would say, sixty, sixty-five percent of the drivers don't want to load their own trucks.
 I don't know how accurate that would be, because I wouldn't have knowledge of whether a lot of the drivers want to, because their companies have made prior arrangements to do it. So really that question -- I don't know whether I could answer it accurately.
- Q. I am asking from your experience.
 A. Going by independent trucks, not truckers that are company drivers, where their company is paying the loading charges, if they actually pay the cash out of their pocket, I would say sixty-five, seventy per cent choose not to.

C. The Allegations to the Governor

The Governor's letter to S.C.I. Chairman Lane noted allegations by certain independent truckers of "questionable unloading fees being imposed on truckers at truck loading docks" and of "requirements of a cash fee for unloading being requested by the gate guards in the dock areas; if payment was not made by the truckers, their trucks were placed on side lines and other trucks were routed in front of them for speedy unloading." These allegations, and all subsequent reports of related complaints, were the primary topic of interrogations by agents in the field and by the Commission at its hearings. Following are excerpts of statements and testimony with respect to these allegations.

Mr. Brown, the driver who leads a group of South Jersey independent truckers:

- Q. Have you ever seen a situation in New Jersey where the terminal won't allow the driver to unload his own truck?
- A. On exempt in New Jersey, no.

- Q. If I asked you to state the basic complaint of the independent drivers concerning lumping, what would you say?
- A. Offhand, I would say the price of the lumping. If it was reasonable, there would be no complaint.
- Q. What would you consider reasonable?
- A. Well, they work an hour --
- Q. Two people?
- A. Two people. So you figure fifteen dollars an hour because we don't make fifteen, but when they are getting \$25 an hour, and with the experience we have with Supermarkets General, where you are paying fifty and you are paying ten dollars each for one of the kids to unload it, it's kind of a rip-off. If the fee was reasonable, I don't believe you would have a complaint from anybody.

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- Q. One of the problems you have with lumpers is that they are too expensive?
- A. Too expensive for the time and what you get out of it.
- Q. You also mentioned your feeling that the shipper should load and the receiver should unload; is that correct?
- A. Right.
- ${\it Q.}$ That is not the general practice today in the industry.
- A. Right.
- Mr. Watson, the leader of a North Jersey group of independent truckers, also described the complaints -- and frustrations -- of his over-the-road colleagues:
 - Q. Based on your experience -- what you have seen yourself -- you have or haven't seen a problem with lumpers in New Jersey?
 - A. Personally, no.
 - Q. Have you ever seen the situation where the driver would have to pay a gate fee to get into the terminal -- in New Jersey?
 A. No.

- Q. Have you seen it at any other place?
 A. New York, but that's a different situation.
 The City of New York runs the market and this
 is like a toll like if you went into a bridge,
 you know, or on a toll road, you get a receipt
 for your money and you pay to go in.
- Q. Have you ever seen a situation in New Jersey where you were told you can't unload your truck and that you have to hire someone? A. No, not myself, no.
- Q. Are you a fair one to talk to about this?
 A. I believe so, yeah.
- Q. Let's just let me just go over the accusation with you. They claim that you have to pay gate dues in New Jersey.

 A. Did they tell you where, because I've never seen it.
- Q. Well, a complaint to the Governor and the implication was that it was in New Jersey.

 A. You mean you say I got to pay a gate fee in New Jersey? I think you ought to be required to say where and back up your allegations. I've never had to pay a gate fee in New Jersey.
- Q. The second one is that if they had to hire a loader and didn't want to pay for him that the trucks would be sidelined and you would have to wait there for hours to get unloaded.

 A. That does happen. I've never had it happen to me.
- Q. And I'm talking about New Jersey you hire this guy and if you don't, we're going to put you on the side or if you don't pay the guy, you're put on the side.
- A. No, I've never seen that happen. I'm not saying that it doesn't because it happens other places and quite possibly could be happening right here.
- Q. When you say other places, what other places are you talking about?
- A. Out of state New York.

- Q. Why do you think New York has all those problems or at least a lot of drivers complain about New York Hunts Point.
- A. Most of your stuff goes right into New York and then like the Northern New Jersey area like Central and Northern New Jersey the commodities are brought into New York, into the city, and are distributed out into the metropolitan area which includes New Jersey. There aren't any markets in New Jersey.
- Q. I'm just saying, and I'm not disagreeing with you, that they couldn't have them in New Jersey. I'm simply saying the fact is that it's a big, big market over there and there's no big markets over in New Jersey?

 A. Yeah, that just exactly that.
- Q. And you think that because of the bigness or whatever possibly that's the reason they have more and more problems with these lumpers and gate fees and --
- A. Yeah, yeah you've got so many trucks coming in and wanting to get out right away. Just the guys will pay just to insure themselves of getting out right away.

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- Q. Have you ever been to a dock in New Jersey where you have not had the option to unload your-self?
- A. No. Any place that I've been in in New Jersey I could have done it myself if I wanted to. It was entirely up to me if I wanted to pay or not.
- Q. Then the decision to hire someone is based on whether you might be tired or you just don't want to be bothered, whatever?
- A. Yeah, you got a chance to sleep while they're unloading the truck. Two hours' sleep or three hours' sleep you get some rest.

Mr. Bailey, the receiving supervisor at Shopright's terminal in Elizabeth:

COMMISSIONER FRANCIS: Can you tell us whether you get more complaints from the independents as to the need for helpers?

THE WITNESS: More complaints from the independents... About not wanting to hire helpers.

BY MR. SCHIRMER:

Q. Do you feel there's any need for legislation in this area of unloading trucks, as far as regulating the rates, as far as regulating the people who unload the trucks? Do you consider it much of a problem?

A. No.

Mr. Wuhl, the produce wholesaler at Newark's Farmer's Market:

- Q. Would it be fair to say that the use of unloaders from the outside is a convenience to your dock in a sense that you don't have the responsibility to unload the trucks and someone has to fill in that gap?

 A. As far as that, it's a convenience. But I prefer that they weren't around, hang around our warehouse.
- Q. What would be an option?
 A. If the drivers would unload their own trucks.
- Q. Well, being that the drivers don't want to and that you don't want the outside lumpers because of the problems they cause, what is a solution or what can you see as a solution?
- A. Well, the only solution they could have in our place is the trucks would have to wait 15, 20, 20 hours to get unloaded if they waited for my help, and they don't want to do a that. So I really can't see a solution.

Mr. McEnroe, the warehousing executive at Secaucus:

BY MR. SCHIRMER:

- Q. Have you ever received complaints concerning the unloaders, from the drivers?

 A. The only time that we'll get involved, if a driver will come to me and feel that he's being, being taken advantage of by being charged an excessive amount, I'll make an inquiry.
- Q. What would you consider, what would a driver consider an excessive amount?

 A. Maybe \$40, maybe a matter of five or ten dollars or whatever.

- Would that involve you becoming involved in negotiation between the driver and the unloader or would you ask that another unloader become involved in the sense that he hire another unloader?
- If he can't find anybody, if he wanted to pay \$25, if he felt \$25 was ample payment for what the unloading would be, we really wouldn't get involved in it, but I would say, no, well, there's someone out there that will probably do it for \$25. And if no one is, I'll say, why don't you want to do it for They feel that's a legitimate price.
- Is there any type of notification outside the warehouse that more than one helper is required?
- Yes, sir, there is.
- And what is this notification consisting of?
- First of all, on our purchase orders, it will have "Helper required." "Helper required with anything over 800 cases at shipper's expense" is one notification on our purchase orders. The other one is the broker, the brokers are notified, if the shipment is not a palletized load, that a helper is required.

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COMMISSIONER FRANCIS: Do you get involved at all if you hear a driver saying, "I was coerced into accepting this guy as my helper, I don't want him"?

THE WITNESS: Yes, I do.

COMMISSIONER FRANCIS: What do you do?

THE WITNESS: I would find out what the reason why this happened. He said, "I was forced to take this man." I say, "You're not forced to do anything."

COMMISSIONER FRANCIS: Excuse me. Who would you go to ask those kinds of questions?

THE WITNESS: If the driver told me, I say, "Point him out. Take me outside, show me who he is that you were coerced into anything."

Mr. Knoch, the warehouse produce manager in Edison:

- Q. Is there any company policy or requirement that a truck driver hire or bring a helper with him?
 A. No.
- Q. Does the truck driver have the option to unload the entire truck himself?
 A. Yes, sir.
- Q. Has this happened?
- A. Yes.

COMMISSIONER PATTERSON: Regardless of the amount of time it might take?

THE WITNESS: That's right. The only thing, and I say this again with that, with these independents, they -- if you don't get them unloaded quick enough, generally they start becoming impatient because most of them want to get out. So, really, you don't have too much trouble tying up the door with them.

COMMISSIONER PATTERSON: But there is nothing -you have no policy which you can use on the
trucker that would get him to unload quicker
and release that door for the next truck driver?

THE WITNESS: No, no. The only -- again I say, the only exception, I might say, to that, I have just on maybe one or two occasions where a driver has come in, backed in and he himself has started to unload, decided that he wanted to go to sleep and wanted to tie the door up.

COMMISSIONER PATTERSON: What do you do then?

THE WITNESS: Well, we just ask him to pull out, when he's ready -- we sign him up for that portion of the load that we have received.

When they find out that, you know, you would like them to pull out, then they generally stay and unload it. And like I say, only one time, once or twice that I can remember.

Mr. Garriques, the lumping supervisor in Hackettstown:

- Q. Apart from M & M, apparently you have been in their business for twelve, thirteen years, have you heard of problems where there are problems with loading?
- A. Every day of the week I hear drivers complaining about warehousing. They give me compliments about what a pleasure it is to come into Hackettstown. Occasionally, they don't feel they should be involved. They feel they should back up, and the company should load their trucks. Even in a situation like that, knowing when they go to a warehouse where a company loads the trucks, it takes two to three times as long as when they hire someone to load it, because people who load it are being paid by the load.
- Q. Could you cite some examples of places where they have spoken about problems?
 A. Hunts Point Market.
- Q. Any place in New Jersey?
 A. Not in New Jersey. I have heard them complain about the piers down in Philly; not in New Jersey really.

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- Q. Do you feel that there is need for any type of regulation or legislation in this area? A. Actually, judging from what I hear from drivers about other areas, I would say, yes.
- Q. What type of regulation or legislation would you think would help cure this problem, if there is a problem?
- A. Well, I think that they should have it set up so drivers have the option at all times to load their own trucks. I think it should be set up so extraordinary amounts of money charged for loading and unloading services should be regulated somehow. There should be a minimum or maximum or something set up. I hear about drivers paying a hundred, a hundred-and-twenty-five dollars to get their trucks unloaded. It is ridiculous.

One trucker was asked about the type of difficulties encountered in other states that he did not meet in New Jersey:

- Q. Is there a reason why Maryland gives you problems?
- A. This is one place -- over there in Landover -- Giant and Safeway have these big warehouse complexes... Also in the same area is the Baltimore-Washington, D.C., produce market, is right there and it's basically the same situation you have in Hunts Point.
- Q. How about New Jersey? They have less of that attitude?
- A. Yeah, only because there isn't a big market area here. I think if you had a big market area here, say in Newark, Trenton, any of the big cities in Jersey, you would have the problems.
- Q. What do you describe as a big market area from your standpoint?
 A. Hunts Point or the Philadelphia Produce
- A. Hunts Point or the Philadelphia Produce Market.
- Q. What factors constitute a big market a huge in-flow and out-flow of cargos?

 A. Yeah, it's a distribution area. Stuff coming in. Broken down into smaller shipments and distributed to any restaurants and institutions things like that.
- Q. This place in Maryland is all around the clock?
- A. No, no it's all at night. You see the stuff has to come in late at night and be broken down and distributed and out to the stores early in the morning so there's no need they don't want the truck there in the day time. The truck has to be there at night.

V. CONCLUSIONS

The Commission has concluded that the abuses reported to the Governor by the independent truckers concerning lumping activities in New Jersey are not widespread or serious. Hence, they do not merit a legislative or prosecutorial response at the the state level in New Jersey.

Although complaints about lumping fees were frequent, they primarily reflected economic concerns on the part of the truckers. No extortionate practices or exorbitant lumping fees were uncovered. In fact, lumping fees that S.C.I. agents witnessed

being negotiated or paid at unloading points were almost universally within an industry-wide range of \$20-\$50 for such tasks. S.C.I. investigators did encounter truckers from time to time who reported instances of unusually high lumping fees, more than \$100, for example, to unload a truckload of watermelons, but these were of a hearsay nature and could not be validated.

As for lumping fees being "imposed" on truckers, the investigation determined that a few of the larger New Jersey terminals did require the utilization of lumpers, particularly for cargoes that exceeded a specified quantity or weight. The reason for such company policy, to expedite the movement of freight, is in the Commission's view a rational one. Such a lumping requirement is normally made known in advance to shippers and truckers alike. And in each case a trucker had the option to seek out and hire a lumper of his own choosing.

No evidence was found of gate fees or of attempted or actual extortion of such fees from independent truckers hauling freight to the 32 terminals inspected in this state. While the same complaints received by the Governor also were voiced in the presence of the Commission's investigators, many such grievances were found to stem from the truckers' experiences in other states, including New York, Pennsylvania, Maryland and California.

This is not to say that the Commission found lumping conditions in this state to be free of imperfections. To the contrary, the Commission was dismayed by the disorganized nature of the process and by its potential for generating more serious transgressions than presently exist.

Many lumpers gave drivers false identification data, including fictitious names and Social Security numbers, for incorporation in lumping receipts. S.C.I. agents also encountered truckers who unloaded their own cargoes but submitted false receipts for lumping to shippers who had agreed to pay unloading charges. It was impossible to ascertain the full extent of such incidents.

The allegations reported to the Governor and repeated at various times to the Commission's agents generally coincided with the frustrations of independent truckers coping with extraordinary inflationary pressures. In addition, such complaints gained at least a superficial appearance of credibility because of the general disarray in the lumping process at most terminals.

However, since lumping as an industry-wide practice is national in scope, what difficulties the practice has generated can be resolved more appropriately by federal legislation and by regulatory action by the Interstate Commerce Commission,

rather than by individual states. California, apparently the only state that has attempted to regulate the process itself, enacted a law in 1978 that was designed to promote the orderly marketing of farm products by establishing a pricing framework for unloading. The preamble to this statute declares that in some California markets charges for unloading farm products were exorbitant. However, this law did not remove the drivers' responsibility for unloading but only required that unloaders be registered and that they be paid fees established by regulation. Under California law, lumping fees are significantly higher than the average fees negotiated in New Jersey.

During the Commission's assessment of its investigative findings, federal legislation designed to improve the efficiency and competitiveness of trucking industry operations began to make progress in the Congress. Since this legislation contained provisions for stabilizing loading and unloading practices, the Commission believed it could become the most effective way to respond to truckers' complaints about lumping problems.

As this report approached publication, the U.S. Senate and House of Representatives concurred in the passage of the Motor Carrier Act of 1980 and sent it to the White House for the President's approval. This 83-page measure contained several pages of requirements responding on an industry-wide basis to similar complaints with regard to lumping conditions that independent truckers had voiced to the Governor and the Commission's investigators.

These federal requirements included:

- requires that any person who owns or operates a motor vechile transporting property in interstate commerce...be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.
- --The (Interstate Commerce) Commission shall require, by regulation, that any arrangement between a motor carrier of property providing transportation subject to the jurisdiction of the Commission...under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

-- A written contract between an owner or operator of a motor vehicle and a broker, shipper of property, or receiver of property which is required to be used by the Commission under this section shall specify the arrangements, including compensation, with respect to loading and unloading of the property transported under such contract. Whenever the shipper or receiver of the property transported under such contract requires that the operator of the vehicle load or unload any part of the property onto or from the vehicle contrary to any provision of such contract, the shipper or receiver shall compensate the owner or operator of the vehicle for all costs associated with loading or unloading that part of the property. Any person who knowingly violates the preceding sentence is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

The Commission shall prescribe, by regulation, the minimum requirements and conditions of written contracts required to be used under this section.

- --It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce...to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle, except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the...Norris-LaGuardia Act.
- -- The Interstate Commerce Commission, in consultation with the Secretary of Transportation, the Secretary of Labor, the Secretary of Agriculture, and representatives of independent owner-operators, the motor carrier industry, shippers, receivers, consumers, and other interested persons, shall study, and report to the Congress, not later than 18 months after the date of enactment of this Act on loading and unloading practices in the motor carrier of property industry. Such report shall include (1) such recommendations for legislative and other changes in such practices as the Commission considers appropriate, and (2) any changes in such practices which the Commission is making by regulation.

The new law, in addition to imposing fines of not more than \$10,000 for each violation of the stated lumping requirements, additionally provides for imprisonment of not more than 2 years for violaters of prohibitions against coercion or attempts to coerce in the loading and unloading process.

These sections of the Motor Carrier Act not only support the Commission's conclusions that problems generated by loading and unloading practices can only be addressed on a nationwide basis, but also provide as noted for a thorough study of these practices under the revised statute within an 18-month period.

VI. RECOMMENDATIONS

- A. In view of the Commission's findings, it is concluded that no legislative or regulatory action need be taken by the State of New Jersey with regard to the recorded complaints of independent truckers. Instead, the Commission urges both strong enforcement of and full compliance with new federal statutory requirements designed to eliminate basic industry-wide problems generated by current practices.
- B. The Commission recommends that the Governor, Legislature and independent truckers of New Jersey take an active, affirmative part in the study that new federal law requires the ICC to conduct of loading and unloading practices. The Commission is prepared to submit its investigative findings in full detail as well as any desired supportive testimony in connection with this required ICC review.