INTERLOCUTORY, VACATING, AND MISCELLANEOUS ORDERS

SCHOOL SERVICES, INC., ET AL.

Docket 8729. Order, January 7, 1969

Order denying respondent's petition for reconsideration of Commission's order of October 10, 1968.

ORDER DENYING PETITION FOR RECONSIDERATION

The Commission issued its decision and order in this matter on October 10, 1968.* On November 27, 1968, respondents filed a petition for reconsideration of the decision herein, principally on the ground that it denies respondents due process of law. According to respondents, "[i]t does so by denying respondents' request for leave to submit a supplemental brief and by the reflection of bias and prejudgment in the special methods adopted for finding violation."

The Commission's Rules of Practice require that petitions for reconsideration be filed under Section 3.55, which in pertinent part provides that:

> [a]ny petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission.

Respondents' petition does not claim that the decision or final order raises any new questions. Nor do we believe that respondents were denied an opportunity to argue any and all issues before the Commission, as respondents allege. Respondents' contention that in an answering brief they are precluded from addressing issues not raised by the appeal brief is without merit. The Commission's Rules of Practice certainly do not so limit an answering brief. In fact, respondents in their answering brief should raise any and all pertinent issues germane to the Commission's consideration of the appeal, whether or not specifically referred to by complaint counsel. The time to raise these issues was when the matter was before the Commission, and every opportunity was accorded to respondents to do so. The fact that

*74 F.T.C. 920.

respondents did not take advantage of this opportunity does not now, at this late date, merit granting their petition for reconsideration. Accordingly,

It is ordered, That respondents' petition for reconsideration be, and it hereby is, denied.

Commissioner Elman dissented.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, January 15, 1969

Order denying third party's motion to modify or quash a subpoena.

OPINION OF THE COMMISSION

This matter is now before the Commission upon the appeal of United States Pipe and Foundry Company from the examiner's order modifying the subpoena and otherwise denying the motion to quash. U.S. Pipe bases its appeal upon twelve separate grounds which are stated at length in its brief and which, to some extent, overlap.

Considered broadly, the grounds for appeal advanced by U.S. Pipe are that the subpoena is void and unenforceable because respondent failed to pay the necessary witness fees and mileage in connection with the return on the previous subpoena; respondent has reopened the entire question of prehearing discovery and now seeks documents not heretofore contemplated by prior Commission opinions on interlocutory appeals in this case and for time periods not previously deemed relevant, including periods subsequent to the complaint; the subpoena seeks to compel production of confidential business information subject to legal privilege; the subpoena is too broad in the range of documents sought; the subpoena is improper because it calls for a document specifically excluded from production in the prior subpoena; it is unlikely that any protective order can be devised which would afford U.S. Pipe sufficient protection against probable abuse by respondent of cost and other confidential figures, and; the examiner has declined to order use of procedures whereby the respondent would obtain the information requested, but in a form which would soften some of the objectionable features of the present subpoena.

In his order denying the motion to quash, production of the documents called for by the subpoena was ordered on condition that the witness fees then in dispute and a witness fee and

travel fee be deposited with the Secretary of the Commission. Further, in the order it was made clear that all references to secret processes would be physically deleted and all documents produced would be held in confidence by counsel until within a specified time counsel for U.S. Pipe moved for a protective order. Following this order, U.S. Pipe filed its present appeal and on December 19, 1968, the Commission extended the return date on the subpoena until five business days following receipt by U.S. Pipe of the Commission's order and opinion on the appeal.

The question of this subpoena was carefully considered by the Commission in its Interlocutory Opinion and Order dated November 1, 1968 [74 F.T.C. 1621]. In that opinion, the Commission pointed out that U.S. Pipe's objections to disclosure of its cost, price, production and similar data were well taken, but that the often confidential nature of such material is not equivalent to an absolute privilege against its disclosure. A claim of privilege for such material cannot succeed if the need for its continued secrecy is found to be outweighed by its importance to the party seeking production in maintaining or refuting issues raised in litigation.

The Commission added that the examiner was, of course, free to consider alternative methods whereby the conflicting considerations of secrecy on the one hand and disclosure on the other may be reconciled and, in that connection, made reference to the procedure whereby sensitive trade information could be submitted to an independent third party for analysis, as in *Mississippi River Fuel Corporation,* Docket No. 8657, [69 F.T.C. 1186 and 70 F.T.C. 1759] or to a procedure whereby the party seeking protection could be required to prepare a nonconfidential summary of the documents for inclusion in the record, or to a procedure whereby the examiner may conduct an *ex parte, in camera* examination of documents for the purpose of excising portions thereof before disclosure is made to the respondent. But the Commission went on to point out that:

> Each of these proposed discovery techniques contains inherent drawbacks, however, and may in some instances impair substantially the value of information sought by respondent. The examiner must consider, in any given instance, whether the ends of justice would be better served by disclosure directly to the respondent, with such reasonable safeguards against misuse as have already been utilized in this proceeding with reference to *in camera* materials and the use of materials obtained by deposition.

In all of these situations it is important to remember that the adoption of no one of these techniques is mandatory and they are not intended to be a substitute for the exercise of the sound and responsible discretion of the examiner, who is in a

far better position than the Commission, because of his proximity to the case, to assess the multitude of variables and arrive at an informed decision as to the procedure best to use in the case before him. *Furr's, Inc.*, Docket No. 8581, Interlocutory Opinion, November 18, 1963 [63 F.T.C. 2225]; *Lehigh Portland Cement Company*, Docket No. 8680, Interlocutory Opinion, August 2, 1968 [74 F.T.C. 1585]. As the Commission observed in its *Furr's, Inc.*, opinion "Orderly procedure requires that matters so intimately connected with the conduct of hearings as the terms and conditions of production of documents be left very largely to the responsible judgment of the examiner." Further, as the Commission has previously ruled in this very same matter, unless there is a clear showing of an abuse of discretion the Commission, in the absence of unusual circumstances, will not disturb a ruling of a hearing examiner in matters involving procedure and discovery.

The Commission finds no such unusual circumstances nor any abuse of discretion here. On the contrary, it appears that the examiner has carefully observed the instructions contained in the prior Commission opinions and fashioned a protective order which in his judgment met the needs of the case before him at the same time as he ordered production of the documents and information to which he deemed respondent was entitled for the preparation of its defense. These are the matters which the Commission has directed him to consider and it seems then that U.S. Pipe's appeal is taken not from his failure to adopt any protective measures at all but rather from his failure to adopt other procedures which U.S. Pipe now urges would have been better suited to its needs. This is not a decision with which the Commission is now disposed to interfere.

With the exception of the question raised by controversy involving witness fees, which has been adequately resolved by the examiner's order, the issues raised in this appeal are not new as the subpoena involved has been in litigation for some time and has been the subject of at least two prior Commission opinions, during the course of which questions of scope and relevancy, as well as confidentiality, have been fully debated and carefully considered. While all elements of due process must be observed, if this proceeding is to be conducted with the speed and dispatch which the interests of the public demands, there must be a stage at which debate over this one procedural point ends and the hearings themselves begin. It would seem that the question of this subpoena has reached that stage.

Commissioner MacIntyre concurred in the result.

ORDER DENYING APPEAL FROM EXAMINER'S DENIAL OF MOTION TO QUASH SUBPOENA

Upon consideration of the appeal dated December 9, 1968 by United States Pipe and Foundry Company from the examiner's order modifying the subpoena and otherwise denying the motion to quash, dated December 3, 1968, and for the reasons stated in the accompanying opinion,

It is ordered, That the appeal of the United States Pipe and Foundry Company from the hearing examiner's ruling be, and it hereby is, denied.

Commissioner MacIntyre concurring in the result.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, January 30, 1969

Order instructing hearing examiner to extend three weeks the time set for trial to commence.

OPINION OF THE COMMISSION

This matter is again before the Commission upon respondent's Application for Leave to File Interlocutory Appeal from Order of Hearing Examiner, filed January 2, 1969. The application was filed pursuant to Rule 3.23(a) of the Commission's Rules of Practice and seeks permission to appeal from the examiner's order, dated December 23, 1968, granting respondent's motion to cancel the trial date to the extent of rescheduling the same to commence January 28, 1969. Although not required to do so by the Rules, counsel supporting the complaint filed their opposition to this Application on January 14, 1969.

In its motion, respondent urges two principal grounds for seeking an appeal. First, respondent alleges that it has not yet had the benefit of the discovery to which it is entitled prior to trial in that United States Pipe and Foundry Company has not yet responded to the subpoena as modified by the examiner on December 3, 1968 and because officials of U.S. Pipe allegedly failed to respond to 80 percent of the questions asked of them at the depositions held on December 11, 1968. Second, respondent contends that an extension should be granted because its counsel is already obligated to try another case before a Commission hearing examiner on January 27, 1969. Respondent then urges that the Commission remand this matter to a new and different

examiner because of the present examiner's alleged refusal to follow the mandate of prior Commission orders with regard to respondent's rights.

In the order in question, the examiner granted the respondent's motion to cancel the trial date of January 13, 1969, to the extent of rescheduling the trial to commence on January 28, 1969, without prejudice to respondent's right to file a new motion to cancel the January 28th trial date in the event of actual commencement of formal hearings in the other case. At that time, the examiner was aware of U.S. Pipe's failure to respond to the subpoena and of respondent's allegations with respect to the depositions. Still it was his view that while some postponement was required, it did not follow that an indefinite postponement should be made. On the other hand, if respondent's counsel did proceed to trial in the other case on January 27th and if there had by that time been no decision by the Commission on the then pending matters before it and no order of enforcement of the subpoena, then further postponement would be necessary. Failing that, the examiner felt that the case should proceed to trial as ordered and that respondent was protected by the reservation that it may move for a delay for purposes of further discovery at the conclusion of complaint counsel's case.

At the time of this action by the examiner, he could not have been aware of the fact that on December 24, 1968 the Commission extended the return date on the subpoena until five business days following receipt by U.S. Pipe of the Commission's order and opinion on the appeal from the examiner's order modifying the subpoena and otherwise denying the motion to quash. He further, obviously, was not aware of the fact that on January 15, 1969, the Commission would issue its order denying the appeal, thus, under its previous order, leaving U.S. Pipe with five business days following receipt of the order within which to respond.

Upon its review of the entire record to date, including the contentions of all the parties, the Commission is of the opinion that no adequate grounds exist under the Rules for granting respondent's application for leave to file an appeal on the points now at issue. The Commission can see little to be gained by the time which would be consumed in the filing of extensive briefs and further consideration of matters which can be disposed of just as well at this time. Such a procedure can only result in further involving the Commission in the details of procedure which are better left to the discretion of the examiner, who, as

the Commission observed in its January 15th opinion, is carefully observing the instructions contained in prior Commission opinions and is attempting to conduct the proceedings in accordance therewith. Hence, the Commission does not regard as deserving of further consideration respondent's contention that this case should be remanded to a new and different examiner for the reasons advanced by respondent.

On the other hand, the Commission wishes to reiterate, for the benefit of the parties and the examiner, its firm policy against piecemeal hearings or hearings held at intervals. In almost all cases, the interests of fairness and speed in adjudication will be served by refining the issues and permitting full discovery in advance of hearings and then holding continuous hearings. Deviations from these general rules should be permitted only in rare and unusual circumstances and the need for such deviations should be fully set out in the record. At the same time, the examiner has available ample authority to see that the Commission's discovery procedures are not abused and to prevent their utilization solely for purposes of delay.

While denying respondent's application for leave to appeal, the Commission is also of the opinion that events outside the examiner's control, which are obvious to the Commission upon its review of the record, dictate the need for some extension of time before the hearings actually commence. Thus the Commission's opinion denying U.S. Pipe's motion to quash the subpoenas was not rendered until January 15, 1969, and actual service upon U.S. Pipe was not effected until a later date, following which the Company had five additional business days within which to respond. This fact plus the approaching trial date in the other case in question have resulted in a telescoping of events into a period too close to the trial date of January 28, 1969 set by the examiner. For this reason, the Commission is returning this matter to the examiner with instructions to grant an extension of three weeks from the date now set for the trial to commence, or such further time as he might within his discretion deem necessary in light of his own evaluation of all the factors involved.

Commissioner MacIntyre concurred in the result.

Order Denying Application for Leave to File Interlocutory Appeal

Upon consideration of respondent's Application For Leave To File Interlocutory Appeal, filed January 2, 1969, and for the reasons stated in the accompanying opinion,

It is ordered, That respondent's application for leave to appeal be, and it hereby is, denied.

It is further ordered, That the matter be returned to the examiner with instructions to grant an extension of three weeks from the date now set for the trial to commence, or such further time as he might within his discretion deem necessary in light of his own evaluation of all the factors involved.

Commissioner MacIntyre concurring in the result.

THE STANLEY WORKS

Docket 8760. Order, January 30, 1969

Order denying respondent's request for the production of confidential documents.

ORDER DENYING REQUEST FOR THE PRODUCTION OF CONFIDENTIAL DOCUMENTS

This matter is before the Commission upon the request of respondent for the production of confidential documents, filed December 12, 1968, and complaint counsel's opposition thereto, filed December 18, 1968. This request seeks to reactivate an application of July 24, 1968, which has been held in abeyance pending the outcome of a simultaneously filed motion for issuance of a subpoena directed to the hearing examiner. The request for the production of confidential documents was filed under the Public Information Section of the Administrative Procedure Act [1] and the motion for issuance of a subpoena was made pursuant to the Commission's discovery rules.[2]

In its request of December 12, 1968, respondent states that "[t]he Hearing Examiner in the above case has now denied Stanley's Motion for Issuance of a Subpoena." Review of the transcript, however, reveals that motion was granted in part and only denied with respect to applicant material (Tr. 222). Accordingly, the better part of respondent's request is now moot. As to the applicant material, the examiner is of the opinion that he is not "at liberty to order the production of this material" and he denied the motion as to it.

The Rules of Practice are silent on the question whether or not the examiner may order the production of applicant material. Since Section 3.36 does not limit the examiner's authority

[1] 5 U.S.C. Sec. 552.

[2] Sec. 3.36, Rules of Practice.

in this respect, there does not appear to be any reason why he should not have the authority to rule on the motion. If the examiner should, as he in fact did in this proceeding, deny the motion, the orderly and expeditious conduct of the proceeding would require the parties, if they disagreed with the examiner's decision, to appeal to the Commission within the time specified by the Rules of Practice.

Since the examiner's opinion concerning his authority to rule on the motion for issuance of a subpoena may have misled respondent and, as will be explained below, action on an improperly made request for the production of confidential documents was deferred (to the possible prejudice of respondent), the examiner is instructed to consider *de novo* that part of respondent's motion for issuance of a subpoena previously denied.

With respect to the request of July 24, 1968, reactivated on December 12, 1968, it states that it is made pursuant to Section 4.8(b) of the Rules of Practice and is predicated upon the Public Information Act of 1966. It is noted that Section 4.8(b) refers to the availability of public information; requests for confidential information predicated upon the Public Information Act must be made under Section 4.11. Furthermore, Section 4.11(b) requires such requests to be made under oath, which respondent failed to do. In any event, Section 3.22 of the Rules of Practice requires that all motions made during the time a proceeding is before an examiner, with the exception of those relating to the disqualification of the examiner, shall be directed to the examiner, which respondent did not do either. Should the examiner have no authority to rule on the motion, the rules require him to certify it to the Commission, along with his recommendations. This requirement is imposed to insure the orderly conduct of the proceeding. It also enables the Commission to obtain the views and recommendations of the examiner, which would otherwise be missing. For these reasons respondent's request will be denied. Accordingly,

It is ordered, That respondent's request for the production of confidential documents be, and it hereby is, denied.

ALLIED CHEMICAL CORPORATION, ET AL.

Docket 8767. Order and Opinion, January 30, 1969

Order denying respondent's appeal from examiner's denial of motion to subpoena Commission records.

OPINION OF THE COMMISSION

This matter is before the Commission upon two appeals; (a) respondents' appeal filed December 20, 1968, from the hearing examiner's denial of their motion for a subpoena for records of the Commission and complaint counsel's answer thereto filed December 30, 1968; and (b) complaint counsel's appeal filed December 23, 1968, from the order of the hearing examiner disposing of the motion for the issuance of the subpoena for records of the Commission, and respondents' answer thereto filed January 3, 1969, entitled "Respondents' Motion To Dismiss Complaint Counsel's Appeal From Order Of Hearing Examiner."

Respondents' motion for records of the Federal Trade Commission was filed on November 22, 1968. In this motion respondents requested the production or disclosure of various documents, papers and other materials in the records of the Commission, including the names, addresses and business affiliations of all persons interviewed by the Commission's staff in connection with this matter and all memoranda, transcripts or other records reflecting the substance of such interviews. This motion was considered in a prehearing conference held on December 12, 1968. In the course of this conference complaint counsel stipulated with respondents' counsel for the production of part of the documents sought and the hearing examiner supplemented the stipulations by his directions on the record, including a protective order. The hearing examiner subsequently issued a formal, written order, filed December 13, 1968, denying respondents' motion for the issuance of a subpoena for records of the Federal Trade Commission, which order recited the stipulations of complaint counsel and the arrangements made for the production of certain of the records requested.

Respondents now appeal from such denial insofar as respondents have not received production of all the documents and materials sought. The documents not produced upon respondents' request under the stipulations and the order and directions of the hearing examiner would appear to be reports of interviews, if any, of persons interviewed by the Commission's staff in connection with this matter.

Complaint counsel agreed, prior to the December 12, 1968, conference, to supply the information requested in Item 3 of the respondents' motion, that is, the names, addresses and business affiliations of all persons interviewed by the Commission's staff in connection with this matter so long as the respondents would disclose like information.[1] It appears that this arrangement was satisfactory to respondents and the examiner's directions at the pretrial conference explicitly covered the terms of such exchange. (It is the examiner's direction in such matter, limiting the exchange to persons interviewed outside the organizations, which forms the basis for complaint counsel's appeal.)

Respondents, however, seek the production of the reports of the interviews with such persons. They claim, in effect, that they are entitled to such access as a matter of a general discovery right. Respondents assert that the Commission's staff has engaged in what is described as a far-reaching investigation covering a period of more than one year and that in that period, both before and after the issuance of the complaint, thirty-nine persons were interviewed, of which complaint counsel indicated an intention to call only eleven. Complaint counsel will not reveal, it is claimed, what they have learned from any of the persons interviewed. Respondents argue that they "cannot hope to retrace complaint counsel's steps." The reasons they assert are that the hearing date set for February 3, 1969, does not allow sufficient time and, furthermore, that they have "every reason to believe that the interviewees will not prove cooperative." Thus, they argue that in the circumstances it would be unfair and a denial of due process to permit the hearing to proceed without requiring complaint counsel to divulge materials favorable to respondents' case or casting doubt on the complaint counsel's case.

As legal authority for their contention that they are entitled to interview reports as a part of prehearing discovery, the respondents cite the cases of *Giles* v. *Maryland,* 386 U.S. 66 (1967) ; and *Brady* v. *Maryland,* 373 U.S. 83 (1963). These cases, in our view, are inapposite to Commission proceedings. Both involve the suppression of evidence where the defendants were found guilty of crimes for which they had been sentenced to death (commuted to life in the *Giles* case). The holdings in such cases, on vastly different factual circumstances, have little, if any, direct relevance to administrative proceedings. In addi-

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[1] Complaint counsel supplied this information to respondents on December 12, 1968 (Tr. 149–150).

tion, neither case expressly deals with the rights of a party being proceeded against so far as matters of pretrial discovery are concerned. They are concerned with production of material and admissible evidence which had been suppressed. The interview reports here involved are not in that category.

The holding in *Hickman* v. *Taylor,* 329 U.S. 495 (1947), is more nearly, if not precisely, in point. In such case the Court was dealing with pretrial discovery applications under the Federal Rules of Civil Procedure and the right, if any, to inquire into materials collected by an adverse party's counsel in the course of preparation for possible litigation. The Court held in that case there was only a naked general demand for the materials as a matter of right and a finding by the District Court that no recognizable privilege was involved. That, the Court stated, was insufficient to justify discovery of what it described as the lawyer's "work product."

This case is not dissimilar. The interview reports sought generally come within the category of the work product of a lawyer and no adequate justification has been presented for their disclosure. While respondents claim that they do not have the time to conduct the interviews, they have not demonstrated that any attempt has been made to interview the persons in question nor have they given any reasons why this should take more time than that available. Respondents also claim that they have "every reason to believe" that the interviewees will not prove cooperative, but they have not elaborated on this statement and they have not demonstrated that they will fail to receive cooperation. These are the sole grounds mentioned. Under the controlling *Hickman* precedent this is insufficient justification for the production sought. See also Commission Rule 3.36(b) covering the content of a motion for a subpoena for Commission records.

Respondents' request does not raise the precise issue with which the Commission was concerned in prior referred to cases such as *Inter-State Builders, Inc.,* Docket No. 8624 (order issued April 22, 1966) [69 F.T.C. 1152]; *L. G. Balfour Company,* Docket No. 8435 (order issued April 22, 1966) [69 F.T.C. 1118]; and the more recent *Star Office Supply Co.,* Docket No. 8749 (order issued September 18, 1968) [74 F.T.C. 1595]. In those cases the question of production related to interview reports for persons who had testified at the trial. In this matter, it is clear that respondents will be given pretrial statements of witnesses qualifying under the Jencks Act, if any, at the time the witnesses testify (Tr. 99). *Cf.* 18 U.S.C. §3500 (1958). Respondents, how-

ever, want all statements made by all persons interviewed in connection with the case, whether or not producible under the Jencks Act and whether or not these relate to complaint counsel's witnesses. Respondents are, in effect, claiming the right to examine the Commission documents generally to determine whether or not any contain information favorable to its defense. The Commission's discovery rules do not go so far. Respondents are not entitled as a matter of discovery right to the general production of all interview reports for persons interviewed in connection with this proceeding. For a full discussion of the Commission's views on the production of interview reports under the Jencks rule see *Inter-State Builders, Inc., supra,* and *L. G. Balfour Company, supra.*

Complaint Counsel's Appeal

As previously mentioned, complaint counsel appeal from what they describe as an order of the hearing examiner issued in disposition of a motion for issuance of a subpoena for records of the Federal Trade Commission. Such counsel assert that this order was served on them December 16, 1968, and provides that complaint counsel supply respondents with a list of names, addresses and business affiliations of all persons interviewed by the Commission's staff in connection with this matter and that respondents' counsel provide complaint counsel with a list of the names, addresses and business affiliations of all persons outside of respondents' organizations interviewed by respondents' counsel in connection with this matter. Complaint counsel characterize this order as unfair and as applying a dual standard in that it requires complaint counsel to supply the names of all persons interviewed whereas respondents' counsel is required to supply the information only as to those persons outside of its organizations.[2] As heretofore noted, complaint counsel have already submitted the required information to respondents. It is not disclosed on the record whether this listing includes interviews with any persons other than those outside of the Federal Trade Commission. In any event, it appears that complaint counsel's objection is not so much with the breadth of the order so far as it affects complaint counsel as it is with the qualification which requires respondents' counsel to produce the information only as to persons outside respondents' organizations.

Respondents raise questions about the appropriateness and

[2] Complaint counsel apparently have misread the hearing examiner's ruling since the examiner expressly limited his direction to complaint counsel to produce the information to persons outside the Commission (Tr. 114).

the timeliness of complaint counsel's appeal. The matter is complicated by the fact that the hearing examiner made a ruling on the subject at the pretrial conference on December 12, 1968, and the next day, on December 13, 1968, in effect formalized his ruling by issuing an order denying respondents' motion for subpoena. Because the situation is not clear and also because respondents will not be prejudiced in view of our rejection of complaint counsel's request on the merits, we will proceed to consider complaint counsel's appeal as properly and timely made under the Commission's rules.

We are not persuaded that the matter raised by complaint counsel is anything more than a procedural detail within the discretionary authority of the hearing examiner. This whole question of the exchange of information concerning persons interviewed was considered in depth before the hearing examiner at the pretrial conference of December 12, 1968. Complaint counsel, at that time, presented their argument that they believed respondents' counsel should produce the names of persons interviewed inside as well as outside of respondents' organizations. They failed, however, to give any substantial reasons why the broader request was necessary and they failed to persuade the hearing examiner to their point of view. Moreover, an issue was raised as to whether or not complaint counsel were, in effect, trying to obtain additional discovery when it appears that their time for such discovery had run out. In such circumstances we can find no justification for interfering with the hearing examiner's resolution of the question.

Accordingly, the appeal of respondents and of complaint counsel will be denied. An appropriate order will be entered.

Commissioners Elman and Nicholson dissented.

ORDER DENYING INTERLOCUTORY APPEALS

Respondents, on December 20, 1968, having appealed from the hearing examiner's denial of their motion for a subpoena for records of the Commission, and complaint counsel, on December 23, 1968, having appealed from the hearing examiner's order disposing of the motion for the issuance of the subpoena for Commission records; and

The Commission having determined, for reasons appearing in the accompanying opinion, that such appeals should be denied:

It is ordered, That the appeal of respondents filed December 20, 1968, be, and it hereby is, denied.

It is further ordered, That the appeal of complaint counsel filed December 23, 1968, be, and it hereby is, denied.

Commissioners Elman and Nicholson dissenting.