THE GRAND UNION COMPANY

Docket 7344. Order and Opinion, Oct. 14, 1959

Interlocutory order remanding to hearing examiner for consideration and appropriate action, as clearly within the scope of his authority, joint motion to amend complaint by substituting wholly owned subsidiaries for original respondent.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter is before the Commission on an interlocutory appeal filed by counsel supporting the complaint from the hearing examiner's order denying a joint motion of counsel to amend the complaint by substituting Square Deal Market Co., Inc., and Super Market Wholesalers, Inc., as parties respondent in lieu of The Grand Union Company. The reason given for the order was that "the proposed amendment is not reasonably within the scope of the proceeding initiated by the original complaint."

In so ruling the hearing examiner was in error. Square Deal Market Co., Inc., it appears, is a wholly owned subsidiary of the respondent, The Grand Union Company, and Super Market Wholesalers, Inc., is in turn a wholly owned subsidiary of Square Deal Market Co., Inc. The acts and practices alleged in the complaint to have been unlawful, instead of having been engaged in by The Grand Union Company, as alleged, were actually engaged in by Square Deal Market Co., Inc., acting through Super Market Wholesalers, Inc. In such circumstances, as the Commission recognized in Docket No. 6486, *The Goodyear Tire and Rubber Company et al.* (Order Affirming Hearing Examiner's Order Amending Complaint —issued October 26, 1956), an order amending the complaint by a substitution of the parties is clearly within the scope of the hearing examiner's authority. See also the Commission's opinion of June 4, 1958, in Docket No. 6961, *Hafner Coffee Company*, in disposition of a motion for amendment certified to the Commission by the hearing examiner.

The motion for amendment will be remanded to the hearing examiner for consideration and appropriate action in conformity with the foregoing.

ORDER

Counsel supporting the complaint having filed an interlocutory appeal from the hearing examiner's order of September 21, 1959, denying a joint motion of counsel supporting the complaint and counsel for the respondent for an amendment of the complaint herein; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the ruling appealed from was erroneous:

It is ordered, That the appeal of counsel supporting the complaint be granted.

It is further ordered, That the aforesaid motion for amendment of the complaint be, and it hereby is, remanded to the hearing ex-