Commissioner Elman concurring in the result.

WHITE LABORATORIES, INC.

Docket 8500. Order, June 28, 1963

Respondent's request for oral argument on proposed form of order and stipulation denied.

The Commission, on June 13, 1962, issued its formal complaint in this proceeding. On April 17, 1963, while this proceeding was before the hearing examiner, respondent filed a motion with the Commission requesting a settlement conference or alternative relief. The Commission, in its order issued April 19, 1963, pointed out that the hearing examiner has full authority to take the actions requested and dismissed the motion as premature. Thereafter, the hearing examiner in his order of June 10, 1963, after noting that negotiations had failed to produce a mutually agreeable settlement between the parties, denied the motion. Respondent has now renewed its motion of April 17, 1963, to the Commission and has attached thereto a proposed form of order together with a stipulation which it contends shows the scope of the practices covered by the complaint. Respondent requests oral argument on its motion and counsel sup-

porting the complaint have filed an answer in opposition to said motion.

The Commission's Rules of Practice make no provision for the filing and consideration of respondent's motion. The proper procedure for presenting this matter to the Commission is through a request for permission to file an interlocutory appeal from the hearing examiner's ruling of June 10, 1963.

The procedural irregularity notwithstanding, the Commission has decided to consider respondent's request on the merits in order to avoid further delay in this proceeding.

The only hearing of record in this proceeding is a pre-trial conference held on April 11, 1963. The subject matter of respondent's proposed stipulation was discussed at that time and no agreement was reached between the parties. Thus, there is no basis in this record for a determination by the Commission as to the validity of respondent's argument that its proposed stipulation shows the scope of its practices as challenged in the complaint. Nevertheless, the Commission has reviewed the proposed stipulation and, even assuming a record basis therefor, is of the opinion that the evidentiary material set forth therein is so lacking in detail as to render it extremely difficult to determine the appropriate scope of an order to cease and desist. Therefore, the Commission considers that the proposed stipulation does not provide a sufficient basis for disposition of this proceeding. Moreover, the Commission notes that neither respondent's proposed stipulation nor its present motion contemplates factual findings which are required by the Commission's order of November 26, 1962. And complaint having issued, the consent order procedure provided by Part 3 of the Commission's Rules of Practice, suggested in respondent's motion, is not available.

The Commission is also of the view that the petition herein is entirely adequate to fully advise it as to the matters in issue and that no useful purpose would be served by oral argument thereon.

In view of the foregoing, *It is ordered*, That respondent's motion of June 11, 1963, and its request for oral argument be, and they hereby are, denied.

Commissioner Elman concurring in the result.