

Docket 8617. Order, Oct. 15, 1964

Order denying permission to file an interlocutory appeal from hearing examiner's denial of offering additional documents in evidence.

ORDER DENYING PERMISSION TO FILE INTERLOCUTORY APPEAL

On July 20, 1964, the hearing examiner in the above-captioned proceeding directed complaint counsel to furnish counsel for respondent, by July 24, 1964, copies of all documents to be proffered in evidence. On September 18, 1964, complaint counsel moved that they be allowed to furnish additional documents, not embraced in the order of July 20, to be proffered in evidence. The examiner, by order of September 29, 1964, denied complaint counsel's motion, stating that, "[i]f granted

it would result, we think, in undue delay and contradict the express desire of the Commission ' . . . that this proceeding be expedited and kept within manageable proportions.' " On October 5, 1964, complaint counsel, pursuant to Section 3.20 of the Commission's Procedures and Rules of Practice (effective August 1, 1963), filed with the Commission a request for permission to file an interlocutory appeal from the examiner's order of September 29. On October 7, 1964, respondent filed a statement in opposition to complaint counsel's request.

Section 3.20 provides that permission to file an interlocutory appeal "will not be granted except in extraordinary circumstances where an immediate decision by the Commission is clearly necessary to prevent detriment to the public interest." Section 3.15(c) of the Rules directs the hearing examiner "[t]o regulate the course of the hearings and the conduct of the parties and their counsel therein," and Section 3.8(c) provides that the examiner's order based on the prehearing conference "shall control the subsequent course of the proceeding, unless modified at the hearing to prevent manifest injustice." Thus, such a question as whether to modify the terms of the prehearing order in order to admit further evidence is essentially within the sound discretion of the hearing examiner. In the interest of orderly and expeditious procedure, his determination of such a question will not often give rise to the "extraordinary circumstances" which must be shown before the Commission will entertain an interlocutory appeal.

In its Order Ruling on Appeal From Examiner's Denial of Motion to Limit Subpoena, issued September 24, 1964 [p. 1543 herein], in this matter, the Commission expressed its "desire that this proceeding be expedited and kept within manageable proportions." Since the duty of expediting the proceeding and keeping it within the bounds of the complaint is, at the hearing stage, primarily the hearing examiner's and in the absence of good cause shown, the Commission has determined that it will not entertain an interlocutory appeal from the examiner's ruling denying complaint counsel's motion. Accordingly,

It is ordered, That permission to file an interlocutory appeal be, and it hereby is, denied.

Commissioner MacIntyre not concurring.

IN THE MATTER OF
VINCENT RUILOVA TRADING AS VINCENT CIGAR
COMPANY ET AL.

Docket C-802. Order, Oct. 15, 1964

Order reopening case, striking prohibitions numbered 2, 3 and 4 and granting respondents thirty (30) days in which to file objection.