INTERLOCUTORY, VACATING, AND MISCELLANEOUS ORDERS

JACOBY-BENDER, INC., ET AL.

Docket 8728. Order, Jan. 5, 1968

Ordering denying motion to dismiss on the ground that complaint counsel was late in filing notice of appeal; and granting respondents extension of time to file reply.

Order Denying Motion to Dismiss Appeal

This matter is before the Commission on respondents' motion to dismiss the appeal on the ground that the notice of intention to appeal and the appeal brief of complaint counsel were not filed within the time prescribed by the Rules, and complaint counsel's answer in opposition thereto. It appears that complaint counsel, in their notice of intention to appeal, by inadvertence stated the initial decision was served November 16, 1967. This error is the basis of the motion to dismiss. In fact, the Commission's records show that the date of service was November 21, 1967. Complaint counsel's notice of intent and appeal brief were therefore timely filed. The Commission has further determined that in view of their misunderstanding as to the timeliness of complaint counsel's appeal respondents should be granted an extension of 30 days from the date of service of this order upon them within which to file their answer to the appeal. Accordingly,

It is ordered, That respondents' motion to dismiss the appeal be, and it hereby is, denied.

It is further ordered, That respondents be, and they hereby are, granted an extension of 30 days from the date of service of this order upon them within which to file their answer to the appeal.

CURTISS-WRIGHT CORPORATION

Docket 8703. Order, Jan. 24, 1968

Order denying respondent's appeal from hearing examiner's order directing compliance with a subpoena duces tecum.

Order Denying Appeal from Examiner's Ruling on Subpoena Duces Tecum

This matter having come on to be heard upon the appeal of respondent and Martin A. Sherry from the hearing examiner's order filed

December 18, 1967, directing compliance with a subpoena duces tecum issued October 12, 1967, and rescheduling return date, and upon the answer of complaint counsel in opposition thereto; and

The Commission having determined that the issues raised on the appeal were in substance decided in the Commission's order issued December 1, 1967 [72 F.T.C. 1027], and that respondent and Martin A. Sherry have raised no new or different contentions; that no showing has been made that the ruling complained of involves substantial rights and will materially affect the final decision and that a determination of its correctness before the conclusion of the hearing is essential to serve the interest of justice: and having furtl er determined that the appeal for such reasons should be denied:

It is ordered, That the appeal of respondent and Martin A. Sherry from the hearing examiner's order filed December 18, 1967, directing compliance with a subpoena duces tecum and rescheduling return date, be, and it hereby is, denied.

Commissioner Elman not concurring.

NATIONAL EXECUTIVE SEARCH, INC., ET AL.

Docket 8731. Order, Jan. 26, 1968

Order granting respondents' request to quash subpoena duces tecum directed to the president of the corporate respondent.

Order Granting Appeal and Remanding to Examiner With Instructions

This matter is before the Commission upon respondents' appeal filed December 1, 1967, from the part of the order of the hearing examiner, of November 27, 1967, denying their request to quash subpoena duces tecum directed to John W. Costello, president, National Executive Search, Inc., and upon complaint counsel's answer in opposition thereto; and it appearing to the Commission that the actions of the hearing examiner in issuing such subpoena duces tecum and denying in part the motion to quash exceeded the limits of the pretrial order; and the Commission having determined, therefore, that the matter should be remanded to the hearing examiner for his reconsideration of the issues raised in the light of the pretrial order:

It is ordered, That respondents' appeal from the part of the hearing examiner's order of November 27, 1967, denying their request to quash subpoena duces tecum directed to John W. Costello, president, National Executive Search, Inc., be, and it hereby is, granted.

It is further ordered, That inasmuch as the hearing examiner's order ruling on the subpoena duces tecum directed to John W. Costello, president, National Executive Search, Inc., exceeds the limits of his

pretrial order entered in this proceeding, the hearing examiner shall, in connection with such subpoena, modify the pretrial order to such extent as may be appropriate under § 3.21(d) of the Commission's Rules of Practice (*i.e.*, to prevent manifest injustice), after which the course of the proceedings shall be governed in accordance with these determinations and actions.

LEHIGH PORTLAND CEMENT COMPANY