

IN THE MATTER OF
KELLOGG COMPANY, ET AL.

Docket 8883. Order, Nov. 25, 1975

Denial of (1) complaint counsel's application for review of administrative law judge's order setting a schedule for pretrial briefing and trial in this matter, and (2) administrative law judge's order denying motion for reconsideration.

Dismissing as moot complaint counsel's petition for stay of action by Commission on administrative law judge's report and orders of Oct. 14, 1975.

*Appearances**

For the Commission: *Robert B. Greenbaum* and *Steven A. Newborn*.

ORDER DENYING APPLICATION BY COMPLAINT COUNSEL FOR
REVIEW OF THE SUBSTITUTE ADMINISTRATIVE LAW JUDGE'S
ORDERS AND DISMISSING PETITION FOR STAY

This matter is before the Commission upon an uncertified application for review.

On Oct. 22, 1975, Administrative Law Judge Joseph P. Dufresne¹ denied complaint counsel's motion that he reconsider and amend his order of Oct. 14, 1975, setting a schedule for pretrial briefing and trial in this matter. The law judge's order, setting Jan. 26, 1976 as the date for the commencement of hearings on complaint counsel's case, was issued pursuant to the Commission's orders of Sept. 16, 1975, and Sept. 23, 1975, requiring that the law judge, after consultation with the parties, promptly establish a schedule for trial and certify to the Commission a status report on this matter.

The law judge has also declined to make a determination that his rulings are appropriate for interlocutory review under Section 3.23(b) of the rules of practice.

Complaint counsel have now applied for review of the law judge's orders of Oct. 14, 1975, and Oct. 22, 1975. They contend that the judge's failure to determine that this matter is appropriate for review under Section 3.23(b) was a clear abuse of discretion and that the rulings setting a briefing and trial schedule were likewise abuses of discretion.

Complaint counsel ask that the scheduling of this matter be "returned to the discretion of Judge Hinkes to set a schedule consistent with the record, the needs of the parties, and the interests of the public in a proper resolution of this important matter. If the Commission

* For additional appearances see p. 650, herein.

¹ Judge Dufresne was designated to substitute for Harry R. Hinkes, the law judge to whom this matter was assigned, who was required to be absent from the Commission for personal reasons.

Complaint

86 F.T.C.

decides that it will itself set the schedule, complaint counsel recommend a trial date of Apr. 5, 1976, as originally proposed by the substitute judge and accepted by all parties."

We cannot conclude, from the record before us, that Judge Dufresne abused his discretion in making any of the determinations challenged by complaint counsel. However, the law judge retains discretion to modify the trial schedule for good cause. Accordingly,

It is ordered, That the aforesaid application for review be, and it hereby is, denied;

It is further ordered, That the petition by complaint counsel for stay of any action by the Commission on Judge Dufresne's report and orders of Oct. 14, 1975, be, and it hereby is, dismissed as moot.
