

IN THE MATTER OF
FORD MOTOR COMPANY

Docket 9001. Interlocutory Order, Feb. 10, 1978

On motion to withdraw matter from adjudication, Commission directed that pleadings of complaint counsel be furnished to the Commission, but not placed on the public record, to enable it to determine the probability that a settlement will be achieved.

ORDER

By his order of January 19, 1978, the Administrative Law Judge certified to the Commission an amended motion by respondent to withdraw this matter from adjudication for consideration of a consent order.

Beyond those facts, the posture of the motion becomes somewhat murky. Respondent's original motion recites that "complaint counsel do not oppose this motion," but this recital is absent from the amended motion.¹ Complaint counsel have not, however, executed the proposed consent order, for reasons which the Administrative Law Judge describes as including both some disagreement with its terms and the view that it would vary the terms of our earlier order (Dkt. C-2582) against the respondent, a variance complaint counsel presumably felt they could not agree to since "[a]ny modification of an outstanding order is exclusively within the jurisdiction and discretion of the Commission."²

Evidently the respective positions of respondent and complaint counsel with regard to the proposed consent order are fully set out in respondent's memorandum of December 23, 1977, complaint counsel's answer of January 16, 1978, and respondent's reply of January 18. These pleadings have not been sent forward to us, however, because of the Administrative Law Judge's opinion that "it would not be appropriate for the Commission to consider the substance of that memorandum [of December 23, 1977] before it withdraws the instant matter from adjudication."

The reasons for this are not elaborated, nor are they self-evident. Obviously, no "*ex parte*" problem exists, and if respondent in its memorandum concedes matters it had placed in issue the damage has already been done by submitting the memorandum to the initial

¹ In his certification, however, the Administrative Law Judge characterizes the motion as "unopposed."

² While this statement is correct, its application in this context seems to reflect a misunderstanding of the significance of executing a proposed consent order. Complaint counsel's signature would indicate a recommendation that the Commission accept the order. Actual modification of the outstanding order would occur only if the Commission followed that recommendation. We make this observation only to obviate confusion in the future, since it appears here that complaint counsel could not unreservedly make such a recommendation.

trier of fact and law. Inasmuch as we are trying to determine, as the Administrative Law Judge did, the probability that a settlement will be achieved, respondent's memorandum and the additional pleadings could be of considerable assistance.

Accordingly, it is ordered, That the pleadings of December 23, 1977, and January 16 and 18, 1978, be expeditiously transmitted to the Commission. They should not, however, be placed on the public record at this time.

Interlocutory Order

IN THE MATTER OF

AIRCO, INC.

Docket 9098. Interlocutory Order, Feb. 15, 1978

Order establishing a protective order providing ten (10) days' notice before release of certain documents to be supplied in response to subpoena duces tecum.

ORDER

The Administrative Law Judge has certified to the Commission a paragraph undertaking to provide ten days' notice before release of certain documents to be supplied by Airco, Inc. in response to a subpoena *duces tecum*. If we so authorize, it is the Administrative Law Judge's intention to incorporate this paragraph in a protective order which he will grant to Airco. As our Rules now stand, a "ten-day notice" undertaking can only be made by the Commission itself.

The action requested by the Administrative Law Judge's certification is similar to that which the Commission took by order dated January 31, 1977, in *Exxon Corporation, et al.* The Commission has determined to authorize incorporation of paragraph 6 in the proposed protective order. The language set out in the Administrative Law Judge's certification will be modified, however, by deletion of the words "designated by Airco as confidential" and substitution therefor of the words "covered by this protective order." The coverage of such an order is of course for the Administrative Law Judge, not respondent, to determine.

So ordered.