In the Supreme Court of Pennsylvania

Middle District

No. 38 May Term, 1974

PENNSYLVANIA HUMAN RELATIONS COMMISSION,

Appellant

vs.

UNITED STATES STEEL CORPORATION, AMERICAN BRIDGE DIVISION, SHIFFLER WORKS,

Appellee

BRIEF FOR APPELLANT

Appeal From the Decision of the Commonwealth Court of Pennsylvania at No. 355 *C.D.* 1973 *Dismissing the Complaint in Equity Brought by the Pennsylvania Human Relations Commission To Compel Answers to Interrogatories Issued To Investigate the Complaint at Docket No. E-*5094*A.*

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STATEMENT OF JURISDICTION

This matter is before the Supreme Court pursuant to Section 203, Article II of the Appellate Court Jurisdiction Act of 1970, 1970, July 31, P. L. 673, No. 223, Art. I, §101, 17 P.S. §211.203, by direct appeal from the final order of the Commonwealth Court of November 1, 1973 dismissing a complaint in equity filed therein by the appellant, which complaint constituted an action originally commenced in the Commonwealth Court.

STATEMENT OF THE QUESTIONS INVOLVED

1. Was PHRC's complaint charging appellee with unlawful employment discrimination invalid as failing to comply with the "particularity" requirement for complaints filed under the Pennsylvania Human Relations Act?

(Answered in the affirmative by the Court below.)

2. Does PHRC have the power to require a respondent, such as appellee, to answer interrogatories issued pursuant to its statutory duty to investigate?

(Apparently not reached by the Court below.)

HISTORY OF THE CASE

The appellant, Pennsylvania Human Relations Commission (hereafter PHRC), filed a complaint on August 21, 1972 charging U. S. Steel Corporation, American Bridge Division, Shiffler Works (hereafter appellee), with violating the employment provisions of Section 5 of the Pennsylvania Human Relations Act, 43 P.S. Section 951 et seq. Pursuant to the complaint and in furtherance of its duty to investigate PHRC served upon appellee interrogatories which related to the charge and demanded answers (Record, Exhibit A). Appellee refused to answer, citing as its reason, inter alia, that PHRC is without authority under its Act to require such answers (Record, Exhibit E). On February 20, 1973, PHRC renewed its demand to appellee for answers to the interrogatories (Record, Exhibit F), but received no response by March 8, 1973, the extended deadline, and it has to date not received answers to the interrogatories. On March 21, 1973, PHRC filed a complaint in equity with the Court below asking that appellee be ordered to answer the interrogatories (Record). Appellee filed preliminary objections to the complaint (Record). On November 1, 1973, the Court below, having heard oral argument on the preliminary objections on September 6, 1973, entered an order sustaining the preliminary objections and dismissing the complaint in equity.

The thrust of the Court below's position was:

(1) PHRC's complaint charging appellee with unlawful discrimination was invalid for failure to comply with the "particularity" requirement of Section 9 of the Act.

(2) Discovery initiated pursuant to an insufficient complaint must likewise fall.

(3) The question of whether PHRC had the power to issue and demand answers to interrogatories either pursuant to a sufficient complaint or incident to an investigation where no complaint had been filed was not reached on the basis that "such is not the case here."

(4) In any event, the Court said, it had no jurisdiction in equity since under Section 10 of the Act, which conferred jurisdiction on the Court to enforce lawful orders of the Commission, PHRC had an adequate remedy at law.

SUMMARY OF ARGUMENT

The PHRC-initiated complaint against the appellee clearly complied with the requirements of Section 9 that the complaint set forth the particulars of the unlawful discriminatory practices complained of. This conclusion is all the more called for in view of the instruction in Section 12(a) of the Act that its provisions be construed liberally for the accomplishment of the purposes thereof. The interpretation given by the lower court would defeat the very purpose of the Act in that it would prevent PHRC from investigating effectively until it had information which only an effective investigation could secure.

The complaint advised appellee of the discriminatory conduct which PHRC claimed it had reason to believe appellee was engaged in. It was surely sufficient to justify an investigation which would determine the correctness or incorrectness of PHRC's belief. Furthermore, the complaint clearly delineated the perimeters of PHRC's area of concern so as to delineate the perimeters of the proposed investigation. To the extent that appellee believed it required more particularity, it could have filed a motion for more particularity in accordance with Section 35.54 of the General Rules of Administrative Practice and Procedure. It failed to do so.

The Court below's rejection of the great weight of Federal Court and administrative authority on this issue, as well as its own holding in *Pittsburgh Press*, was arbitrary and ill-founded.

The Court below failed to reach the issue of PHRC's power to demand answers to interrogatories on the basis that discovery initiated pursuant to an invalid complaint must fall.

Clearly, PHRC's duty under the Act to make a prompt investigation after the filing of a complaint implicitly confers upon it and requires that it have the power to utilize interrogatories or any other discovery tool which is available for those engaged in litigation in the courts, subject to the same objections as to relevance and needless burdensomeness and others which may be raised during discovery under the rules of civil procedure. It is urged that this court reach this issue and use this case to affirm PHRC's investigatory powers, as to the interrogatories involved in this case but also as to PHRC's investigatory and discovery powers generally.

ARGUMENT

I. PHRC's complaint charging appellee with unlawful employment discrimination clearly complied with the "particularity" requirement for complaints filed under the Pennsylvania Human Relations Act.

(First Question Involved)

The pertinent language of Section 9 reads:

> "Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission."

In construing this language the Court below failed once again to honor the terms of Section 12(a):

> "The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof. . ."

The Court below sets forth and evidently completely accepts Appellee's contention that "the Commission's self-initiated formal complaint is subject to this

requirement of particularity, that it fails to meet this test and thus does not state a cause of action upon which subsequent discovery procedure may rest; in this case a demand to respond to the disputed interrogatories. To hold otherwise, defendant contends would permit the Commission by a fishing expedition to bootstrap this fundamental inadequacy of its complaint."

We would do well at the outset to consider this "fishing expedition" argument.

In *United States v. Morton Salt Company*, 338 U.S. 632 (1950), the Court upheld the information-gathering powers in connection with the law enforcement duties of the Federal Trade Commission. Mr. Justice Jackson wrote:

> "We must not disguise the fact that sometimes, especially early in the history of the federal administrative tribunal, the courts were persuaded to engraft judicial limitations upon the administrative process. The courts could not go fishing, and so it followed neither could anyone else. Administrative investigations fell before the colorful and nostalgic slogan 'no fishing expeditions.' It must not be forgotten that the administrative process and its agencies are relative newcomers in the field of law and that it has taken and will continue to take experience and trial and error to fit this process in our system of judicature. More recent views have been more tolerant of it than those which underlay many older decisions. Compare Jones v. Securities & Exchange Comm'n, 208 U.S. 1, with United States v. Morgan, 307 U.S. 183, 191.

> The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law."

Twenty-one years later, in penetrating and bristling language, the Court in *Local No. 104, Sheet Metal Workers International Association v. Equal Employment Opportunity Commission*, 439 F. 2d 237 (9th Cir. 1971), reiterated the present—day view of what is necessary to trigger an investigation by a civil rights law enforcement agency. The case dealt with a charge filed by an EEOC Commissioner. The applicable provisions of Title VII of the Civil Rights Act of 1964, Section 706(a), included the words, ". . . and such charge sets forth the facts upon which it is

based. . ." In upholding EEOC'S "demand for access to evidence" against an argument comparable to that raised here and accepted by the Court below in *Sheet Metal Workers,* the Court wrote:

> "Local 104 interprets the parenthetical language as requiring a detailed statement of the underlying facts relative to the alleged acts of discrimination. Local 104's vigorous exhortation to the court to interpret the language quoted above to mean that the Commission, in its investigation, must not ask any questions to which it does not already know the answers, has about it the aura of another, and bygone, legal era. Local 104 plays upon the epithet 'fishing expedition' as if those words were as fearsome as they once were in that other era when even so sophisticated a jurist as Mr. Justice Holmes made use of them. A useful guideline to the solution of our problem is to be found in the Supreme Court's opinion in United States v. Morton Salt Co., 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed. 401 (1950), a case involving the investigative powers of the Federal Trade Commission."

The Court then picked up that portion of the *Morton Salt* opinion quoted above and commented:

> "In these present days when discovery in advance of trial is commonly used in civil cases in the courts, and to some extent even in criminal cases, it would be incongruous for Congress to create an administrative agency to function in a new sensitive and socially and economically important field, curtail the agency's functions to

the point where its only authorized activities were those of investigation of violations of its law, and the difficult and often frustrating and fruitless task of, by persuasion and compromise, attempting to induce violators to obey the law, and then, by a parenthetical clause, disable it from normal and effective investigation.

> Local 104 would give to the parenthetical clause an extreme interpretation in the direction of avoiding what Local 104 calls 'fishing expeditions'. We think the interpretation should be in the opposite direction, the direction which would put the Commission on a level with other Boards and Commissions created by the Congress and manned by persons appointed by the President and approved by the Senate to initiate a new and important public policy. We think that when a person of the stature of a Commissioner of the EEOC says that he has reasonable cause to believe that a violation of the statute, which violation consists of historically practiced racial discrimination, it is apparent that he so believes because there is common opinion among persons knowledgable in the subject, to that effect, which common opinion would not exist unless there was some plausible basis for it, sufficient to justify an investigation which would determine its truth or falsity. . . . If Local 104 is violating the EEO statute, it has no right to do so, nor has it any privilege, in this non-criminal proceeding, to prevent its Government from finding out whether it is violating the law, by withholding

the evidence which would be relevant in the search for the right answer to the question."

That of course is precisely what is involved in the instant case. Section 9 provides that "after the filing of any complaint or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith."

Here the Commission felt it had reason to believe that Appellee was violating the employment provisions of the Act. Presumably it could have investigated without filing a complaint. Being of the view that better procedure dictated filing a complaint putting the respondent on notice it was being investigated, PHRC filed a complaint which read:

> "The Respondent has in the past and continues until the present time to maintain a discriminatory system of recruitment, hiring, training, employment, compensation, promotion, demotion, job assignment or placement, transfer, lay off, retention, referral, dismissal, rehire, retirement, and pensions, and has otherwise discriminated in the past and continues until the present time to discriminate regarding terms, conditions and privileges of employment because of sex, race and national origin. This pattern and practice of discrimination is in violation of the applicable provision of Section 5 of the Pennsylvania Human Relations Act, act of October 27, 1955, P. L. 744, as amended, 43 P.S. 951 et seq."

It is submitted that this complaint set forth with sufficient particularity what discriminatory conduct PHRC had reason to believe Appellee was engaging in. Similarly, it is submitted, the complaint was sufficient to "justify an investigation" which would determine the truth or falsity of PHRC's belief. And surely the implication of the Court below's position would be as paralyzing to the Commission as the implications of Local 104's argument to the EEOC. PHRC could not investigate pursuant to a complaint until it first had information that only an investigation could produce. *In Sparton Southwest, Inc. v. EEOC,* 461 F. 2d 1055 (10th Cir. 1972), EEOC sought to enforce its demand for the production of records and to take depositions. The trial court denied the petition to enforce on the ground that EEOC's charge did not meet the statutory requirement to "set forth the facts upon which it is based." The Tenth Circuit initially affirmed the District Court. Judge Boyle's dissent prevailed upon the Court and upon rehearing before the Court en Banc the District Court was reversed and EEOC's demands granted. In that dissent, Judge Boyle said:

> "If the majority's narrow and technical construction of the statute ultimately prevails, the Commission would be hamstrung in that it would have to have made its investigation before launching discovery proceedings, and after all that is the only purpose of the Commissioner's complaint. The complaint's object is to obtain the facts so that conciliation efforts can be carried out. To require the Commission to have

> the facts before it starts thwarts the entire purpose of the Act. If specific evidence is set forth, the scope of the investigation would thereby be restricted to that transaction, hence there would be no opportunity for the Commission to conduct an investigation of general employment practices such as are described in the complaint at bar."

Judge Boyle also pointed out that all of the other Circuits which had considered this question gave this provision in question "a less technical and more reasonable construction."

> "See General Employment Enterprises, Inc. v. Equal Employment Opportunity Commission, 440 F. 2d 783 (7th Cir. 1971); Bowaters Southern Paper Corporation v. E.E.O.C., 428 F. 2d 799 (6th Cir. 1970); Graniteville Company (Sibley Division) v. E.E.O.C. (private complaints), 438 F. 2d 32 (4th Cir. 1971)."

It should be noted that this provision in Title VIII requiring the charge to "set forth the facts upon which it is based" has been deleted by the 1972 Amendment. The act now reads:

> "Charges shall be in writing, under oath or affirmation and shall contain such information and be in such form as the Commission requires."

This is certainly an affirmation by Congress that they did not intend that the requirement as to the charge serve to obstruct the investigation. Why should our Court, in the face of legislative instructions to con-

strue the act liberally to accomplish its purposes, construe it so as to demonstrably thwart its purposes?

The Court below recites the language in PHRC's complaint charging discrimination and characterizes it as "but a slightly expanded restatement of Section 5(a) of the Act and as such is a mere conclusion of law. It is totally deficient in particularity by any standard, and advises United States Steel in no way by what means, methods or circumstances it is charged with discrimination."

Whether or not the charge is but a slightly expanded restatement of Section 5(a), it clearly delineates the perimeters of the area of concern and thus sufficiently delineates the perimeters of the proposed investigation. It is a labored construction of the Act to require more. Where in the Act does it require that the respondent be apprised of the means, methods or circumstances by which it allegedly discriminates. Are not these among the very facts only an investigation can uncover?

It is submitted that the reasoning and decision of the Iowa Supreme Court in *Iron Workers Local 67 v. Hart,* 191 N. W. 2d 758 (1971), is more reasonable and responsive to the purposes of the Act and to the public policy it proclaims than the opinion of the Court below. That case involved a challenge to a decision of the Iowa Civil Rights Commission, under statutory language identical to our Act, on the grounds that the decision was not in accord with the complaint:

> "If this were an action between private litigants in Civil Court, respondent's position might

be well taken. . . We have before us however, an administrative proceeding foundationed upon a legislative enactment designed more to implement broad public policy than to adjudicate differences between private parties. We have held technical rules of pleading have no application in an administrative proceeding. . . . we said, 'the key to pleading in an administrative process is nothing more nor less than opportunity to prepare and defend, and deficiencies in any pleading in that field may be cured by a motion for a more specific statement.' See 1 Davis Administrative Law, Section 8.04, p. 525 (1958).

". . . The functions of administrative agencies and courts are so different that the rules governing judicial proceedings are not ordinarily applicable to administrative agencies unless made so by statute. Davis, supra, Section 8.03, p. 522.

". . . Here the complaint arguably satisfied the minimum requirements of the statute. Respondents, wanting the particulars set out more specifically, could have made the appropriate motion.

". . . By that stage of the proceedings, respondent surely knew the basic issues."

In the instant case, Appellee surely knew the basic issues. At the very least the complaint arguably satisfied the minimum requirements of the statute. Furthermore Appellee, although it set forth in its answer that the complaint is deficient in that it does not contain a statement of the alleged unlawful discriminatory practice, failed to file a motion for more particulars in accordance with §35.54 of the General Rules of Administrative Practice and Procedure which reads:

"A respondent may file with his answer a motion that the allegations in the complaint be made more definite and certain, such motion to point out the difficulties complained of and details desired. . ."

In *Pittsburgh Press Employment Advertising Discrimination Appeal,* 4 Pa. Commonwealth Ct. 448 (1972), the Court below rejected essentially the same argument which it now advances in disallowing PHRC's complaint.

"The Pittsburgh Press", said the Commonwealth Court, "does insist, however, that it was denied due process of law insofar as being unable to determine from the complaint the nature of the alleged offense." The Commonwealth Court answered this contention by citing the language of the Court in *Commonwealth v. Acquaviva,* 187 Pa. Superior Ct. 550 (1958):

"It is sufficient if the language used is capable of an interpretation which reveals such essentials. Lack of precision is not itself offensive to the requirements of due process. The constitution does not require impossible standards. All that is required is that the language convey sufficiently definite warning as to the prescribed (sic) conduct when measured by common understanding and practices."

The Commonwealth Court then continued with its own commentary:

> "This is an administrative proceeding and is not restricted by the niceties of common law pleadings. The Pennsylvania Legislature in its wisdom permitted the establishment of local administrative agencies to process complaints and hold proceedings to adjudicate issues concerning certain rights of citizens. It certainly was within the contemplation of the Legislature that such a local administrative agency would be lay-oriented. It was contemplated, and is indeed the reality, that persons not formally trained in the law often serve as human relations commissioners. Similarly, it was to be expected that the complaints and charges would be framed in the language of laymen. Administrative agency proceedings have never been held to the high standards of the lawsuit filed in a court of law. In Kochinsky v. Independent Pier Company, at 157 Pa. Superior Ct. 15, 41 A. 2d 409 (410-11 (1945)), the court said: 'Proceedings before the compensation authorities are not "litigation", and the strict rules of pleading and practice applicable to common law actions do not apply. The courts take a liberal attitude toward the pleadings in compensation cases and consider the substance of the relief prayed for rather than its form . . . . Of course, the parties are entitled to know the issue in any particular proceeding, so that they may be prepared to meet it by proper evidence.' A determination by this Court that the Pittsburgh Press had sufficient knowledge of the charges against it, thus enabling it to properly defend, would be dispositive of the due process of law question in the instant case. We are in agreement with the Pittsburgh Press argument that the 'particulars' (required by the Ordinance) as set forth in the original complaint of N.O.W. lacked some specificity. Nevertheless, we hold that the complaint particulars were adequate and sufficiently specific under the test of fairness."

In its opinion, the Court below dismissed as inapposite in this case the Pittsburgh Press decision. But why? Of the 10 Commissioners only 2 are attorneys. The general rule of not requiring specificity of administrative agency complaints which trigger investigations was not evolved out of the theory of want of expertise as the Court below suggested, although that was frequently mentioned by Courts, but, as has been demonstrated above, out of recognition by courts that it would be counterproductive and antithetical to the legislative scheme which created the administrative agency to hold it to the niceties of pleading which pertained in judicial proceedings.

Far from having the wealth of attorneys which the Court below suggests, the PHRC had 5 to deal with a very large caseload and to serve regional offices in Pittsburgh, Philadelphia and Harrisburg as well as the Headquarters Office in Harrisburg. Compared to EEOC, it was impoverished in its legal resources, yet no federal court has imposed upon EEOC the requirement of conforming to the strict confines of

judicial pleading. Although it is not the basis of PHRC's position, it happens to be a fact that the great preponderance of its complaints are drafted by laymen.

The Court below found that the complaint in *Pittsburgh Press* "lacked some specificity" under the ordinance but held nevertheless "that the complaint particulars were adequate and sufficiently specific under the test of fairness." It is respectfully submitted that there is no rational basis for concluding that the complaint in the instant case was any less adequate or sufficiently specific under the test of fairness, and this is all the more evident in view of appellee's failure to avail itself of its right to ask for more particulars.

It is submitted that the Court below's complete rejection of "the many federal court and administrative agency" precedents as well as its own decision in *Pittsburgh Press* is arbitrary and ill founded.

II. PHRC has the power to compel answers to interrogatories pursuant to its duty to investigate.
(Second Question Involved)

The Court below failed to reach this issue. It acknowledged that Sections 7 and 9 of the Act conferred broad powers upon the Commission to enforce the provisions of the Act. It acknowledged that "there is no question that the Commission has the power to initiate an investigation whenever it has

'reason to believe' an unlawful discriminatory act has been committed." Presumably, it would also concede PHRC's power to investigate after the filing of any complaint since Section 9 of the Act provides:

> "After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith."

The Court below observed that "in neither Section of the Act is the Commission given the specific power to issue and require answers to interrogatories nor is use of interrogatories mentioned as a procedural device."

This is true, of course, but the same can be said about the power to make an on-site inspection of respondent's facilities or interview respondent or its employes, for example.

Nowhere under Title VII is EEOC given the specific power to issue and require answers to interrogatories (see Section 710), yet that federal agency routinely employs interrogatories to investigate. As far as is known its power to utilize interrogatories has not been challenged.

Section 7 of the Act in three separate paragraphs —(f), (f.1) and (f.2)— empowers and directs the Commission to investigate.

> "(f) to initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices.

(f.1) To investigate where no complaint has been filed, but with the consent of at least eight of the members of the Commission any problem of racial discrimination with the intent of avoiding and preventing the development of racial tension.

(f.2) On request of the Governor, to investigate claims of excessive use of force by police in civil rights protest activities."

Paragraph 2 of Section 9 provides:

"After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed the Commission shall make a prompt investigation in connection therewith."

Section 7(g) provides in part:

"To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath or affirmation and, in connection therewith, to require the production for examination of any books and papers relating to any matter under investigation where a complaint has been properly filed before the Commission. The Commission may make rules as to the issuance of subpoenas by individual Commissioners. In case of contumacy or refusal to obey a subpoena issued to any person, the Court of Common Pleas of Dauphin County or any court of common pleas within the jurisdiction of which the hearing is to be held or the said person charged with contumacy or refusal to obey is found, resides or transacts business, upon application by the Commission, may issue to such person an order requiring such person to appear before the Commission, there to produce documentary evidence, if so ordered, or there to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof."

Obviously, Section 7(g) was not intended to be a definitive statement of PHRC's investigative powers but rather a general statement of how the statutory scheme of investigation, conciliation and, if necessary, public hearing, could be implemented.

It is the position of PHRC that in imposing and conferring upon PHRC the duty and power to investigate, and promptly, in order to determine whether or not violations of the Act have occurred, the Legislature perforce authorized and conferred upon the Commission the means to carry out the assignment effectively.

Where PHRC has been given this mandate, and where courts are instructed to construe the provisions of the Act liberally for the accomplishment of its purposes, what basis could there be for a court saying it could not find that the Legislature intended PHRC to utilize interrogatories to conduct its investigation?

In its preliminary objections, Appellee argued that PHRC may not demand answers to interrogatories because it failed to exhaust its express statutory authority to obtain the information sought by use of subpoenas, citing Section 7.

An immediate reply to this is that PHRC requires the discretion to determine what investigatory device, what means of discovery, would be most effective under the circumstances of each case. At the outset of its opinion, the Court recited, inaccurately,[1] some of the background involved in this case. PHRC's affirmative action project was and is an ambitious endeavor to be creative and vigorous in carrying out the mandate of the Act to eliminate the evils of discrimination. In order for its project to be implemented as effectively and expeditiously as possible, particularly given the limitations of staff, it was determined to utilize the discovery device of the interrogatory at the outset in order to gather as expeditiously as possible the relevant information. It was believed that the respondents had the knowledge and the resources to collate and assimilate the answers

[1] The Court below stated it was taking judicial notice of public records "which are the genesis of subsequent Commission action leading to the present controversy." It then recited that "In 1971 the Federal Equal Employment Opportunity Commission (EEOC) compiled a list of some 85 Pennsylvania employers which, based upon percentages of women and minority groups employed by a particular employer measured by comparable percentages in area census figures, it found to be appropriate subjects for affirmative action programs. Based upon this report EEOC submitted to our Pennsylvania Commission and EEOC Project Report —Analysis of Targets.[1]"

This recitation is inaccurate. The "Project" staff cited in footnote 1 in the Court's opinion, which both the Court and appellee assumes is the staff of the Federal EEOC, is actually the staff of PHRC's own Affirmative Action Project. This staff is employed by PHRC and reports to, and only to, PHRC.

from its records in a much more efficient manner than could the Commission. This was the basis of the decision to utilize the interrogatories rather than the subpoena. It may be that based upon information obtained through the interrogatories, other records or documents would be subpoenaed.

Presumably, PHRC could continue to function without the power to employ interrogatories, although it fears its efficiency and its effectiveness would be damaged. What is essential to this agency, however, in order for it to continue to function with any degree of effectiveness at all is a statement by this Court in the strongest most unequivocal language that it has the power to compel respondents to cooperate with its investigations and to provide records and documents and information relevant thereto, subject to the same objections as to relevancy and needless burdensomeness and others that may be raised during discovery proceedings under the rules of civil procedure.[2]

Respondent and their attorneys in increasing numbers relying incorrectly upon the opinion of the Court below, are refusing to cooperate with PHRC, as to interrogatories but also in other facets of the Commission's investigatory efforts. But even before this opinion, the Commission had met with recalcitrance from many respondents who challenged the Commission's investigatory powers, taking a very narrow view of the applicable provisions of the Act.

[2] Appellee was advised of the procedures it would follow if it wished to object to particular questions. No such objections were received (Record, Exhibit F).

For example, the provision of Section 7(g) cited by the appellee as Authority for PHRC's power to subpoena has been interpreted by many attorneys for respondents as meaning the Commission may subpoena books and papers but only to be produced at a public hearing. It is submitted that this construction would defeat the very scheme of the Act which requires an investigation in order to demand whether the facts of a case warrant a hearing. To require a hearing to be convened in order to investigate would be to construe the Act as an absurdity.

The Commission, of course, is to blame for not having long since litigated this issue and others involving its investigatory powers. It will do so in the future, on a piecemeal basis if this Court holds that this is necessary. But again, it is urged that this Court use this case, which factually involves only a demand to answer interrogatories, as the vehicle to declare that the statutory duty to promptly investigate means that the Commission has the power to utilize all discovery tools available in civil litigation and the discretion to employ whatever tool or tools are appropriate under the facts and exigencies of a particular case.

Having dealt with what it is believed are the two substantive issues in this case—the sufficiency of the complaint and PHRC's investigatory powers and tools—we turn to a discussion of what procedure this Court should now follow.

(1) The Court below, having reached the merits of the sufficiency of the complaint issue, held it had

no jurisdiction of the complaint in equity because PHRC had an adequate remedy in law under Section 10 of the Act. The relevant language of Section 10 reads: "When the Commission has heard and decided any complaint brought it, enforcement of its order shall be initiated by the filing of a petition in such court. . ."

Under a strict reading of those words, the "order" that PHRC could petition the Commonwealth Court to enforce could be said to be only a "final order" issued after a public hearing. However, it would appear that the better view would be that if a final order can be enforced by the Commonwealth Court, so too implicitly must an order issued prior to the final order, which must be enforced if the Commission can even reach the stage of the public hearing. At the least, this action should have been brought in the alternative, under Section 10 or, if the Court limited Section 10 to "final orders," then under the Court's equity jurisdiction.

PHRC gladly accepts the Court below's declaration that Section 10 should be interpreted to enforce a refusal to cooperate with a PHRC investigation. However, it is respectfully submitted that the Court below should have considered the complaint, which it found to be improperly brought as a complaint in equity, as a petition to enforce under Section 10. This was all the more called for since the Court below did reach the merits of the "particularity" issue in a holding severly adverse to PHRC's program. We request that this Court treat the matter as a petition for enforcement under Section 10. If this Court af-

firms the Court below on these jurisdictional grounds, the result will be to leave standing the mischievous holding with regard to the complaint.

(2) If this Court finds that the PHRC-initiated complaint was legally sufficient, it can either remand the case to the Court below and direct it to reach the merits or this Court itself can decide the issue of PHRC's power to compel answers to interrogatories as well as its investigatory powers in general. It's urged that this Court adopt the latter court and reach this issue, particularly in view of the time that has been lost and the urgent need of PHRC to have its investigatory powers affirmed. Judicial economy too would dictate that this Court reach this issue rather than have it come back again, after remand, which is certainly possible, or in another case.

(3) If this court finds that the PHRC-initiated complaint was insufficient, it can affirm the Court below on that basis. However, again it is respectfully urged that rather than take this course, the Court clarify the requirements of "particularity" and then reach the investigatory powers issue, again because of the urgent need that PHRC has for an affirmation by this Court of its authority to investigate promptly and effectively.

Respectfully submitted,
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