

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS
COMMISSION,

Petitioner

v.

OTTO & HOLLINGER, INC. et al.,

Respondents

No. 1678 C. D. 1979

BEFORE: HONORABLE GENEVIEVE BLATT

HEARD: September 17, 1979

The Pennsylvania Human Relations Commission (Commission) applies here for an order to enforce a subpoena issued to Otto & Hollinger, Inc. (respondent).

In January 1976, Daryl Jones and Frank Chambers, Jr. (complainants) filed a complaint with the Commission alleging that they were unlawfully discriminated against on account of their race when they were discharged from the respondent's employ. Pursuant to its authority under the Pennsylvania Human Relations Act¹, the Commission then initiated an investigation and requested certain information from the respondent which information was supplied. The Commission then concluded, however, that additional information was needed in order to resolve several inconsistencies obviously existing between the information supplied by the complainants and that furnished by the respondent.

On March 31, 1976, therefore, a Commission investigator wrote to the respondent requesting the following information:

- 1) Time cards for four employees.
- 2) Copies of records bearing notations regarding disciplinary warnings given to each of the complainants
- 3) A copy of the original time cards of one of the complainants from his date of hire to December 31, 1974.
- 4) A "Recap of Employee Earnings Record" with a breakdown showing hours and wages of all Truss Mill Laborers and Truck Drivers employed as of December 19, 1975.

The letter in question also indicated that after receiving the requested information, the investigator would arrange for a visit to the respondent's office to spot review actual records and to interview nine specified

employees as well as "all other Truss Mill laborers and truck drivers". The letter further requested copies of any posted rules and some further clarification as to the complainants' alleged "poor work habits".

On April 12, 1976, the respondent's attorney wrote to the Commission that the information requested in its letter of March 31, 1976 would not be provided. Then, on May 5, 1976, a representative of the Commission wrote to the respondent's attorney requesting cooperation, to which the respondent's attorney responded by requesting a hearing. No further action was taken by either the Commission or the respondent until almost 2 1/2 years later when the Commission investigator again wrote to repeat his request of March 31, 1976.² When the respondent again refused to provide this information the Commission issued a Subpoena Duces Tecum on November 28, 1978, commanding the production of the aforementioned four items of information. The respondent refused to comply, and this application followed.

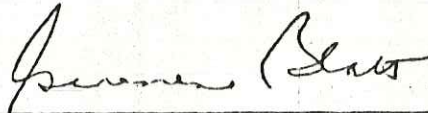
The respondent concedes that the Commission has the power to issue subpoenae but contends that the Commission exceeds its authority when, as the respondent argues here, the information requested is too burdensome to produce.

We have previously held that the scope of judicial inquiry in a subpoena enforcement action is whether or not 1) the inquiry is within the authority of the agency; 2) the demand is not too indefinite and 3) the information sought is reasonably relevant to the investigation. Commonwealth of Pennsylvania v. Shults, 26 Pa. Commonwealth Ct. 129, 362 A.2d 1129 (1976). We see no question that the Commission's subpoena meets the first two parts of this test. As to the third part, however, we have been somewhat doubtful but, after hearing, we are now satisfied that the information requested was reasonably relevant to the investigation,

should have been provided and may now be subpoenaed.

We might further note that the respondent failed to pursue an available remedy when it received this subpoena. The Special Rules of Administration Practice and Procedure, 16 Pa. Code 42.48(d) provide that any person upon whom a subpoena is served by the Commission may state his objections in writing to the Commission, and that these objections would then be reviewed by the Commission. Such added review would have provided the respondent a full opportunity to challenge the scope of the subpoena and to make a record which might have been persuasive on appellate review.

~~After consideration of the pleadings and testimony heard, there-~~
fore, we will grant the application of the Commission.



Genevieve Blatt, Judge

¹Act of October 27, 1955, P. L. 744, as amended, 43 P. S. §951 et seq.

²The Commission's counsel insisted at hearing that its reason for its delay was that an appeal was pending regarding Commission subpoena rights and it wanted to defer action pending determination of that appeal.

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ORDER

AND, NOW, this 27th day of September, 1979, upon consideration of the above petition and after hearing, it is ordered that Richard A. Kauffman, an authorized representative of Otto & Hollinger, Inc., or another proper custodian of the records of Otto & Hollinger, Inc., shall appear before the Pennsylvania Human Relations Commission at a time and place to be determined by the Commission to provide to the Pennsylvania Human Relations Commission all documents required by the subpoena as issued on November 28, 1978.

CERTIFIED FROM THE RECORD

SEP 27 1979

Francis C. Barbush
CHIEF CLERK

Genevieve Blatt
Genevieve Blatt, Judge