

Decision No. 77781**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NAACP, WESTERN REGION; MEXICAN-AMERICAN
POLITICAL ASSOCIATION; NATIONAL ORGAN-
IZATION FOR WOMEN; SPANISH SPEAKING/
SURNAMED POLITICAL ASSOCIATION; AMERICAN
G.I. FORUM; NAACP OF SAN FRANCISCO; and
60 REGULATED UTILITY USER-CONSUMERS,
on behalf of California's 4.5 million
minority user-customers and 10 million
female user-customers,

Complainants,

vs.

Case No. 9090

ALL REGULATED PUBLIC UTILITIES IN-
CLUDING GENERAL TELEPHONE COMPANY OF
CALIFORNIA; SOUTHERN CALIFORNIA EDISON
COMPANY; PACIFIC TELEPHONE & TELEGRAPH
COMPANY; PACIFIC GAS & ELECTRIC COMPANY;
SAN DIEGO GAS & ELECTRIC COMPANY; GREY-
HOUND LINES WEST; UNION PACIFIC RAIL-
ROAD COMPANY; SOUTHERN PACIFIC TRANS-
PORTATION COMPANY; WESTERN PACIFIC
RAILROAD COMPANY; and ATCHISON, TOPEKA
& SANTA FE RAILROAD COMPANY,

Defendants.

O P I N I O N

Complainants, on behalf of an alleged 12.2 million "user-consumers" of regulated utilities, allege that defendant-utilities engage in arbitrary, discriminatory and unlawful practices with regard to employment of minority groups and females. Such persons are alleged to be systematically excluded from the upper echelons of management of these utilities.

Included within said complaint are allegations of various statistics which purport to indicate the percentages of "blacks and Spanish surname persons," and females that are "user-customers of California regulated public utilities," and the percentage they comprise in the aggregate of the "work force" in this State.

The complaint concludes with a request for a "full-scale investigation into all employment policies of all regulated California public utilities." It further requests the Commission to develop a "Five-year Fair Employment Plan that will eliminate every vestige of discrimination and resultant economic inefficiency caused by said discriminatory employment policies" and spells out, in some detail, various aspects of the plan including representation of minorities on the board of directors of each utility, employment of minorities in percentages at every level commensurate with the minority population in the area served, and some program to purchase supplies from minority group business.

Answers to the complaint were filed by the named defendants herein. Motions to dismiss were filed also by Greyhound Lines West, San Diego Gas & Electric Company, Pacific Telephone and Telegraph Company, and General Telephone Company.

These charges of discrimination in employment practices have been made in recent rate cases involving the Pacific Gas & Electric Company (P.G. & E.). (See Application No. 50779 in which complainants filed a Petition for Writ of Review of Decision No. 75721, an Order Affirming Quashing of Subpoenas Duces Tecum. A Writ of Review of Decision No. 75721 was denied by the California Supreme Court in Calif. Rural Legal Assistance v. P.U.C., SF 22668, September 8, 1969).

Similar allegations by California Rural Legal Assistance (CRLA) were made in Application No. 51552 (P.G. & E. - Electric Rate Increase). Statistics, similar to those in this Complaint, were presented in a petition in that case to review a ruling by the Examiner which excluded evidence of alleged discriminatory employment practices of P.G. & E. The Examiner's ruling was affirmed by this Commission on June 16, 1970 (Decision No. 77375).

The jurisdiction of this Commission is limited to the exercise of the powers given to it by the Constitution of this State, as implemented by the Legislature. This principle has been reaffirmed in a recent opinion of the California Supreme Court in Ferdig v. State Personnel Board, 71 A.C. 112 (May 1969) in which the court said:

"It is [a] settled principle that administrative agencies have only such powers as have been conferred on them, expressly or by implication, by constitution or statute. (United States Fid. & Guar. Co. v. Superior Court (1931) 214 Cal. 468, 471 [citing cases]; see Pacific Tel. & Tel. Co. v. Public Utilities Comm. (1950) 34 Cal.2d 822 . . .; 1 Am. Jur. 2d Administrative Law, § 70 p. 866.) An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. (See 2 Am. Jur. 2d Administrative Law, § 188 pp. 21-22.)"

Turning to a consideration of the scope of this Commission's jurisdiction, in People v. Western Airlines, Inc., 42 Cal.2d 621 (1954), the California Supreme Court said, at page 634:

"The [Public Utilities] commission is therefore a regulatory body of constitutional origin, deriving certain of its powers by direct grant from the Constitution which created it. (Pacific Tel. & Tel. Co. v. Eshleman (1913), 166 Cal. 640 [137 P. 1119, Ann.Cas. 1915C 822, L.R.A.N.S. 652]; Morel v. Railroad Com. (1938), 11 Cal.2d 488 [81 P.2d 144].) The Legislature is given plenary power to confer other powers upon the commission. Art. XII, §§ 22 and 23.) As to the scope of those powers we look to the legislation enacted in the exercise of that power, principally the Public Utilities Code, and to the decisions of this court in construing them. Such additional powers 'must be cognate and germane to the regulation of public utilities, and when the power thus conferred relates to the regulation of transportation companies, it must be cognate and germane to the regulation of railroads or other transportation companies that are in fact common carriers. [Citing cases.]' (Morel v. Railroad Com., supra, 11 Cal.2d 488, 492.)"

The test for such powers as the Commission may exercise is whether they are "cognate and germane" to the regulation of public utility services, rates and charges. This standard appears to be quite broad at first glance. However, the courts have established some limitations. In Pacific Tel. & Tel. Co. v. P.U.C., 34 Cal.2d

822 (1950), the telephone company disputed the authority of the Commission to inquire into service contracts made with its parent company. The court pointed out that many state legislatures were dissatisfied with rate regulation as a means to control payments between affiliated utilities, but that California had not granted any express powers to this Commission to exercise direct control. It was further stated that "The primary purpose of the Public Utilities Act . . . is to insure the public adequate service at reasonable rates without discrimination. (Pac. Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 633 [citations].)" (Pac. Tel. & Tel. Co. v. P.U.C., 34 Cal.2d 822, 826.)

The court noted that the Commission was given broad powers to regulate utilities vis-a-vis the consumer, i.e., regulation of rates and services and the manner in which service is rendered in order to protect the ability to serve the public.

"The Act does not, however, specifically grant to the commission power to regulate the contracts by which the utility secures the labor, materials, and services necessary for the conduct of its business, . . ." (Ibid. p. 827.) (Emphasis added.)

The court concedes that every utility contract affects rates and services. Whether such contracts or practices are reasonable is often a matter of conflicting opinion.

"The determination of what is reasonable in conducting the business of the utility is the primary responsibility of management. If the commission is empowered to prescribe the terms of contracts and the practices of utilities and thus substitute its judgment as to what is reasonable for that of the management, it is empowered to undertake the management of all utilities subject to its jurisdiction. It has been repeatedly held, however, that the commission does not have such power." (Emphasis added.) (Ibid. p. 828.)

Several examples are given of instances where the Commission could have substituted its judgment for that of the utility, but did not have such powers, including the area of labor-management relations.

"Again, there is great public interest in the relations between labor and management, for wages invariably affect rates, and disputes over them or other matters are bound to affect services. Accordingly there has been considerable state and federal legislation to diminish economic warfare between labor and management. In the absence of statutory authorization, however, it would hardly be contended that the commission has power to formulate the labor policies of utilities, to fix wages or to arbitrate labor disputes.

"In other jurisdictions the courts have generally held in interpreting statutes essentially like that of California that the commission's control over contracts affecting rates and services is limited to regulation of contracts that directly affect the service the rate-payer will receive at a particular rate." (Pac. Tel. & Tel. Co. v. Public Utilities Com., 34 Cal.2d 822, 829 (1950).)

Subsequently, in 1959 the California Fair Employment Practice Act was enacted (Sec. 1410, et seq., California Labor Code). This Act created the Fair Employment Practice Commission (F.E.P.C.). The Act prohibits unlawful employment practices including discrimination on the basis of race, religion, color, etc. The F.E.P.C. is given authority to hear complaints and to investigate and issue orders and regulations to implement and enforce the purposes of the Act. Its orders may be enforced in the courts and violations thereof are made misdemeanors.

Section 1411 of the Labor Code contains a policy declaration which reads as follows:

"It is hereby declared as the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement on account of race, religious creed, color, national origin, or ancestry."

The Legislature intended to enact a comprehensive scheme of regulation in regard to the opportunity to seek, obtain and to hold employment without discrimination and to make such activity a civil right (Section 1412, Labor Code). Moreover, since the Pac. Tel. & Tel. Co. case, discussed above was decided in 1950, the Legislature has not seen fit to confer jurisdiction over labor-management relations on this Commission.

Complainants argue that Sections 451 and 453 of the Public Utilities Code^{1/} bar "any form of discriminatory employment practice . . . and compels every regulated public utility to provide full and equal employment opportunities to every employee, ..." There is no explanation as to why these statutes are authority for complainants' contentions. An inspection of the cases interpreting these statutes discloses that the conduct that is forbidden is in regard to discrimination in rates or service by the utility towards various groups or classes of its customers, and even then, discrimination per se is not forbidden. It is only when such discrimination is undue or unreasonable that it is struck down (Re Alcoholic Beverage Rates, 43 C.R.C. 25 (1940)). The Commission has also enforced regulations concerning safety in regard to the public and employees of the utility, e.g., General Orders 106, 114, 118.

1/ "451. All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

"453. No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The commission may determine any question of fact arising under this section."

However, no interpretation of these statutes has been discovered which makes them applicable to the subject of minority hiring practices of utilities. Moreover, in view of the decision in the Pacific Telephone case, 34 Cal.2d 822 (1950), and the enactment of the Fair Employment Practice Act, it is apparent that the Legislature intended that complaints regarding discrimination in hiring and employment practices be considered by a body other than this Commission.

The Legislature has created a forum specifically to adjudicate problems of discrimination. The California Supreme Court has declared that this Commission does not have jurisdiction over labor-management relations which would include employment practices.

Accordingly, the motions to dismiss should be granted.

ORDER DISMISSING COMPLAINT

NAACP, Western Region; Mexican-American Political Association; National Organization for Women; Spanish Speaking/Surnamed Political Association; American G.I. Forum; NAACP of San Francisco; and 60 Regulated Utility User-Consumers, on behalf of California's 4.5 million minority user-customers and 10 million female user-customers, Complainants herein, having filed a complaint "to Secure Public Utilities Commission-Initiated, Full Scale Investigation and Hearing Re All Regulated Public Utilities Concerning Discriminatory Employment Policies and Gross Under-utilization of Minority Group and Female Talent at Policy Making Levels", and the Commission having apprised the named defendants of said complaint; Greyhound Lines West, San Diego Gas & Electric Company, Pacific Telephone and Telegraph Company, and General Telephone Company having filed answers to the said complaint and motions

to dismiss and the Southern Pacific Transportation Company, the Union Pacific Railroad Company, the Western Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railroad Company having filed answers to the complaint, and the Commission having considered each and every allegation thereof, and being of the opinion that it has no jurisdiction to entertain said complaint,

IT IS ORDERED that the complaint in Case No. 9090 is hereby dismissed.

Dated at San Francisco, California, this 6th day
of OCTOBER, 1970.

William L. Sturgeon Chairman
Angela
William L. Sturgeon
John F. Mc
Vernon L. Sturgeon Commissioners