

Denver Law Review

Volume 20 | Issue 10

Article 1

July 2021

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Recommended Citation

G. Dexter Blount, War Production Board Compliance Procedure, 20 Dicta 247 (1943).

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War Production Board Compliance Procedure

BY G. DEXTER BLOUNT*

The following is an outline of the procedure prescribed and followed in the handling of cases which involve violations of the regulations and orders of the War Production Board.

CREATION OF WAR PRODUCTION BOARD AND LEGALITY OF ITS ACTS

The War Production Board was established by directive of the President of the United States, issued on January 16, 1942,¹ as one of seventeen war agencies, to assist him in the prosecution of the war. He derived his authority from statutes enacted by the Congress, among which are the First War Powers Act of December 18, 1941,² and the Second War Powers Act of March 27, 1942.³ Article I of the Constitution of the United States granted the Congress power to enact these statutes.

The headquarters of the War Production Board are in Washington, D. C. Its operations are conducted there and in regional and district offices. The United States is divided into thirteen regions, one of which, the ninth region, covered Montana, Wyoming, Colorado, New Mexico and Utah until recently, when Montana was transferred to another region.

To the War Production Board was assigned the job of controlling the production, transfer and use of materials, products and facilities in such manner as to bring victory to the armed forces of the Allies in the shortest possible time. The chairman of the War Production Board was given exclusive authority to do what he deemed necessary, within statutory limitations, to accomplish the desired result. The War Production Board, with his approval, has issued, and will continue to issue, regula-

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¹Executive Order 9024, 7 F.R. 329 (1942).

²55 STAT. 838 (1941), 50 U. S. C. (App.) S. 601 ff.

³56 STAT. 176 (1942), 50 U. S. C. (App.) S. 631 ff.

tions governing the allocation and use of materials, products and facilities, methods of obtaining priorities, assistance to procure them, and the operations of business in conformity with the programs of the War Production Board.

To facilitate the work the chairman created forty-one divisions, to each of which he assigned the supervision of the War Production Board over a designated industry, material or product. Each division has caused to be issued by the War Production Board, from time to time, orders restricting and controlling the operations of its industry, or the sale or use of the materials over which it has jurisdiction. More than six hundred regulations and orders that have been issued are now in use. They affect every kind of business, and the sale of every kind of product that is deemed essential, directly or indirectly, in the prosecution of the war.

CREATION AND OPERATIONS OF COMPLIANCE DIVISION

Any system of industrial control requiring restrictive regulations and orders must have adequate policing to protect manufacturers and merchants who cooperatively obey the law against the few who wilfully violate the regulations and orders. To perform that duty the chairman established the compliance division. Its responsibility is to investigate complaints of violations and to impose or recommend punishments if the investigations show that violations have occurred and are wilful and significant.

The regional compliance chief, with his assistants, operates the regional office, which has jurisdiction over the district offices. The work of the district offices in compliance cases is limited to making investigations and reporting on them. The regional office of the ninth region is located in Denver and district offices are located in Denver and Salt Lake City. When information is received in a district office that a person is suspected of violation of regulations or orders of the War Production Board, a district investigator is assigned to make an investigation. When the investigation is concluded the investigator makes a written detailed report which is carefully checked by the district senior investigator, the regional analyst, and the regional compliance chief, each of whom prepares a written analysis. If they conclude that there was no violation, or that the violation was insignificant or excusable, or that punishment will seriously impede the war effort, the case is closed. That is the result in about 80 per cent of the cases. In some of these cases the regional compliance chief issues a warning letter or cautions the respondent as to future operations. On the other hand, if there appears to have been a violation, and it was wilful and significant, the case is referred to the regional attorney for further handling.

When it appears during an investigation that the respondent is violating conservation order L-41⁴ in doing prohibited construction work, the regional compliance chief may issue a stop order demanding the immediate discontinuance of such work. This may be supplemented by an additional stop order issued in Washington. Failure of the respondent to stop will be considered a serious violation and probably subject him to a criminal prosecution in the United States district court.

After a critical examination of the report of the investigator and the recommendations of the reviewers of the report, the regional attorney may recommend the closing of the case, or submit the case to the Department of Justice for criminal prosecution or the filing of an injunction suit to restrain further violations, or he may arrange with the respondent for a consent injunction decree or a consent suspension order.

In cases of emergency a temporary suspension order may be issued by the director of the compliance division with the approval of the office of the general counsel, and with or without notice to the person accused of violations. This will be done generally upon recommendation of the regional attorney. In such cases the respondent will be informed of the charges made against him, and a hearing of the charges will be had as soon as practicable. This procedure has the general effect of a temporary restraining order in an injunction suit.

If the regional attorney does not take any of these steps, he will prepare a charging letter or telegram for the regional compliance chief to sign and send to the respondent. The charging letter or telegram charges the respondent with having violated one or more orders or regulations by doing certain specified acts, or with having made misrepresentations of facts to the War Production Board. Upon receiving the charging letter or telegram, the respondent may ignore it, which amounts to an admission of the charges made, or he may answer the charges in writing, or he may notify the regional compliance chief that he desires a hearing before a compliance commissioner. In either event the case is submitted to the compliance commissioner for decision.

The compliance commissioner is not an employee of the War Production Board. He is carefully selected and appointed by the chairman of the War Production Board to preside at compliance hearings and to make reports and recommendations to the compliance division in Washington, and to render other incidental services when called upon to do so. The deans of the University of Colorado and the University of Denver law schools are the compliance commissioners for the ninth region.

HEARINGS BEFORE COMPLIANCE COMMISSIONERS

Under the Second War Powers Act the President is vested with unlimited authority to allocate materials and to grant priorities assist-

⁴7 F. R. 2730, 3774 (1942).

ance in such manner as he shall deem necessary or appropriate to promote the national defense, subject only to the proviso that his decisions must be "in the public interest." This power has been delegated by the President, through statutory authorization, to the chairman of the War Production Board. It is executive in nature, may be exercised without notice or hearing, and is subject only to the limitation that it may not be used arbitrarily or capriciously. As a matter of law, allocations and priorities assistance could be withheld by the War Production Board, acting upon the report of its own investigator, and without notice to the alleged violator, or an opportunity to be heard. However, it was decided by the general counsel that the public interest requires that such drastic powers should not be exercised in any case without exhausting every attempt to ascertain the exact truth, to the extent permitted by the exigencies of the war effort. The urgency of that effort would obviously not permit the full equivalent of, and the delays incident to, the prosecution and trial of a case pending in court. The present compliance procedure was, therefore, designed to give as close an approximation of judicial proceedings as was thought advisable under the circumstances. In other words, the objective of the procedure set up is to provide the maximum degree of fairness in determining if priorities and allocations should be withdrawn, or other penalties should be imposed, consonant with the time limitations under which the War Production Board must necessarily operate.

For these reasons the hearings before the compliance commissioners are designed as opportunities for frank and open presentation of all the facts to determine whether or not punishment should be inflicted. The purpose of the proceedings is to afford the respondent an opportunity to admit the violations charged and to show that mistakes have been made by him, or to show other mitigating circumstances which might be taken into account in connection with determining what penalty, if any, should be imposed; or the respondent may deny the charges, in which event evidence will be introduced by the regional attorney for the purpose of proving them.

The hearing before the compliance commissioner is informal. Technical rules restricting the admission of evidence are disregarded. The object is to ascertain the true facts as quickly and simply as possible. The case against the respondent is made by introduction of the charging letter and, when the charge is denied, by the introduction of other evidence. The respondent is permitted to make an uninterrupted statement, usually not under oath, either with or without the assistance of questioning by his attorney. If he makes false statements or wilful misrepresentations, he may be prosecuted criminally. He may produce supporting witnesses. He may introduce as exhibits written statements or docu-

ments. Technical proof of the execution of the documents is not required. So long as his testimony is confined to the issues and is factual he will not be restricted. He may be cross-examined by the regional attorney. Evidence contradicting his evidence may be introduced. The compliance commissioner may force the production of evidence by issuing subpoenas and subpoenas duces tecum. The hearings are short. They are not open to the public. Neither news reporters nor other people not directly involved are permitted to attend the hearings. They are usually held in the office of the regional attorney. After the taking of testimony is completed, the attorney representing the respondent and the regional attorney are permitted to make arguments, but argumentative discussions are not permitted prior to that time.

After the hearing the reporter transcribes the testimony and delivers the transcript to the compliance commissioner, who studies the transcript, the regulation or order involved, and the report of the investigator; and makes such other investigation as he sees fit. He then prepares a written report, similar to a report made by a court referee. With the report he submits recommendations as to the disposition of the case.

The compliance commissioner may withhold temporarily making his report and recommendations. After the hearing is concluded, he may issue a probationary order (hereinafter explained), which is a direction that no formal disposition of the case be made for a specified period of time pending a determination of the possibility of continuing violations in the future.

The compliance commissioner may also preside at investigatory hearings, upon request of the regional attorney, to discover facts regarding the operations of the business of a person that might justify the issuance of a charging letter or telegram. These hearings are held when that person refuses to disclose the facts and to show his records to an investigator of the compliance division. By the issuance of a subpoena or subpoena duces tecum, the compliance commissioner may force the attendance of witnesses and the production of documents at the hearings.

RECOMMENDATIONS AND ORDERS OF THE COMPLIANCE COMMISSIONER

The compliance commissioner delivers his report to the regional office, together with his separate recommendations, and a proposed suspension order if he decides that one should be issued. The report, recommendation and proposed suspension order are then forwarded to the compliance division in Washington for final decision. The legal department may propose a different suspension order if not more severe than the one proposed by the compliance commissioner.

If the compliance commissioner finds that there was not a wilful and significant violation, he will recommend that the case be closed, and when it is closed he notifies the respondent. If he finds that there was a wilful and significant violation and he does not issue a probationary order, or postpone punishment during good behavior, he may recommend (1) a criminal prosecution, (2) an injunction suit, or (3) a suspension order. The recommendation of the compliance commissioner is generally adopted in Washington and the punishment prescribed, if any, is ordered.

By the use of the word "wilful" it is not intended that the imposition of penalties shall be confined to violations which are accompanied by an evil intent or corrupt purpose. Conduct marked by gross negligence or careless disregard of whether or not a person has the right so to act, is "wilful," and, under such circumstances, it is no defense for him to say that he did not intend to violate the regulation or order, or that he was not familiar with its terms, if by reason of his business operations he should have known about them.

If the compliance commissioner recommends criminal prosecution or an injunction suit, the regional attorney refers the case to the Department of Justice for the filing and prosecution of the criminal or civil suit. In the event of a conviction in a criminal case, the maximum penalties are a fine of \$10,000 and imprisonment for one year on each count.

If a suspension order is issued it may contain provisions which (1) withdraw or withhold priorities assistance from a respondent, (2) withdraw or withhold allocations of scarce materials or products from respondent, (3) prohibit respondent from receiving, delivering, or otherwise dealing in specified scarce materials or products, (4) limit or restrict a respondent in the manufacture or production of scarce materials or products, or (5) otherwise regulate the business of respondent to assure future compliance. The suspension order usually has the effect of an injunction decree restraining respondent from operations for a period of not less than three months. The suspension order is effective upon its issuance in Washington and service by mail upon the respondent. He may appeal to the chief compliance commissioner in Washington to have the execution of the suspension order stayed, or to have it set aside or modified. The compliance division may also appeal from the conclusions and recommendations of the compliance commissioner. The method of appeal is informal. It may be by letter, or in any other written form. It should set forth in detail the facts and reasons why the requested relief should be granted. The chief compliance commissioner may prescribe rules and forms changing the present appeals procedure. The decision of the chief compliance commissioner upon an appeal is final. No provision has been made for a court review. It is believed that no court has juris-

diction to set aside a suspension order, except possibly for the reason that it was issued maliciously or capriciously.

PROBATIONARY PROCEDURE

Recently the compliance commissioner was granted authority to issue probationary orders instead of recommending prosecutions or suspension orders. He may put the respondent upon probation for a period of months, after a hearing before the compliance commissioner has been held, if the case involves a minor violation, and, in some more substantial cases where the respondent is engaged primarily in war work.

The probationary order will not be issued unless the compliance commissioner is satisfied that there was no deliberate attempt on the part of the respondent to impede the war effort; that there was no diversion of critical materials to non-essential uses; and that there is no present danger of a continuance of the violations. As a condition to the issuance of the probationary order, in lieu of other penalty, the compliance commissioner requires the respondent to give assurances, either orally or in writing, and as a part of the record, that he will conduct his business in the future in accordance with the regulations and orders of the War Production Board. The respondent must also satisfy the commissioner that his purchase and sales records are being kept in a satisfactory manner so that they will show fully and accurately all his transactions in restricted materials, equipment and facilities.

At the end of the probationary period, or during that time, an investigator will make further investigations of the respondent's records and business activities. If the investigator finds that the respondent is operating his business and keeping his records in accordance with the regulations and orders, he will so report to the compliance commissioner, who may then close the case at the end of the probationary period, or extend the probationary period and close the case after the end of the extended period. If, as a result of the investigations, or for any other reason, the compliance commissioner is convinced that the respondent is continuing to violate the regulations and orders during the probationary period, he may recommend the issuance of a suspension order in addition to, or supplementary to, the probation order. This may be done with or without the taking of additional testimony.

DICTA

Published monthly by the Denver and Colorado Bar Associations.

20 cents a copy

\$1.75 a year

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Members of the Denver Bar Association Who Have Lost
Their Lives in the Service of the United Nations

Alvin Rosenbaum, First Lieutenant, United States Army Air
Forces, August 2, 1943.

"Arch" White, for many years deputy clerk and clerk of the Supreme Court of Colorado, has contributed some of the anecdotes and stories gathered by him through his long associations with courts and lawyers. Mr. White is now playing the part of a gentleman of leisure in the warmer surroundings of Phoenix, Arizona.

We hardly believe these exhaust his fund of recollections, and hope that he will find it possible to give additional light to our sometimes gray and somber pages.