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NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
Washington 25, D. C.

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A8-5/P8-2
~~CONFIDENTIAL~~
Serial 01876P32

17 February 1947

Declassified / Downgrade to

Auth: EO 12958

Date 22 SEP 98 Unit: NCTIS 22

From: Chief of Naval Intelligence.
To: District Intelligence Officers, All Naval Districts
and Intelligence Officers, River Commands.

SUBJECT: Removal of employees involving reasonable doubt as to
loyalty; subversive activity; and membership in un-
American groups.

Enclosure: (A) Copy of OIR Circular Ltr. to All Naval and Marine
Corps Activities Concerned, dated 14 Jan. 47, same
Subject.

1. Enclosure (A) is forwarded for information. Attention
is called to Reference (e) of Enclosure (A) by which addressees are
admonished as to the correct use of information obtained from intelli-
gence sources.

2. In view of the fact that investigations conducted by
Naval Intelligence are frequently used as a basis for removal actions,
the data set forth in Enclosure (A) should be studied thoroughly in
order that the necessity for investigations of high standards and
quality is understood.

/s/A. C. J. Sabalot
A. C. J. Sabalot,
By direction,

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NAVY DEPARTMENT

CPL&D-47-6
DF

WASHINGTON 25, D. C.

AV
R-510:sn

14 Jan 1947

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CIRCULAR LETTER

To: All Naval and Marine Corps Activities Concerned.

Subj: Removal of employees involving reasonable doubt as to loyalty;
subversive activity; and membership in un-American groups.

- Refs:
- (a) NCPI 45.7 (Removals for cause)
 - (b) NCPI 45.11 (Veteran preference rights)
 - (c) NCPI 45.9 (Removals in interest of national security)
 - (d) Navy Regulations, Articles 76 and 113
 - (e) CNO conf ltr, Op-32D1 A7-2/LOCI Serial 05562P32 dated 24 September 1946
 - (f) Executive Order 9806 dated 24 Nov 1946 (Establishing the President's Temporary Commission on Employee Loyalty)

1. The Congress of the United States has indicated concern with respect to the employment of disloyal and subversive persons in the Federal Service, and has recommended that the problem be thoroughly considered with a view to establishing adequate procedures to deny them employment or remove them from employment. Executive Order 9806 dated 25 November 1946, reference (f), established an inter-agency committee to attack this problem on a Government-wide basis. Although there is no doubt concerning the loyalty of the vast majority of naval employees, nevertheless, in order to treat with disloyal persons when occasions arise, the Secretary of the Navy similarly believes that the Naval Establishment must continue to treat this matter as one of foremost concern. It is the responsibility of heads of activities to give forthright attention to this situation and take such steps as are necessary to comply with demands of this problem and remove from their rolls all persons considered disloyal or subversive.

2. In order to assist those in authority it appears advisable to set forth the existing procedures which may properly be utilized. Two removal procedures are available; (1) reference (c), and (2) references (a) and (b). It is the studied opinion of the Department that reference (c) should be used in rare cases only and that the majority of the required removals may be satisfactorily effected under the provisions of reference (a), or (b) when applicable.

3. Reference (c) was provided as a war-time measure in order to safeguard the national security. Reference (c) permitted summary action whenever the Department uncovered evidence which indicated that individuals were taking or might take action prejudicial to the national security. In these cases, under the pressure of the war effort and in the interest of security, removal action was taken even though the evidence was not preponderant. During the war, the Department could take no chances nor could it gamble on

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the loyalty and devotion of persons on its rolls, and in order to safeguard the national security, had no alternative but to remove summarily all persons whose conduct, work or background was of such nature that suspicion aroused. Such action will not be taken in the future unless the person under question occupies a strategic or key position giving him access to secret or top-secret information. Therefore, it is recommended that heads of activities henceforth recommend action under reference (c) only in cases where the evidence is less tangible but sufficient to require surveillance and where the individual concerned has access to secret or top-secret information.

4. In most of the subject cases, removal should be effected in accordance with the provisions of references (a) and (b). Although reference (a) provides the procedure for removal, the authority for removal stems from two sources, outlined as follows:

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- a. Civil Service Commission Rules and Regulations permit the removal of any person when there exists a reasonable doubt as to his loyalty to the Government of the United States. The legal basis for such action is found in the Act of 24 August 1912 (37 Stat. 555) and provided by the Civil Service Commission in Section S-1-7 of the Federal Personnel Manual. Departmental authority is provided in NCPI 45.7-2i. Attention is invited to the fact that "reasonable doubt as to loyalty to the Government of the United States" is a broad and inclusive charge and may be demonstrated in a multitude of manners. No concise standards are available for guidance of naval activities and the determination as to whether "reasonable doubt" exists is a matter solely within the judgment of heads of activities. In such cases it is not necessary to establish conclusive evidence of disloyalty. It is necessary, nevertheless, that sufficient evidence be on hand to raise a "reasonable doubt" concerning a person's loyalty.
 - b. Section 9A of the Hatch Act (53 Stat. 1148) requires the mandatory removal of any person who is a member of a political party or organization which advocates the overthrow of the constitutional form of Government in the United States, such as the Communist Party, the German Bund, or any other Communist, Nazi or Fascist organization. It should be noted that the reason for removal under Section 9A of the Hatch Act is membership in an organization advocating the overthrow of our form of government. Therefore when this authority is used as the basis for removal sufficient evidence should be at hand to establish membership. The Act further provides that no part of appropriated funds may be used to pay the salary or wages of a person who is a member of an organization which advocates the overthrow of our form of government. Accordingly, when sufficient evidence is at hand to establish such membership, and the evidence is unrefuted and removal action is taken based on such authority, payment for any salary due and unpaid and for lump sum leave is prohibited.

5. As indicated in paragraphs 2, 3, and 4 herein, the provisions of NCPI 45.7 and NCPI 45.11 shall be used except in those rare instances where the

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Provisions of NCPI 45.9 are applicable. In effecting removals under NCPI 45.7, certain points of clarification are needed concerning hearings:

- a. Actions involving employees in their trial or probationary periods and others not entitled to the protection of Temporary Civil Service Rule XII should be processed according to the provisions of NCPI 45.7-4b(2), in which case persons so charged should be granted an informal hearing immediately prior to removal. It is suggested in these cases that the charges be read and handed to the employee, and that he be given at that time the opportunity to reply on his behalf.
 - b. Employees who have completed their trial or probationary periods or who are otherwise entitled to the protection of Temporary Civil Service Rule XII as provided by NCPI 45.7-4b(1) will, as a matter of Department policy, be advised of their right to a hearing and permitted to exercise that right if requested. Only in unique and rare cases where unusual circumstances make a hearing impracticable may hearings be denied. In loyalty hearings, the provisions of reference (a) may be departed from to the extent that the hearings may consist only of the presentation of evidence by and on behalf of the employee concerned. At such hearings employees may be represented by persons of their own choice and bring witnesses if so desired. Neither the employee nor his representative has a right to examine the evidence or its sources. In such hearings, naval authorities should open the meeting and listen to the evidence presented. It is understood, of course, that when the evidence presented by and on behalf of the employee concerned raises a doubt concerning the credibility or accuracy of the information upon which the charges are based, naval authorities will wish to raise questions in the hearing. In all cases it is the responsibility of those conducting the hearings to uncover all pertinent facts needed for a fair decision. The charge of being "disloyal" or a member of an un-American group is a most serious charge to place against an employee, and in order to safeguard his rights and privileges it is imperative that the employee concerned be given full opportunity to present his evidence. Cases of mistaken identity and false and inaccurate information arise on occasion, and hasty action in such cases does irreparable harm to employees and the Naval Establishment as well. A brief or digest of each hearing must be made and filed, or verbatim records may be made if desired.
6. In processing the subject cases, it is necessary that the charges be made as specific and detailed as possible in order to permit the employees concerned full opportunity to present their evidence. In most cases, employees concerned will state that the nature of the charges is such that they cannot adequately present evidence in refutation since they do not know in detail the facts upon which the charges are based. This is inevitable in view of the fact that in most cases the basic information will have been drawn from confidential sources. On the other hand, in some cases, naval authorities will be dealing with persons and groups who do not disclose all facts in their cases in which the Navy might be interested. Nevertheless, real effort must be made to draw specific charges from the evidence at hand. The Department recognizes the difficulties inherent in developing specific charges from confidential material when its sources must

at all times be protected. Therefore, examples of how charges may be drawn are set forth in enclosure 1. In addition, enclosure 1 includes a sample of an interrogatory which may be used in developing and verifying evidence prior to the issuance of charges. Heads of activities may utilize the methods best adapted to the cases at hand and may, if desired, employ the interrogatory, which the Civil Service Commission has found very satisfactory in the development of its loyalty cases.

7. Attention is further directed to the fact that employees entitled to the protection of Section 14 of the Veterans' Preference Act of 1944 as provided in reference (b) may appeal such removals to the U. S. Civil Service Commission. Section 14 of that Act provides in part that any such veteran employee who is discharged, suspended for more than thirty days, furloughed without pay, or reduced in rank or compensation, "shall have at least thirty days' advance written notice.....stating any and all reasons, specifically and in detail, for any such proposed action". Therefore, since that Act by its very language demands that the charges be specific and in detail and since the U. S. Civil Service Commission in its regulations pursuant thereto and administration thereof, likewise demands that the charges be specific and in detail, it is imperative that in cases involving preference eligible employees with these rights of appeal, the charges be made specific and in detail. To do otherwise is to fail to comply with the provision of the Act and the regulation of the Commission and to be faced with a reversal by the Commission on technical or procedural grounds regardless of the merits of the case.

8. Great care must at all times be exercised to protect the sources of the confidential information. In preparing the statements of charges, those charges must not be set forth which by their very nature will disclose the sources of the confidential information. In cases appealed to the Commission by veterans, heads of activities shall not permit the disclosure of the confidential information to either the representatives or investigators of the Commission. Reference (e) clearly sets forth the policy of the Department with respect to the disclosure of confidential materials and should be carefully studied.

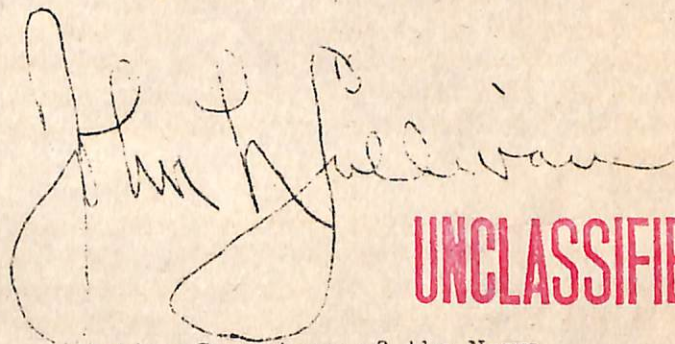
9. In all subject cases appropriate information must be shown on the personnel action form as required by NCPI 135. When removal is based on the broad charge of reasonable doubt as to loyalty, the remarks space of the personnel action form should carry such a statement as "Information has been received which raises a reasonable doubt as to your loyalty to the Government of the United States"; and when Section 9A of the Hatch Act has been violated, a statement should be included somewhat as follows, "Your employment was in violation of Section 9A of the Hatch Act." When removal is effected under the provisions of reference (c), the remarks space should carry a statement such as "Your removal is warranted in the interests of national security".

10. Enclosure 2 illustrates the official policy of the U. S. Civil Service Commission and the Federal Government with respect to the administration of subject cases. Enclosure 3 is attached as a matter of information for heads of activities. This decision was reaffirmed by the United States Court of Appeals, District of Columbia, 16 December 1946. It will be noted after study of Enclosure 3 that a Court of Law has no jurisdiction to inquire into the guilt or innocence of an employee if he has been removed in compliance with the procedures

specified by law. Since the provisions of references (a) and (c) fully comply with the requirements of law and the regulations of the Civil Service Commission, provisions of heads of activities are not reviewable by the courts of the land if these references have been followed. The only cases processed under Civil Service Temporary Regulation XII which are reviewable by authority other than the Secretary of the Navy are those cases involving preference eligible employees which may be appealed to the Commission as provided by reference (b). Cases effected under the provisions of reference (c), even though involving preference eligible employees, may not be appealed to the Commission since Public Law 808 is special legislation vesting in the Secretary of the Navy authority not subject to the application of the Veterans' Preference Act.

11. The President's Temporary Commission on Employee Loyalty which was established by reference (f) is now reviewing for the Federal Government this entire problem of loyalty, and its recommendations may require subsequent modifications of this instruction, which will be promulgated as necessary.

12. Recent cases received in the Department indicate that activities should give greater consideration to making thorough investigations of persons entering into scientific, technical, professional and high administrative positions prior to effecting appointments. It is imperative that every possible precaution be taken to preclude the entrance into the Naval Establishment of persons of doubtful background and loyalty. It is appreciated that there is an urgent need for the services of persons with these specialized skills. Nevertheless, considerable trouble is avoided by conducting adequate examinations and investigations prior to their entrance on duty. To do otherwise is to make it necessary at a subsequent date to effect such removals as are treated in this letter, thereby placing an unnecessary burden on activities and straining an effective public relations and recruiting program.



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Acting Secretary of the Navy

Encls: (HW)

1. Methods of Preferring Charges.
2. U. S. Civil Service Commission ltr of 21 May 1946 to Mr. Arthur Stein, International Vice-President of UPWA.
3. District Court Decision, D. C. (Morton Friedman, Plaintiff, V. Lewis B. Schwollenbach, et al., Defendants), Civil Action No. 27196.

DISTRIBUTION:

OIR Special List #25, 25c and 25f.

EXAMPLES OF CHARGES AND INTERROGATORY

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1. This charge is based on evidence establishing both membership in an un-American organization and reasonable doubt as to loyalty:

"Reliable information has been received that (a) you are sympathetic to the policies and principles of the Communist Party; (b) you joined the Communist Party in approximately July 1941; (c) you held Communist Party membership book number 63481 in 1942; (d) you attended the Communist Party Convention in Detroit in August 1943 as a delegate from the Boston Communists Club; (e) you occupied an office in the Young Communist League in 1943; (f) you subscribed to Communist dominated periodicals and literature during 1942 and 1943; (g) you actively disseminated Communist literature in 1945; (h) in June 1945 you stated that the Russian form of government is superior to that of the United States; and (i) you have among your friends and associates known Communists. In view of the foregoing it appears you are a member of the Communist Party and a reasonable doubt exists as to your loyalty to the government of the United States."

2. This charge is based on evidence establishing only reasonable doubt as to loyalty:

"Reliable information has been received which indicates that (a) you stated on several occasions during 1945 that a totalitarian form of government is superior to that of the United States; (b) you have among your friends and associates persons known to oppose the constitutional form of government in the United States; (c) you strongly advocated a second front after Russia became an ally of the United States in World War II although you previously stated the United States should not get involved in foreign wars; and (d) you attended Communist Party rallies in January and March 1946 in New York City. In view of the foregoing a reasonable doubt exists as to your loyalty to the government of the United States."

3. The Interrogatory.

In those cases where evidence on hand raises only a slight doubt concerning a person's loyalty or poses certain questions which must be resolved if such person is to be continued in employment, the investigation report may be supplemented by the use of an interrogatory which is illustrated below. Such an interrogatory is merely an instrument employed to secure additional information to be used in determining fitness for continued employment and would be preliminary to preferring charges. By using an interrogatory heads of activities may secure data which erases a slight doubt, or on the other hand, confirms and strengthens such doubt to the extent that it becomes "reasonable", thereby requiring the initiation of removal action. Interrogatories in no case can be used in lieu of charges. On the other hand, the decision to prefer charges may grow out of material and evidence developed by the interrogatory.

As an example, let it be assumed that a confidential report on an employee contains information completely established and verified to the effect that (1) he attended a Communist Party Rally in New York City in October 1941, (2) he has stated to friends that War Bonds are a poor investment since the

U. S. Government will never be able to redeem all of them, and (3) brother-in-law is known to be a Communist.

The foregoing facts suggest the possibility that the person concerned may have loyalties and sympathies for the Communist Party but the evidence is not reasonably conclusive. Therefore, in order to clarify the slight doubt existing, an interrogatory might be used as follows and submitted to the employee for reply:

"Reliable information has been received which raises a question concerning your interest in the principles of the Communist Party. Your reply to the following questions must be notarized and returned to this office within 5 days.

I

What is your full name and present address?

II

When and where were you born?

III

Why did you attend a Communist Party Rally in New York City in October 1941?

IV

With whom did you attend the above rally?

V

Approximately how many other meetings or rallies dominated by the Communist Party have you attended and which most recently?

VI

What is your basis for stating that the U. S. Government will never be able to redeem all its War Bonds?

VII

Do you have any relatives who are Communists or who have indicated sympathies with Communist principles and policies? If so, list their names and addresses and the extent of your association with them.

VIII

Have you ever associated with individuals whom you have reason to believe are sympathetic with the Communist Party? If so, give their names and addresses and the extent of your associations.

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(Enclosure 2)

PRESS RELEASE

Press Relations
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UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C.

May 21, 1946

FOR RELEASE, WEDNESDAY, MAY 22, 1946:

The United States Civil Service Commission today sent the following letter to Mr. Arthur Stein, International Vice-President of the United Public Workers of America in response to a letter which he had addressed to the Commission on May 9:

* * * *

Mr. Arthur Stein
International Vice-President
United Public Workers of America
930 F Street, N. W.
Washington 4, D. C.

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Dear Mr. Stein:

Your letter of May 9, 1946, refers to several newspaper stories which have appeared in recent days indicating that officials of the Commission are planning to investigate the United Public Workers of America.

One of these stories refers to an investigation in connection with collections for the educational work of the Political Action Committee of the CIO. The other newspaper story relates to a reported inquiry by the Commission's Legal Division on the question of the loyalty of your organization to the United States of America.

The information concerning the alleged collection of funds for a political organization has been obtained so far from the newspaper article to which you refer. However, whenever information of that sort comes to the Commission, it becomes the duty of the Commission to investigate and endeavor to learn whether there has been a violation of the Hatch Act or the Civil Service Regulations as promulgated under the Civil Service Act and Rules, or if one is contemplated. If a violation has actually occurred, it is the duty, as the law now stands, of the Commission to remove the violator from office, no matter how slight the violation may be. If a violation is contemplated, the Commission believes that it is only fair to advise Federal employees that what is contemplated probably would lead to violations on the part of individuals who, otherwise, might not know what is proposed is a violation, and might lead to removal no matter how innocent the individual may be of any intent to violate.

While it is true that a federal employee may make a contribution for political purposes, the law provides that he may not solicit, collect or otherwise handle contributions made for political purposes. Further, it is unlawful for an employee to solicit "in any manner whatever" or receive any contribution of money or other thing of value for "any political purpose whatever."

The law also provides that "no person shall in any room or occupied in the discharge of official duties by any officer or employee of the United States - - - solicit in any manner whatever or receive any part of the donation of money or other thing of value for any political purpose." -ibu-

It is the real purpose for which the money is being raised that counts; not what the process of raising it is named. It may be for a worthy political purpose, in one's viewpoint, or it may be for a bad political purpose in one's viewpoint; the effect of the law is just the same.

So far as the story about a loyalty investigation of the United Public Workers of America by the Commission is concerned, there is no basis for it at all. Before the article to which you referred appeared, no one in the Commission having authority had even thought of such an investigation, so far as the Commissioners have been able to learn.

Having answered the two questions asked in your letter, let me go a little further in the way of suggestion. The right of a Federal employee to his own opinion regarding the affairs of the United States can not be questioned; nor can his right to express that opinion. Neither is he prohibited from expressing his personal opinion on International affairs. There is no law which forbids a body of Federal employees from expressing its opinion on either domestic or international problems.

The law on the subject which might affect a Federal employee who expresses an antagonistic opinion towards the United States government, either as an individual or as a member of a convention, is contained in the Hatch Act and Regulation V, Sec. 3 "Disqualifications" of Temporary Civil Service Regulations.

As you are undoubtedly aware, Section 9(A) of the Hatch Act reads as follows:

"It shall be unlawful for any person employed in any capacity by any agency of the Federal government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States."

The regulations of the Civil Service Commission, referred to above, provide that one basis for disqualifying a person for employment in the Federal service, as well as a basis for removing an employee from the Federal service, is "a reasonable doubt as to his loyalty to the government of the United States."

Admittedly, that provision of law was aimed at members of the Communist, Fascist or Nazi parties. Therefore, it is the duty of the Civil Service Commission to prevent members of these parties from getting into the government service, and to get them out if it has authority in the particular case.

The Commission has done everything possible within the limits of its resources to see to it that both the provisions of the Hatch Act above referred to, as well as the regulations above referred to, are strictly enforced in connection with passing on the qualifications of persons for federal employment. As you know, the Commission has throughout the war often approved the

persons "subject to the results of an investigation." If appointment investigations have revealed that persons already on the federal pay-roll fall within the provisions of either the Hatch Act or the Commission's regulations, the Commission has consistently ordered their removal.

Experience has taught the Commission that it is difficult to prove that a person under suspicion is a member of the Communist Party. Very few Communists in the United States will admit that they are Communists. Even when the Commission has definite proof that certain persons are or have been members of the Communist Party, they still dispute the fact. Therefore, the Commission has to rely on cumulative, collateral or circumstantial evidence.

- In evaluating the evidence which has been placed before it in individual cases, the Commission has sought to determine whether the person concerned has been a follower of what has been recognized as a well-established Communist party line. If it has concluded that a person has followed the Communist party line, it has either disqualified him for federal employment, or, if he is in the service, it has ordered his removal.

The mere fact that a person attended a convention which declared that the Communistic Russian government was perfect in all that it did, while the government of the United States was imperialistic in its designs on humanity, would not, standing alone, justify a decision that the person was a Communist, and consequently believed that force to overthrow the government to which he normally owed allegiance was justified. However, such action is bound to arouse suspicion against the members, as it unquestionably did in the case of your organization. Its purpose in throwing an utterly uncalled-for proverbial red rag in the face of the American public, the employer of its members, is rather difficult to understand..

There is no question but that evidence indicating that individuals participated in the drafting of such resolutions or actively supported the adoption of such resolutions would be considered as relevant evidence in determining whether or not a person was following the Communist party line.

You have asked for information on these two newspaper reports, and we have endeavored to comply with your request in a manner that will give you an understanding of what the Commission regards as its duty in connection with the subject matter of both reports.

Sincerely yours,

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H. B. MITCHELL
President

- 3 -

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Authority NND 73643

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

MORTON FRIEDMAN,

Plaintiff,

V.

LEWIS B. SCHWELLENBACH, et al.,

Defendants.

UNCLASSIFIED

Civil Action No. 27196

This is an action for declaratory judgment, mandamus, and injunction. Originally named as defendants were Paul V. McNutt, individually and as Chairman of the War Manpower Commission, and Harry B. Mitchell, Lucille Foster McMillin, and Arthur S. Flemming, individually and as members of the United States Civil Service Commission. Because of the resignation of Mr. McNutt as Chairman of the War Manpower Commission and the transfer on September 17, 1945, pursuant to Executive Order No. 9617 (10 F. R. 11929), of that wartime agency and all of its functions, employees, and records, with certain exceptions not here material, to the Department of Labor, Lewis B. Schwellenbach, individually and as Secretary of Labor, has been substituted as a party defendant herein by order of the court dated November 13, 1945.

The plaintiff, who was an employee of the War Manpower Commission, seeks declaration that he was improperly and unlawfully discharged from that Agency and an order directing his reinstatement. He also seeks injunctive relief against the members of the Civil Service Commission who directed the War Manpower Commission to dismiss him and who, in addition, cancelled all his pending eligibilities for Civil Service employment.

The defendants moved to dismiss the complaint but the court deferred action until the filing of an answer. Since the filing of the answer the plaintiff and defendants have filed motions for a summary judgment.

On February 16, 1942, the President, by virtue of the authority vested in him by section 2 of the Civil Service Act, issued Executive Order No. 9063 (7 F. R. 1075) authorizing the Civil Service Commission to adopt and prescribe such special procedures and regulations relating to the recruitment, placement, and changes in status of personnel in Federal service as it determined to be necessary in order that there would be no delay during the war emergency in filling positions in the Federal service with qualified persons. Said Executive Order further provided that the procedures and regulations thus adopted and prescribed were to be binding with respect

to all positions affected thereby which were subject to the provisions of the Civil Service Act and Rules. The second paragraph of Executive Order 9063 stated that persons appointed solely by reason of any special procedures adopted under authority of said order to positions subject to the provisions of the Civil Service Act and Rules were not thereby to acquire a classified (competitive) civil-service status, but, in the discretion of the Civil Service Commission, might be retained for the duration of the war and for 6 months thereafter.

The President on February 20, 1942, by Executive Order No. 9067 (7 F. R. 1407), further authorized the Civil Service Commission to secure information as to employees of executive departments and agencies who were deemed competent to perform essential war work in departments or agencies having a higher priority classification, and, with the consent of the employees concerned, to effect the transfer of any such employee to meet the personnel needs of a department or agency, having a higher priority classification, and to adopt such rules and regulations and to establish such procedures as might be necessary to carry out its responsibilities thereunder. This Executive Order remained in effect until September 27, 1942 (Executive Order No. 9243, September 12, 1942).

Pursuant to Executive Orders 9063 and 9067, the Civil Service Commission prepared and adopted the War Service Regulations, effective March 16, 1942 (Title 5, C.F.R., Supp., Chapter I, Part 18; 7 F. R. 7723).

In order to expedite employment and transfers to meet war conditions, the Civil Service Commission, pursuant to the aforesaid Executive Orders, expanded its use of conditional appointments and conditional transfers, a practice whereby the Commission effects and immediate employment or transfer, subject to a condition. The condition ordinarily imposed is that the person shall be subject to a character investigation for the purposes of ascertaining the qualifications determinable by such investigation. This procedure enables the Commission to fill a vacancy immediately and complete its examination of the applicant or transferee at a subsequent date. Prior to the war, the Commission's policy was to publish an announcement of the examination, stating the type of position, required qualifications, place of examination, etc., hold an examination, establish a register and certify three names from the top of the register to the agency subject to a character investigation. To meet the necessity of rapid expansion of

Employment, the Commission, under the authority of Executive Order 9603, dispensed with this peace-time practice and resorted to the speedier methods of recruitment. Persons were placed on the job under a conditional appointment or conditional transfer, and thereafter, the Commission conducted its investigation to ascertain certain factors of qualification before certifying as to the eligibility of the applicant or transferee.

Plaintiff was transferred on May 29, 1942, from the Federal Works Agency to the Division of Central Administrative Services, Office for Emergency Management. This transfer was expressly made "subject to character investigation." Without change in status plaintiff, while said investigation was being conducted and while certain of the events hereinafter described were taking place, was involved first in an interoffice transfer (September 16, 1942) to the War Manpower Commission Personnel Branch, Central Administrative Services, Office for Emergency Management, and later (March 27, 1943) in a group transfer shifting all personnel functions of the Office for Emergency Management to the constituent agencies of the War Office for Emergency Management, in plaintiff's case, the War Manpower Commission.

Until plaintiff's conditional transfer, effective May 29, 1942, to the Office for Emergency Management, his previous employment with the Federal Government had at all times been in positions excepted from the classified civil service (Act of November 26, 1940, Section 1, 54 Stat. 1211; 5 U.S.C. 631 (a)). Said conditional transfer brought plaintiff for the first time within the scope of the War Service Regulations and the Civil Service Rules, and within the jurisdiction of the Civil Service Commission. He was at no time in the Federal Classified civil service.

War Service Regulation II, Section 3, provides as follows:

An applicant may be denied examination and an eligible may be denied appointment for any one of the following reasons:

* * * * *

(g) a reasonable doubt as to his loyalty to the Government of the United States;

* * * * *

Any of the reasons stated in the foregoing subdivisions from (b) through (h) inclusive, shall be sufficient cause for removal from the service.

These disqualifications are elements that come within the scope of an investigation and which usually are only discovered by investigation.

The Commission's established procedure and practice were followed

in plaintiff's case where a question of qualification to be determined by investigation is involved.

Pursuant to the condition set forth in the transfer of plaintiff on May 29, 1942, from the Federal Works Agency to the Division of Central Administrative Services, Office for Emergency Management, whereby the transfer and plaintiff's tenure were made subject to a character investigation, the Commission conducted an investigation as to plaintiff's qualifications, suitability, and fitness. As a result of that investigation, the Commission determined that there was a reasonable doubt as to plaintiff's loyalty to the Government of the United States and that plaintiff was therefore not eligible for Federal employment in a war service status and, under date of October 27, 1942, requested Central Administrative Services, Office for Emergency Management, to terminate his services. Plaintiff appealed from this decision and a hearing was held on January 26, 1943, before the Board of Appeals and Review of the Commission. At said hearing plaintiff was given full opportunity to present for consideration all the evidence and testimony he desired on the question of his eligibility for a War Service appointment. Thereafter, the Commission, upon review and reconsideration of the entire record, reaffirmed its determination that plaintiff was ineligible for Federal employment and by letter of May 3, 1943, so notified him. The Office for Emergency Management was also notified on May 3, 1943, that the Commission's previous action had been affirmed.

The plaintiff appealed to the proper authorities and exhausted all administrative remedies.

On June 5, 1944, the Commission, after consideration of the complete record, reaffirmed its decision and so notified plaintiff by letter on June 5, 1944. Said letter is as follows:

"United States Civil Service Commission
Washington, D. C.

File: BAR:JFE:GD
June 5, 1944

"Mr. Morton Friedman
c/o Personnel Office
War Manpower Commission
Washington, D. C.

"My dear Mr. Friedman:

Reference is made to your appearance before the Commission on April 19, 1944, in further prosecution of your appeal from the finding of ineligibility for continuance in the service.

The Commission has given most careful consideration to your case including the information developed during the course of the investigations which were made and the testimony before the Board of Appeals and Review at

the hearing which was accorded you. Particular attention, however, has been given to your statements and based upon those statements the Commission has concluded that the finding of ineligibility was in accordance with the standards applied in such cases and therefore has affirmed the previous action.

The Commission's action was based mainly on your activities in connection with the American Peace Mobilization and your shift in attitude and point of view following the declaration of war between Germany and Russia. It may be true that many members of the American Peace Mobilization were not aware that it was Communist-dominated and pro-Communist but it is generally recognized that those who were prominently and actively affiliated with that organization were people who over a period of time had shown sympathy with the Communist cause. Your testimony was that you were sent to the first meeting of the American Peace Mobilization in Chicago as a representative of your local union, that you also were sent to a meeting of the organization in New York City as a delegate, and that you participated actively in their meetings and affairs. You also testified that you were active in the affairs of the Washington Peace Mobilization and served on several of its committees.

You were admittedly opposed to the United States participation in war before the invasion of Russia by Germany but thereafter you changed your mind and were of the opinion that this country should fight along with the other United Nations. Just how long it was before Pearl Harbor that you changed your mind is not definitely established, but on the occasion of your appearance before the Commission you indicated that it was probably in August of 1941, which obviously was soon after June 22, 1941.

These matters, together with other activities which have been personally discussed with you, are convincing to the Commission that you are not eligible for retention in the service according to standards observed by the Commission.

By direction of the Commission:

Very respectfully,

/s/ William C. Hull
Executive Assistant."

Accordingly, plaintiff's employment was terminated September 12, 1944.

Under date of August 16, 1944, the Civil Service Commission advised plaintiff that any and all applications and eligibilities of plaintiff for examinations were cancelled because information disclosed through investigation indicated that plaintiff did not measure up to the required standard of suitability and fitness. The records of the Civil Service Commission do not disclose that plaintiff had any applications or eligibilities for examination then pending.

The position held by plaintiff during the period April 18, 1943, to September 12, 1944, was that of Chief of the Classification Division of the War Manpower Commission. Plaintiff's employment was thus closely related to the efficient operation of an agency having important duties and heavy responsibilities in mobilizing the Nation's war effort.

The action of the Civil Service Commission in determining, after thorough investigation, that there was a reasonable doubt as to plaintiff's loyalty and that therefore he was not qualified under the controlling

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regulations to obtain a War Service appointment, is asserted to be unlawful as in violation of the Civil Service Act, Civil Service Rule I, Sec. 2, and Sec. 9(a) of the Hatch Political Activities Act. It is also argued that such determination by the Commission abridges plaintiff's fundamental rights guaranteed by the First and Fifth Amendments to the Constitution. The further contention is made that the termination of plaintiff's employment by the War Manpower Commission as a result of the Commission's finding of ineligibility, was in violation of Section 6 of the Lloyd-LaFollette Act. None of these assertions can be sustained. The Commission's action was in all respects in complete conformity with law. There has been no unlawful infringement of plaintiff's constitutional liberties.

This is not a case of removal after an absolute appointment. Plaintiff's employment was not terminated because he was found ineligible or not qualified to receive a War Service appointment, nor is this a case in which plaintiff has been determined to be disloyal. The Commission's determination was only that there was a reasonable doubt as to plaintiff's loyalty to the Government of the United States.

The plaintiff conceded that the right to disqualify Federal employees because of a reasonable doubt of their loyalty would seem obvious enough in time of war. The Commission found reasonable doubt of the loyalty of the plaintiff. It based its finding in part upon the fact that the plaintiff was a member of, and prominently and actively affiliated with the American Peace Mobilization, participated actively in its meetings and affairs, and served on several of its committees. There were reasonable grounds to believe that this organization was formed under the auspices of the Communist party designed to influence the American people to oppose participation in the war against Germany. Within a month after the German invasion of Russia its name was changed to American Peoples' Mobilization and then favored assistance to Britain and Russia in the war against Germany. It can hardly be said that there could be no reasonable doubt of the loyalty of a member of a communist organization who opposed war against Germany so long as this country was an ally of Great Britain, a democracy, but became an advocate of war when this country became allied with Russia, a communistic and totalitarian state. The defendants did not find that the plaintiff was disloyal. It was not necessary to go so far; it merely found that it had a reasonable doubt of his loyalty.

It is difficult to see that the Hatch Act has any application to this case. This Act prohibits Federal employees from taking any active part

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in political management or political campaigns. It is true that under that Act Federal employees retain the right to express their opinions on all political subjects to the same extent as other citizens. The plaintiff has not been denied the right to express his opinions, but if his opinions as expressed and his conduct in conformance with those opinions have raised a reasonable doubt in the minds of the Commission of his loyalty, there is nothing in the Hatch Act that would prevent his removal from office.

The plaintiff also claims that the action of the Commission was in violation of the Lloyd-LaFollette Act, but the plaintiff was not in the classified competitive civil service, and the provisions of the Lloyd-LaFollette Act apply only to persons in the classified civil service.

Apart, however, from the question of whether there was any substantial ground for the action of the Commission, it has acted pursuant to law and the courts are without jurisdiction to control its action so long as as it complies with the law. This principle has been followed ever since the case of Decatur v. Paulding, 39 U.S. 496. In Levine v. Farley, 107 F (2nd) 186 the Court of Appeals of the District of Columbia affirmed the action of the lower court in dismissing the suit of a plaintiff who sought a writ of mandamus against the Postmaster General to compel the reinstatement of the plaintiff in a position from which he had been removed, the plaintiff claiming that he had been unjustly removed as a result of unfair discrimination. The Court said:

"We, therefore, hold that, where action is taken in removing from office an employee in the classified service and the action is in accordance with requirements of the statute relating thereto, such action is not reviewable by mandamus, and a court of law has no jurisdiction to inquire into the guilt or innocence of the employee as to the charges upon which he was removed."

There are many decision to the same effect.

It appears, then, that there has been no violation of law by the Commission.

Both the plaintiff and the defendants have moved respectively for a summary judgment. There are no genuine issues of fact; the case is a proper one for that procedure. The motion of the plaintiff for summary judgment will be overruled; that of the defendants sustained and the complaint dismissed with costs.

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/s/ Jennings Bailey
Justice

April 1, 1946.