

## PART THREE

### PROCEDURE IN ADJUDICATION OF CASES

## CHAPTER 5

# Parties and Pleading

### A. PARTIES

#### 1. The Agency as a Party

EVERY phase of the administrative adjudication of cases—whether by informal conference or formal hearing<sup>1</sup>—is affected by the circumstance that the agency itself is a principal party. Unlike judges, administrative officers are almost always concerned with the outcome of the case as parties in interest.

The agency's direct interest in the outcome is obvious in cases where the proceeding is entitled in the name of the agency (or the Government) against a respondent, such as proceedings by the Federal Trade Commission or the National Labor Relations Board. Moreover, the same tendency is present in many types of cases where the agency is not

<sup>1</sup> As pointed out in the Report of the Attorney General's Committee on Administrative Procedure, Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941), most of the activity of administrative agencies in disposing of cases judicially is concerned with informal disposition of matters, by conference and consultation, without formal hearing and often without any regularized proceedings of any kind. While this circumstance is of fundamental importance, and is the primary point to be considered in connection with legislative imposition of standards of administrative procedure; yet the very flexibility of these informal methods of disposing of cases precludes any extended discussion thereof. Since the informal cases are almost always those closed by consent, as a result of a mutual agreement between the parties, their disposition is governed by no set rules or standards but rather by the inclination of the negotiators in each particular case. It is in such cases, if any, that justification can be found for the cynical observation that practice before administrative tribunals does not involve knowing the law, but rather knowing the administrators. While no separate treatment of the informal methods of administrative procedure is here undertaken, yet frequent references thereto will be made in the following chapters. The opportunity of resorting to the informal procedure at any stage of a formally conducted case—which is simply the option of terminating the proceedings by negotiating an agreed settlement—somewhat conditions the conduct of the agencies, and their practices, in handling matters which are formally adjudicated.

formally a party. Quite generally, for example, workmen's compensation commissions feel that it is a part of their function to aid the claimant in obtaining compensation. Similarly, unemployment compensation commissions are conscious of a desire to stretch statutory interpretation to the furthest possible point, in favor of allowing claims. Many other examples could be cited.<sup>2</sup>

The simple fact that the agency is usually directly interested in the final disposition of the case is probably the chief factor differentiating administrative from judicial procedure. An agency's rules as to intervention, its rules of pleading, and its method of conducting hearings, are all likely to be affected by the desire to achieve a procedure that will most effectively aid the agency in reaching what it deems desirable results.

## 2. Indispensable and Permissive Parties

Traditional rules of joinder and of necessary or indispensable parties play but little part in administrative proceedings.<sup>3</sup> Ordinarily, the only indispensable parties are those who, as a matter of due process or because of specific statutory requirements, must be given notice of contemplated action and an opportunity to be heard thereon.<sup>4</sup> Parties with dissimilar or even conflicting and competing interests may be joined in a single proceeding, or the proceeding may continue without joinder of parties who might appropriately be brought into the proceeding, and parties may be dropped or new parties added, as administrative convenience suggests,

<sup>2</sup> There are some instances where probably no such tendency is present. For example, the Interstate Commerce Commission probably has no partisan interest in the disposition of the reparations cases which it decides—and incidentally, it has expressed its desire of being relieved of the duty of deciding such cases.

<sup>3</sup> *National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350, 60 S. Ct. 569 (1940); *cf.*, *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 59 S. Ct. 206 (1938)—holding that the Board could not void a contract, when one of the parties thereto had not been joined in the administrative proceedings.

<sup>4</sup> See Chapter 4, *supra*, p. 91.

ordinarily subject to no restriction except occasional statutory provision or particular agency rules.

### 3. Intervention

Provision is frequently made, either in statutes or in the agency's rules of procedure, for intervention of interested parties. Intervention is usually permissive and is granted or denied at the discretion of the agency.<sup>5</sup> Many agencies, motivated by a desire for expeditious handling of cases or sometimes perhaps by a desire to exclude potential troublemakers, exhibit a tendency to deny such petitions, thus narrowing the issues and excluding competing interests from an opportunity to play their part in shaping the course of administrative determination.<sup>6</sup>

Ordinarily, denial of a petition to intervene is not appealable.<sup>7</sup> In cases where administrative discretion has clearly been abused, or where a clear statutory right exists, denial of a petition to intervene may sometimes be remedied in subsequent judicial proceedings.<sup>8</sup> But on the whole, the courts show little disposition to interfere.

Not infrequently, administrative agencies permit limited participation in a case by one who is not allowed to intervene. Sometimes the status of such a party is substantially like that of an *amicus curiae* in judicial proceedings; sometimes he is permitted to introduce testimony, cross-examine witnesses, and even (under some statutory provisions creating a right of appeal in any aggrieved party) to seek judicial review of the order. Between these two extremes, many intermediate

<sup>5</sup> *Meeker v. Lehigh Valley R. Co.*, 236 U. S. 434, 35 S. Ct. 337 (1915); *Sunshine Broadcasting Co. v. Fly* (D. C. D. C. 1940), 33 F. Supp. 560.

<sup>6</sup> E.g., *In the Matter of Matheson Radio Co., Inc.*, 8 F. C. C. 397 (1941); *In the Matter of Vail-Ballous Press, Inc.*, 15 N. L. R. B. 378 (1939); *Northwest Airlines, Inc., et al.*, 6 C. A. B. 217 (1944).

<sup>7</sup> *Alston Coal Co. v. Federal Power Commission* (C.C.A. 10th 1943), 137 F. (2d) 740.

<sup>8</sup> *Federal Communications Commission v. National Broadcasting Co.*, 319 U. S. 239, 63 S. Ct. 1035 (1943); *Mississippi Valley Barge Line Co. v. United States* (D. C. Pa. 1944), 56 F. Supp. 1.

solutions may be worked out as a means of enabling the agency to have the benefit of the views of collaterally interested parties.<sup>9</sup>

These devices offer wide opportunities in the way of permitting effective participation in administrative proceedings by collaterally interested parties, thus securing valuable contributions making for better informed administrative action, without involving difficulties that sometimes attend formal intervention, such as the prolonging of hearings, and the undue enlargement of the record, or the introduction of extraneous issues.

## B. PLEADING

### 1. General Requirements

The mode of pleading to be adopted by an administrative agency is a matter to be settled by the agency. Save as occasional statutory provisions or agency rules may impose some requirements,<sup>10</sup> the tribunals are permitted to conduct their proceedings in such manner as they may deem will be most conducive to the effective disposition of business.<sup>11</sup> Apparently, if an agency so desired, it could proceed to hearing without filing a complaint, relying on informal conferences to advise the other parties to the case as to the claims and contemplated action of the agency; indeed, this is substantially the practice of several agencies, which employ complaints that recite little more than the names of the parties and the language of the statute involved.<sup>12</sup> It has not been required, in any event, that the pleadings conform to any of the accepted common-law standards by which the sufficiency

<sup>9</sup> See *In the Matter of United Light & Power Co., S.E.C. Holding Company* Act Release No. 2531 (1941).

<sup>10</sup> E.g., the very detailed rules of the Interstate Commerce Commission.

<sup>11</sup> *Louisville & N. R. Co. v. Sloss-Sheffield Steel & Iron Co.* (C.C.A. 5th 1923), 295 Fed. 53, *aff'd* 269 U. S. 217, 46 S. Ct. 73 (1925).

<sup>12</sup> For criticism of the practice, see "Administrative Procedure in Government Agencies," Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941) 63.

of pleadings in judicial proceedings are judged,<sup>13</sup> although Section 5 of the Administrative Procedure Act of 1946 may be construed as imposing some requirements as to definiteness in pleadings. Section 5 provides that where some other statute requires the agency to act only after holding a hearing, there must be notice not only of the time and place of hearing, but also as to "the matters of fact and law asserted."

The pervasive tendency of administrative tribunals to adopt rules that are primarily defensive in character, designed to protect the agency's procedure from attack rather than to define the practice before the agency,<sup>14</sup> has militated against the voluntary adoption of any strict requirements with reference to pleadings. If an agency adopted a rule providing for the furnishing of bills of particulars, upon cause shown, for example, it might lay itself open to attack on the ground that in denying such a motion in a particular case, it had violated its own rule. It is much the easier course for the agency to provide by rule that bills of particulars may not be required. Then the agency is free to furnish statements of particulars as often as it serves its purposes to do so; and at the same time it may with impunity deny a request for particulars whenever this appears the more convenient course.

But it is a shortsighted policy which prompts some agencies to adopt modes of pleading which neither apprise the respondent of the factual issues in dispute nor put him on notice of the real nature of the claim. Not only does this

<sup>13</sup> *Pennsylvania R. Co. v. United States* (D. C. Pa. 1923), 288 Fed. 88; *Farmers' Livestock Commission Co. v. United States* (D. C. Ill. 1931), 54 F. (2d) 375. The decision in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 40 S. Ct. 572 (1920), to the extent that it indicated that an administrative complaint must state a cause of action, has had but little effect. See *Chisholm v. Gilmer*, 299 U. S. 99, 57 S. Ct. 65 (1936), and *Honeyman v. Hanan*, 302 U. S. 375, 58 S. Ct. 273 (1937).

<sup>14</sup> See Benjamin, *ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK* (1942) 38.

practice make it difficult for the respondent to prepare his case, but it often results in wasting the time of the agency. The generality of a complaint, or notice of hearing, may serve to put formally in issue a host of matters on which there is really no question. On an application for issuance of a license, for example, the applicant must sometimes put in lengthy proofs on such broad issues as public convenience, interest, and necessity, although there may be but one narrow issue with which the agency is concerned.

There can be no question but that a complaint which sets out allegations of alleged wrongdoing in general form, substantially in the language of the statute, puts the respondent to unnecessary difficulty in ascertaining the gist of the actual complaint and thus renders it difficult for him adequately to prepare his defense.

Not only would the rights of the respondents be better protected, but the agencies themselves could act more efficiently, if they voluntarily adopted the suggestions as to particularity in pleading made by the Attorney General's Committee.<sup>15</sup>

Much of the difficulty could be solved by agency insistence on careful investigation and consideration prior to the institution of formal proceedings. This would have many collateral advantages. It would tend to eliminate the inauguration of proceedings in cases where the challenged party was in fact not guilty of wrong. It would facilitate the satisfactory adjustment, without contest, of cases where the respondent would, upon learning precisely what charge was made and what action was proposed, admit the facts and agree to the entry of a consent order disposing of the case. Finally, by making possible a better statement of the case in the initial pleadings, it would facilitate the trial of contested matters.

<sup>15</sup> Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941) 234.

The initial notice should be the crucial one. While the requirements of due process can be satisfied in many cases by a specification of the charges during prehearing conferences or even by the device of posthearing notice of contentions and issues (coupled with an opportunity for further hearings if requested by the respondent), yet these are at best time consuming and inefficient. The entire course of administrative adjudication can proceed most efficiently, most fairly, and with greatest assurance of doing justice, if at the outset of the case the parties are advised fully and with particularity of the nature of the claims to be made and the issues to be argued.

## 2. Sufficiency of Complaint: Appraisal of What Is to Be Heard

Procedural due process requires that the respondent in administrative proceedings shall be duly informed of the nature of the charge made against him, in order that he shall have ample opportunity to present an appropriate defense to the case that may be made against him.

However, the courts have not generally required that such information be contained in the complaint or other moving papers which institute the administrative proceedings. In many types of cases it is enough if the respondent is apprised of the agency's claims, and the issues involved, at any stage of the proceedings, provided always that after such information becomes available an opportunity remains to the respondent to present his defense to such claims before the issuance of the final order. It has been suggested that four means, at least, may be appropriate in various types of proceedings as a means of apprising the parties of the issues: (1) a specific complaint; (2) an examiner's tentative findings, to which exceptions may be taken; (3) an issue-defining



oral argument; and (4) the filing of briefs in which definite points are stated.<sup>16</sup>

The absence of all four of these devices would invalidate the administrative procedure (in cases where its function is fundamentally judicial in nature). But it is not required that all four be utilized in every case. The absence of a specific complaint may often be remedied by the subsequent employment of alternative devices as a means of advising the respondent of the agency's claims and the issues. Whether or not an insufficiently definite complaint has been satisfactorily remedied by the subsequent proceedings is an inquiry that rests largely upon the facts of the individual case. If in fact the parties are fully acquainted with the basis of the agency's claims, for example, a formal objection to the inadequacy of the agency's complaint will be unsuccessful.<sup>17</sup> If the hearings are held at intermittent intervals and the respondent has sufficient time, after learning the basis of the agency's claims when it is putting in its evidence, to prepare and present his defenses, then the lack of particularity in the complaint is immaterial.<sup>18</sup> If the respondent elects to proceed with the defense, without objecting to the insufficiency of the complaint, he may be held to have waived the point.<sup>19</sup>

In cases where decision is not affected by the course of developments subsequent to the issuance of the complaint, and where the court must pass upon the sufficiency of the complaint, standing alone, the court must undertake to determine whether the respondent is in fact likely to be prejudiced by the vagueness of the complaint. To some

<sup>16</sup> *Morgan v. United States*, 304 U. S. 1, 58 S. Ct. 773, 999 (1938).

<sup>17</sup> *National Labor Relations Board v. Piqua Munising Wood Products Co.* (C.C.A. 6th 1940), 109 F. (2d) 552, 557.

<sup>18</sup> *National Labor Relations Board v. Remington Rand, Inc.* (C.C.A. 2d 1938), 94 F. (2d) 862.

<sup>19</sup> *Brahya v. Federal Radio Commission* (App. D. C. 1932), 59 F. (2d) 879.

extent, this determination is affected by the character of the administrative proceeding.

Where the scope and nature of the administrative decision which may be made at the hearing is ascertainable in advance—where it will be an order granting or denying a license, or ordering a respondent to cease and desist from particular practices—it is more frequently required, and properly so, that the initial pleadings must indicate the issues which are to be considered at the hearing. If the agency contemplates revocation of a license on particular grounds, the respondent is in fairness entitled to know in advance of the hearing what those grounds are. On the other hand, where the character of the administrative decision which may follow the hearing is not fixed and certain, it is often not practical to define the issues with great particularity in the initial pleadings, and a very general notice of the subject matter to be considered will be deemed sufficient.<sup>20</sup>

<sup>20</sup> Thus, in *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 50 S. Ct. 220 (1930), where market agencies had filed proposed tariff schedules increasing their rates, and the administrative authorities, after suspending the proposed rate schedules, gave notice that at statutory hearings they would consider whether a further order should be made as to the rates, it was held that this sufficiently apprised the parties of the possibility that the administrative authorities might prescribe a new schedule of rates even lower than those under which the agencies had been operating before an increase was proposed. The court relied in part upon the circumstance that the statute was deemed to put the parties on notice as to the type of order which might ensue; and the court was impressed by the fact that there was no showing that the market agencies had been misled or that they had failed to put in evidence anything which would have been adduced had the notice stated more particularly the nature of the contemplated order. The difficulty of knowing in advance what type of order might be deemed proper was also adverted to. Similar considerations are reflected by the decision in *Pearson v. Walling* (C.C.A. 8th 1943), 138 F. (2d) 655. In that case, the administrator of the Wage and Hour Division of the U. S. Department of Labor had published general notice as to the meetings to be held by a statutory "Industry Committee," which would be charged in part with the duty of defining the "Lumber and Timber Products" industry, and establishing a minimum wage to be paid to certain employees in that industry. A definition was promulgated broad enough to include manufacturers of bows and arrows, and it was held that there was no deprivation of due process because a manufacturer engaged in that particular business had not been apprised in advance that the definition might be made broad enough to include

Despite the difficulty of giving in advance an accurate description of the issues which may arise in the course of the administrative proceeding, if the failure sufficiently to describe the issues has in fact caused actual prejudice to the respondent, relief may be afforded. The same result is sometimes reached where it seems entirely probable that such prejudice would follow.<sup>21</sup>

Unless it can be shown that actual prejudice has been suffered, or that it can be fairly presumed that it will inevitably result, the courts are little inclined to insist that the administrative agencies use their pleadings as a means of apprising the respondent of what is to be heard.<sup>22</sup>

### 3. Bills of Particulars

One reason why administrative agencies prefer to restrict their complaints and charges to vague generalities is that at the time of the issuance of such documents, the particulars

his enterprise. There was no showing that the particular manufacturer was injured because of the very general character of the notice as to the convening of the committee. Further, it would obviously be extremely difficult to specify what particular types of enterprise might be deemed to fall within the lumber and timber products industry. The precise scope and character of the administrative order could not be foreseen.

<sup>21</sup> In *Carl Zeiss, Inc. v. United States* (C.C.P.A. 1935), 76 F. (2d) 412, the Tariff Commission gave notice that it intended to investigate difference in cost of production of "optical instruments 'of a class or type used by Army, Navy or Air Forces for fire control.'" The Zeiss Company was not interested in the particular types of optical instruments then in use, but was vitally interested in related types of optical instruments which were suitable for such use. It did not participate in the hearings. At the conclusion thereof, a determination was made that applied to all types of optical instruments suitable for such use by the Army and Navy. The notice was held insufficient, the court saying that information as to an investigation of optical instruments of a class or type *used by* the Army and Navy did not suggest to interested parties the holding of an investigation relative to optical instruments *suitable to be used by* such armed forces.

Many of the state courts are more inclined to insist on definiteness and particularity in administrative pleadings (from the viewpoint of accurately apprising the parties of what is to be heard) than are the federal courts. See, e.g., *Abrams v. Daugherty*, 60 Cal. App. 297, 212 Pac. 942 (1922); *Kalman v. Walsh*, 355 Ill. 341, 189 N. E. 315 (1934).

<sup>22</sup> *Consumers Power Co. v. National Labor Relations Board* (C.C.A. 6th 1940), 113 F. (2d) 38; *Republic Steel Corp. v. National Labor Relations Board* (C.C.A. 3d 1939), 107 F. (2d) 472; *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board* (C.C.A. 7th 1940), 111 F. (2d) 869.

of the case may not yet be known. But before the hearing is reached, or at least before it is completed, the attorney handling the case for the agency must learn such particulars; and accordingly some agencies have adopted fairly liberal practices as to the furnishing on request of further statements of details and particulars. Other agencies, unfortunately, appear to have a fixed rule against it.<sup>23</sup>

Much would be gained by a further development of the practice of furnishing bills of particulars, wherever practical.<sup>24</sup>

Such a practice would eliminate most of the vice inherent in the vagueness and incompleteness so often found in the original complaint. Needless litigation might often be avoided by providing in rule or statute for the issuance of bills of particulars on the same basis as that on which they are available in judicial proceedings.

But the granting of such relief rests largely within the discretion of the agency. Denial of a request for particulars cannot be attacked successfully unless it is clear that actual prejudice has resulted. The courts will not presume prejudice.<sup>25</sup>

<sup>23</sup> Beer, *FEDERAL TRADE LAW AND PRACTICE BEFORE THE FEDERAL TRADE COMMISSION* (1942) 194.

<sup>24</sup> The degree of particularity which can be achieved varies, of course, in accordance with the nature of the proceeding. Where the hearing is directed to the determination of justiciable questions (as in most license revocation cases and many unfair labor practice or trade practice cases) detailed specification is ordinarily feasible. But in other types of cases, particularly where the hearing is directed primarily to the establishment of a mass of factual data which will guide the agency in reaching a decision that is largely a matter of policy—as in some cases before utility commissions—it is frequently impractical to do more at the outset than to indicate the general subject to be investigated. In this type of case, where the specification of particular issues of fact and law may be left to be developed at the hearing itself, opportunity should be given for supplementary presentation of evidence and further argument. See Benjamin, *ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK* (1942) 78.

<sup>25</sup> On the contrary, it is assumed that no actual prejudice would result from a denial of particulars, where the administrative hearing was conducted at intervals. *National Labor Relations Board v. Remington Rand, Inc.* (C.C.A. 2d 1938), 94 F. (2d) 862. See also *Locomotive Finished Material Co. v. National Labor Relations Board* (C.C.A. 10th 1944), 142 F. (2d) 802; and *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board* (C.C.A. 7th 1940), 111 F. (2d) 869.

Even in cases where it is conceded that simple fairness would have required the furnishing of the requested particulars, it has been held that the respondent can have no relief other than to apply for leave to adduce additional testimony.<sup>26</sup>

#### 4. Amendments of Pleadings; Variances

No problem is presented by amendments of a formal or technical character, correcting mistaken averments as to names, dates, places, figures, or other minutiae of pleading. Such amendments can be made with little if any formality, and no prejudice results.

Nor is much difficulty encountered from the allowance of amendments, which enlarge or otherwise alter the substance of the charge, if they are made on due notice prior to the hearing. Even though such amendments may incorporate matters arising subsequent to the institution of the administrative proceedings,<sup>27</sup> yet no harm comes from the allowance thereof so long as adequate time is given the parties to prepare and meet the additional charges.

Not infrequently, amendments raising new issues are proposed at the hearing itself. Then the question is whether or not a continuance will be granted to enable the respondent

<sup>26</sup> *E. B. Muller & Co. v. Federal Trade Commission* (C.C.A. 6th 1944), 142 F. (2d) 511. Such holdings, it might be said, overlook the fact that the whole course of a hearing and the entire complexion of the case is quite different where the respondent must feel his way along in the dark than where he knows in advance exactly what claims and issues he must meet. Putting in additional evidence, after the hearing has been completed, does not correct the harm that has been done. Where this harm can be clearly demonstrated—as where the refusal of particulars has in effect deprived the respondent of a right of cross-examination—relief is sometimes granted, and the administrative proceedings set aside. *Powhatan Mining Co. v. Ickes* (C.C.A. 6th 1941), 118 F. (2d) 105.

<sup>27</sup> *National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350, 60 S. Ct. 569 (1940); *National Labor Relations Board v. Piqua Munising Wood Products Co.* (C.C.A. 6th 1940), 109 F. (2d) 552; *Lehigh Valley R. Co. v. American Hay Co.* (C.C.A. 2d 1914), 219 Fed. 539.

to prepare his proofs on the new issue. Continuances should be freely granted, on a claim that a party requires additional time to prepare his case.<sup>28</sup> But there seems to be no clear right to such a continuance; a large measure of discretion is vested in the administrative agency.<sup>29</sup>

Where a variance between the complaint and the proof is not corrected at the hearing, a question arises as to whether an order may nevertheless be entered appropriate to the factual situation disclosed at the hearing. The modern trend toward the allowance of amendments to the pleadings to conform to the proofs, even in court proceedings, is quite properly reflected in the decisions which permit at least an equal degree of flexibility in the procedure of administrative agencies.<sup>30</sup> But this liberality should not be relied upon to permit an administrative order to stand where it appears that the departure at the hearing from the issues raised in the pleadings probably prevented the parties from having a full and fair hearing.<sup>31</sup> In this type of case, no clear demonstration of prejudice should be required. Because of difficulties of proof, a convincing showing of probable prejudice should

<sup>28</sup> It is incumbent upon the party seeking a continuance to demand it promptly. *Harris v. Hoage* (App. D. C. 1933), 66 F. (2d) 801.

<sup>29</sup> *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 59 S. Ct. 206 (1938); *Jefferson Elec. Co. v. National Labor Relations Board* (C.C.A. 7th 1939), 102 F. (2d) 949. If it is clear that the denial of a continuance is an abuse of discretion, the courts may grant relief. *Wallace v. Allen*, 115 Pa. Super. Ct. 347, 175 Atl. 878 (1934), where the complaint in a workmen's compensation case alleged physical injuries, and the claimant at the hearing sought to establish that he was suffering from traumatic hysteria.

<sup>30</sup> *Armand Co., Inc. v. Federal Trade Commission* (C.C.A. 2d 1936), 84 F. (2d) 973; *National Labor Relations Board v. Swift & Co.* (C.C.A. 7th 1940), 108 F. (2d) 988; *M. H. Ritzwoller Co. v. National Labor Relations Board* (C.C.A. 7th 1940), 114 F. (2d) 432; *Earl W. Baker & Co. v. Maples*, 155 Okla. 105, 8 P. (2d) 46 (1932); *Sears v. Peytral*, 151 La. 971, 92 So. 561 (1922); *Felix Coal Co. v. Jones*, 254 Ky. 190, 71 S. W. (2d) 430 (1934).

<sup>31</sup> *Alton & Southern Railroad v. Illinois Commerce Commission*, 316 Ill. 625, 147 N. E. 417 (1925); *Deadwyler v. Consolidated Paper Co.*, 260 Mich. 130, 244 N. W. 484 (1932); *Vaughn v. Solvay Process Co.* (La. Ct. of App.), 176 So. 241 (1937).

be sufficient. As noted from the decisions cited, the cases on this point exhibit considerable contrariety of result, reflecting in part different factual situations and, in part, differences of judicial philosophy.

#### 5. Respondent's Answer; Subsequent Pleadings

The generality of the initial pleadings, so typical of administrative procedure, begets a like generality in the answer, in cases where an answer is filed. Often, the answer amounts to little more than a plea of the general issue, with notice of special defenses frequently appended. The transmutation from the common-law art of issue pleading to the code pleading of facts and thence to so-called notice pleading (inappropriately named, since the theory proceeds largely on the assumption that the respondent has actual knowledge or notice of the claims and accordingly need not be particularly notified thereof in the pleadings), which has largely affected the pleading practices of the administrative agencies, is thus seen to be far from an unmixed blessing. While it eliminates technicalities, it sometimes produces a situation where the pleadings serve no useful purpose—where, for example, the respondent does not know the exact claim of the agency and the agency is not aware of the respondent's defense, until a prehearing conference is held or until the matter comes on for hearing.

Administrative agencies frequently pay but little attention to the respondent's pleadings. Replications and rejoinders, or their equivalents, are uncommon in administrative procedure. A vague complaint and a general denial are typical.

Where, however, a respondent presents, by way of defense in his answer, allegations of matters which he seeks to prove but which in the opinion of the agency are irrelevant to the

issues tendered by the complaint, the agency may strike such allegations from the answer.<sup>32</sup> This is done where the agency believes that the hearing of the proposed proofs might unnecessarily delay the case, or if it appears that the prime motive of the pleader is to confuse the issues.

<sup>32</sup> *International Ass'n of Machinists, Tool & Die Makers Lodge No. 35 v. National Labor Relations Board* (App. D. C. 1939), 110 F. (2d) 29, aff'd 311 U. S. 72, 61 S. Ct. 83 (1940).