UNITED STATES DEPARTMENT OF LABOR
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Report on the Work

of the

National Defense Mediation Board

March 19, 1941–January 12, 1942

Bulletin No. 714

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FOREWORD

The National Defense Mediation Board was the ultimate authority under the President of the United States, which dealt with labor disputes that threatened to impede the defense effort in the period immediately preceding Pearl Harbor. The Board was established on March 19, 1941, about 9 months after the beginning of the defense program. It was superseded by the National War Labor Board on January 12, 1942, about 1 month after the United States entered the war. During the 10 months of its existence, the Board dealt with 114 disputes that had been certified to it by the Secretary of Labor, a total of 118 cases.

The importance of this report on the work of the National Defense Mediation Board is too obvious to require emphasis. It seems appropriate that this report should be made available by the Bureau of Labor Statistics, the Bureau which published the analysis of the activities of the first War Labor Board (1917–19), in its bulletin No. 287. However, a distinction should be made between the nature of this bulletin and the earlier one. This bulletin consists, essentially, of the report by the staff of an independent agency, rather than a report by the Bureau's own staff. It is not a record of the completed history of the settlement of war-time disputes, a project which must be deferred until the close of the war. Meanwhile, it is important to preserve, for present-day administrators and future students, the record of the methods used and the results attained in the handling of the most difficult labor disputes which developed in the period of active preparation for national defense. The fact that the original Board has been superseded by another agency makes appropriate the separate publication of the report. No other comprehensive report was made by the National Defense Mediation Board.

To the manuscript as submitted for printing, the Bureau of Labor Statistics has added part V, which contains certain documents that may contribute to a more complete understanding of the disposition of cases referred to the Board. The need for including those documents arises because of the fact that action was taken by other agencies in four of the Board's cases: No. 36, *North American Aviation;* No. 46, *Federal Shipbuilding;* No. 51, *Air Associates;* and No. 20B, *Captive Mines.* Part V, supplied by the Bureau, consists of the executive orders and other decisions reached after the work of the National Defense Mediation Board on these cases was completed.

A. F. Hinrichs,
Acting Commissioner, Bureau of Labor Statistics.

PREFACE

The following study of the work of the National Defense Mediation Board was prepared upon the Board's request and with its cooperation by Louis L. Jaffe, professor of law, University of Buffalo Law School, and William Gorham Rice, Jr., professor of law, University of Wisconsin Law School.

The Board was created by Executive order on March 19, 1941, and was dissolved by the Executive order of January 12, 1942, which created the National War Labor Board. The study treats of the entire work of the Board and, in addition to the body of the report and appendices, there is a brief report of each of the cases handled, together with the full text of all recommendations.

The study treats of the powers, organization, and practice of the Board, and analyzes its efforts in shortening and preventing strikes; the methods used in settling cases; and the substance of the settlements on some outstanding issues.

The Board was in certain respects a unique experiment. The use of a tripartite body—public, employer, employee—in mediation was novel, and many entertained doubts whether it could and would succeed. The combination of mediatory and recommendatory power of a vaguely compulsory nature in a body without specific statutory authority raised practical problems of great moment to the public. These problems are also of special interest to practitioners and students of law and government. On the mediatory process, there is very little literature. It is hoped that this study will be of value to all who are concerned with the process of collective bargaining and the relation of the Government thereto.

I take this opportunity to express to Messrs. Jaffe and Rice the appreciation and gratitude of the National Defense Mediation Board for their unselfish and devoted work on this study.

WILLIAM H. DAVIS,
Chairman, National Defense Mediation Board.

Bulletin No. 714 of the

United States Bureau of Labor Statistics

Report on the Work of the National Defense Mediation Board

Introduction

As the United States of America plunged deeper into the rearmament program in the winter of 1940–41, the upward swing of industrial activity brought with it rises in the cost of living and emphasized maladjustments between labor and management throughout the country. As is usual in such times, the number of strikes increased from 147 in December 1940 to 316 in March 1941. The number of man-days of idleness due to strikes rose rapidly from 458,314 in December 1940 to 1,543,803 in March 1941.

Defense production and transportation were being seriously crippled by these strikes, which became more and more difficult to handle through the existing governmental machinery. This situation was dramatized by rioting which occurred in connection with such stubborn strikes as that of 14,000 men in four plants of the International Harvester Co., and 7,500 men at the Milwaukee plant of the Allis-Chalmers Manufacturing Co. The Lackawanna works of the Bethlehem Steel Co. were closed for several days and similar consequences threatened other plants of this company. The huge River Rouge plant of the Ford Motor Co. was constantly in danger of being shut down. By the middle of March it was apparent that additional measures had to be taken to cope with the situation.

On March 19, 1941, the President created the National Defense Mediation Board to adjust labor disputes in defense industries. Three steps were set forth in the Executive order for the Board to follow in settling these controversies: (1) Mediation in promoting collective bargaining between the parties before the Board; (2) if this fails, suggestion of voluntary arbitration; and (3) if both of these fail, findings of fact and recommendations, which may be made public. Disputes were to reach the Board only through certification by the Secretary of Labor after the United States Conciliation Service had been unable to settle them.

The Board was originally composed of 11 members—4 management, 4 labor, and 3 public. Labor's representation was equally divided between the American Federation of Labor and the Congress of Industrial Organizations. As the pressure of work increased, alternates from all 3 groups were added, increasing the membership to 41. The first chairman, Clarence A. Dykstra, was succeeded in July by William H. Davis.

Cases were heard by panels of the Board, representing the three groups. These panels exercised all the powers of the Board in settling disputes. Only three cases were brought before the full Board.

At the time the Board was abolished, January 12, 1942, 118 cases had come before it involving a total of 1,191,664 workers, and of these 118 cases, 96 had been settled.

Only four times did Board cases reach the President for further action.[1] The first case was that of *North American Aviation, Inc.*, where the union called a strike during mediation in violation of an agreement with the Board; the second and third, *Federal Shipbuilding and Dry Dock Co.*, and *Air Associates, Inc.*, where the companies refused Board recommendations; and the fourth, the *Captive Mines* dispute, where the union rejected a Board recommendation, and the C. I. O. members of the Board resigned. By Executive order the President ordered the Army to take possession of the first and the third plants, the Navy, the second. In the fourth case, the President's suggestion of arbitration was accepted. All plants had been returned to their owners by January 7, 1942. Other important controversies tackled by the Board were those involving 7,500 employees of the Allis-Chalmers Manufacturing Co., of Milwaukee, 160,000 employees of General Motors, 400,000 bituminous-coal miners, and 225,000 trucking employees in 12 midwestern States.

Shortly after the United States declared war, a national conference of labor and management, convened by the President, on December 23 agreed to settle disputes for the duration without resort to strikes or lock-outs and recommended the setting up of machinery for peaceful settlement. On January 12, 1942, pursuant to this agreement, the President set up the National War Labor Board, which took over all unsettled controversies still on the Mediation Board's calendar.

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[1] The documents in these four cases concerning developments after the cases passed out of the jurisdiction of the Board are given in pt. V.

Part I

General View of the Board's Activities

General View of the Board's Activities

Jurisdiction of the Board

The National Defense Mediation Board was established by Executive order [1] on March 19, 1941. The order gave the Board jurisdiction over such controversies as the Secretary of Labor certified to the Board, arising between any employer and any employees, which threatened to burden or obstruct the production or transportation of equipment or materials essential to national defense and which could not be adjusted by the Commissioners of Conciliation of the Department of Labor. The Board was thus restricted to such matters as the Secretary of Labor certified to it. It considered, however, that its jurisdiction embraced all parties necessary to the disposition of a certified dispute. In a few matters, unions not named in the original certification, upon showing interest, were permitted to participate in the hearings and negotiations.

The Board treated as binding the determination of the Secretary that the dispute threatened production. However, about the first of June, the Secretary created an advisory committee on certification, consisting of a representative of the Conciliation Service, a representative of the Labor Disputes Division of the Office of Production Management (later called the War Production Board), and the chairman of the Mediation Board or his representative. Thereafter, the Secretary was guided by the advice of this committee.

Before this the Board had rejected the certification of No. 24, *Busch-Sulzer Bros. Diesel Engine Co.*, a case that involved a dispute between two unions affiliated with the American Federation of Labor that threatened to hold up defense work. The reason for its refusal to exercise jurisdiction was that the dispute was not one between employer and employees. In this situation of intrafederation conflict (but for other reasons) the National Labor Relations Board also had refused to adjudicate representation controversies. Where the disputing unions were not members of one federation the Mediation Board took jurisdiction, as in No. 61, *Consolidated Edison Co.* Usually these disputes were over bargaining representation and they were handled solely for the purpose of expediting a determination by the N. L. R. B. as to which union should be the bargaining agent, and of maintaining, or securing resumption of, production pending N. L. R. B. action.

Composition of the Board [2]

The Board was composed originally of 11 members designated by the President, 3 representing the public, 4 representing employees,

[1] Appendix A sets forth this order, the Board's rules of procedure, etc. The National Defense Mediation Board should not be confused with the statutory National Mediation Board which is concerned with labor relations in rail and air transportation.

[2] Appendix C sets forth the complete personnel of the Board.

and 4 representing employers. Later many alternates were appointed; some of these were designated as alternates to 1 of the 11 regular members of the Board; others simply as public, employer, or employee alternates. In a matter to be disposed of by the full Board where a roll call was asked for, only the regular members or, in the absence of a member, his alternate, or in the absence of his alternate, an alternate of the same class, could vote. By a rule of the Board the employee alternates were subdivided into A. F. L. and C. I. O. groups. Alternates of one group could not vote as substitutes for members of the other group unless all members and alternates of the latter group were absent. Except in formal votes it was customary for alternates to take full part in the discussions and proceedings of the Board in its executive sessions. In these the Board concerned itself with matters of policy and with the general conduct of its business.

In ordinary course a case was handled by a division or special panel of the Board, one member (either regular or alternate) from each class,[3] the labor man being of the group to which the union in the case belonged (if any). Occasionally substitutions occurred when hearings were prolonged or numerous. In cases where both the A. F. L. and C. I. O. were concerned, there was one public member, two employer members, one C. I. O. member, and one A. F. L. member. It is believed that no employer member sat in a case involving himself or a corporation of which he was an officer or director. On only two panels were there labor members whose own union was a party: the earlier case, No. 17, *American Car and Foundry Co.*, involved merely a reference to the N. L. R. B.; and in the later case, No. 92, *Ingalls Ship Building Co.*, an international vice president of one of the party unions sat with the consent of the employer. As regular members of the full Board, two international officers of the United Mine Workers sat in the last stage of No. 20B, *Bituminous Coal Operators, Captive Mines.* They dissented from the decision and resigned from the Board.

In only two cases did the full Board bring to a conclusion a certified matter. These were No. 20B, *Bituminous Coal Operators, Captive Mines*, and No. 37 *Bethlehem Steel Co., Shipbuilding Division*, No. 20B, *Captive Mines*, had previously been heard by a panel, which had rendered a two to one decision, and after refusal by the union to accept the recommendations of the panel, the matter was referred to the full Board pursuant to an agreement between the parties and the President. In No. 37, *Bethlehem Steel*, because of the great importance and controversial nature of the issue, the panel referred the case to the full Board.

A member of the panel could request the full Board to consider the case in which he was sitting. This happened only in No. 37, *Bethlehem Steel Co.*, and No. 46, *Federal Shipbuilding Corporation.*[4] In the latter case the panel, by vote of two to one, was prepared to recommend that the employer agree to a union maintenance clause. The full Board discussed the issues but recommitted the case to the panel for final disposition. It was hoped by some of the members that the panel might find a way to bring the parties to agreement.

[3] A six-man panel heard No. 105, *Central States Employers' Negotiating Committee.* In the early cases extra employer or worker members frequently participated, e. g., cases Nos. 10, 17, 31, and 34.

[4] The panel-drawn recommendation in No. 31, *Employers Negotiating Committee*, was formally approved by the full Board when the union issued its blast of defiance.

The panel finally issued its recommendation, by vote of two to one. Thus with the exception of No. 20B, *Captive Mines*, No. 37, *Bethlehem Steel*, and to some degree, No. 46, *Federal Shipbuilding*, all of the Board's recommendations have been on the responsibility of a panel. Cases No. 46, *Federal Shipbuilding*, No. 20B, *Captive Mines*, No. 20C, *Alabama Mines*, and No. 65, *Solvay Process Co.*, were the only ones in which the panel recommendation was not unanimous.[5]

Initially the Board had difficulty in securing the constant and faithful attendance of employer and employee members at hearings. In one early case as many as four different labor members sat. It became a question whether part-time members picked for their great distinction and representative character could devote the needed time and effort to mediation as well as to their own important affairs. A great many alternates were added, enough, it would appear, to eliminate the early difficulty. It was found also that certain of the members could give more time than others and were used more often. In this way the Board was able to carry on its business with persons a part of whose usefulness was just the fact that they had not severed their industrial or labor connection. In several cases where no member was available, persons served on panels who had not been appointed to the Board. Usually these persons were about to be appointed as alternates.[6]

The Count of Cases

The Board received cases as follows:

TABLE 1.—*Date of acquisition of cases by the National Defense Mediation Board, by certification and by division*

Date of acquisition	By certification, case numbers	By division,[1] case numbers	Total cases
Mar. 19–Apr. 18	1–15		15
Apr. 19–May 18	16–34		19
May 19–June 18	35–42	20A	9
June 19–July 18	43–51		9
July 19–Aug. 18	52–67		16
Aug. 19–Sept. 18	68–79	20B, 20C	14
Total for first 6 months			82
Sept. 19–Oct. 18	80–93		14
Oct. 19–Nov. 18	94–105	4A	13
Nov. 19–Dec. 7	106–109		4
Total to outbreak of war			113
Dec. 8, 1941–Jan. 12, 1942	110–114		5
Total to supersession of the Board			118

[1] Case No. 4, *International Harvester*, was subdivided by the Board into No. 4 (plants where the C. I. O. was bargaining representative) and No. 4A (plants where the A. F. L. prevailed). Case No. 20, *Bituminous Coal*, was subdivided into No. 20, *Appalachian Mines* (C. I. O.), No. 20A, *Wisconsin Steel Coal Mines*, an Appalachian mine where the Progressive Mine Workers, A. F. L., had bargaining rights, No. 20B, *Captive Mines*, certain Appalachian mines owned by steel companies, chemical companies, and the Carter Coal Co., and No. 20C, *Alabama Mines*. Cases Nos. 4A, 20A, 20B, and 20C are counted as if certified on the date the Board separated them from their parent.

On November 11 or soon after, the members and alternate members of the Board who belonged to the unions comprising the Congress of

[5] One member "reserved" a minor difference of opinion in an interim recommendation in No. 4, *International Harvester Co.*

[6] Labor men who were never named to the Board served on panels in cases Nos. 9, 17, 25, 32, 80, and 81.

Industrial Organizations, in protest against the full Board's decision in the *Captive Mines case*, presented their resignations to the President. After that date the Secretary of Labor certified no C. I. O. cases to the Board. Regarding pending cases the Board took the position that it could be discharged of responsibility only by a settlement of the controversy, and it tried to effect such settlements wherever that seemed possible without action by the panels in the absence of C. I. O. representation.

The Practice of Voluntary Settlement

The principal purpose of the creation of the Board is expressed in the last words of the Executive order of March 19: "to avoid strikes, stoppages, and lock-outs." This objective was pursued directly by action directed to relieving the strike rash and indirectly by the preventive medicine of furthering sound collective bargaining and arbitration of differences. The Board followed both these techniques, mindful always that an agreement willingly reached is more enduring than one arrived at under undue pressure of any sort; occasionally it was thought that ultimate agreement was more likely to be reached without first achieving a resumption of production.

In three cases the President concluded that situations had arisen where production would be promoted by military occupation of a plant. In each of these cases the Board had used in vain the resources at its command of listening to the parties' complaints, of fostering direct dealing between them, and of mediation; and in two of the cases it had made formal recommendations. This possibility of compulsion necessarily formed a background to all the Board's work, but every effort was made by the Board to promote arrangements between the contending parties that satisfied them, in the belief that only such arrangements fully released the productive powers of labor and management in the Nation's defense effort.

The Critical Situation of Cases at Certification

Since cases were to be certified to the Board only when they "cannot be adjusted by the Commissioners of Conciliation of the Department of Labor,"[7] it was the most stubborn disputes alone that reached the Board; every case represented an actual or potential strike. Indeed, in nearly every case certified during the first 3 months, a strike was in progress or had been voted before certification was made.

Of the 118 cases, 64, or 54 percent, were strike cases.[8] After the Board took jurisdiction there were generated 24 more stoppages[9] of measurable duration, a few in cases that came to the Board as strikes and more in nonstrike cases. Altogether, 75 cases at one time or another confronted the Board with 88 distinct interruptions of production.

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[7] Rarely a case was certified in which the Conciliation Service had not intervened: No. 61, *Consolidated Edison,* and No. 105, *Central States Employers' Negotiating Committee* (parties agreed to arbitration by Board).

[8] Appendix B, table 7, and appendix D.

[9] Appendix B, table 8.

Methods of Maintaining Production Pending Final Settlement [10]

In several of these 64 strike cases settlement was effected before the Board heard the case. The efforts of other Government agencies, such as the Conciliation Service, paved the way for a steadily increasing proportion of settlements before hearing—occasionally settlements of the controversy, usually merely of the strike. Thus 9 strikes were ended pursuant to an agreement of the parties with the President, the O. P. M., or some other Government agency, immediately prior to certification—all late cases.

The whole controversy, including the strike, was settled after certification and before hearing in eight cases, of which one was a post-certification strike. In two of these the settlement was to remove the controversy to the N. L. R. B.; in the rest the parties reached a final settlement by contract at this stage of proceedings. In four cases an interim agreement ended strikes (one, a strike arising after certification) without a final settlement of the controversy. Even in those cases, however, in which the strike was settled without a hearing, the Board had a role: (1) In each it notified the parties that it would hear the controversy; (2) in several it requested the parties to resume production; (3) in one it requested the N. L. R. B. to act.

Without any formal agreement between the parties, strikes were ended by request of the Board. It customarily requested continuation of production in cases that reached it before interruption of production, and these requests almost always succeeded; likewise in many instances the Board successfully requested resumption of production before a hearing.[11] It is particularly worthy of note that so often unions were willing to abandon their strikes upon the mere promise of a hearing. Though a certain number of such strikes may have been partly motivated by a desire to get the controversy before the Board, its request to keep working was a novelty that proved very valuable. Its success soon made it the Board's usual procedure in all cases where it was likely to be conducive to maintenance of production, except in the rare instances in which suspension of work appeared to be a factor favorable to the effectuation of a lasting settlement.

Often these interim arrangements for ending or preventing an interruption of production were accompanied by a pledge by the employer that any wage agreement thereafter made should be retroactive to the date of the abandonment of the strike or of the expiration of a collective contract. This understanding was usual where a strike had occurred at the expiration of such a contract.

The Board's usefulness in promoting production pending adjustment of a controversy brought to hearing is noteworthy.

In the 28 cases that came up for hearing with a strike still in progress and in others that generated a stoppage at some later time, there were many instances of resumption of production before final settlement. This was achieved by various means, such as the parties' interim agreement or their compliance with a request or a formal recommendation of the Board.[12] Two strikes, arising after certification, in No. 36,

[10] Further analysis will be found in appendix D.
[11] Appendix B, table 8.
[12] Details are presented in appendix D.

North American Aviation, and No. 51, *Air Associates*, were ended by seizure of the plant by the Government, and the second of three strikes in No. 20B, *Captive Mines*, by an agreement sponsored by the President. Less than one-third of all the stoppages, including those that occurred after certification, lasted till final settlement of the case. Among these were the two other instances that evoked Presidential intervention, No. 46, *Federal Shipbuilding* (plant seizure), and No. 20B, *Captive Mines* (agreement to arbitrate). At the outbreak of war on December 7—and since the last week of November—no stoppage of production existed in any of the 30-odd cases before the Board, and none developed during the remaining weeks of the Board's life.

The following table summarizes the Board's record:

TABLE 2.—*Strikes at time National Defense Mediation Board received cases and those occurring thereafter, by mode of ending stoppage*

Mode of ending stoppage	Strikes existing at time Board received case	Strikes occurring thereafter	Total
Stoppages ended before hearing—			
By reason of certification	9		
By final contract of parties	5	1	
By interim contract of parties	3	1	
By reference to N. L. R. B	2		
By request of Board	17	2	
Total	36	4	40
Stoppages ended during or after hearing but before final disposition of case—			
By interim contract of parties	3	3	
By request of Board		3	
By formal recommendation of Board	9	3	
By plant seizure		2	
Total	12	11	23
Stoppages ended by final disposition of cases after hearing	16	9	25
Totals	64	24	88

Duration of Interruptions of Production [13]

A good test of the usefulness of the Mediation Board as a national defense agency is afforded by its record of speed in terminating and averting stoppages of production. The following tables show 110 cases (omitting 8 complicated or peculiar cases) divided into 8 categories and the corresponding average periods of work stoppage.

[13] Further analysis will be found in appendix D. For reasons indicated in connection with table 13 therein, cases Nos. 4 and 20 and their offshoots and cases Nos. 19 and 24 are not dealt with in the present section.

TABLE 3.—*Number of strike and nonstrike cases certified and average days of interruption of production*

Item	Number of cases certified—				
	I Mar. 19–Sept. 18, completed	II Mar. 19–Sept. 18, transferred to N. W. L. B.	III Sept. 19–Jan. 12, completed	IV Sept. 19–Jan. 12, transferred to N. W. L. B.	Total
Strike cases	37	3	9	9	58
Nonstrike cases	32	3	11	6	52
Total	69	6	20	15	110
	Average days of interruption of production				
Strike cases					
Average duration before certification of the interruption existing at time of certification	21.9	42.3	15.1	23.7	22.2
Average duration after certification of all interruptions	11.9	24.7	3.4	3.0	9.9
Nonstrike cases					
Average duration after certification of all interruptions	2.2	8.3	.1	1.2	1.9
All cases					
Average duration after certification of all interruptions	7.4	16.5	1.6	2.3	6.1

The duration after certification of all interruptions of production in the 38 cases (open and closed) certified before June 19 is 325 days; or 8.6 days per case. The duration after certification of all interruptions of production in the 37 cases (open and closed) certified between June 19 and September 18, inclusive, is 285 days; or 7.7 days per case. The duration after certification of all interruptions of production in the 35 cases (open and closed) certified after September 18 is 66 days, or 1.9 days per case.

The duration of all interruptions of production in cases before the Board from date of certification through June 18 is 308 days. (If the 8 excluded cases were included, the duration might be reckoned 378 days.) The duration of all interruptions of production between June 19, or from the date of certification if thereafter, and September 18, inclusive, is 226 days. (If the 8 excluded cases were included, the duration might be reckoned 236 days.) The duration of all interruptions of productions from September 19, or from the date of certification if thereafter, to January 12, 1942, is 142 days. (If the 8 excluded cases were included, the duration might be reckoned 168 days.) In all, interruption of production in the 110 cases while they were before the Board amounted to 676 days, an average of 6.1 days per case, as indicated above. Or, with the 8 excluded cases added, it might be reckoned that there were 782 days of interruption in 118 cases, an average interruption of 6.6 days per case.

The Board's increasing success in dealing with interruptions of production is further displayed by the following table and the accompanying chart, which shows that the percentage of those at work in pending cases rose from 0 percent in March to 100 percent in December. The high percentages during May, June, and July are due to the fact that No. 20, *Bituminous Coal Operators*, involving 400,000 men, was pending until the Appalachian contract was signed July 6, though the strike had ended April 30, 6 days after the case was certified to the Board.

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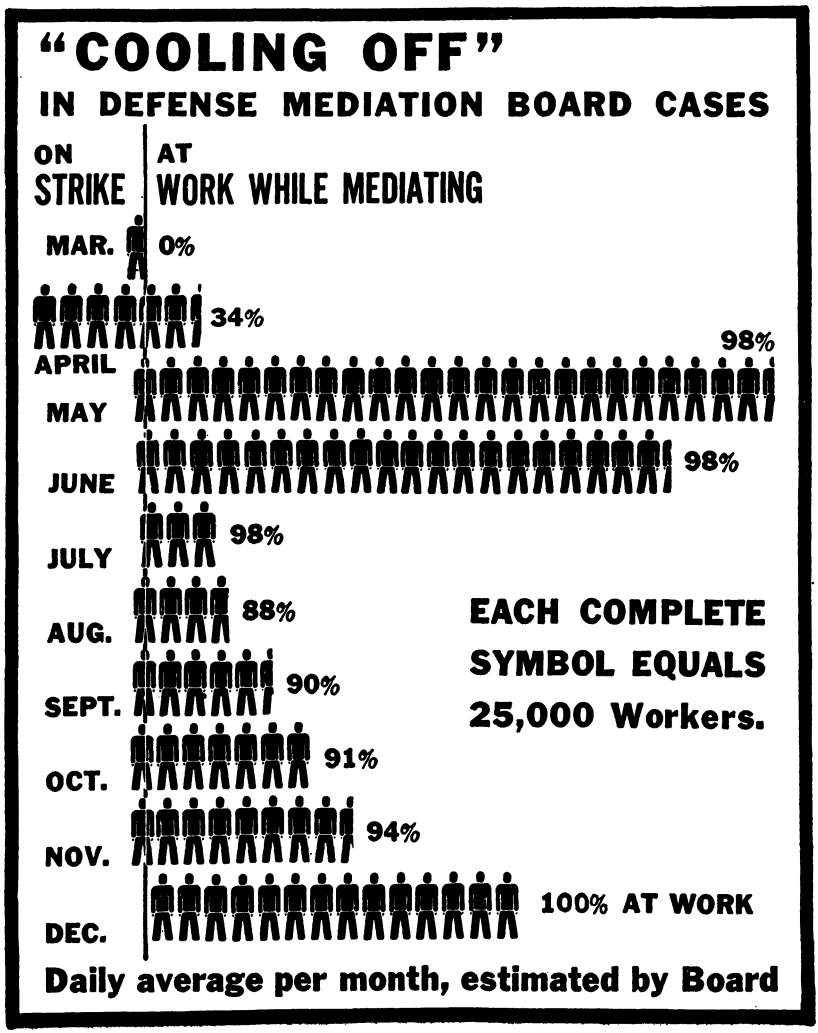
TABLE 4.—*Average number of workers on strike and at work, by month*

Month	Workers on strike and at work			
	Monthly average number of workers in pending cases	On strike	At work	Percentage at work
March [1]	17,825	17,825	0	0
April	161,634	106,909	54,725	34
May	615,092	13,234	601,858	98
June	503,892	8,000	495,892	98
July	76,016	1,853	74,163	98
August	93,197	11,495	81,902	88
September	141,970	13,567	128,403	90
October	177,425	16,668	160,757	91
November	216,230	14,195	201,935	94
December [2]	350,753	0	350,753	100

[1] March 27–31. [2] December 1–7.



Methods of Final Settlement

Although the forms of settlement are various, if not infinite, a rough classification is offered (based largely on the opinion of the Board's panel assistants) for the 96 cases that were concluded by the Board. Of these 96, 75 were cases that came to the Board before September 19. Of the 82 cases arising before September 19, 7 were turned over to the War Labor Board, and of the 36 of later origin, 15 were so transferred and 21 were settled by the Mediation Board.[14]

The variety of settlements is scarcely indicated by the following classification, for each panel chairman had his own methods, and each case presented its own procedural problems. The tripartite constitution of the panels added to the variety of approach utilized to bring the parties to a spontaneous or a recommended settlement.

When the Board made recommendations, they frequently referred to only one or two of the many issues which divided the parties at the time of certification. Moreover, in a few cases, what took the form of a recommendation was, in fact, terms accepted by the parties which one or both of the parties preferred to have appear to emanate from the Government rather than from direct negotiation. The recommendation usually proposed either a method of settlement of present or prospective disagreements (e. g. arbitration) or else substantive terms of settlement—in either case to be embodied in a contract; sometimes, however, it set forth a course of action for one party only, or a procedure of investigation and report by the Government.

In nearly every case, it need hardly be said, most issues were settled by direct negotiation. In the following table cases are listed as settled simply by contract whenever the Board was not active in framing any of the terms of settlement.

Where agreement was reached before the Board, it was not unusual for panel members to sign or initial the contract. In No. 28, *Bendix Aviation Corporation*, the union officers were unable to secure membership acceptance of the agreement. The officers asked that the matter be reopened. The panel took the position that the agreement being initialed was akin to a recommendation and that it would be bad practice to permit reopening; Judge Stacy, the panel chairman, thought that nevertheless the Board's responsibility in case of a strike threat might compel its further effort. Indeed, in No. 43, *Sealed Power*, where the workers struck against a recommendation, the Board undertook further negotiations in the field resulting in better terms for the workers.

Cases in which the contract or the recommendation principally related to present or prospective proceedings before the N. L. R. B., as well as cases in which the Board refused to take desired action because it would encroach on the province of the N. L. R. B., are classed as disposed of by reference to N. L. R. B. In case No. 53, *Gulf States*

[14] The conclusion of a case by the Board is a somewhat arbitrary concept, for the controversies with which it dealt are never finally settled. In the Board's records a case was ordinarily "closed" (and the Secretary of Labor so notified) soon after the completion of a collective agreement settling outstanding difficulties. But there were often clerical delays. Moreover, not every case eventuated in such an agreement; in which case the date of closure depended even more on clerical convenience. The date of conclusion used herein is usually earlier than the date appearing in the Board's records; it is the date when a settlement contract was completed, or, if the case did not lead to such an agreement, it is the last date on which the Board took an active hand in the controversy (as by referring it to the N. L. R. B. or by appointing an arbitrator).

Utilities, the Board was confronted with two distinct issues, one of which it referred to the N. L. R. B.[15] Cases settled without a hearing are not included in the first of the two following tables:

TABLE 5.—*Strike and nonstrike cases and method of disposal*

Method of final disposal of cases settled after hearing[1]	Cases arising before Sept. 19		Cases arising after Sept. 18		Total
	Strike	Nonstrike	Strike	Nonstrike	
1. By contract of the parties (sometimes with aid of agencies other than Board)	11	6	3	2	22
2. By contract of the parties with suggestions of the Board or its agents	6	8	4	5	23
3. By contract of the parties pursuant to formal recommendation of the Board	12½	10	1	2	25½
4. By acquiescence of dissatisfied party in formal recommendation of the Board	1			2	3
5. By reference to N. L. R. B.	5½	3			8½
6. By intervention of the President	1	1			2
7. By nonaction of the Board	1	1			2
Sum of cases	38	29	8	11	86

[1] These cases are identified by number in appendix B, table 10.

TABLE 6.—*Method of final disposal of all cases*

Item	Cases arising before Sept. 19	Cases arising after Sept. 18
Settled before hearing:[1]		
By contract of parties	5	3
By reference to N. L. R. B.	2	
	7	3
Settled after hearing:		
By contract of parties	17	5
By contract of parties with N. D. M. B. aid	14	9
By contract of parties with N. D. M. B. recommendation	23½	3
By acquiescence in recommendation of N. D. M. B.	2	1
By reference to N. L. R. B.	7½	
By intervention of the President	2	
By nonaction of N. D. M. B.	2	
	68	18
Transferred to N. W. L. B.	7	15
Total	82	36

[1] These cases are named in appendix D, paragraph on final settlement before hearing.

Compliance with Recommendations of the Board

In the great majority of cases going to recommendation, the recommendation was accepted by all parties. There were important exceptions, however.[16]

In No. 46, *Federal Shipbuilding Corporation*, the employer refused to accept a recommendation for union maintenance. In No. 51, *Air Associates*, the employer refused to accept a recommendation that employees be immediately returned to work. These refusals eventu-

[15] A similar dichotomy might be performed on several other cases that the Board did not formally divide, e. g., No. 50, *Tennessee Coal Co.* (where both halves were settled in the same way).

[16] An interim contract made at the Board's instigation was violated by a strike in No. 36, *North American Aviation, Inc.*

ated in Government seizure. In No. 83, *Agar Packing & Provision Corporation*, the employer rejected a recommendation that certain strikers be reinstated, with no further action by this Board. In No. 57, *Lincoln Mills*, the employer refused at first to accept recommendations for union maintenance and a voluntary check-off; but subsequently accepted in order to end an interruption which might have lost it Government orders. (Similar pressure was conducive to acceptance after long delay in No. 58, *Ohio Brass Co.*, and perhaps in other cases.)

In No. 31, *Employers Negotiating Committee*, the Board recommended that, pending a study of conditions in the industry, the union accept the employers' offer of union maintenance and a certain wage increase and end the strike, all else to remain in status quo. The International Woodworkers of America rejected this recommendation. On the same day the President proclaimed the existence of an unlimited national emergency. The Board immediately wired the president of the union calling attention to the fact that the President had "called upon loyal workmen as well as employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognized the rights of labor or of capital." The Board called upon the union to reconsider its decision and to bring the telegram to the personal attention of everyone with power to vote. When this was not done, the Board recalled representatives of the union to Washington. After 2 days of meeting with the chairman of the Board and the president of the C. I. O., the international president of the union issued a statement defying the Board. This was immediately answered by the president of the C. I. O. who said: "It is the considered, calm judgment not only of myself but of all C. I. O. representatives who are either members or alternate members of the National Defense Mediation Board that the interests of the I. W. A. will be better served by accepting the recommendations of the Board." He urged that local unions on strike hold meetings and consider these recommendations. Within a week local unions started returning to work under the terms the Board had recommended, which the international union through its officers finally accepted.

Another dramatic case was No. 73, *Kansas City Power & Light Co.* The controversy related to unfair labor practices and representation matters already in litigation under the National Labor Relations Act. The Board therefore recommended that the parties continue production pending the litigation. But members of the dissatisfied Brotherhood of Electrical Workers immediately struck and blacked out Kansas City. Whereupon the chairman of the Board issued a statement saying: "In this emergency the universal and ungrudging acceptance of the letter and spirit of the [National Labor Relations] Act by employers is a compelling obligation. It is an equally compelling obligation on the part of labor to seek and follow its legal remedy in preference to direct action in such cases as this. All the pressure of public opinion is called for to enforce these obligations. The National Defense Mediation Board, therefore, today calls upon the striking members of local No. B–412 to return immediately to work, and it calls upon the national officers of the American Federation of Labor and the international officers of the International

Brotherhood of Electrical Workers to exert all the influence they possess to that end." This appeal was successful forthwith.

In No. 3, *Cornell-Dubilier*, the union refused to call off a strike, as recommended, but soon after reached a full settlement with the employer. In No. 10, *Phelps Dodge Copper Products Corporation*, the union twice rejected recommendations of the Board to resume work on stated conditions. The Board was about to bring the case to the attention of the President when the crucial terms of settlement were agreed upon and production was renewed. In No. 20, *Appalachian Mines*, and No. 20C, *Alabama Mines*, there was no verbal rejection of what the Board urged, but the final terms of the contracts were somewhat more favorable to the union; in the *Appalachian case* the employers conceded certain demands which the panel had rejected. In No. 43, *Sealed Power*, the union struck in protest against the recommendations. The Board dispatched an agent to the scene. Eventually the union and the employer agreed on terms slightly more favorable to the workers than those recommended. In No. 77, *Duquesne Light*, the independent union purported to reject a recommendation that the bargaining unit be settled by the Pennsylvania Labor Relations Board, but the rival union obtained this redress from that board. In No. 92, *Ingalls Ship Building Corporation*, the union announced its refusal to accept the recommendations against union maintenance, but production continued nevertheless. In No. 72, *Aluminum Co.* (Vancouver), a recommendation that a master agreement be negotiated covering all Aluminum Co. plants in which the A. F. L. was the bargaining agent was rejected by the union, but the rejection involved no stoppage or disturbance of the status quo. The recommendation was in fact no more than a suggestion looking to the future solution of demands pressed before the Board.

Finally in No. 20B, *Captive Mines*, the United Mine Workers of America rejected 2 recommendations of the Board. The second of the 3 strikes in this case was the union's reply to a recommendation of the Board that the controversy over terms of employment (particularly union security) be settled by arbitral decision of the full 11-man membership of the Mediation Board or of a special joint arbitration board created by the parties, and that meanwhile mining be carried on without interruption under the terms temporarily existing. This second strike was terminated by an agreement engineered by the President, whereby the matter was submitted to the full Board for its arbitral recommendation. The union rejected this recommendation also, because it did not include the union shop, and it ordered a third strike. At the same time all C. I. O. members presented their resignations from the Board, and the President again intervened to restore coal production.

Part II

The Process of Mediation and Recommendation

The Process of Mediation and Recommendation

Powers, Purposes, and Procedures of the Board

The Board was authorized to make "every reasonable effort to adjust and settle" the disputes certified to it by assisting the parties thereto to negotiate agreements for that purpose. If the Board had had no other authority than this it would have been simply a mediation board. But the Board was authorized further to investigate, to conduct hearings, to make findings of fact, and to formulate recommendations for the settlement of the disputes and make public its findings and recommendations. The Executive order did not purport to make the findings or recommendations binding upon the parties. Nevertheless, a recommendation approached in force as well as in form an arbitral award. This was emphasized by the fact that great moral pressure was brought to bear upon the parties to embody its terms in agreements. In two cases where management refused to accept the recommendation, the President ordered the armed forces to take possession of the plant and then put the Army and the Navy in charge of the respective plants. The authority to recommend has tended to obscure the fact that the primary object and the greatest effort of the Board was directed to securing agreement of the parties by purely mediatory action. Thus in only approximately 30, or a little over one-third, of the 86 cases settled after hearing before the Board was it necessary for the Board to resort to its authority to recommend.[1] Furthermore, the recommendation might cover only part of the dispute and pave the way for agreement on the remainder of it. Thus about 70 percent of the wage demands and 70 percent of the union security demands were settled by agreement without the need of recommendation.

In each case the parties were asked to send representatives to a hearing. No party ever refused to attend. But when the C. I. O. members attempted to resign, the C. I. O. "withdrew" its cases. The Board, though postponing hearings indefinitely, stated that its responsibility to effect settlement could not be affected by a party's attempted withdrawal. It took a similar position in No. 105, *Central States Employers' Negotiating Committee*, when certain of the employers covered by the certification indicated their intention to withdraw. The Board would demand that employer representatives have authority to bind the employer and that the union or employee representatives be prepared to recommend to their constituencies whatever they agreed to before the Board. In only two cases, No. 77,

[1] In a number of cases there were interim recommendations arranging the terms for calling off a strike or continuing production until a permanent agreement could be reached. These included provisions concerning discrimination, retroactivity of the permanent agreement, and occasionally even wage and union security terms which were likely to become part of a final settlement. The figures in the text do not include interim recommendations. Also excluded are recommendations that an issue be settled by the N. L. R. B. pursuant to the N. L. R. A.

Duquesne Light Co., and No. 91, *John A. Roebling's Sons Co.* (at hearing of December 16), did a party (an independent union) send representatives avowedly not authorized to negotiate to the extent customary. In only one case, No. 51, *Air Associates*, did a party (en employer) refuse to continue to attend a hearing when dissatisfied with its course. All hearings were held in Washington except those held by special investigators. Parties sometimes protested this—employers complaining of the loss of time, unions of the expense. Parties were free to employ lawyers in the hearing as they wished. The employers used lawyers more frequently than the unions. Parties were permitted to introduce into the hearing as many persons as they saw fit. Anyone properly attending the hearing was permitted to participate either to make argument or to assert facts. There were no written statements of claim or denial. The Board had no power to subpoena.

The extent to which the proceedings were reported verbatim depended on the panel chairman. In time it became customary to record most of what was done in the presence of the full panel, but nothing of the negotiations conducted by the panel or by members of the panel with one or another of the parties. The transcripts of the hearings were relatively confidential, but were available for perusal by the parties in the office of the Board; parties were permitted to have copies of introductory statements made by themselves, but of nothing which would reveal the course and progress of the hearing. The transcripts, though often inaccurate, because of the informality of the proceedings, and not revised by the participants, are valuable at the least as showing the opposed positions, the arguments pro and con, and sometimes the reaction of the panel; and from them the statement and narrowing of the issues and occasionally the forming outlines of the agreement may be grasped. The further and ultimate maturation ordinarily took place off the record.

At the beginning of the hearing the chairman of the panel called upon each of the parties to present its claim. Thereafter, there was no set order. The object of the panel at this point was to assist the parties in finding mutually agreeable positions. At this stage there was no attempt to distinguish sharply between assertion of facts and argument. No oath was taken by persons who asserted facts. In the process of discussion the parties, unaided by the panel, might find that differences between them were not great enough to justify a deadlock. Certain parts of the discussion might involve an examination of the reasons why a party demanded or refused a particular solution. Participation of the Board in such a discussion was extremely valuable. The parties might feel greater obligation to make it appear to the Board that their conduct was rational than they would to each other. Given a statement of the reasons for and against a position it might be possible to find a formula which could not, in good faith, be rejected. When it appeared that general discussion was not bringing a solution it was customary for the employer representatives and the employee representatives to retire to separate rooms. The full panel or individual members of the panel would then confer with the separate parties in an endeavor to break the deadlock. The intent of the separate conferences was to promote the immediate consideration of proposals and counterproposals in an

uncoerced atmosphere. It enabled the panel member presumably most favorable to the party in question to secure a more exact idea of the concessions which were possible and at the same time to make available to the party the judgment of one who was both a nominee of the President and an individual presumptively and legitimately sympathetic to him. It would develop occasionally that the parties came to see the advantage of further negotiation either at home or in Washington without panel participation. The panel then withdrew, offering to hold itself in constant readiness to assist. The panel members thus applied continuous and persistent effort to the bringing about of agreement between the parties and in the majority of cases this effort was successful.

The presence of avowedly employer and employee members in addition to public members is novel in mediation. It might have been surmised that the representative members would each support their side and so stiffen the backs of the parties. The members were, however, conscious that they were appointed as public officials and were strongly moved by a sense of responsibility.

Team play, which characterized panel procedure, was due in part to the members' passion for settlement. This devotion kept tired Board members working on cases until 3 and 4 o'clock in the morning when they felt that by so doing they could cement an agreement. It was not intended that a member should give up his sympathy for and understanding of the point of view which he was chosen to represent and it was for each member to affect a reconciliation between private sympathy and public duty. The member with a known sympathy for a party and a sense of the public interest was able to prevail upon that party to make concessions which might not have been won by hostile threats or a supposedly disinterested pressure. This fact was of consequence in the success of the Board's mediating effort.

Yet is cannot be denied that the power to recommend was one of the circumstances conditioning the mediation process. The parties understood that failure to agree involved a gamble as to what the Board would recommend. The parties understood also that public opinion and even governmental force might compel acceptance of the recommendation. This meant, at least, that the parties would be impressed with the futility and wastefulness of assuming intransigent positions. It could be said to increase the likelihood of a serious examination of all possibilities.

Despite the existence of this reserved power the Board in each case indicated its extreme reluctance to use it and tried to convince the parties that its efforts, at least during the initial stages, were not to be interpreted as involving any judgment on the merits; that its suggestions did not carry the implication that its recommendations, should any be necessary, would follow similar lines. The Board particularly discouraged attempts by a party to draw from the Board hints as to how much it would give or as to whether some concession by the party would win some compensatory concession from the Board in the form of a recommendation or a refusal to recommend. Generally speaking, the Board was satisfied that it succeeded in convincing the parties that its intentions were mediatory. The positive values which flow from consent were not seriously impaired despite

the fact that agreement was negotiated under the auspices of a Board which might have exercised semicompulsory powers.

There came a time, however, in certain of the cases when the mediatory atmosphere began to yield to the sense that recommendations, or something approaching them, would be necessary. The cases in which this happened were not limited to those which issued in formal recommendation. The panel, for example, might make it clear that it would not recommend a union maintenance clause. Such an action was nearly equivalent to a recommendation since it was likely to place the demand in question beyond possibility of agreement. In an occasional case the Board let it be known that it would recommend a certain provision. This might increase the bargaining power of one party with respect to that specific demand or some other demand. At the same time it left the favored party free to press in the most desirable direction and the other party to choose the point at which it would yield. More or less persistent suggestions from the panel, all having a similar tendency, would make it clear that the panel was insisting upon or was preparing to recommend an agreement in something like the suggested terms. On the other hand, occasionally recommendations embodied the predetermined agreement of the parties, one of whom perhaps wished to avoid responsibility to his constituency for the bargain or to make it more persuasive and more likely to gain acceptance.

The Board was most reluctant to make recommendations with respect to pay, insofar as such a recommendation must depend upon a fact such as whether the employer in question was paying the prevailing wage. In a number of instances it was possible to arrive at a wage decision without any intense development of the facts. But the loose mixture of argument and fact customarily presented to the Board, and adequate for the usual process of mediation, did not always provide material sufficiently detailed or precise. In such cases, of which there were 26, the Board appointed special representatives or investigators, not members of its regular staff, who gathered information. The investigator sometimes, but not always, held a hearing. Among the investigators[2] were college professors, industrial engineers, lawyers, and a prominent industrialist. The investigator conferred with each party. He secured information from governmental and private research organizations. The investigator usually was asked to state his findings of fact and to suggest solutions. His report on occasion served as a basis for further collective bargaining, eliminating the need for formal recommendations. These references vary in importance. In one, No. 31, *Employers Negotiating Committee*, a five-man board investigated the entire wage structure of the Douglas fir lumber industry in the Pacific Northwest with a view to furnishing a stable and permanent base for labor relations. Not all of these references involved wage issues. In a few the Board's agent was told to promote further and continuous negotiation or simply to keep one or the other party quiet until a solution was found. In No. 20, *Appalachian Mines*, and in No. 20C, *Alabama Mines*, the Board itself conducted an examination into the facts. Here the parties presented upon their own motion and upon request detailed material. The

[2] Appendix C, list of Special Agents.

Board secured assistance also from the statistical and economic services of the Bituminous Coal Division, Department of the Interior. In No. 105, *Central States Employers' Negotiating Committee*, the Board secured the assistance of the Interstate Commerce Commission and the Bureau of Labor Statistics.

Though the Board did not usually give interpretations of its recommendations (and of course did not undertake to interpret contracts made under its auspices), an interpretation of a clause proposed by the Board was sometimes given by the panel chairman, as in No. 39, *Marlin Rockwell*, and No. 5, *Weyerhaeuser Timber Co.* (telegram to Snoqualmie Falls Lumber Co. from executive secretary of the Board after consulting panel). In No. 86, *Cleveland Graphite*, a further hearing was held when a keen controversy arose concerning the meaning of a contract made under Board auspices.

Principles and Precedents as Factors in Decision

The point was often made both inside and outside of the Board that unlike the National War Labor Board of 1917–18, this Board did not operate under formulated principles and that its disposition of one matter did not serve as a precedent in another; and there was a resolution by the Board to that effect. The distinction between the two Boards has been exaggerated since it is only with respect to the demands for the union shop and union maintenance that the question of formulating a policy was important or controversial. In a number of respects the present Board proceeded upon the basis of well understood principles though they may not have been made explicit. One of the principles of the War Labor Board was the recognition of labor's right to organize and to bargain collectively. Since this principle had been enacted into law, it was, of course, equally a principle of the present Board. The Board accepted as binding the provisions of the National Labor Relations Act together with the interpretations of these provisions by the National Labor Relations Board. Furthermore, the Board refused to permit one party to a collective agreement to open up an existing contract during its life unless the other party agreed. The principles of the War Labor Board provided that, in fixing wages, hours, and conditions of labor, regard should always be had to labor standards, wage scales, and other conditions prevailing in the localities affected and that minimum rates of pay should be established which would insure the subsistence of the worker and his family in health and reasonable comfort. These are principles which have either been enacted into law or so thoroughly accepted that inevitably they would be and were applied by this or any similar board.

It was on the issue of union security that the War Labor Board did formulate and the National Defense Mediation Board is believed not to have formulated a principle or to have acknowledged earlier decisions as precedent. In the case of the War Labor Board a conference of employer and employee representatives had agreed upon a set of principles prior to the establishment of the Board. Among these principles was one providing that strikes or lock-outs should not be resorted to for turning an open into a closed shop, or the reverse; that the union shop if established should continue; and that em-

ployer refusal to grant a closed shop was not to be deemed a grievance. It was understood that this commitment was given in return for the principle, which had not until then been accepted, that employers should not in any way interfere with the right of the workers to organize and to bargain collectively through chosen representatives. No such agreement preceded the formation of the present Board. It was the opinion, at least of the majority of the members, that the Board itself, being primarily a mediatory board, could not consistently adopt a set policy upon a matter concerning which there was basic disagreement between employers and employees. To some extent this attitude was a true reflection of the mediatory nature of the Board. It was emphasized by the fact that all recommendations of the Board, with the exception of those noted under "Composition of the Board," were made by panels. This permitted the equities of each case and the talents of particular Board members to play a greater part in the decision than if it were controlled by generalities. It made it possible to secure agreements based upon concessions which would not have been forthcoming if a set policy had blocked the way. The mediatory nature, however, of the Boards' process did not fully explain the refusal to adopt an explicit principle for union security claims, since the Board was also semiarbitral in character. The tripartite composition of the Board explained much. It had not only to solve the controversy before it, but to do it without disaffecting the Board members. The difficulty arose where it was called upon to take positions which seriously offended one or the other group and which could not be fortified by a reference to well-established governmental policy. A discussion of union security may make the point clearer.

Union Security [3]

In approximately half of the cases heard by the Board there were demands for some form of union security; these include the following types:

(*a*) *Closed shop.*—All persons employed must be union members when hired and must remain union members during employment.

(*b*) *Union shop.*—All persons employed must within a specified time after hiring become and remain union members.

(*c*) *Union maintenance.*—All employees who at the time of the contract were union members or thereafter become union members must maintain membership as a condition of employment.[4] (In one of the last cases the agreement made the clause applicable only to those individuals who specifically accepted it.)

(*d*) *Check-off.*—The employer must periodically deduct a stated portion of an employee's pay and transmit to the union the amount deducted as dues. The check-off might not require the consent of the member or it might require specific authorization; and in the latter case it might or might not permit revocation of the authority. The check-offs introduced into agreements under the auspices of the Board (none of them as a result of recommendation) were of the voluntary type with limited power to revoke.

(*e*) *Preferential hiring.*—Union members were to be given preference in employment. Such clauses varied in the extent to which preference must be given.

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[3] Further analysis will be found in appendix E.

[4] This is the only form of "union maintenance" recommended by the Board or contained in agreements negotiated under its auspices. But note No. 57, *Lincoln Mills*, appendix E. 2 (*d*). Other forms require the employer to fill places vacated by union members with union members or to maintain the same proportion of union membership which existed at the time of the contract.

(*f*) *Employer recognition or encouragement of union membership.*—These clauses were of great variety. In some of them the encouragement was confined to statements of good will or friendship contained in the agreement. In others the employer must make known his approval of union membership to each new employee. An occasional clause gave to the union exclusive privileges to use bulletin boards and other plant facilities.

(*g*) *Discipline of antiunion activity.*—These clauses required the employer to discipline by discharge, lay-off, or otherwise, persons whose activity imperiled the position of the contracting union. The clauses varied primarily with respect to enforcement procedures from a naked unimplemented promise of the employer to impartial arbitration.

In the 56 or so cases in which union security was demanded some 33 were disposed of by agreement without recommendation and in the other 14 that were closed, recommendations usually, but not in every case, became the basis for agreement. An earlier portion of this report has explained that the distinction between agreement and recommendation is a rough one. To what extent the difference of disposition is significant is to be considered in the light of those observations and the comments on union security in relation to specific cases noted here and in appendix E.

The Board made a recommendation in favor of the closed shop in only 1 case, No. 37, *Bethlehem Steel Co., Shipbuilding Division.* The closed or union shop was demanded in probably as many as 46 cases but in many of these cases it was not seriously presented and the failure to make recommendation signifies simply that the demand would be given serious consideration only in a very special case. The Board made a recommendation against the nearly equivalent union shop in only 1 case, No. 20B, *Bituminous Coal, Captive Mines.* It is possible, however, to treat cases in which union maintenance was explicitly denied, of which there are 4, as an implied denial of the union or closed shop. Both *Bethlehem* and *Captive Mines* were dealt with finally by the full Board.

The background of *Bethlehem* was this: The Navy Department, the Maritime Commission, and the Office of Production Management had established the need for some regional uniformity of labor conditions in shipbuilding in each of the four zones: Pacific Coast, Gulf Coast, Great Lakes, and Atlantic Coast. The Pacific Coast stabilization conference was the first to be held. The Bethlehem Steel Co. was invited but did not attend. The Government authorities brought strong pressure upon employers and employees for uniform wage standards and abolition of strikes. It asked them to embody these provisions in all collective contracts. The standards having been accepted,[5] negotiation of a so-called "master agreement" followed. This agreement included not only the zone standards but also many other terms to be incorporated into the contracts between the unions and each employer. An overwhelming majority of the employers employing approximately 80 percent of the workers agreed that the closed shop be one of the terms of this master agreement. Bethlehem alone refused to participate in this negotiation, which was strongly supported by the Government. The Board, therefore, considered its recommendation that Bethlehem become a party to the master agreement as an appropriate measure to further

[5] The legal significance of zone standards was in issue in several other cases, discussed in appendix G.

the interest of the Government in securing uniformity and stability in the shipbuilding industry of the West. This reason, perhaps more than any need of the union for protection, was determinative, but the Board's action gave color to the union's claim that it was entitled to the closed shop in exchange for making wage concessions practically forced by the Government and giving up the right to strike. On the other hand, that employers employing 80 percent of the men had agreed to a closed shop went not so much to the merit of the union's demand as it did to the justice of asking Bethlehem to accept a degree of uniformity that the Government conceived to be important to defense.

In the *Captive Mines case*, it was the union rather than the Government which was pursuing and had in very considerable degree established uniformity in working conditions. Taking the bituminous-coal industry as a whole, the union represented an overwhelming proportion of the employees, and it had secured union-shop agreements with nearly all of the commercial operators though with few of the operators of the coal mines owned by steel producers. The captive mine owners had never taken part in the industry negotiations and had not, formally at least, been asked to take part in negotiating the contract in question. Some of the Board members were influenced, too, by the fact that whereas in *Bethlehem* the closed shop would not exclude nonunion members from many other building-trade jobs, the union shop in the coal mines would cover practically all the jobs available to the men in question and so establish a union monopoly of all existing jobs. The Board had already recognized, as appears below, that where employees were asked voluntarily to forgo their right to strike as a contribution to national defense and it seemed likely that by so doing they would imperil their organization, the organization should be entitled to protection of some sort. So much might be legitimately deduced from the express Congressional encouragement given to organizations for collective bargaining. The mine workers, however, did not show the need for the union shop as a measure of present protection. In the absence of such need and in the absence of any Government policy requiring a union shop, the Board did not recommend the union shop.

The Board recommended the union maintenance clause in seven cases and explicitly refused to recommend it in four cases. In an early case, No. 5, *Weyerhaeuser Timber Co.* and *Snoqualmie Lumber Co.*, involving a group of lumbering companies on the Pacific Coast, a panel of the Board was instrumental through its suggestions in securing an agreement for union maintenance. There is no doubt that the panel considered that the union maintenance clause would be valuable in stabilizing employer-employee relations in a disturbed industry, but there is nothing to show that in that case or in four other cases in which the clause was agreed to without recommendation the panel would have recommended the adoption of the clause had it not been agreed to. The latest development of the clause was that agreed to in No. 111, *Hammond & Irving*, in which each employee member could elect whether the maintenance clause should be applicable to him. This compromise was suggested by the employer's claim that many of the present members were not satisfied

with the union or its leadership. The maintenance clause was first recommended in No. 31, *Employers Negotiating Committee*, and again shortly thereafter in No. 34, *Columbia Basin Area Loggers and Sawmill Operators*, both involving other sectors of the Pacific Northwest lumber industry. In No. 31 the employers offered the clause, and the Board in an interim recommendation urged the employees to accept it, which they, having demanded the union shop, very reluctantly agreed to do. In No. 34, the recommendation was based on a predetermined agreement of the parties. Similarly in No. 43, *Sealed Power*, and in No. 57, *Lincoln Mills*, the panel had some reason to believe, though erroneously as it would appear from the employer's subsequent protest, that the employer did not seriously oppose the demand. There remain No. 36, *North American Aviation Co.*, No. 44, *Western Cartridge*, and No. 46, *Federal Shipbuilding Corporation*, in which it was clear that the employer was opposed to the demand for union maintenance and in which the recommendation must be considered as based squarely upon the merits.

In *North American Aviation* the officers of the national union had not objected to the use of troops to break the strike. The indirect effect had been greatly to weaken the local union. There was an urgent need for reviving the union in order to assure stable labor relations, and the quarrel between local and national leadership made it doubtful whether the national leadership could restore it without the assistance of the maintenance of membership clause. In *Western Cartridge* it was clear to the panel that the employer had persistently fought unionization even during the course of proceedings before the Board so that the union, deprived of a strike weapon, would have been disabled from protecting itself against the employer's activities. Finally in *Federal Shipbuilding*, the union, by agreeing to the Atlantic Coast Zone Standards of wages, hours, and working conditions, was, in the interest of stabilization, limiting its importance to workers and giving up its right to strike at the very time that, due to the rapid expansion of the shipbuilding industry, a great number of new workers were being introduced without trade-union experience. It was thought that in such a situation a maintenance of membership clause was necessary to enable the union to protect its organization. These cases are the only ones in which Board panels found adequate reason for recommending the adoption of the union maintenance clause.

In a number of cases the Board refused to recommend union maintenance; it made no such recommendation after that in No. 57, *Lincoln Mills*, on August 7. In No. 21, *General Motors*, the Board, in refusing to recommend, pointed to the continuous and successful growth of the union. In No. 85, *Alabama Dry Dock*, it pointed to the existence of a contract which stated specifically that union membership should not be a condition of employment. In No. 92, *Ingalls Ship Building*, which bears some resemblance to *Federal Shipbuilding*, the Board was impressed with the fact that the employer had made freely an offer which included preferential hiring, union membership encouragement, shop discipline, and grievance procedure; this offer led the Board to believe that the employer harbored no antiunion motives but on the contrary was willing to cooperate with the union. In other cases the panel let it be known informally, by

express statement or by the tenor of its questions, that it would not recommend union maintenance clauses. In all of these instances it was obvious that the panel could find no special or distinguishing circumstance which would support the claim for union maintenance.

It is probably correct to state that the Board did not adopt a fixed or inflexible attitude toward demands for the union shop or union maintenance. Any such attitude would have excluded from consideration the intangibles which were important in a process in which mediation played so large a part: the relative strength of the opposed parties, the intensity of their attitude with respect to union security, the importance of the industry's operations for national defense. Nevertheless there does seem to have been a frame of reference which oriented the thinking of the Board on the issue of union security. The Board appealed to the unions in the interest of national defense to forgo, to as great an extent as possible, the use of the strike. The strike is an important instrument for maintaining the union's power and holding its membership. Where the special circumstances of the case indicated a threat to the union's security, which the abandonment of the strike instrument would have seriously increased, it was thought appropriate and just to recommend to the employer that he grant in return some protection in the way of a union maintenance or some related clause. Thus the union made a prima facie case if it showed a substantial membership and a special threat to its position. In the absence of such a showing, the cases required quite special circumstances to entitle the claim to serious consideration.

The union shop and union maintenance clauses are not the only instruments of security for a union that has statutory bargaining rights. Others were recommended—preferential hiring, encouragement by the employer of union membership, forbidding activity against the union on company time. These recommendations usually reflected existing practice in the shop or agreement achieved at the hearing and were put in the form of recommendation to give them greater weight.

The variety of devices available where the parties have been induced to take up a cooperative attitude is indicated by the 33 cases in which agreements were arrived at without the pressure of recommendation. Here it is appropriate to call attention to only one of these, namely, No. 6, *Allis-Chalmers* (Milwaukee); this case is important for a number of reasons. The Board succeeded in terminating a controversy which 76 days of strike had not settled. During all of this period the exact nature of the issue was never brought to a focus. An obscure bitterness probably generated by employer encouragement given earlier to a company union, later to a rival A. F. L. union, seemed to block exploratory negotiation. The mediatory processes of the Board were exactly suited to clarification. The company had purported to agree to the principle that an activity which "undermined" the C. I. O. union was a breach of shop discipline, but it had refused to implement the principle so acknowledged by adequate procedure; in any case the parties had been unable or unwilling to come to an agreement on the details. The company claimed to see in such procedure as the union demanded a sanction for compelling payment of union dues; it was unalterably opposed to becoming a party to machinery having such objectives. Upon the basis of general principles to which both parties acknowledged allegi-

ance, the Board brought the parties to accept an agreement which gave the union a favored status in the shop, which provided for an impartial referee, but which explicitly stated that the mere failure to pay dues should not be construed by the referee as an "undermining" of the union.

Wage Rates[6]

In the cases certified to and heard by the Board approximately three-fourths of them involved, among other demands, a demand with respect to wages. In the 66 or so wage cases which were completed, the wage controversy was determined by agreement without any recommendation in about 46 and with recommendation in about 20, though in 2 of these the recommendation was only as to wages pending mediation. Obviously there can be no very specific rules for the solution of a wage demand, and 20 cases are too few from which to draw conclusions as to general tendencies. Roughly speaking, it may be stated that the recommendations, with a few exceptions, proceeded along lines made familiar by arbitration practice. The Board was reluctant to recommend rates of pay. Such recommendations ordinarily would require a detailed examination of facts. As indicated above, the Board's regular procedure of developing facts was a loose one, well fitted to mediation but often insufficient for the needs of arbitration. It thus had to appoint special investigators where the mediatory process did not succeed, but more than this the Board understood that there were no firm principles to give a measure for a decision with respect to wage demands and so preferred that the parties find a solution by agreement.

In a few cases the Board has recommended no more than a procedure by which a rate can be determined as, for example, arbitration, an impartial grievance procedure, or study by efficiency engineers. In a number of cases the recommendations follow very closely the rates offered by the employer or fill in the wage scale more or less in accordance with the logic of the existing scale.

Where the Board itself has had to improvise the wage terms it has usually instructed its investigators to pay special attention to prevailing wage scales. A representative case is No. 39, *Marlin Rockwell.* The reasoning upon which the recommendation is based is the traditional one of applying existing patterns. It is usually debatable as to what industries, both in kind and location, are justly comparable. In this case the Board extended the area from the small town in question to a nearby metropolitan area which created a somewhat more favorable basis for the treatment of the union claim. Also, it considered as relevant, practices in industries different from that in question. In a later wartime case, No. 110, *Anaconda Copper Mining Co.*, however, the Board applied to electricians the industry rates in preference to the higher rates of nearby nonrelated industries; the case dealt with a skilled class already well paid; the Board recommended the increase offered by the company. In other cases, particularly those settled by agreement before the Board, the area of comparison is apt to be restricted to the industry, but the general lines of reasoning have been the same. In a few cases where no investigation was had the recommendation was the result of compromise between the union's demand and the employer's offer.

[6] Further detailed analysis will be found in appendix F.

Five of the wage recommendation cases are distinctive. Two of them, No. 20, *Bituminous Coal Operators, Appalachian Mines*, and No. 20C, *Bituminous Coal Operators, Alabama Mines*, involved demands for the elimination of differentials in pay between different areas of bituminous-coal production. In No. 20 the southern Appalachian operators opposed the abolition of the differential of 40 cents in the day wage rates in their favor and against the northern operators because of allegedly higher cost of production, and less favorable freight rates. An analysis of the facts presented by the Bituminous Coal Division showed that the realizations of the southern operators (even after absorption of the freight differential) were superior; that the elimination of the differential would add 3½ cents a ton to the cost; that at least one-half of this additional cost would be neutralized by adjustments in the minimum price structure established by the Bituminous Coal Act and the remaining 1½ cents was immaterial with reference to competition between the northern and southern fields. In No. 20C, involving the Alabama producers (traditionally a lower wage area than either the northern or southern Appalachian fields) the union demanded that 40 cents be added to the day wage rate so that the gap between the southern Appalachian and the Alabama rates would not be increased as a result of the elimination of the 40-cent differential between southern and northern Appalachian fields. The issue was framed entirely with reference to the claim of the Alabama operators that realizations were not sufficient to cover the additional 40 cents. The Board examined the current realizations and decided that they were sufficient to cover an additional 25 cents a day. The Board recommended further that should there be any increase in these realizations one-half of the profit should accrue to the miners up to, but not exceeding, an additional 15 cents per ton. In both of these cases the Board resolved the issue by criteria substantially agreed to by the parties. The difference was not as to the principles but as to the facts and these were found by a process essentially judicial.

In No. 21, *General Motors*, the union asked and received from the Board a recommendation for a general increase of 10 cents per hour. The employer had offered up to 5 cents for all employees and 5 to 10 cents for skilled workmen. There was no question but that the employer was paying the prevailing rate in the industry or that the hourly wage rates were generally higher than those in other industries. The union argued that there was a customary differential between the industry and certain other related industries such as steel, and that because steel had increased its rate 10 cents, General Motors should increase by the same amount. The Board took note of this fact and the fact that the seasonal nature of the industry tended to reduce the annual earnings of the workers. The Board stated that it did not take into consideration the possibility of increases in the cost of living or the possible decrease in production and opportunities for employment which might lower earnings of both company and employees. These contingencies might be taken care of when they arose by the clause in the contract permitting termination on 60 days' notice.

The Board recommended increased war-risk bonuses in No. 80, *American Merchant Marine Institute*. The practice had grown up of giving monthly bonuses to seamen who voyaged into dangerous belligerent areas and additional flat bonuses for duty into ports such as Suez

and Aden which were peculiarly hazardous. The monthly rate had, by agreement, been stepped up to $60. West-coast seamen asked for $90; east-coast seamen for $150. West coasters wanted the danger zone shifted from 160 east to 160 west meridian; east coasters wanted the Caribbean and the Canadian ports included. Suez had come to be worth $75; the seamen asked for $300; a few other ports were worth $45; they asked for $100, and $50 for certain ports not previously payable. There were other demands. These paint the picture. The ship owners were most anxious for an arbitration procedure which would cover future demands. The unions were set against this. The panel gave an $80 monthly rate; $100 for Suez plus $5 for every day laid over after the first 5 (lay-overs were usually 20 days or more). It added a few ports to the bonus list and rejected claims on many others. It set the one hundred and eightieth meridian as the danger line; it ignored the Canadian and Caribbean ports. For future disputes it recommended an arbitration board of three to be appointed by the President. The case is interesting because the situation was one in which practice was new and the criteria for rate making completely nebulous, though, when the Board entered, a structure had been worked out by contract. The Board gave what it considered a generous increase in return for the stabilization which it hoped would come from the arbitral board.

The last of the important wage determinations, decided after the actual commencement of war, was No. 105, *Central States Employers' Negotiating Committee.* The Committee, representing about 800 common and contract carriers engaged in motortrucking in the Central States, had collective agreements since 1938 with the Teamsters (I. B. T.) Union. The certification grew out of the negotiation of a renewal contract. The parties agreed to seek the offices of the Board and to abide by its determination. Thereupon the case was certified. The principal demands were for a raise in hourly rates from 80 cents to $1, in mileage rates from 3 to 5 cents, and for vacations with pay. The Board found that since 1937 truckers' wages had risen much faster than cost of living. However, "it seems unsound to take real wages in 1937, the year before the first general contract was negotiated, as necessarily the standard, or to assume that the lower standard of living then existing among the drivers was proper and should now be reestablished. We must differentiate between the standards reached by workers through individual bargaining or through bargaining in local and limited groups and those reached by industry-wide bargaining of the type with which we are here dealing. Absolute standards of fair real wages, of course, do not exist. But when dealing with organized industry it seems to us fairer and more desirable to take as the standard that balance between wages and living costs which has been reached through industry-wide bargaining.

"* * * As a general rule, it is only after some years of collective bargaining that the proper competitive balance between a newly organized industry and those longer organized is established. When that balance is reached, of course, can only be judged by rule of thumb. But it seems fair to assume from the evidence before us that if the proper balance in labor costs between this industry and its chief competitor, the railroads, has in fact been reached, it was only when the

advances established by the recently expiring contract became effective in 1940."

In view of the recent 10-cent increase given to the railroad workers by the President's Emergency Board, the Board awarded 10 cents per hour and 4 cents per mile more (roughly 12 percent in each class). It will be noted that, despite their somewhat greater elaboration, both the argument and the conclusion are strikingly similar to No. 21, *General Motors*. The companies complained of inability to pay increases. Here the Board replied that in setting a minimum it, like the last War Labor Board, must ignore inability to pay, but that that factor had led the Board "to restrict the increase * * * to the minimum which * * * other factors have seemed to dictate." "In dealing with this question, however, we must of necessity consider the industry in this case as a whole and not the individual carriers."

The Board awarded 1 week's vacation with pay to be taken, however, only in the form of actual vacation and not as a bonus. The companies had urged that the emergency was a bad time to inaugurate vacations. The Board, on the contrary, found that the demand for greater productivity, increasing strain and fatigue, would be well served by vacations. It cited a similar conclusion as to railroad employees by the President's Emergency Board and remarks of Prime Minister Winston Churchill with regard to holidays as an aid to staying power.

The Board had little occasion to consider the relevancy of a living wage as a criterion for fixing wage rates. This may have been due to the minimums set by and under the Fair Labor Standards Act, or to the fact that the unions did not rely upon the point. The Board occasionally adverted, as in General Motors, to the fact that the employer was able to pay the increase which it recommended. It will be remembered that the War Labor Board of 1918 took the position that an employer, regardless of its profit and loss account, must pay a reasonable price for labor. It was in No. 105, *Central States Employers' Negotiating Committee* that the Board first adverted directly to the problem and endorsed the position of the War Labor Board with the qualification, however, that profit and loss might be taken into account should the wage demanded be more than the reasonable minimum. The standard, however, of a reasonable minimum is what the representative units of the industry should pay in the light of the relation between its wage scale and wage scales of comparable industries. The qualification may therefore be of little comfort to marginal and submarginal operators, particularly where industry-wide collective bargaining has developed. In No. 20C, *Alabama Mines*, the Board made a recommendation which might incidentally threaten the profit margin of some producers, but it did restrict the increase to a point which it hoped would enable all operators to break even, and it counted upon changes in the legally fixed minimum price structure eventually to protect marginal operators. A number of cases settled by agreement seem to indicate that the poor financial position of the employer might lessen the pressure exerted by the Board for a solution which might otherwise seem appropriate.

It is even less possible to make generalizations concerning wage settlements where there was no recommendation. These settlements

have followed the expected lines of compromise and comparison with the practices prevailing in the industry. One agreement, however, is sufficiently important and distinctive to justify mention. That is the agreement which settled the controversy in No. 36, *North American Aviation.* Here the Board was instrumental in raising the general wage level in airplane manufacture. The union demanded a 75-cent minimum and 10-cent blanket increase. It argued the large profits of the industry and pointed out that the present minimums were much lower than in the body and motor plants of the automobile industry. North American's minimum was 50 cents, at which figure a great majority were employed, a fact partly explained by the large percentage of employment of workers new to the aircraft industry. Other airplane plants ran from 50 cents for starters to 63 cents after 6 months' time. The Board was at one time prepared to recommend a 60-cent starting rate, a 75-cent regular minimum, and a 10-cent blanket increase. The panel admitted that the wages at North American were not substantially out of line with those of other West coast plants, but it believed that in view of the enormous importance of airplanes in national defense the wage levels in this comparatively new industry should be brought to the level of wages in the more highly paid industries with which airplanes were comparable, such as steel and motors. The wages, the panel felt, should be of such a nature as to attract and keep contented the finest workers in the area. The parties agreed along these lines.

Breach of Collective Contracts[7]

In many cases the controversy concerned legal rights as well as economic interests. For issues of this sort, other forums are available. The Board did not, even at the request of the parties, handle controversies for which the law designated a specialized tribunal, such as the National Labor Relations Board. But it did not refuse to dispose of such matters as charges of breach of contract. In several cases its recommendation was based in part on a finding of invasion of legal rights or included a proposal to arbitrate such an issue. While the Board sometimes ignored charges of breach of contract as insignificant and devised no definite sanctions for strikes in violation of contract, it repeatedly asserted the obligatory character of collective agreements and sometimes phrased its recommendations expressly to provide redress for breach. This attitude is most clearly expressed in its handling of No. 2, *Vanadium Steel Corporation;* No. 78, *Bendix Aviation Corporation;* and No. 85, *Alabama Dry Dock & Shipbuilding Co.* In the last-named case the Board rejected all union demands because "this case is governed by the principle that a collective bargaining agreement once made should be given effect as long as it endures."

In a few cases the Board exercised its mediatory function, as in No. 101, *Chris Craft Corporation,* or recommended inquiries, as in No. 40, *Bohn Aluminum,* and No. 78, *Bendix Aviation Corporation,* with a view to voluntary modifications of contracts by the parties.

[7] Further detailed analysis will be found in appendix G.

Questions Involving the N. L. R. A.[8]

While the Board might encourage modification of existing contracts which it deemed unsuited to present circumstances, it would not recommend violation of the statute law nor even pass judgment on alleged violations where another agency had been created expressly to perform this function. This policy was proved repeatedly in cases where the union claimed that the employer was committing unfair labor practices under N. L. R. A., section 8, or where there was uncertainty about bargaining units or bargaining representatives under N. L. R. A., section 9. However, in the very first case heard by the Board, No. 3, *Cornell-Dubilier*, the Board did not respect an N. L. R. B. order to an employer not to bargain with a particular union. Here production had been interrupted and no other union was on the scene. In these circumstances the Board, in the prime interest of obtaining production, recommended bargaining prohibited by the N. L. R. B. order, which was under court review. Though the recommendation was rejected by the union because it involved ending the strike before terms of settlement were reached, bargaining before the Board soon led to a contract. The Board—or the employer—was more cautious in No. 6, *Allis-Chalmers* (Milwaukee), where the possibility of conflict between terms of the contract and the N. L. R. B. was expressly provided against in the collective contract.

When a representation issue had to be decided, the Board referred this issue—whether it was incidental or principal—to the N. L. R. B. This reference was made sometimes by informal suggestion even before a hearing, sometimes by request to the N. L. R. B. to expedite a pending proceeding, sometimes by formal recommendations to the parties. This procedure was expressly envisaged by the Executive order of March 19.

The Board's policy of self-limitation is further illustrated by No. 42, *Duquesne Light*, in which the Board recommended that the issue of representation be decided by the Pennsylvania Labor Relations Board and that the parties forgo any right of judicial review. Though the Board's recommendation was not accepted by all parties, the Pennsylvania Labor Relations Board's actual decision was.

The Board's relations to the N. L. R. B. extended also to the unfair labor practice field. Cases No. 22, *Minneapolis-Honeywell*, No. 48, *Scullin Steel*, No. 69, *Pullman* (Bessemer), No. 73, *Kansas City Power and Light*, and No. 107, *Burgess Battery*, involved questions both of representation and of unfair labor practices. Case No. 69 is particularly interesting because, at the suggestion of the Board, the parties agreed that they would accept the determination of the N. L. R. B. trial examiner on reinstatement demands, and renounced any recourse to the N. L. R. B. itself or to the courts. The refusal of the Board to intervene in matters entrusted to the N. L. R. B. of course extended to N. L. R. B. cases in the courts. Thus, in No. 73, the N. L. R. B. had started a contempt proceeding against the employer for violating an order of the N. L. R. B. affirmed on appeal. The Mediation Board, holding that this proceeding was progressing in due course, succeeded in persuading a union complaining of the employer's conduct to call off its strike and return to work pending the court's decision.

[8] Further detailed analysis will be found in appendix H.

The Board repeatedly obtained from N. L. R. B. sources, interpretations of the N. L. R. B. In No. 18, *John A. Roebling's Sons*, the Board asked the N. L. R. B. for an opinion on the propriety of allowing the bargaining representative bulletin board privileges superior to those accorded a rival union. The general counsel of the N. L. R. B. unofficially replied that no decisions forbade it. In connection with No. 46, *Federal Shipbuilding & Dry Dock Co.*, the President suggested that the Board consider "if necessary with the members of the National Labor Relations Board" whether the proposed maintenance of membership were violative of the National Labor Relations Act. The Board, supported by a formal opinion of the general counsel of the N. L. R. B. that "an employer does not engage in unfair labor practices * * * by including in a contract with a proper labor organization a maintenance of membership clause," agreed unanimously that the proviso of section 8 (3) of the N. L. R. A. constituted "an express statutory sanction of the maintenance of membership clause," and the chairman so reported to the President. The N. L. R. B. general counsel again gave the Board a formal opinion—regarding bargaining with unions in the absence of a majority representative of the employees—in No. 108, *Nevada Consolidated Copper* (Santa Rita and Hurley). In No. 54, *Armour*, the Board obtained a statement of the chairman of the N. L. R. B. that it would be proper for the employer to negotiate a master agreement covering many plants when the N. L. R. B. had certified the C. I. O. as representative in each of these plants as separate bargaining units. In No. 65, *Solvay Process*, the Board asked the N. L. R. B. to get from the Circuit Court of Appeals clarification of its decree affirming a N. L. R. B. duty-to-bargain order against the employer. The court, so requested, gave an elucidation.

In No. 51, *Air Associates*, the Board suggested that, instead of leaving a claim of reinstatement and back-pay to the N. L. R. B., the employer reinstate all employees and leave the question of pay to an arbitrator. Thereafter the N. L. R. B. issued a complaint on this matter. The employer agreed to take the men back, but wished the N. L. R. B. to determine whether any pay was due. The Board amended its recommendation accordingly and it was then accepted.

The relation between the two boards was altogether harmonious; the Mediation Board did not invade the field of action of the N. L. R. B. or of the courts in dealing with the N. L. R. A. The Board's function in situations where the N. L. R. A. provided the ultimate remedy was to arrange a truce while the appointed agency proceeded to adjudicate. The chairman of the Board expressed the Board's attitude when he said in his public statement in response to the union's brief strike against the Board's recommendation in No. 73, *Kansas City Power & Light:*

"The National Labor Relations Act, which has been described as the Magna Charta of trade unionism in the United States, gives to this union an orderly method of obtaining the recognition for which it is now striking; it is labor's own act. In this emergency the universal and ungrudging acceptance of the letter and spirit of the act by employers is a compelling obligation. It is an equally compelling obligation on the part of labor to seek and follow its legal remedy in preference to direct action."

Part III

Appendixes

Appendix A

General Documents

1. Executive Orders Relating to the National Defense Mediation Board

EXECUTIVE ORDER No. 8716

March 19, 1941

WHEREAS it is essential in the present emergency that employers and employees engaged in production or transportation of materials necessary to national defense shall exert every possible effort to assure that all work necessary for national defense shall proceed without interruption and with all possible speed.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes, and in order to define further certain functions and duties of the Office of Emergency Management of the Executive Office of the President with respect to the national emergency as declared by the President to exist on September 8, 1939, it is hereby ordered as follows:

1. (*a*) There is hereby created in the Office for Emergency Management, a board to be known as the National Defense Mediation Board (hereinafter referred to as the Board). The Board shall be composed of 11 members to be appointed by the President, of whom 3 shall be disinterested persons representing the public, 4 shall be representatives of employees, and 4 shall be representatives of employers. The President shall designate as chairman of the Board one of the members representing the public.

(*b*) Each member of the Board shall receive necessary traveling expenses, and each member who, during the period of his service on said Board, is not an officer or employee of the United States shall receive in addition thereto $25 per diem for subsistence expense on such days as he is performing Board duties. Within the limits of such funds as may be appropriated by Congress or allocated to it by the President, through the Bureau of the Budget, the Office of Production Management shall furnish the Board with necessary experts, assistants, officers, and employees, and make provisions for the necessary supplies, facilities, and services.

2. Whenever the Secretary of Labor certifies to the Board that any controversy or dispute has arisen between any employer (or group of employers) and any employees (or organization of employees) which threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense (excluding any dispute coming within the purview of the Railway Labor Act as amended) and which cannot be adjusted by the Commissioners of Conciliation of the Department of Labor, the Board is hereby authorized—

(*a*) To make every reasonable effort to adjust and settle any such controversy or dispute by assisting the parties thereto to negotiate agreements for that purpose;

(*b*) To afford means for voluntary arbitration with an agreement by the parties thereto to abide by the decision arrived at upon such arbitration, and, when requested by both parties, to designate a person or persons to act as impartial arbitrator or arbitrators of such controversy or dispute;

(*c*) To assist in establishing, when desired by the parties, methods for resolving future controversies or disputes between the parties; and to deal with matters of interest to both parties which may thereafter arise;

(*d*) To investigate issues between employers and employees, and practices and activities thereof, with respect to such controversy or dispute; conduct hearings, take testimony, make findings of fact, and formulate recommendations for the settlement of any such controversy or dispute; and make public

such findings and recommendations whenever in the judgment of the Board the interests of industrial peace so require;

(e) To request the National Labor Relations Board, in any controversy or dispute relating to the appropriate unit or appropriate representatives to be designated for purposes of collective bargaining, to expedite as much as possible the determination of the appropriate unit or appropriate representatives of the workers.

3. Whenever a controversy or dispute is certified to the Board, in accordance with section 2, the chairman, in accordance with regulations prescribed by the Board, shall designate as a division of the Board such members as he deems necessary to take action with respect to such controversy or dispute, and to perform in connection therewith any of the duties enumerated in section 2; provided (a) that no less than three members shall be assigned to any such division, and (b) that each of the three groups represented on the Board shall be represented on any such division.

4. Whenever a controversy or dispute which has not been certified to it in accordance with section 2 is brought to the attention of the Board, it shall refer the matter to the Department of Labor.

It is hereby declared to be the duty of employers and employees engaged in production or transportation of materials essential to national defense to exert every possible effort to settle all their disputes without any interruptions in production or transportation. In the interest of national defense the parties should give to the Conciliation Service of the Department of Labor and to the Office of Production Management (a) notice in writing of any desired change in existing agreements, wages, or working conditions; (b) full information as to all developments in labor disputes; and (c) such sufficient advance notice of any threatened interruptions to continuous production as will permit exploration of all avenues of possible settlement of such controversies so as to avoid strikes, stoppages, or lock-outs.

FRANKLIN D. ROOSEVELT.

EXECUTIVE ORDER No. 8731

April 4, 1941

By virtue of the authority vested in me by the Constitution and the statutes and in order further to assure that all work necessary for national defense shall proceed without interruption and with all possible speed, it is hereby ordered as follows:

Executive Order No. 8716 of March 19, 1941, entitled "Establishment of National Defense Mediation Board," is hereby amended so as to provide for the appointment of alternate members of the National Defense Mediation Board, each of which alternate members shall be designated as alternate for a regular member of the Board named in connection with his appointment. Any alternate member shall be authorized to serve, when the regular member for whom he is designated as alternate shall for any reason be unavailable for such service, upon any division of the Board designated by the chairman of the Board under the provisions of section 3 of said Executive Order No. 8716, and to perform in connection with such service the duties and functions of a member of the Board with respect to any matter before such division. An alternate member shall receive compensation and expenses during any period of such service in like manner as regular members of the Board.

FRANKLIN D. ROOSEVELT.

EXECUTIVE ORDER No. 9017

January 12, 1942

WHEREAS by reason of the state of war declared to exist by joint resolutions of the Congress, approved December 8, 1941, and December 11, 1941, respectively (Public Laws Nos. 328, 331, 332, 77th Congress), the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war; and

WHEREAS as a result of a conference of representatives of labor and industry which met at the call of the President on December 17, 1941, it has been agreed that for the duration of the war there shall be no strikes or lock-outs, and that all

labor disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered:

1. There is hereby created in the Office for Emergency Management a National War Labor Board, hereinafter referred to as the Board. The Board shall be composed of 12 special commissioners to be appointed by the President. Four of the members shall be representative of the public; 4 shall be representative of employees; and 4 shall be representative of employers. The President shall designate the chairman and vice chairman of the Board from the members representing the public. The President shall appoint 4 alternate members representative of employees and 4 representative of employers, to serve as Board members in the absence of regular members representative of their respective groups. Six members or alternate members of the Board, including not less than 2 members from each of the groups represented on the Board, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

2. This order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted.

3. The procedures for adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, the Commissioners of Conciliation of the Department of Labor shall be notified if they have not already intervened in the dispute. (c) If not promptly settled by conciliation, the Secretary of Labor shall certify the dispute to the Board, provided, however, that the Board in its discretion after consultation with the Secretary may take jurisdiction of the dispute on its own motion. After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

4. The Board shall have power to promulgate rules and regulations appropriate for the performance of its duties.

5. The members of the Board (including alternates) shall receive necessary traveling expenses, and, unless their compensation is otherwise prescribed by the President, shall receive in addition to traveling expenses $25 per diem for subsistence expense on such days as they are actually engaged in the performance of duties pursuant to this order. The Board is authorized to appoint and fix the compensation of its officers, examiners, mediators, umpires, and arbitrators; and the chairman is authorized to appoint and fix the compensation of other necessary employees of the Board. The Board shall avail itself, insofar as practicable, of the services and facilities of the Office for Emergency Management and of other departments and agencies of the Government.

6. Upon the appointment of the Board and the designation of its chairman, the National Defense Mediation Board established by Executive Order No. 8716 of March 19, 1941, shall cease to exist. All employees of the National Defense Mediation Board shall be transferred to the Board without acquiring by such transfer any change in grade or civil service status. All records, papers, and property, and all unexpended funds and appropriations for the use and maintenance of the National Defense Mediation Board shall be transferred to the Board. All duties with respect to cases certified to the National Defense Mediation Board shall be assumed by the Board for discharge under the provisions of this order.

7. Nothing herein shall be construed as superseding or in conflict with the provisions of the Railway Labor Act (act of May 20, 1926, as amended, 44 Stat. 577; 48 Stat. 926, 1185; 49 Stat. 1169; 45 U. S. Code 151), the National Labor Relations Act (act of July 5, 1935, 49 Stat. 457; 29 U. S. Code 151 et seq.), the Fair Labor Standards Act (act of June 25, 1938; 52 Stat. 1060: 29 U. S. Code 201 et seq.), and the act to provide conditions for the purchase of supplies, etc., approved June 30, 1936 (49 Stat. 2036; 41 U. S. Code, sections 35–45), or the act amending the act of March 3, 1931, relating to the rate of wages for laborers and mechanics, approved August 30, 1935 (49 Stat. 1011; 40 U. S. Code, sec. 276 et seq.).

FRANKLIN D. ROOSEVELT.

2. General Resolutions of the National Defense Mediation Board

Adopted April 10

That the Office of Production Management should continue to act as the fiscal agent for the Board within the purview of section (b) of the Executive order of March 19, 1941.

That the Board should appoint and maintain its own independent administrative staff.

That the chairman should appoint a committee to study the administrative organization of the Board and submit recommendations to the Board at its next meeting.

That the records of the Board with respect to hearings before a division of its members are confidential and not for disclosure.

Adopted July 10

That the Board should not adopt any uniform policy with respect to union security recommendations.

Adopted July 24, August 7, and August 21

Rules of Procedure.

1. [Rule 1, adopted July 24, providing for a rotating vice-chairmanship was rescinded August 7, and the following resolution was adopted in its stead:] In his absence and that of the vice-chairman, the chairman should designate an acting chairman; and in the absence of such designation, the public representative senior in appointment should serve as acting chairman.

2.1. At any meeting of the Board all regular or alternate members of the Board present shall be empowered to vote unless a roll call is requested. A roll call may be requested by any member of the Board present at the meeting.

2.2. In case of a roll call, all regular members of the Board present shall be empowered to vote. Alternate members may then vote only in accordance with the following section.

2.3. In the absence of any regular member of the Board his power to vote shall pass to one of his designated alternate members in the order of their appointment and, as among those appointed simultaneously, in alphabetical order.

2.4. In the absence of a regular member of the Board and of all of his designated alternates, or in the absence of a regular member of the Board for whom no alternates have been designated, his power to vote shall pass to an alternate member present from the same group as the absentee. For the purpose of this section, regular and alternate members shall be divided into four groups: Public representatives, employee representatives affiliated with the Congress of Industrial Organizations, employee representatives affiliated with the American Federation of Labor, and employer representatives. Power to vote shall pass to alternate members within each group in the order of their appointment and, as among those appointed simultaneously, in alphabetical order.

2.5. If less than two employee representatives affiliated with the Congress of Industrial Organizations are present, the power to vote of the absentees shall pass to alternate members affiliated with the American Federation of Labor in the order of their appointment and, as among those appointed simultaneously, in alphabetical order. If less than two employee representatives affiliated with the American Federation of Labor are present, the power to vote of the absentees shall pass to alternate members affiliated with the Congress of Industrial Organizations in the order of their appointment and, as among those appointed simultaneously, in alphabetical order.

3.1. At all Board meetings at which the chairman of the Board is present, he shall preside. In his absence, the vice-chairman of the Board shall preside. In the absence of both the chairman and the vice-chairman, the acting chairman shall preside.

4.1. A quorum of the Board shall consist of seven Board members empowered to vote in accordance with the provisions of section 2 provided that a quorum must include at least two members representing the public, two members representing the employers, and two members representing the employees.

5.1. Under paragraph 3 of the Executive order of March 19, 1941, a division designated by the chairman is empowered to take action with respect to the controversy or dispute and to perform, in connection therewith, any of the

duties of the Board. Action by the Board on a particular dispute may be effected by such a division duly designated by the chairman. Upon the request of any member of a division, the matter before the division may be referred to the full Board for consideration and action.

Adopted August 21

That the chairman should instruct the assistants to the divisions that one of their duties in each case is to keep alert to the question of whether or not there is machinery for settling disputes over the interpretation of agreements negotiated before the Board or recommendations issued by it, and, if not, to bring it to the attention of the chairman of the division.

That the present policy of the Board of permitting the parties to disputes to examine, in the Board's offices, copies of the transcripts taken at hearings, but not to take such transcripts from the Board's offices or to copy from them, should be continued.

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Appendix B

Cases and Interruptions of Production Before the Board

TABLE 7.—*List of all cases, showing parties and stoppage situation when case was taken by Board*

* Production substantially slowed or stopped when Board took jurisdiction (i.e. on date of certification except in cases 4A, 20A, 20B, and 20C).
# Stoppage threatened when Board took jurisdiction.
X No critical situation when Board took jurisdiction.

Case No.	Name and address of employer	Name of labor organization and affiliation
* 1	Universal-Cyclops Steel Corporation, Bridgeville, Pa.	Amalgamated Association of Iron, Steel, and Tin Workers of North America, Good Will Lodge 178, C. I. O.
* 2	Vanadium Corporation of America, Bridgeville, Pa.	United Vanadium Workers Local Industrial Union No. 953, C. I. O. Later changed to Steel Workers Organizing Committee, Local 2480, C. I. O.
* 3	Cornell-Dubilier Electric Corporation (subsidiary of Condenser Corporation of America), South Plainfield, N. J.	International Brotherhood of Electrical Workers, Local B-1041, A. F. L.
* 4	International Harvester Co., Chicago, Ill. (3 plants), East Moline, Ill., Canton, Ill., Richmond, Ind.	Farm Equipment Workers Organizing Committee, C. I. O.
X 4A	International Harvester Co., Chicago, Ill., Milwaukee, Wis., and Rock Falls, Ill.	Federal Labor Unions, Locals 22631 and 22657, A. F. L.
* 5	Weyerhaeuser Timber Co. (Snoqualmie Falls Lumber Co.), Snoqualmie Falls, Wash.	Puget Sound District Council Lumber and Sawmill Workers, United Brotherhood of Carpenters and Joiners of America, Local 2545, A. F. L.
* 6	Allis-Chalmers Manufacturing Co., Milwaukee, Wis.	United Automobile Workers of America, Local 248, C. I. O.
* 7	Seas Shipping Co., Inc., New York, N. Y.	National Marine Engineers' Beneficial Association, Local 33, C. I. O.
* 8	Standard Tool Co., Cleveland, Ohio	United Automobile Workers of America, Local 217, C. I. O.
* 9	Cowles Tool Co., Cleveland, Ohio	United Automobile Workers of America, Local 217, C. I. O.
* 10	Phelps Dodge Copper Products Corporation, Elizabeth, N. J.	United Electrical, Radio and Machine Workers of America, Local 441, C. I. O.
* 11	J. Sklar Manufacturing Co., Long Island City, N. Y.	United Electrical, Radio and Machine Workers of America, Local 1225, C. I. O.
* 12	California Metal Trades Association, San Francisco, Calif.	International Association of Machinists, Lodge 68, A. F. L.
# 13	Minneapolis Moline Power Implement Co., Minneapolis, Minn., and Hopkins Moline Power Implement Co., Hopkins, Minn.	United Electrical, Radio and Machine Workers of America, Locals 1138 and 1146, C. I. O.
* 14	Birdsboro Steel Foundry & Machine Co., Birdsboro, Pa.	Steel Workers Organizing Committee, C. I. O., Birdsboro Steel Foundry & Machine Co. Employee and Beneficial Association.
* 15	Arcadia Knitting Mills, Inc., Allentown, Pa.	Federation of Dyers, Finishers, Printers, and Bleachers of America, C. I. O. (Branch of Textile Workers Union of America).
# 16	Kellogg Switchboard & Supply Co., Chicago, Ill.	International Brotherhood of Electrical Workers, Local B-713, A. F. L., and International Association of Machinists, District 8, A. F. L.
* 17	American Car & Foundry Co., Buffalo, N. Y.	Federal Labor Union 22518, A. F. L., and Steel Workers Organizing Committee, C. I. O.
* 18	John A. Roebling's Sons Co., Trenton and Roebling, N. J.	Steel Workers Organizing Committee, Local 2111, C. I. O.
* 19	American Potash & Chemical Corporation, Trona, Cal.	International Union of Mine, Mill and Smelter Workers, Local 414, C. I. O.
* 20	Bituminous Coal Operators. (Appalachian Mines were dealt with as No 20; special groups of Appalachian Mines as No. 20A and No. 20B; and Alabama Mines as No. 20C.)	United Mine Workers of America, C. I. O.
* 20A	Wisconsin Steel Coal Mines (subsidiary of International Harvester Co.), Benham, Ky.	United Mine Workers of America, C. I. O., and International Union of Progressive Mine Workers of America, Local 402, A. F. L.
* 20B	Bituminous Coal Operators (Captive Mines)	United Mine Workers of America, C. I. O.
* 20C	Bituminous Coal Operators (Alabama Mines)	United Mine Workers of America, District 20, C. I. O.

TABLE 7.—*List of all cases, showing parties and stoppage situation when case was taken by Board*—Continued

Case No.	Name and address of employer	Name of labor organization and affiliation
# 21	General Motors Corporation, Detroit, Mich.	United Automobile Workers of America, C. I. O.
# 22	Minneapolis-Honeywell Regulator Co., Minneapolis, Minn.	United Electrical, Radio and Machine Workers of America, Local 1145, C. I. O.
* 23	Utica & Mohawk Cotton Mills, Inc., Utica, N. Y.	Textile Workers Union of America, C. I. O.
# 24	Busch-Sulzer Bros. Diesel Engine Co., St. Louis, Mo.	International Association of Machinists, District Lodge 9, A. F. L., and United Brotherhood of Carpenters and Joiners of America, A. F. L.
* 25	Curtis Manufacturing Co., St. Louis, Mo.	Steel Workers Organizing Committee, Local 1128, C. I. O.
# 26	Allis-Chalmers Manufacturing Co., Pittsburgh, Pa.	United Electrical, Radio and Machine Workers of America, Local 613, C. I. O.
* 27	Continental Rubber Works, Erie, Pa.	United Rubber Workers of America, Local 61, C. I. O.
# 28	Bendix Aviation Corporation, South Bend, Ind.	United Automobile Workers of America, Local 9, C. I. O.
* 29	Ex-Cell-O Corporation, Detroit, Mich.	United Automobile Workers of America, Local 157, C. I. O.
* 30	United Engineering & Foundry Co., Pittsburgh, Pa.	Steel Workers Organizing Committee, Local 1388, C. I. O.
# 31	Employers Negotiating Committee (representing employers in the logging and milling industry in the Puget Sound area).	International Woodworkers of America, C. I. O.
* 32	Allis-Chalmers Manufacturing Co., La Porte, Ind.	Farm Equipment Workers Organizing Committee, Local 119, C. I. O.
# 33	Smoot Sand & Gravel Corporation, Washington, D. C.	Sand and Gravel Workers' Union, Local 22075, A. F. L.
# 34	Columbia Basin Loggers, Portland, Oreg., (representing lumber operators).	International Woodworkers of America, Columbia River District Council No. 5, C. I. O.
# 35	E. W. Bliss Co., Brooklyn, N. Y.	United Electrical, Radio, and Machine Workers of America, Local 475, C. I. O.
# 36	North American Aviation, Inc., Inglewood, Calif.	United Automobile Workers of America, Local 683, C. I. O.
* 37	Bethlehem Steel Co. (Shipbuilding Division), San Francisco, Calif.	Bay Cities Metal Trades Council, A. F. L.
# 38	Aluminum Co. of America, Cleveland, Ohio.	National Association of Die Casting Workers of America, Local 55, C. I. O.
* 39	Marlin Rockwell Corporation, Plainville, Conn.	United Automobile Workers of America, Local 197, C. I. O.
# 40	Bohn Aluminum & Brass Corporation, Detroit, Mich.	United Automobile Workers of America, Local 208, C. I. O.
# 41	Curtiss-Wright Corporation (Curtiss Propeller Division), Neville Island, Pa.	Steel Workers Organizing Committee, Local 2170, C. I. O.
# 42	Duquesne Light Co. (Colfax Power Station), Pittsburgh, Pa.	Utility Workers Organizing Committee, Local 117, C. I. O., and Independent Association of Employees of Duquesne Light Co. and Associated Companies.
# 43	Sealed Power Corporation, Muskegon, Mich.	International Union United Automobile Workers of America, Local 637, A. F. L.
# 44	Western Cartridge Co. (East Alton Manufacturing Co.), Alton, Ill.	Chemical Workers Union, Local 22574, A .F. L.
* 45	Western Pennsylvania Labor Relations Association, Pittsburgh. Pa. (representing truck owners).	International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 249, A. F. L.
X 46	Federal Shipbuilding & Dry Dock Co. (subsidiary of U. S. Steel Corporation), Kearny, N. J.	Industrial Union of Marine and Shipbuilding Workers of America, Local 16, C. I. O.
X 47	Cheney Brothers, South Manchester, Conn.	Textile Workers Union of America, Local 63, C. I. O.
# 48	Scullin Steel Co., St. Louis, Mo.	Steel Workers Organizing Committee, Local 1062, C. I. O., and Scullin Steel Co. Employees Mutual Aid Association, Inc.
# 49	Breeze Corporations, Inc., Newark, N. J.	United Automobile Workers of America, Local 871, C. I. O.
# 50	Tennessee Coal, Iron, & Railroad Co. (subsidiary of U. S. Steel Corporation), Birmingham, Ala.	Office and Technical Workers, Local 2210, C. I. O., and International Brotherhood of Electrical Workers, Local B-287, A. F. L.
* 51	Air Associates, Inc., Bendix, N. J.	United Automobile Workers of America, C. I. O.
* 52	Federal Mogul Corporation, Detroit, Mich.	United Automobile Workers of America, Local 202, C. I. O.
* 53	Gulf States Utilities Co., Baton Rouge, La.	International Brotherhood of Electrical Workers, Locals 1003, 1238, and 1241, A. F. L., and Gulf States Electrical Service Employees Association.
X 54	Armour & Co., Chicago, Ill., and other plants.	Packinghouse Workers Organizing Committee, C. I. O.

TABLE 7.—*List of all cases, showing parties and stoppage situation when case was taken by Board*—Continued

Case No.	Name and address of employer	Name of labor organization and affiliation
# 55	Borg-Warner Corporation (Mechanics Universal Joint Division), Rockford, Ill.	United Automobile Workers of America, Local 225, C. I. O.
X 56	Aluminum Co. of America, Vernon, Calif.	United Automobile Workers of America, Local 808, C. I. O.
# 57	Lincoln Mills of Alabama, Huntsville, Ala.	Textile Workers Union of America, C. I. O.
* 58	Ohio Brass Co., Mansfield and Barberton, Ohio.	United Electrical, Radio and Machine Workers of America, Locals 747 and 758, C. I. O.
# 59	Erwin Cotton Mills Co., Durham, N. C.	Textile Workers Union of America, Local 246, C. I. O.
* 60	United States Gypsum Co., Chicago, Ill., and other plants.	Gas, By-Products, Coke and Chemical Workers Union, District 50, United Mine Workers of America, C. I. O.
* 61	Consolidated Edison Co. of New York, Inc., New York, N. Y.	International Brotherhood of Electrical Workers, Local 3, A. F. L., and Brotherhood of Consolidated Edison Employees.
* 62	Todd Galveston Dry Docks, Inc. (subsidiary of Todd Shipyards Corporation), Galveston, Tex.	Galveston Metal Trades Council, A. F. L., and International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, A. F. L.
# 63	Rockford Drop Forge Co., Rockford, Ill.	International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, Local 614, A. F. L., and International Association of Machinists, A. F. L.
* 64	Curtiss-Wright Corporation (Curtiss Propeller Division), Caldwell, N. J.	International Association of Machinists, Local 703, A. F. L., and Propeller Craft, Inc.
# 65	Solvay Process Co., Inc. (subsidiary Allied Chemical & Dye Corporation), Baton Rouge, La.	Oil Workers International Union, Local 424, C. I. O., and Chemical Workers Union Local 22609, A. F. L.
X 66	Aluminum Co. of America, Pittsburgh, Pa., and other plants.	Aluminum Workers of America, Local 2, C. I. O.
* 67	Pacific States Cast Iron Pipe Co. (subsidiary of McWane Cast Iron Pipe Co.), Provo, Utah.	Steel Workers Organizing Committee, Local 1654, C. I. O.
* 68	American Car & Foundry Co., Chicago, Ill.	United Automobile Workers of America, Local 805, C. I. O.
* 69	Pullman Standard Car Manufacturing Co., Bessemer, Ala.	Steel Workers Organizing Committee, Local 1466, C. I. O., International Association of Machinists, Local 359, A. F. L., and International Brotherhood of Electrical Workers, Local B-287, A. F. L.
* 70	Henry Vogt Machine Co., Louisville, Ky.	Steel Workers Organizing Committee, Local 1693, C. I. O.
* 71	Pullman Standard Car Manufacturing Co., Michigan City, Ind.	Brotherhood of Railway Carmen of America, Local 290, A. F. L.
# 72	Aluminum Co. of America, Vancouver, Wash.	Aluminum Trades Council, A. F. L.
# 73	Kansas City Power & Light Co., Kansas City, Mo.	International Brotherhood of Electrical Workers, Local B-412, A. F. L., and Independent Union of Utility Employees.
* 74	Pressed Steel Car Co., McKees Rocks, Pa.	Steel Workers Organizing Committee, Local 1844, C. I. O., and Car and Foundry Workers, Union, Local 1.
# 75	Lamson & Sessions Co., Cleveland, Ohio.	United Automobile Workers of America, Local 217, C. I. O.
* 76	American Brake Shoe & Foundry Co., Mahwah, N. J.	International Molders' and Foundry Workers' Union of North America, Local 315, A. F. L.
* 77	Duquesne Light Co., Pittsburgh, Pa., and Curtiss-Wright Corporation (Curtiss Propeller Division), Beaver, Pa.	Independent Association of Employees of Duquesne Light Co. and Associated Companies, and Building and Construction Trades Council, A. F. L.
# 78	Bendix Aviation Corporation (Bendix Products Division), South Bend, Ind.	United Automobile Workers of America, Local 9, C. I. O.
* 79	Hendey Machine Co., Torrington, Conn.	United Automobile Workers of America, Local 398, C. I. O.
* 80	American Merchant Marine Institute, Inc., New York, N. Y., Pacific American Shipowners Association, San Francisco, Calif., Waterman Steamship Corporation, Mobile, Ala.	Seafarers International Union of North America, A. F. L., and Sailors Union of the Pacific, A. F. L.
# 81	Consolidated Aircraft Corporation, San Diego, Calif.	International Association of Machinists, Aircraft Lodge 1125, A. F. L.
* 82	Shaw-Box Crane & Hoist Division of Manning, Maxwell, & Moore, Inc., Muskegon, Mich.	International Union United Automobile Workers of America, Local 644, A. F. L.
* 83	Agar Packing and Provision Corporation, P. Brennan Co., Illinois Meat Packing Co., Chicago, Ill.	Packinghouse Workers Organizing Committee, C. I. O.
* 84	Arcade Malleable Iron Co., Inc., Worcester, Mass.	Steel Workers Organizing Committee, C. I. O.
# 85	Alabama Dry Dock & Shipbuilding Co., Mobile, Ala.	Industrial Union of Marine and Shipbuilding Workers of America, Local 18, C. I. O.
* 86	Cleveland Graphite Bronze Co., Cleveland, Ohio.	Mechanics Educational Society of America, Local 5.

TABLE 7.—*List of all cases, showing parties and stoppage situation when case was taken by Board*—Continued

Case No.	Name and address of employer	Name of labor organization and affiliation
# 87	Fairmont Aluminum Co., Fairmont, W. Va	Aluminum Workers of America, Local 1, C. I. O.
* 88	American Cyanamid Co. (Calco Chemical Division). Bound Brook, N. J.	Chemical Workers Union, Local 22051, A. F. L., and United Mine Workers of America, C. I. O.
* 89	International Harvester Co., Springfield, Ohio	United Automobile Workers of America, Local 402, C. I. O.
* 90	Hillsdale Steel Products (subsidiary of Spicer Manufacturing Corporation), Hillsdale, Mich., and Spicer Manufacturing Corporation, Toledo, Ohio.	International Union United Automobile workers of America, Local 663, A. F. L., and United Automobile Workers of America, Local 701, C. I. O.
# 91	John A. Roebling's Sons Co., Roebling, N. J	Brotherhood of Railroad Trainmen, Lodge 867.
* 92	Ingalls Ship Building Corporation, Pascagoula, Miss.	Pascagoula Metal Trades Council, A. F. L.
* 93	American Engineering Co., Philadelphia, Pa	Industrial Union of Marine and Shipbuilding Workers of America, Local 35, C. I. O.
# 94	Sloss-Sheffield Steel & Iron Co., Birmingham, Ala.	United Mine Workers of America, District 50, Local 12014, C. I. O.
# 95	Alabama By-Products Corporation, Birmingham, Ala.	United Mine Workers of America, District 50, Local 12136, C. I. O.
# 96	Bell Aircraft Corporation, Buffalo, N. Y	United Automobile Workers of America, Local 501, C. I. O.
# 97	Robins Dry Dock & Repair Co., New York, N. Y.	Industrial Union of Marine and Shipbuilding Workers of America, Local 39, C. I. O.
# 98	Union Electric Co., St. Louis, Mo	Tri-State Utility Workers Union.
* 99	York Corrugating Co., York, Pa	International Association of Machinists, Local 1462, A. F. L.
* 100	Wolverine Tube Co., Detroit, Mich	United Automobile Workers of America, Local 174, C. I. O.
* 101	Chris Craft Corporation, Algonac, Mich	Federal Labor Union 20783, A. F. L.
* 102	American Can Co., Chicago, Ill	Steel Workers Organizing Committee, Locals 2041 and 1478, C. I. O.
X 103	Nevada Consolidated Copper Corporation (Subsidiary of Kennecott Copper Corporation), Ely, Nev.	Brotherhood of Locomotive Engineers, Division 596.
# 104	Waterfront Employers Association of Washington, Seattle, Wash.	International Longshoremen's Association, Locals 38-83, 38-86, 38-97, A. F. L., and International Longshoremen's Association, Checkers and Supercargoes, Local 38-36, A. F. L.
# 105	Central States Employers' Negotiating Committee, Chicago, Ill. (operating truck owners).	International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Central States Drivers' Council, A. F. L.
X 106	American Shipbuilding Co., Cleveland, Ohio	Metal Trades Department, A. F. L.
* 107	Burgess Battery Co., Freeport, Ill	International Association of Machinists, Lodge 1096, A. F. L.
# 108	Nevada Consolidated Copper Corporation (subsidiary of Kennecott Copper Corporation), Santa Rita and Hurley, N. Mex.	Chino Metal Trades Council of Santa Rita and Hurley, N. Mex., A. F. L., Brotherhood of Locomotive Firemen and Enginemen, Lodge 492, and Brotherhood of Railroad Trainmen, Lodge 825.
X 109	American Molasses Co., American Sugar Refining Co., Refined Syrups Sales Corporation, New York, N. Y.	International Longshoremen's Association, A. F. L.
# 110	Anaconda Copper Mining Co., Butte, Mont	International Brotherhood of Electrical Workers, Locals 65, 122, and 200, A. F. L.
* 111	Hammond & Irving, Inc., Auburn, N. Y	International Association of Machinists, Local 153, A. F. L., and International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Local 628, A. F. L.
* 112	Johns-Manville Products Corporation, Watson, Calif.	Rock Products Workers Union, Local 21643, A. F. L.
# 113	Highway Transport Association of Pennsylvania, Inc., York, Pa., Harrisburg Truckowners Negotiating Committee, Harrisburg, Pa., Lancaster Truckowners Negotiating Committee, Lancaster, Pa.	International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Locals 430, 771, and 776, A. F. L.
# 114	Carolina Transportation Association, Inc., Charlotte, N. C.	International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 71, A. F. L.

TABLE 8.—*Cases in which the Board upon taking case requested the parties to continue or resume production*

S Stoppage.
T Threatened stoppage.
* Production resumed or stoppage prevented by Board's request.
# Production resumed or stoppage prevented by truce or settlement before hearing.
X Occurrence or continuance of stoppage despite Board's request.
Y Production resumed pursuant to agreement to end stoppage upon certification of case.

Action	Case No.	Title and location of company
S X	2	Vanadium Corporation of America, Bridgeville, Conn.
S *	4	International Harvester Co., strikes in two plants at Chicago, Ill., and one each at Rock Falls, Ill., and Richmond, Ind.
T	13	Minneapolis Moline Power Implement Co., Minneapolis, Minn. Hopkins Moline Power Implement Co., Hopkins, Minn.
T *	16	Kellog Switchboard & Supply Co., Chicago, Ill
S X	20B	Bituminous Coal Operators (captive mines)
S *	20C	Bituminous Coal Operators (Alabama mines)
T *	21	General Motors Corporation, Detroit, Mich.
T *	22	Minneapolis-Honeywell Regulator Co., Minneapolis, Minn.
T *	26	Allis-Chalmers Manufacturing Co., Pittsburgh, Pa.
T *	28	Bendix Aviation Corporation, South Bend, Ind.
S X	29	Ex-Cell-O Corporation, Detroit, Mich.
S *	30	United Engineering & Foundry Co., Pittsburgh, Pa.
S X	32	Allis-Chalmers Manufacturing Co., Laporte, Ind.
T X	33	Smoot Sand & Gravel Corporation, Washington, D. C.
T *	34	Columbia Basin Loggers, Portland, Oreg.
T *	35	E. W. Bliss Co., Brooklyn, N. Y.
T *	36	North American Aviation, Inc., Inglewood, Calif.
[1] S *	37	Bethlehem Steel Co., San Francisco, Calif.
T *	38	Aluminum Co. of America, Cleveland, Ohio.
S *	39	Marlin Rockwell Corporation, Plainville, Conn.
[2] T *	40	Bohn Aluminum & Brass Corporation, Detroit, Mich.
T *	41	Curtiss-Wright Corporation, Neville Island, Pa.
T *	42	Duquesne Light Co., Pittsburgh, Pa.
T *	43	Sealed Power Corporation, Muskegon, Mich.
T *	44	Western Cartridge Co., Alton, Ill.
S *	45	Western Pennsylvania Labor Relations Association, Pittsburgh, Pa.
T *	47	Cheney Bros., South Manchester, Conn.
T *	48	Scullin Steel Co., St. Louis, Mo.
T *	50	Tennessee Coal, Iron & Railroad Co., Birmingham, Ala.
S *	52	Federal Mogul Corporation, Detroit, Mich.
T *	55	Borg-Warner Corporation, Rockford, Ill.
T *	56	Aluminum Co. of America, Vernon, Calif.
T *	57	Lincoln Mills of Alabama, Huntsville, Ala.
[3] S X	58	Ohio Brass Co., Barberton and Mansfield, Ohio.
T *	59	Erwin Cotton Mills Co., Durham, N. C.
S Y	61	Consolidated Edison Co. of New York, Inc., New York, N. Y.
S *	62	Todd Galveston Dry Docks, Inc., Galveston, Tex.
T *	63	Rockford Drop Forge Co., Rockford, Ill.
S Y	64	Curtiss-Wright Corporation, Caldwell, N. J.
T *	65	Solvay Process Co., Inc., Baton Rouge, La.
T *	66	Aluminum Co. of America, Pittsburgh, Pa.
S *	67	Pacific States Cast Iron Pipe Co., Provo, Utah.
S *	68	American Car & Foundry Co., Chicago, Ill.
S *	69	Pullman Standard Car Manufacturing Co., Bessemer, Ala.
S	70	Henry Vogt Machine Co., Louisville, Ky.
S X	71	Pullman Standard Car Manufacturing Co., Michigan City, Ind.
T *	72	Aluminum Co. of America, Vancouver, Wash.
T *	73	Kansas City Power & Light Co., Kansas City, Mo.
S #	74	Pressed Steel Car Co., McKees Rocks, Pa.
T *	75	Lamson & Sessions Co., Cleveland, Ohio.
T *	78	Bendix Aviation Corporation, South Bend, Ind.
S Y	79	Hendey Machine Co., Torrington, Conn.
S Y	80	American Merchant Marine Institute, Inc., New York, N. Y., Pacific American Shipowners Association, San Francisco, Calif., and the Waterman Steamship Corporation, Mobile, Ala.
T *	81	Consolidated Aircraft Corporation, San Diego, Calif.
[4] S X #	82	Shaw-Box Crane & Hoist Division of Manning, Maxwell & Moore, Inc., Muskegon, Mich.
S *	84	Arcade Malleable Iron Co., Inc., Worcester, Mass.
T *	85	Alabama Dry Dock & Shipbuilding Co., Mobile, Ala.
S *	86	Cleveland Graphite Bronze Co., Cleveland, Ohio.
T *	87	Fairmont Aluminum Co., Fairmont, W. Va.
S *	88	American Cyanamid Co., Bound Brook, N. J.
S Y	89	International Harvester Co., Springfield, Ohio.
S Y	90	Hillsdale Steel Products, Hillsdale, Mich., Spicer Manufacturing Corporation, Toledo, Ohio.
T *	91	John A. Roebling's Sons Co., Trenton, N. J.
S Y	92	Ingalls Ship Building Corporation, Pascagoula, Miss.
S *	93	American Engineering Co., Philadelphia, Pa.
[5] T X *	94	Sloss-Sheffield Steel & Iron Co., Birmingham, Ala.
T *	95	Alabama By-Products Corporation, Birmingham, Ala.
T *	96	Bell Aircraft Corporation, Buffalo, N. Y.

See footnotes at end of table.

TABLE 8.—*Cases in which the Board upon taking case requested the parties to continue or resume production*—Continued

Action	Case No.	Title and location of company
[2]T X #	97	Robins Dry Dock & Repair Co., New York, N. Y.
T *	98	Union Electric Co., St. Louis, Mo.
[5]X S	99	York Corrugating Co., York, Pa.
S Y	100	Wolverine Tube Co., Detroit, Mich.
S *	101	Chris Craft Corporation, Algonac, Mich.
S #	102	American Can Co., Chicago, Ill.
T *	103	Nevada Consolidated Copper Corporation, Ely, Nev.
T *	104	Waterfront Employers Association of Washington, Seattle, Wash.
T *	105	Central States Employers' Negotiating Committee, Chicago, Ill.
T *	108	Nevada Consolidated Copper Corporation, Santa Rita and Hurley, N. M.
T *	109	American Molasses Co., American Sugar Refining Co., Refined Syrups Sales Corporation, New York, N. Y.
T *	110	Anaconda Copper Mining Co., Butte, Mont.
S Y	111	Hammond & Irving, Inc., Auburn, N. Y.
S *	112	Johns-Manville Products Corporation, Watson, Calif.
T *	113	Highway Transport Association of Pennsylvania, Inc., York, Pa. Harrisburg Truckowners Negotiating Committee, Harrisburg, Pa. Lancaster Truckowners Negotiating Committee, Lancaster, Pa.
T *	114	Carolina Transportation Association, Charlotte, N. C.

[1] The certification expressly excluded revision of "Pacific Coast Zone Standards." The Board's request to resume production was heeded, except by the machinists' local which made a demand contrary to these standards. The Board addressed its request to the employer and to the Bay Cities Metal Trades Council, of which this local was a member. Upon the council's voting for resumption of work, this local withdrew from the council and, despite appeals from its international president and from the President of the United States, remained on strike till the Board's recommendations had been accepted by the parties. Though its demand (being excluded by the certification) had not been dealt with, its members then resumed work.

[2] Board's telegram requesting postponement of strike received too late to prevent stoppage.

[3] Controversy involved plants at Barberton and Mansfield, Ohio. Strikers did not return to work at Barberton, but the threatened strike at Mansfield was called off.

[4] Union acceded to Board's request to return to work, but company refused to reopen plant till union agreed to abide by shop rules and regulations.

[5] Union acceded to Board's request to return to work, but company refused to reopen plant until an agreement had been reached.

TABLE 9.—*List of cases in which stoppages of production occurred after certification to the National Defense Mediation Board*

Case No.	Title of company	Case No.	Title of company
18	John A. Roebling's Sons Co.	[2]40	Bohn Aluminum & Brass Corporation.
[1]20B	Bituminous Coal Operators (captive mines).	43	Sealed Power Corporation.
20C	Bituminous Coal Operators (Alabama mines).	46	Federal Shipbuilding & Dry Dock Co.
21	General Motors Corporation.	[1]49	Breeze Corporations, Inc.
22	Minneapolis-Honeywell Regulator Co.	51	Air Associates, Inc.
31	Employers Negotiating Committee.	55	Borg-Warner Corporation.
33	Smoot Sand & Gravel Co.	57	Lincoln Mills of Alabama.
36	North American Aviation, Inc.	65	Solvay Process Co., Inc.
38	Aluminum Co. of America.	73	Kansas City Power & Light Co.
[1]39	Marlin Rockwell Corporation.	[2]94	Sloss-Sheffield Steel & Iron Co.
		97	Robins Dry Dock & Repair Co.

NOTE.—Total: 21 cases; 24 stoppages.

[1] 2 stoppages.

[2] Board's telegram requesting continuation of production was received too late to revoke strike order before it became effective; but work was promptly resumed.

Of the foregoing cases a stoppage existed when the Board acquired Nos. 18, 20B, 20C, 39, and 51. These five cases and No. 49 are the only ones in which production was twice halted; and No. 20B, *Captive Mines*, and No. 39, *Marlin Rockwell*, are the only ones in which there were three interruptions of work.

TABLE 10.—*Cases in which hearings were held, classified by stoppage situation and by method of final disposal*

Method of final disposal	Strike cases [1]		Nonstrike cases [2]		
	Original stoppage ceased before final disposition	Original stoppage continued till final disposition	None occurred later	Stoppage occurred later	Number of cases in each class
1. By contract of the parties (sometimes with aid of agencies other than the Board).	7, 18, 29, 76, 86, 90, 93.	3, 9, 12, 15, 23, 32, 77.	28, 50, 56, 63, 96.	38, 49, 94.	22
2. By contract of the parties with suggestions of the Board or its agents.	27, 30, 88, 101, 111, 112.	5, 6, 25, 71.	16, 26, 41, 47, 59, 75, 81, 87, 95, 98, 106.	40, 55.	23
3. By contract of the parties pursuant to formal recommendation of the Board.	2, 10, 20, 20C, 37, 39, 45, 51, 62, 68, 79, 80.	11, 53 (half).	21, 34, 35, 42, 44, 54, 78, 105, 108.	36, 43, 57.	25½
4. By acquiescence of dissatisfied party in recommendation of the Board.	61.		72, 85.		3
5. By reference to the N. L. R. B. (usually on recommendation of the Board).	17, 52, 64, 69.	53 (half), 20A.	48.	22, 73.	8½
6. By intervention of the President.	20B.		46.		2
7. By nonaction of the Board.		19.	24.		2
Sum of cases.	31.	15.	30.	10.	86

[1] Cases in which there was a stoppage when certified.
[2] Cases in which there was no stoppage when certified.

Appendix C

Personnel

Membership of the National Defense Mediation Board

REGULAR MEMBERS

Representing the public.

CLARENCE A. DYKSTRA of Wisconsin, president, University of Wisconsin (chairman from March 19 to July 1, 1941; alternate public member from July 2, 1941, to January 12, 1942).

WILLIAM HAMMATT DAVIS of New York, attorney (public member from March 19 to July 1, 1941; chairman from July 2, 1941, to January 12, 1942).

FRANK P. GRAHAM of North Carolina, president, University of North Carolina (public member from March 19 to August 6, 1941; vice chairman from August 7, 1941, to January 12, 1942.)

CHARLES E. WYZANSKI, Jr., of Massachusetts, attorney (alternate public member from March 19 to July 17, 1941; public member from July 18, 1941, to January 12, 1942).

Representing employers.

CYRUS S. CHING of New York, vice president, U. S. Rubber Corporation (March 19, 1941, to January 12, 1942).

ROGER D. LAPHAM of California, chairman of the board of directors, American-Hawaiian Steamship Co. (March 19, 1941, to January 12, 1942).

EUGENE MEYER of New York, publisher of the Washington Post (March 19, 1941, to January 12, 1942).

WALTER C. TEAGLE of Connecticut, chairman, board of directors, Standard Oil Co. of New Jersey (March 19, 1941, to January 12, 1942).

Representing employees.

GEORGE M. HARRISON of Ohio, grand president, Brotherhood of Railway and Steamship Clerks (March 19, 1941, to January 12, 1942).

THOMAS KENNEDY of Pennsylvania, secretary-treasurer, United Mine Workers of America (March 19 to November 11, 1941). (Resignation submitted November 11, 1941.)

GEORGE MEANY of New York, secretary-treasurer, American Federation of Labor (March 19, 1941, to January 12, 1942).

PHILIP MURRAY of Pennsylvania, president, Congress of Industrial Organizations (March 19 to November 11, 1941). (Resignation submitted November 11, 1941.)

ALTERNATE MEMBERS

Representing the public.

FRANCIS W. H. ADAMS of New York, attorney.

WALTER T. FISHER of Illinois, attorney.

WAYNE L. MORSE of Oregon, dean, University of Oregon School of Law.

WILLIAM GORHAM RICE, Jr., of Wisconsin, professor of law, University of Wisconsin Law School.

RALPH T. SEWARD of New York, attorney.

WALTER P. STACY of North Carolina, chief justice, Supreme Court of North Carolina.

GEORGE STOCKING of Texas, professor of economics, University of Texas.

Representing employers.

CHARLES E. ADAMS of Pennsylvania, president, Air Reduction Corporation. (Alternate for Eugene Meyer.)

JOHN E. CONNELLY of New York, attorney. (Alternate for Roger D. Lapham.)

FREDERICK S. FALES of New York, former vice president and director, Socony-Vacuum Oil Co., Inc.

ROLLAND J. HAMILTON of New York, secretary and treasurer, American Radiator and Standard Sanitary Corporation. (Alternate for Eugene Meyer.)

FRAZIER D. MACIVER of Wisconsin, vice president, Phoenix Hosiery Co.

GEORGE H. MEAD of Ohio, president, The Mead Corporation. (Alternate for Roger D. Lapham.)

GERARD SWOPE of New York, honorary president, General Electric Co. (Alternate for Walter C. Teagle.)

Representing employees.

JOHN BROPHY of Pennsylvania, director of Industrial Union Councils, Congress of Industrial Organizations. (Alternate for Philip Murray.)

EDWARD J. BROWN of Wisconsin, president, International Brotherhood of Electrical Workers of America (A. F. L.). (Alternate for George M. Harrison.)

WILLIAM A. CALVIN of Maryland, vice president, International Brotherhood of Boiler Makers, Iron Shipbuilders, and Helpers of America (A. F. L.).

JAMES B. CAREY of Virginia, secretary, Congress of Industrial Organizations. (Alternate for Thomas Kennedy.)

S. H. DALRYMPLE of Ohio, president, United Rubber Workers of America (C. I. O.).

CLINTON GOLDEN of Pennsylvania, regional director, Steel Workers Organizing Committee (C. I. O.). (Alternate for Thomas Kennedy.)

GEORGE GOOGE of Georgia, southern representative, American Federation of Labor.

GEORGE LYNCH of Virginia, president, Pattern Makers League of North America (A. F. L.). (Alternate for George M. Harrison.)

HUGH LYONS of Massachusetts, regional director, Congress of Industrial Organizations. (Alternate for Philip Murray.)

HERBERT W. PAYNE of New York, vice president, Textile Workers Union of America (C. I. O.).

EMIL RIEVE of Pennsylvania, general president, Textile Workers Union of America (C. I. O.).

ROBERT J. WATT of Massachusetts, international representative, American Federation of Labor. (Alternate for George M. Harrison.)

JAMES WILSON of Ohio, labor advisor, International Labor Office, former president, Pattern Makers League of North America (A. F. L.). (Alternate for George Meany.)

HERBERT WOODS of Connecticut, director of research, International Union of Operating Engineers (A. F. L.). (Alternate for George Meany.)

Panel Assistants

ARCHIBALD COX
LEWIS M. GILL
FREDERICK H. HARBISON
GEORGE KIRSTEIN
AVERY LEISERSON
E. RIGGS MCCONNELL
THOMAS F. NEBLETT
J. C. TOMEY

Special Agents, Listed by Cases in Which They Served

Case No.	Name	Appointee and title	Authorization
2	Vanadium Corporation of America.	Msgr. Francis J. Haas, special representative.	To investigate the issues in dispute.
4	International Harvester Co.	Don D. Lescohier, special representative.	To investigate the issues in dispute.
4-A	International Harvester Co.	Stanley P. Farwell, special representative.	"* * * to investigate the wage issue in dispute * * * and to report his findings to the Board * * *"
18	John A. Roebling's Sons Co.	George T. Trundle, Jr., expert advisor.	"* * * to study the disputed operations proposed for, but not yet actually put into operation in, Department 75. * * * to test the proposed new operations, to find and evaluate the facts and on the basis of his findings, to make recommendations to the N. D. M. B. * * *"
		Alfred Dangler, Jr., expert adviser.	To assist Mr. Trundle in making his study.
		Donald Wright, expert adviser.	

Special Agents, Listed by Cases in Which They Served—Continued

Case No.	Name	Appointee and title	Authorization
22	Minneapolis-Honeywell Regulator Co.	Edwin E. Witte, special agent.	"* * * to confer with the parties to aid in reaching a settlement of pending unadjusted grievances and, if necessary, to make recommendations for the adjustment of such grievances * * *."
		Nathan P. Feinsinger, special agent.	Replaced Mr. Witte who was forced to discontinue his work for the Board due to other commitments.
27	Continental Rubber Works.	George T. Trundle, Jr., special representative.	"* * * to make a survey of the engineering processes and the cost accounting system * * * to find and evaluate the facts and, on the basis of his findings, to make recommendations for the consideration of the National Defense Mediation Board * * *"
		Carey O. Malpas, special representative. William E. Jones, special representative. Roy H. Dickson, special representative. Raymond P. Wright, special representative. Edward Tegeler, special representative.	To assist Mr. Trundle in making his investigation.
31	Employers Negotiating Committee.	Dexter M. Keezer, chairman of commission.	"* * * to investigate issues in dispute * * * to make findings of fact and, on the basis of these findings, to make recommendations to this Board * * *."
		Wayne Morse, member of commission. Paul Eliel, member of commission.	Same as above.
		Vernon H. Jensen, special representative.	"* * * to assist the impartial commission to investigate issues in dispute * * *."
35	E. W. Bliss Co.	George T. Trundle, Jr., special representative.	"* * * to investigate the issues in dispute * * * to find and evaluate the facts, and, on the basis of his findings, to make recommendations for the consideration of the National Defense Mediation Board * * *."
		Alfred Dangler, Jr., special representative. Raymond Wright, special representative. Roy H. Dickson, special representative. Edward Tegeler, special representative.	To assist Mr. Trundle in making his investigation.
		Paul R. Hays, arbitrator.	"* * * to arbitrate the basis for the establishment of minimum rates, the setting of minimum rates and the effective retroactive date * * *".
39	Marlin Rockwell Corporation.	Harry Shulman, special representative.	"* * * to investigate the matters in dispute, to report his findings of fact and make recommendations to the Board with regard to these issues * * *."
46	Federal Shipbuilding & Dry Dock Co.	Burton A. Zorn, special representative	To investigate the dispute.
49	Breeze Corporations, Inc.	Harold B. Bergen, special agent.	"* * * to investigate entering rates, minimum wage rates, classifications, and appropriate blanket raises for employees in jobs in each of the company's plants represented by the United Automobile Workers * * * to receive evidence and arguments from the parties; and * * * to make a prompt report to the N. D. M. B. * * *."
		Phillip S. Babb, special representative Ewing W. Reilley, special representative	To assist Mr. Bergen in his investigation.
51	Air Associates	Harry Shulman, special representative.	"* * * to serve as arbitrator with respect to such issues * * * as the parties shall, by mutual agreement, submit to arbitration; and further, to investigate, make findings of fact and recommendations to the Board upon all other issues in dispute * * *."
57	Lincoln Mills of Alabama.	Francis Goodell, special agent.	"* * * to investigate the question of what will be appropriate wages for the company to pay * * * and shall report to the Board within 3 weeks * * *."

Special Agents, Listed by Cases in Which They Served—Continued

Case No.	Name	Appointee and title	Authorization
58	Ohio Brass Co.	J. M. MacDonald, special representative.	"* * * to investigate the issues in dispute * * * and report his findings to the Board."
		E. F. Murdoch, special representative.	Same as above.
60	United States Gypsum Co.	Owen D. Young, special representative.	"* * * to investigate general wage increases, vacation, arbitration of grievances, and union security; to conduct hearings, take testimony, and make findings of fact for the information of the Board * * *."
61	Consolidated Edison Co. of New York, Inc.	Arthur S. Meyer, special agent.	"* * * to investigate the issues in dispute * * * and upon the basis of his findings to make recommendations to this Board * * *."
		Paul R. Hays, special representative.	"* * * to assist Arthur S. Meyer, special agent, in investigating the issues in dispute * * * and in making findings of fact and recommendations to this Board * * *."
66	Aluminum Co. of America.	Paul R. Hays, special representative.	"* * * to investigate the issues in dispute between the employer and employees, and practices and activities thereof with respect to the controversy or dispute certified; to conduct hearings, take testimony, and make findings of fact for the information of the N. D. M. B. * * *."
		McDonald K. Horne, Jr., special assistant (representative).	"* * * to assist Paul R. Hays, the Board's special representative, in his investigation of the issues in dispute * * *."
67	Pacific States Cast Iron Pipe Co.	James H. Wolfe, special representative.	"* * * investigate the question of wages and [the question of] overtime for truck drivers and report his findings to the Board * * *."
73	Kansas City Power & Light Co.	John A. Lapp, special representative.	"* * * to investigate the issues in dispute * * *."
84	Arcade Malleable Iron Co., Inc.	Charles G. Rugg, special representative.	"* * * to investigate the issues in dispute * * * to make findings of fact and report such findings to the Board * * *."
90	Spicer Manufacturing Co.	A. C. Lappin, special representative.	"* * * to act as an impartial observer in the dispute * * *."
98	Union Electric Co.	Alex S. Langsdorf, special representative. Wade Childress, special representative. Frank H. Wilson, special representative.	"* * * to investigate the issues in dispute * * * to conduct hearings between the parties, to make findings of fact and report to the National Defense Mediation Board * * *."
103	Nevada Consolidated Copper Corporation.	Frank M. Swacker, special representative.	"* * * to investigate the issues in dispute * * * and report his findings to the Board * * *."
104	Waterfront Employers Association of Washington.	Donald H. MacKenzie, special representative.	"* * * to investigate the wage issue in dispute * * * and report his findings to the Board * * *."
107	Burgess Battery Co.	Robert J. Meyers, special representative.	"* * * to make a thorough investigation of the company's wage rates at its Freeport, Ill., plant and submit to the Board as promptly as possible a written report containing his recommendations on wages * * *."
110	Anaconda Copper Mining Co.	Isador Loeb, special representative.	"* * * to investigate the wages of the electricians at the Butte, Mont., mine of the Anaconda Copper Mining Co. * * * and report his findings to the Board * * *."

In several other cases the Board appointed persons pursuant to agreement between the parties. These persons were not, however, representatives of the Board in arbitrating or similar activity.

Appendix D

Maintenance of Production Pending Settlement

The first list of cases in appendix B indicates the existence or the imminence of interruption of production at the time of certification and the second list shows how successfully the Board dealt with this immediate situation. By dividing these lists into time segments, it will be seen that the reference of a case to the Board came more and more often to be substituted for a strike, and that the Board's requests in strike cases were more and more usual and more and more successful.

TABLE 11.—*Stoppage status of cases by time periods*

Status of case when acquired	Number of cases in each period of acquisition					
	Mar. 19–June 18	June 19–Sept. 18	Sept. 19–Dec. 7	Total to Dec. 7	Dec. 7–Jan. 12	Total
Stoppage	26	21	15	62	2	64
Stoppage imminent	16	13	12	41	3	44
No critical situation		6	4	10		10
Total	42	40	31	113	5	118

TABLE 12.—*Frequency and effect of Board's request to keep operating*

Status of case when acquired	Number of cases in each period of acquisition					
	Mar. 19–June 18	June 19–Sept. 18	Sept. 19–Dec. 7	Total to Dec. 7	Dec. 7–Jan. 12	Total
Stoppage:						
(a) Production not asked	19	6	2	27	0	27
(b) Production asked—						
(1) With success	4	12	11	27	2	29
(2) Without success	3	3	2	8	0	8
No stoppage:						
(a) Production not asked	2	3	2	7	0	7
(b) Production asked—						
(1) With success	12	16	12	40	3	43
(2) Without success	2	0	2	[1] 4	0	[1] 4

[1] In 3 of these cases the request to remain at work came too late; in all 4 the strike was settled before hearing.

In some cases the Board did not request production pending mediation because there was no likelihood of a stoppage; in other cases, particularly the earlier strike cases, because such a request apparently would have been futile; in a few, perhaps, because, in the Board's opinion, it would have been a hindrance to the achievement of a lasting settlement to ask that a stoppage be terminated before settlement of the controversy.

Besides the 64 strikes which existed when the Board assumed jurisdiction, 24 more stoppages of measurable duration and importance developed at a later stage in these 118 cases, some in cases that came to the Board as strikes and some in nonstrike cases. Altogether, 75 cases at one time or another confronted the Board with 88 distinct interruptions of production. Besides these 24 stoppages, set forth in appendix B, table 9, there were brief post certification stoppages of small groups of workers in No. 7, *Seas Shipping*, No. 18, *Roebling*, No. 57, *Lincoln Mills*, No. 85, *Alabama Dry Dock*, and doubtless other cases—slight stoppages that did not engage the attention of the Board.

In a few of these 64 strike cases, a final settlement of the controversy was effected before the Board heard the case. Thus, one strike was ended and the case closed (No. 74, *Pressed Steel*) by the promise to consider at once the union's petition for determination of representation, and another (No. 14, *Birdsboro Steel*) by an agreement of the parties to resume production pending such a determination. In 5 other strike cases (No. 1, *Universal-Cyclops*, No. 8, *Standard Tool*, No. 70, *Henry Vogt Machine*, No. 82, *Shaw-Box Crane & Hoist*, and No. 99, *York Corrugating*), the parties reached a final settlement by contract before the Board held a hearing. Similarly, in 3 nonstrike cases, No. 13, *Minneapolis Moline*, No. 33, *Smoot Sand & Gravel* (in which there was a strike between certification and settlement), and No. 109, *American Sugar Refining*, there was final settlement without hearing. Thus, 7 strike cases, and 3 nonstrike cases ended in the first stage of Board control.

Without a final settlement strikes were often averted or terminated before cases came to hearing. Government agencies often made arrangements that production should be resumed or not interrupted if a case was certified to the Board, as has been shown in table 2. Certification itself was the signal for calling off a strike in nine recent cases, No. 61, *Consolidated Edison*, No. 64, *Curtiss-Wright*, No. 79, *Hendey Machine*, No. 80, *American Merchant Marine*, No. 89, *International Harvester*, No. 90, *Spicer Manufacturing*, No. 92, *Ingalls Ship Building*, No. 100, *Wolverine Tube*, and No. 111, *Hammond & Irving*. Indeed in the last of these (though counted as a strike case), the strikers had returned to work in response to a promise of certification forthwith, a few hours before the Board received the case.

Without such a stimulus strikes have occasionally been called off before hearing as a part of some interim agreement of the parties, as in No. 32, *Allis-Chalmers*, La Porte, No. 97, *Robins Dry Dock* (a strike that began after the date of certification but before the certification had been received by the Board), No. 102, *American Can*, and No. 107, *Burgess Battery*.

As indicated in appendix B, table 8, a request of the Board without any form of agreement achieved resumption of work in 17 cases (while with an interim or final agreement work was promptly resumed in 13 more) out of the 37 cases in which such a request was made, while in nonstrike cases the Board kept the wheels of industry moving in all of the 47 cases in which it so requested, except No. 33, *Smoot Sand & Gravel*, No. 40, *Bohn Aluminum*, No. 94, *Sloss-Sheffield*, and No. 97, *Robins Dry Dock*, in the last 3 of which cases the certification was too late to enable the Board to make its request in time. In *Bohn* and *Sloss-Sheffield* the strike was promptly called off: in the other 2 cases

it was soon settled by agreement, as has been noted. The total of 64 strikes in limine and 88 stoppages in all had thus been reduced to 28 and 48, respectively, before the cases were heard.

When a strike did not end before the hearing, the Board, nevertheless, often succeeded in achieving a resumption of production before the completion of a collective agreement or some other form of final settlement. In No. 2, *Vanadium*, No. 18, *Roebling*, and No. 93, *American Engineering*, the parties as a result of the hearing made an interim agreement to end a stoppage dating from before certification. The brief second Roebling strike, culminating in several slight stoppages, also was settled by the parties while the Board was carrying on an investigation of wages and work load. The second strike in No. 20B, *Captive Mines*, was ended by agreement, sponsored by the President, which returned the case to the full Board. In No. 49, *Breeze*, a 2-day strike after hearing was ended by interim agreement. An earlier 1-day strike in this case and 2-day strikes in No. 65, *Solvay Process*, and No. 73, *Kansas City Power*, that occurred during or after the hearing were stopped by request of the Board. Interim recommendations made by the Board or its representatives during or after hearing led to resumption of production in 11 cases; i. e., No. 17, *American Car & Foundry*, No. 20, *Appalachian Mines*, No. 20B, *Captive Mines* (first strike), No. 22, *Minneapolis-Honeywell*, No. 27, *Continental Rubber*, No. 29, *Ex-Cell-O*, No. 31, *Employers Negotiating Committee*, No. 39, *Marlin Rockwell* (second strike), No. 51, *Air Associates* (first strike), No. 58, *Ohio Brass*, No. 60, *U. S. Gypsum*. In 3 of these (Nos. 22, 31, and 39), the stoppage arose after certification; in the other 8, the strike began before the Board's intervention. The precertification strike in No. 10, *Phelps Dodge Copper Products*, was ended upon the verbal acceptance of the Board's final recommendation, though the collective agreement was not completed till a week later. Two strikes, arising after certification, were ended by seizure of the plant by the Government: No. 36, *North American Aviation*, and No. 1, *Air Associates*. Thus, in the hearing stage and before final settlement, 23 stoppages were terminated of which 12 were original and 11 postcertificational stoppages; the toll of original strikes that persisted beyond a hearing and to final settlement was 16; and the toll of later stoppages that so persisted was 9.

Of these 25, one disappeared by attrition, No. 19, *American Potash*, and 2 responded only to the intervention of the President, No. 46, *Federal Shipbuilding* and No. 20B *Captive Mines* (third strike).

The importance of the stoppages can be more clearly judged from the following tables which show the number of cases in several categories and the average period of stoppages before certification and after certification for each of these categories. Cases Nos. 4, 4A, 20, 20A, 20B, and 20C are omitted, because they involve too many units to be susceptible of anything approaching accurate mathematical treatment in this regard; and cases Nos. 19 and 24 also are omitted because the Board did nothing effective in handling these controversies. There were no stoppages in Nos. 4A and 24, but there were stoppages in Nos. 4, 19, 20, 20A, 20B, and 20C.

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TABLE 13.—*Classification of cases in relation to stoppages*

Item	I Cases certified Mar. 19–June 18, closed by N. D. M. B.	II Cases certified June 19–Sept. 18, closed by N. D. M. B.	III Cases certified Mar. 19–Sept. 18, transferred to N. W. L. B.	IV Cases certified Sept. 19–Jan. 12, closed by N. D. M. B.	V Cases certified Sept. 19–Jan. 12, transferred to N. W. L. B.	All cases
Strike cases	22	15	3	9	9	58
Nonstrike cases	15	17	3	11	6	52
Total	37	32	6	20	15	110
	Average number of days of interruption of production in each category					
Strike cases						
Average duration before certification of the interruption existing at time of certification	26.7	14.9	42.3	15.1	23.7	22.2
Average duration after certification of the interruption existing at time of certification	12.4	8.1	24.7	3.4	3.0	9.1
Average duration after certification of all interruptions	13.2	10.1	24.7	3.4	3.0	9.9
Nonstrike cases						
Average duration after certification of all interruptions	.8	3.4	8.3	.1	1.2	1.9
All cases						
Average duration after certification of all interruptions	8.0	6.5	16.5	1.6	2.3	6.1

The duration after certification of all interruptions of production in the 38 cases (both open and closed) certified before June 19 is 325 days; or 8.6 days per case. The duration after certification of all interruptions of production in the 37 cases (both open and closed) certified between June 19 and September 18, inclusive, is 285 days; or 7.7 days per case. The duration after certification of all interruptions of production in the 35 cases (both open and closed) certified after September 18 is 66 days; or 1.9 days per case. The over-all stoppage after certification is therefore 676 days for the 110 cases, or 6.1 days per case, as indicated above.

If the eight excluded cases, all of which arose before September 19 (except No. 4A in which there was no strike), were included, the effect would be to increase the number of days of interrupted production markedly in the group of cases certified before June 19 and slightly in the June–September group, thus steepening the diminution of production losses as time passed. By rough approximation the total of interruptions would amount to 782 days and the average interruption per case would be 6.6 days.

These same interruptions are classified by time periods in the next to last paragraph of "Duration of Interruptions of Production" (p. 11) of this report.

In terms of number of workers at work and number of workers not at work the last paragraph of "Duration of Interruptions of Production" (p. 11) and the chart and table that accompany it show the

situation of all cases before the Board, month by month. After November 24 there was no stoppage of production in any case pending before the Board except that in No. 112, *Johns-Manville*, a strike case certified Saturday, December 20; work was resumed Monday, December 22. The method of calculation used in this report, of counting stoppages from the day work ceased to the day it was resumed, makes this a 2-day interruption.

Appendix E

Union Security

1. Coverage of This Appendix and Classifications

The number of docketed cases was in all 118. This includes Nos. 4A, 20A, 20B, and 20C. The cases, however, which were settled without hearings are here excluded. These are Nos. 1, 8, 13, 14, 33, 70, 74, 82, 99, and 109. In these cases it is not always possible to determine what the issues were nor in what way they were settled. They have no ascertainable significance in assessing the trend of Board activity. In sum, there are 108 cases which are here analyzed.

Of these 108 there were demands for some form of union security in about 56. These included demands for closed shop, union shop, union maintenance, check-off, preferential hiring, employer recommendation or encouragement of union membership, discipline of anti-union activity, and grievance procedure where demanded or granted with the object of maintaining union membership. Mere demands for union recognition have been excluded. Eight cases in which a demand for union security was made were not disposed of and so are not discussed. These are Nos. 4A, 60, 84, 89, 96, 97, 102, and 107. Case No. 19, *American Potash*, though never settled, was closed.

A classification of the forms in which the demands for union security were first made must be very inexact and is of no great significance. It is the usual self-respecting procedure of unions to make a demand for the closed or union shop. The demand may be set high as a bargaining expedient and may cloak what is really a demand for union maintenance, some form of shop discipline, or even something entirely outside the union security field, such as wages. Thus, in approximately 46 cases a demand was made for the union shop. In the remaining few cases the demand was more specific, as in No. 6, *Allis-Chalmers*, for shop discipline and grievance procedure clauses and in No. 92, *Ingalls Ship Building*, for union maintenance.

Classification of solutions will be made from two points of view, the method by which the solution was achieved (recommendation or agreement), and the substance of the solution. The classification according to method has obvious defects. The influence and participation by the Board may range from a proffer of a well-heated office to the Board's ultimate power of recommendation. And, no doubt, some recommendations imply the use of the Army and some do not. Even the meaning of results which have the same formal descriptions varies from case to case. Some recommendations are in the teeth of at least one of the parties; others embody the agreement of the parties which is thus given formal dress to protect the negotiators from the displeasure of their constituencies. On the other hand, an agreement may be the result of firm intimations from the Board of what it will

recommend, should it be forced to do so. Given these intimations the parties may prefer a form of ostensible agreement to manifest intransigence. A rough summary of results is as follows (cases may appear in more than one subheading):

Cases disposed of by recommendation		14
For closed shop	1	
Against closed or union shop (explicitly)	1	
Preferential hiring	3	
For union maintenance	7	
Against union maintenance (explicitly; it was denied in many other cases informally or inferentially)	4	
Membership encouragement, shop discipline clauses, etc., granted	6	
Cases disposed of by agreement		33

2. Recommendations

(*a*) *Cases in which procedure alone was recommended.*—It should be noted that the Board through recommendation and suggestion has substantially promoted the use of clauses and devices (short of the more determinative union shop or union maintenance) to strengthen the position of a union against the organizational effort of rival unions. Examples of this are No. 6, *Allis-Chalmers*, and No. 10, *Phelps Dodge Copper*. This course coincides with a similar course of ruling by the N. L. R. B. which gives to unions attaining majority status some power to suppress directly or through employer action the activity of dissentient minority groups.

(*b*) *Closed or union shop.*[1]—The Board has recommended the closed shop in one case (No. 37, *Bethlehem Steel Co., Shipbuilding Division*). The recommendation here was made in the face, apparently, of strong employer opposition but the employer did indicate that it would accept the recommendation. The union at one time was prepared to take in compromise a preferential shop. The company stated that it would prefer the recommendation of the Board to a voluntary concession by it which might serve as a precedent in its plants in other parts of the country. It could be stated that in the remaining 45 or so cases in which the closed or union shop was demanded, the Board refused it. That statement, however, would be misleading since in few of these instances was the demand seriously maintained. In No. 20B, *Captive Mines* (in which the demand was for a union shop or nothing), the demand was refused by the Board (but granted by subsequent arbitration arranged by the President). In No. 31, *Employers Negotiating Committee*, the union's insistent demand for a union shop was at least temporarily (and it would seem finally for the purposes of this case) rejected; the union was advised to accept the employers' offer of a union maintenance clause. In No. 85, *Alabama Dry Dock*, the union shop was explicitly denied. *Bethlehem* and *Federal* were said to be inapplicable because in the case at hand a contract provided that membership should not be a condition of employment. Cases in which union maintenance was explicitly denied may also, with some reason, be treated as involving a denial of the union shop.

[1] As here used, the term "closed shop" requires that the employer employ only persons who are, prior to employment, members of the union; "union shop" requires that any person employed become, within a stated time, a member of the union.

(*c*) *Preferential hiring.*—In three cases the Board has recommended some form of preferential hiring. The recommendations involved an expressed or implied refusal to recommend a formal union shop clause. The first of these cases is No. 34, *Columbia Basin Area Loggers and Sawmill Operators*, in which the Board recommended that, "the employer give first consideration to local unemployed members of the union, provided that they are qualified and readily available; when satisfactory men cannot be obtained in the above manner, the hiring of others shall not be deemed a breach of this agreement." This clause, embodying an existing practice, stated the wishes of both parties. The second case is No. 62, *Todd Galveston Dry Docks, Inc.*, in which the Board, taking account of the fact that substantially all employees were members of the union and of the existing oral understanding which in its opinion amounted to a preferential hiring arrangement, recommeded the following clause: "The company recognizes that a large majority of its employees for years past have been members of the unions with which it now has a labor agreement. Relations in general have been mutually satisfactory. * * * The union and the company agree that it is for their mutual interest to maintain existing practices and agree to do so. The company looks with favor on its employees becoming members of the unions, parties to this agreement." These clauses must be read in the light of a tacit practice of preferential hiring. The third case is No. 92, *Ingalls Ship Building Co.*, in which the Board recommended that the union accept, among other things, a clause, offered by the employer, stating, "All things being equal and when practicable, members of the said union will be given preference in the hiring of men when said members have registered with the employer's employment office and with the union and when they are available within 24 hours." In No. 19, *American Potash and Chemical Corporation*, the Board during the hearing, suggested the appropriateness of a preferential hiring clause, but, although it does appear that the panel would have been willing to recommend a union maintenance clause, it does not appear that it would have recommended a preferential hiring clause. No formal recommendation was actually made.

(*d*) *Union membership maintenance.*[2]—A union membership clause has been recommended in 7 cases: No. 31, *Employers Negotiating Committee;* No. 34, *Columbia Basin Area Loggers and Sawmill Operators;* No. 36, *North American;* No. 43, *Sealed Power;* No. 44, *Western Cartridge;* No. 46, *Federal Shipbuilding Corporation;* and No. 57, *Lincoln Mills.* In No. 34 the recommendations embodied the wishes of the parties. In No. 43 the employer accepted the recommendations when both the employer and the employee member of the panel indicated an attitude favorable to the claim. In No. 31, the employer offered the clause in satisfaction of a union shop demand; the union refused to accept it; the Board recommended that it do so. In No. 57, *Lincoln Mills*, the panel believed that the employer would accept the recommendation, although it made no agreement to do so and protested after its issue. The recommendation in that case contained a so-called "escape clause" providing that any employee might

[2] "Union maintenance" unless otherwise noted, provides simply that a person who at the time of the contract is, or who thereafter becomes, a member of the union, shall as a condition of employment remain a member in good standing.

withdraw from the union for legitimate reasons not related to wages, hours, or conditions of employment; such reasons to be passed upon by a board of review, the impartial member of which was to be appointed by the United States Director of Conciliation. The recommendations also provided for a voluntary check-off, which at one time the employer had granted to another union.

The other three cases, which show the strongest disposition to make a recommendation contrary to the pleasure of at least one party, No. 36, No. 44, and No. 46, were decided, respectively, on June 28, July 24, and July 26. The recommendation in No. 57, *Lincoln Mills*, was issued on August 7. There were no recommendations for union maintenance after that date. In No. 19, *American Potash*, the Board stated that if it became necessary to make a formal recommendation, "it would not go beyond" recommending union maintenance.

In four cases, No. 21, *General Motors*, No. 85, *Alabama Dry Dock*, No. 92, *Ingalls Ship Building*, and No. 94, *Sloss-Sheffield*, the Board explicitly refused to recommend a union maintenance clause. In two of the cases, No. 92 and No. 94, the recommendations did contain union security provisions falling short of union maintenance, in No. 92, preferential hiring, union membership encouragement, shop discipline, and grievance procedure, and in No. 94, shop discipline. In No. 92 these recommendations were endorsements of employer offers. In No. 85 an existing contract provided that membership should not be a condition of employment; the Board recommended adherence to the contract. In three cases, No. 54, *Armour & Co.*, No. 55, *Borg-Warner Corporation*, and No. 63, *Rockford Drop Forge Co.*, the panel let it be known informally that it would not grant a union maintenance clause. In a number of others, as for example No. 59, *Erwin Cotton Mills*, and No. 71, *Pullman Standard Car Manufacturing Co.*, the question by the panel chairman as to what special factors in the case supported the claim for union maintenance indicated a panel attitude negative to the claim.

(*e*) *Membership encouragement, shop discipline, and related matters.*—In 4 cases, No. 34, *Columbia Basin Area Loggers and Sawmill Operators*, No. 10, *Phelps Dodge Copper Products Corporation*, No. 62, *Todd Galveston Dry Docks*, and No. 92, *Ingalls Ship Building Corporation*, the Board recommended clauses obliging the employer to encourage, in greater or less degree, membership in the union. The *Phelps Dodge* clause is the weakest of these. The Board (not using the word "recommend") states that it is "of the opinion that the following clause should be taken as a suitable basis for the immediate resumption of production." "The union and the employer agree that at all times they will use their best efforts and endeavors to promote and maintain harmonious, friendly, and cooperative relations between the employee and union. * * * When a new employee is hired, he will be informed of the existence of the union and of this agreement." In No. 34, the employer was asked to agree to recommend that all new employees join the union. The recommendations included also union maintenance and preferential shop. In No. 62, the company was asked to state in the agreement that it "looks with favor upon its employees becoming members of the unions, parties to this agreement" and in No. 92 the Board recommended that the union accept clauses offered by the employer whereby the company would state that it "advocated" that those who are now members retain

membership and that "the interests of the employees are best served by being members of the union." It should be understood that in all of these cases the union encouragement clause was combined with other clauses looking toward union security. In No. 10 the employer agreed to "discipline without discrimination those who by their conduct on the premises interfered with the production of the plant." In No. 62 the recommendation involved as well a practical recognition of the preferential shop and in No. 92 the employer's offer, acceptance of which by the union was recommended, included also a form of preferential hiring and discipline of any employee advocating a policy contrary to that established by the agreement. Furthermore, the Board recommended an additional paragraph whereunder the good faith of a supervisory employee, in carrying out the policies of the agreement, could be tried by a disinterested person designated by the Board.

In No. 94, *Sloss-Sheffield Steel & Iron Co.*, the Board recommended the following clauses: "The company will not tolerate any of its agents engaging at any time in activities against the union signatory to this contract." "The company will not tolerate and will discipline any employee who, on company time, carries on antiunion activities or seeks to interfere with the membership or status of this union. The company has good will toward membership in the certified union as a basic part of our industry and a vital partner in defense production. The company and union agree to cooperate for harmonious relations, orderly and efficient shop discipline, and maximum defense production."

In No. 11, *Sklar Manufacturing Co.*, a recommendation for a better definition of grievance procedure seems to have been directed in some measure, at least, to the demand for union security.

In No. 72, *Aluminum Co. of America*, the Board recommended that the demand for union shop in the Vancouver plant be postponed until "such time as the parties might negotiate a new master agreement covering all plants in which the union in question represented the employees."

In No. 20B, *Captive Mines*, the original panel was unwilling to issue recommendations with respect to the demand for union shop. It suggested instead further procedures involving a choice of methods of arbitration.

3. Agreements

There is, of course, no clear-cut line between cases disposed of by recommendation and those by agreement. Generally speaking, of course, a case disposed of by recommendation is more likely to be one in which the parties were unable to agree. The area of disagreement, however, may have been small and in some cases what was in substance an agreement was embodied in a recommendation to make it more persuasive with the constituencies of the negotiators. On the other hand, agreements have been arrived at through varying degrees of Board pressure and insistence.

Cases in which the parties have been told what the Board "would" recommend have been noted in the preceding sections but a so-called "suggestion" may make it clear to the parties that the Board is insisting upon its adoption. Suggestions thus range themselves in a series

from intense Board pressure for solution to simple stimulation of forces making for agreement.

A rough attempt at such a classification of agreements has been made in "Methods of Final Settlement" (p. 13) of the report. This classification will not be repeated here but the amount of Board pressure will be indicated in connection with many of the cases.

(*a*) *Union membership maintenance.*—A union membership maintenance clause was agreed to in five cases: No. 5, *Weyerhaeuser Timber Co.* and *Snoqualmie Falls Lumber Co.* (commonly called the *Snoqualmie case*); No. 23, *Utica & Mohawk Co.;* No. 88, *American Cyanamid Co.* (union maintenance in a mild form): No. 95, *Alabama By-Products Co.;* and No. 111, *Hammond & Irving* (union maintenance in a "voluntary" form).

Of these cases, No. 5, *Snoqualmie*, is the most important. In this case the panel informally submitted the maintenance clause and a clause obligating the company to recommend membership. Both were accepted. The solution in this case was a dominant factor in bringing about the solution in No. 31 and No. 34 involving other sectors of the Pacific Northwest lumber industry, in both of which cases the Board recommended the union maintenance clause.

In No. 23, *Utica & Mohawk*, the clause was agreed to without important assistance from the Board. The employer had, prior to the certification to the Board, proposed a clause requiring union maintenance but not obligating the company to discharge an employee not remaining in good standing. The clause finally agreed upon requires the company to discipline union employees who do not remain in good standing, but does not seem to require their absolute discharge. It provides also for discipline of anyone "guilty of any activity in the plant intending to undermine the union."

In No. 88, *American Cyanamid*, the Board suggested, and the parties agreed to, a clause falling somewhat short of union maintenance. It provides that the company "expects" that employees will maintain union membership and that in the event of failure to do so, the employee on request of the union will be called before a conference of company and union officials, which will remind the employee of the company's expectation that he maintain his membership. A similar agreement was secured in No. 106, *American Shipbuilding*. The company in No. 106 agreed further to present new employees with a copy of the agreement, to ask them to cooperate with the union in fulfilling its obligations, and to "contact" union officers before hiring.

In No. 95, *Alabama By-Products*, the clause requires not only union maintenance, but that new employees become members of the union. In a very late case, No. 111, *Hammond & Irving*, the parties agreed to an interesting variation, making the maintenance clause applicable only to those members who agree that it shall be so applicable. The idea seems first to have been given currency in the Board when such an arrangement was offered by the employer in No. 106, *American Shipbuilding*. (It was refused by the union.)

(*b*) *Voluntary check-off.*—In two cases No. 47, *Cheney Silk*, and No. 59, *Erwin Cotton Mills*, the parties agreed to a voluntary check-off. The provision in No. 47 makes the authorization for check-off irrevocable except for "legitimate reasons" which "shall not be related

to wages, hours, and conditions of employment." Furthermore, the legitimacy of the reasons is subject to approval or disapproval by a board consisting of equal representation from the union and the company. In the event of the failure of the board to agree unanimously, the matter is to be referred to an impartial person selected by the board. Should the board be unable to agree, the impartial party is to be selected by the Connecticut State Board of Mediation and Arbitration. In No. 59 the substantive provisions of the clause are the same as in No. 47, but the provisions for enforcement are different. The company is not to be a party to the dispute, but the employees affected in the union shall, if they are unable to agree on a method of settling the issue, refer it to a person to be nominated by Frank P. Graham, or, if he cannot make the nomination, by the American Arbitration Association. This form of "escape clause" is very much a Board invention. The check-off protects the union and in so doing promotes stable labor relations. It may, however, bind the employee to a union which in time is seen to be inefficient or corrupt. The escape clause which permits withdrawal for reasons other than the terms of the labor agreement may serve to keep union officials faithful, and, if not, to lay the basis for justified revolt.

(*c*) *Shop discipline.*—There are approximately 11 cases in which the parties agreed upon some form of shop discipline as a primary or partial solution of the union security demand.

In the first, No. 6, *Allis-Chalmers* (Milwaukee), the controversy was almost entirely over the form and implementation of a shop discipline clause. The importance of the controversy and the obduracy of the parties led the Board to exert very strong pressure for a solution. The suggestions of the Board were nearly equivalent to recommendations. The employer seemed prepared, as a general proposition, to treat its earlier statements and now-expired contractual arrangements as involving a general principle committing it to the treatment of activity against the union as a form of disruption of shop discipline. The company also agreed to the principle of a "referee clause," providing for an arbitrator with jurisdiction to decide whether an activity constituted "undermining the union" or a disruption of shop discipline. The company, however, was sharply opposed to the clause becoming the vehicle of union maintenance or union shop or a sanction for payment of dues, and the union, though alleging a desire for one or the other of these things, did not insist that the clause be the instrument of this desire. This controversy narrowed down to the question of whether a failure to pay dues was in itself an "undermining" of the union. The employer insisted that the clause should explicitly state that it was not. The chairman of the panel felt that the employer should not insist upon this position but should trust to the referee to take a view consistent with the meaning of the provision. He did not deny that a failure to pay dues might, in some cases at least, be construed as "undermining," but he thought that the question should be left open for an arbitrator since most cases would involve more than the mere payment of dues and a good arbitrator should not be too closely controlled by an excess of formula. The employer persisted, however, in its position and the panel suggested the following: "It is agreed that the fact that an employee is not a member of the union or is not a member

in good standing, shall not alone and in itself be cause for discipline in the absence of some other fact or facts showing that the status of and conduct on the company premises of such employee is interfering with shop discipline." Apparently, as a concession in return for this yielding to the employer, the Board suggested that these words be followed by the words: "It is expected that by union members remaining in good standing such interference with shop discipline will be reduced." These clauses were accepted. The employer at one time had written a letter to the union stating: "The company will maintain discipline on company premises, and to that end will strictly enforce its rules and regulations; accordingly, no employee will be permitted to engage in any activity in any way related to or connected with the work of a labor organization or of collective bargaining on company premises except as approved in the agreements with labor organizations." The employer later maintained that this declaration was contrary to N. L. R. A., because by reference to the agreement it permitted this union exclusively to engage in certain organizational activities on the premises. The employer was induced by the Board to accept the inclusion in the contract of the above-quoted words with the provision that if N. L. R. B. advises that the provision is contrary to N. L. R. A., it shall be stricken. The union demanded also that all shop rules hereafter adopted be subject to its approval. The panel was able to bring the union to admit that its interest was with respect to such rules as might discriminate against it or undermine its organization. Both parties agreed finally to a clause that no rule should be of a discriminatory character, and that a dispute as to its character in this respect would constitute an adjudicable grievance.

In No. 26, *Allis-Chalmers* (Pittsburgh), and No. 32, *Allis-Chalmers* (La Porte, Ind.), the settlement followed the broad lines laid down in No. 6.

No. 9, *Cowles Tool Co.*, incorporated a shop discipline clause without important suggestion from the Board; also provisions for harmonious relations and use of bulletin board.

The agreement in No. 23, *Utica & Mohawk*, also reached without suggestion from the Board, incorporates shop discipline with the union maintenance already mentioned.

In No. 30, *United Engineering & Foundry Co.*, in which the union demanded the closed shop on the ground that the employer was reversing its previously friendly attitude, the employer asked the Board to make an informal compromise suggestion. Upon the basis of the Board's suggestions, the agreement provided that the employer would not permit any conduct on company time or property opposed to the interest of the union. In turn, the union was not to solicit members on company time or property nor to exert coercion on any employee to join the union.

In No. 47, *Cheney Silk*, plant discipline was a part of a clause including voluntary check-off, as noted above, and employer encouragement of union membership.

In No. 55, *Borg-Warner Corporation*, the employer indicated willingness to agree to a shop-discipline clause provided that it be made clear that this did not require it to put the sanction of dismissal behind the collection of dues. The Board let it be known that it

would not recommend any union security clauses and the union agreed to the company's offer.

In No. 75, *Lamson & Sessions*, on the basis of suggestions from the Board, it was agreed that the company would take disciplinary action against any of its employees whom it found guilty of "interfering with the status and responsibility of the union as sole bargaining agent certified by the N. L. R. B."

In No. 76, *American Brake Shoe & Foundry Co.*, the union demanded a union shop and later expressed a willingness to accept a clause to the effect that the employer approves of employees becoming union members. Without important suggestions from the Board, the parties finally agreed on a clause stating the company had no objection to union membership and obligating the company to discipline any employees who on company time engaged in antiunion activity. The union in turn agreed to suppress union activities during working hours.

In No. 88, *American Cyanamid Co.*, the arrangements made upon suggestions by the Board included the noncompulsory union maintenance clause, discipline of activities in the plant "calculated to undermine the status of the union as the bargaining agency," union agreement not to engage in union activities during working hours, and a commitment by the company to present new employees with a copy of the agreement and to ask them to "cooperate with the union to carry out the obligations of the contract."

(*d*) *Union membership encouragement and related matters.*—Clauses encouraging union membership or containing some form of favorable reference to it have already been noted in cases Nos. 6, 9, 47, 75, 88, and 106. Other cases should be noted. In No. 29, *Ex-Cell-O Corporation*, the company agreed to a clause that "it was important that employees who are or who become members of the union remain in good standing." The union agreed in turn that "neither the union nor its members will intimidate or coerce any employee in respect to his right to work or in respect to union activity, membership, or nonmembership."

In one case, No. 25, *Curtis Manufacturing Co.*, the only response to the union-shop demand was a clause admitting the right of employees to join the union.

In No. 76, *American Brake Shoe & Foundry Co.*, the company specifically refused to make any statement that it encouraged union membership. Such a statement, it argued, was a covert form of closed shop. It did agree to a shop discipline clause, as noted above.

In No. 16, *Kellogg Switchboard Supply*, and No. 71, *Pullman* (Michigan City), the grant or improvement of grievance procedure was considered as in some sense a response to claims for union security.

(*e*) *Agreements containing no reference to union security.*—In these cases there was originally a demand for some form of union security usually a pro forma demand for a union shop, but the demand was not pressed or was swapped for some concession not related to union security.

These include No. 18, *John A. Roebling's Sons Co.* (demands waived for concessions); No. 27, *Continental Rubber Works* (claim not pressed); No. 41, *Curtiss-Wright Corporation* (where the claim

was abandoned but the employer informally agreed to arrange a meeting between the union and some 24 employees who had refused thus far to join the union, at which meeting the union representatives would be given a full opportunity to present to the men the arguments in favor of union membership; this agreement was not part of the written contract); No. 49, *Breeze Corporations* (in which, however, the union already had union maintenance under an earlier agreement); No. 63, *Rockford Drop Forge Co.* (in which the demand for a union shop was dropped, apparently after the panel had indicated its unwillingness to grant that demand); and No. 112, *Johns-Manville* (in which the demand for union shop was dropped probably in return for wage settlement; in any case union has 100 percent membership).

In No. 56, *Aluminum Co.* (Vernon), the Board suggested that the issue of a union shop be postponed until the negotiation of a master agreement for all the plants represented by the union in question. The suggestion was acceded to. The fact was that the existing master agreement, which covered plants not here in question, had no union shop provisions, and the company protested against exceptional arrangements in the plant in question.

Appendix F

Wage Rates

1. Coverage of This Appendix and Classifications

The total number of cases docketed by the Board was 118. This includes Nos. 4A, 20A, 20B, and 20C which when certified to the Board were included within Nos. 4 and 20, respectively, but were split off when found to involve separate controversies.

Cases in which there was no hearing before the Board	10
Cases in which there was no wage issue	26
Cases in which the wage issue was not decided	16
Cases in which the wage issue was determined by recommendation in whole or in part	[1] 20
Cases in which the wage issue was determined by agreement in whole or in part	[1] 48

[1] No. 44, *Western Cartridge,* and No. 94, *Sloss-Sheffield,* were resolved in part by agreement. They have been included in both categories thus accounting for the two additional numbers.

In some of the 26 cases in the second class, there may have been wage issues at some time prior to submission or after disposition by the Board, but there was none before the Board. The category includes No. 51, *Air Associates, Inc.*, in which wage negotiations were proceeding outside the Board at the same time that other issues were before the Board. Here the Board's special investigator made suggestions for minima based on his findings as to the wages prevailing in the community for similar work, but the Board made no recommendation on this issue, and the case was closed upon seizure of the plant by the President.

Of the 16 cases in which the wage issue was not decided the Board closed No. 19, *American Potash & Chemical Corporation*, at the desire of the parties, without proceeding to any recommendation. The strike ended with the employer raising wages without collective bargaining. In 8 of these cases the Board appointed an investigator. In No. 4A, *International Harvester*, No. 58, *Ohio Brass Co.*, No. 60, *United States Gypsum Co.*, No. 67, *Pacific States Cast Iron Pipe Co.*, and No. 84, *Arcade Malleable Iron Works*, the investigator's report either had not been received or had not been released owing to C. I. O. withdrawal. In No. 49, *Breeze Corporations*, No. 66, *Aluminum Co.* (regional differential), and No. 107, *Burgess Battery Co.*, the investigator's report was released to enable the parties to resume collective bargaining. In the *Burgess case* the parties announced themselves to be mutually satisfied with the investigator's report and to be willing to come to agreement on the basis of it. The remaining cases, No. 4, *International Harvester Co.*, No. 89, *International Harvester Co.*, No. 97, *Robins Dry Dock*, No. 100, *Wolverine*, and No. 102, *American Can*, hearings were, due to the withdrawal of the C. I. O., either not scheduled or postponed. In No. 91, *John A. Roe-*

bling's Sons Co., the hearing was postponed until the union would send a representative with power to negotiate on all issues. The last docketed case, No. 114, *Carolina Transportation Association*, was not received until January 6, 1942. All of these 15 cases were transferred to the docket of the National War Labor Board.

2. Recommendations

There were 20 cases in which the wage issue was treated in some form or other through recommendation. As indicated elsewhere, a classification which distinguishes between recommendations and agreements is somewhat arbitrary. Some of these recommendations, at least, represented in very large part the already achieved agreement of the parties. On the other hand, in many of the cases of so-called agreement, the pressure brought to bear upon the parties by a determined panel was as great as that accompanying formal recommendations. The capitulation of the parties might indicate simply less power of resistance or a preference for the form of agreement to that of recommendation after it had become clear what the substance of the recommendation would be.

(*a*) *Cases in which procedure alone was recommended.*—The recommendations in No. 68, *American Car and Foundry;* No. 78. *Bendix Aviation;* No. 104, *Waterfront Employers' Association;* and No. 113, *Highway Transport Association*, do not deal with wage rates. In No. 68, the Board believed that the dispute was essentially one over the operation of a wage rate, and recommended an impartial grievance procedure as a means of settlement. In No. 78, the immediate question was whether the employer had not refused to apply the appropriate wage rate under the contract to some 12 female workers. The Board recommended that a representative of the Board make a binding disposition of the question. But this controversy was only part of a larger one, increasingly acute, involved in transforming the plant from a small-scale to a mass-production basis. For this transformation job, classification was an urgent necessity. The Board recommended further negotiation between the parties with a Board representative assisting. Case No. 104, *Waterfront Employers' Association*, concerned the employees of Pacific Coast waterfront employers represented by the A. F. L. The great majority were represented by C. I. O. and an arbitration concerning similar wage rates was proceeding contemporaneously. The Board considered that it would be inadvisable to make recommendations which would place one of the rival unions in a favorable position or otherwise embarrass the arbitration. It recommended (orally) arbitration. The parties accepted but insisted that the Board itself be arbitrator. The Board arranged for an investigator who would make a study independent of the other arbitration toward which the A. F. L. was hostile.

In No. 113, *Highway Transport Association*, the parties had agreed on arbitration in principle but were unable to agree on the manner of appointing arbitrators. It was with that problem that the recommendation dealt.

In one case, No. 98, *Union Electric*, the Board itself held no hearings. Due to special circumstance, it at once appointed three investigators who were to assist the parties to a conclusion. The investiga-

tors made recommendations which became the basis of an agreement.

(*b*) *Cases in which the recommendations followed closely rates offered by the employer, or the logic of the existing wage scheme.*—In No. 11, *J. Sklar Manufacturing Co.*, the company had already made the following offer: To employees receiving 50 cents or less—5 cents advance; to those receiving 51 cents to 54 cents—advances sufficient to bring the rate to 55 cents. The Board added to this settlement a recommendation that those having more than 55 cents receive an advance equivalent to 5 cents more than was being received at a certain date, thus following in a certain sense the employers' scheme of advance. It appears that this recommendation embodied the substantial agreement of the patries. In No. 29, *Ex-Cell-O*, the union asked a flat raise of 10 cents per hour. The employer offered 5 cents to all not receiving increases through recent job classification adjustments. The Board recommended a flat 5-cent raise. In No. 31, *Employers Negotiating Committee*, the operators offered a compromise of the wage demands which brought wages into line with those generally agreed upon in No. 34, the related *Columbia Basin Area Loggers case*. The Board recommended that the offer be accepted on an interim basis until a committee appointed by the Board might complete a comprehensive study on rates and methods of pay in the Douglas fir industry of the Pacific Northwest. It should be remarked that this is a progress rather than a final recommendation. The distinction, however, is not important, since even a final recommendation may not be final for long. In No. 40, *Bohn Aluminum*, the union asked a flat 10 cents per hour wage increase, though it had agreed not to open wages until April 1, 1942. The company, nevertheless, was prepared to grant 8 cents if allowed to experiment with an incentive system. The Board adopted this offer as a recommendation with the qualification that the introduction of the system should be voluntary with each employee and its final adoption put to a vote in 60 days. Similarly in No. 94, *Sloss-Sheffield*, where the union demanded a 5-cent raise and the employer offered 2 cents, the Board made an interim recommendation of 2 cents and suggested the appointment of an investigator. The parties finally arrived at agreement without further Board participation.

In No. 44, *Western Cartridge*, the permanent wage rates were a result of agreement but there was an interim recommendation by the Board that an advance of 5 percent granted to other employees and departments be applied at once to the department before the Board. In No. 110, *Anaconda Copper Mining Co.*, the electrical workers asked for an increase of $2.25 per day; the employer offered 75 cents. An investigator found that Anaconda's wage compared favorably with other copper companies. He found no evidence to substantiate the union's charge that the companies held down rates collusively. He found that the wages were much lower than those paid by neighboring building contractors, but found that in the last 2 years, at least, Anaconda's men had had steadier employment. He found that wages paid by neighboring utilities were 33 percent higher; this work may have been more hazardous; its rate was traditionally higher. The investigator was most troubled by the fact that 4 of the crafts in the plant, i. e., bricklayers, plumbers, molders, and lead burners, were much better treated. Electricians were no worse treated than 13 other crafts

in which were the great majority of skilled craftsmen. Electricians needed as much intelligence and education as any of the highest paid crafts. Yet the differential had existed for a long time both here and in the industry. The investigator was not unimpressed with the claim that elimination of the differential might unsettle the company's whole wage structure and bring on unseen and overcostly consequences. He asked whether, if the union had withdrawn the demand in 1939 (as it had), it is justified in refusing to withdraw the demand in a period of war and national peril? He apparently thought it would not be; he recommended, and in this the panel concurred, acceptance of the employer's offer. In these 6 cases, then, the recommendation was either an adoption of the employers' offer, or closely modeled upon it, or a generalization of the employer's existing wage structure.

(*c*) *Cases settled on traditional arbitration lines.*—In No. 45, *Western Pennsylvania Labor Relations Association*, the union asked a general increase of 10 cents an hour. The employers' association raised its offer from 2 cents to 6 cents, at which point the men returned to work. Both parties agreed at that time to be bound by any further findings of the Board. An additional increase of 1½ cents was granted, making a total of 7½ cents per hour. Whether this result was based upon any special reasoning does not appear.

In No. 43, *Sealed Power*, the union eventually secured almost all of what it had demanded before the Board. Its original demands before certification are estimated to have involved a total increase in wages of $210,000. The demand before the Board was scaled down to $150,000. The company offered approximately $100,000. The recommendation was for approximately $125,000. The union, however, struck rather than accept the recommendation and eventually secured $145,000. The earnings in 1940, which were considerably above what they had been in earlier years, were $293,000. It should be noted that in this case the recommendation also provided for a union maintenance clause. The more than usual rigor of the recommendations taken together with the fact that the union struck against them and secured an even superior settlement, suggests that the union was probably in an unusually strong position. This as much as anything may account for the recommendations.

Case No. 39, *Marlin Rockwell*, follows somewhat the pattern of the above cases and, in other respects, certain traditional patterns of wage arbitration. Here the union wanted a 10-cent per hour general increase. The employer had already granted it to the men, but had granted only 5 cents to the women. It justified the women's rate on the ground that it was that prevailing in the vicinity for comparable work. The special investigator appointed by the Board came to the conclusion that if the area of comparison were extended beyond the town to adjoining towns and cities, the Marlin Rockwell rate was below that prevailing; that the additional 5 cents would, therefore, be fair. The Board recommended this increase. The union asked 2½ percent of annual earnings as a vacation bonus. The employer treated the request as a demand simply for more earnings. The investigator was of the opinion that a vacation or an equivalent bonus had a different psychological effect than the wage increase and was justified by the custom prevailing in the adjoining city, Hartford. He suggested a vacation bonus based on a rough median of those pre-

vailing in Hartford. He advised against granting a demand for a double-time Sunday, finding that to be unjustified in the defense situation and finding further that time and a half was the prevailing practice. He advised also that a demand for 4 hours call-in pay was excessive but that 2 hours would not be unusual in the light of Hartford practice. All of his suggestions were adopted in the Board's recommendation. It will be noticed that the reasoning upon which this recommendation is based is the traditional one of applying existing industry patterns to the case in question. To be sure, it is usually debatable what industries, both in kind and location, are justly comparable. In this case, the Board extended the area from the small town in question to a surrounding metropolitan area which would create a somewhat more favorable basis for the treatment of the union claims. It treated as relevant, also, practices in industries different from that in question. In other cases, particularly in those settled by agreement before the Board, the area for comparison was somewhat narrower, but the general lines of reasoning have been the same. Particularly to be noted is the much less favorable treatment (from the union standpoint) of possibly relevant comparative material in the later wartime case No. 110, *Anaconda Copper Mining Co.*, treated above.

(*d*) *The most striking of the wage recommendations.*—The five remaining cases, No. 20, *Bituminous Coal Operators* (Appalachian Mines), No. 20C, *Bituminous Coal Operators* (Alabama mines), No. 21, *General Motors*, No. 80, *American Merchant Marine Institute*, and No. 105, *Central States Employers' Negotiating Committee*, are the most distinctive of the wage recommendation cases. However, No. 20, though dramatic, was solved in terms which, objectively considered, were relatively uncontroversial. The differential for work done on daily wage rates between the northern and the southern operators within the Appalachian area had existed only since 1933. It was justified on the basis of the difference in cost of production, particularly on the supposed unfavorable freight-rate differential. An analysis of the facts presented by the Bituminous Coal Division showed that, if anything, the realizations of the southern operators (after absorption of freight differentials) were superior; that the elimination of the wage differential was equivalent to an additional cost burden of 3½ cents per ton; that at least one-half of this additional cost would be neutralized by adjustments in the minimum price structure established by the Bituminous Coal Division, and that the remaining 1½ cents was immaterial in amount in the competitive price structure.

The reasoning in No. 20C, *Alabama mines, follows* somewhat similar lines; but the effects are perhaps more drastic. Until the acceptance of the decision of the Board in No. 20 there had existed between the Alabama miners and the southern Appalachian miners a wage differential of $1.10 a day. Upon the elimination of the Appalachian North-South differential of 40 cents, the question arose whether 40 cents should be added to the Alabama rate in order to maintain the preexisting differential between the southern Appalachian and the Alabama fields. The Alabama operators argued that their realizations were not sufficient to cover the additional 40 cents. The issue was framed entirely with reference to this claim. The Alabama

operators had experimented during and just prior to this period with increased prices to the consuming public. They had established what they believed to be the maximum limit of possible realization. Two members of the Board recommended a wage increase of 25 cents per day and certain adjustments on the theory that as much as, but no more than, that was made possible by the increased realizations established in the period of operations just prior to the recommendation. They recommended further that should there be any increase in these realizations, one-half of the benefit should accrue to the miners up to but not exceeding an additional 15 cents per ton.

The next recommendation for consideration is that in No. 21, *General Motors.* Here the union was asking for a general increase of 10 cents per hour and a union shop, among other things. The employer had offered 3 to 5 cents before the case was certified. During negotiations before the Board, it increased the offer to 5 cents for all employees and 5 to 10 cents for skilled employees. There was no question that the employer was paying the prevailing rate in the industry or that the hourly wage rates were generally higher than those in other industries. The union argued that there was a customary differential between the automobile industry and certain other related industries such as steel, and that because steel had increased its rate 10 cents, General Motors should increase by the same amount in order to preserve the differential. The Board took note of this fact and of the fact that the seasonal nature of the industry tended to reduce the annual earnings of the workers. The Board granted 10 cents as asked for. The Board purported not to consider, in arriving at this conclusion, the probable increase in cost of living or the probable decrease in automobile work due to defense readjustment. Adjustment for such changes could be taken care of when the need arose by the provision that the contract might be terminated by either side on 60 days' notice. The Board did, however, note that the profits were sufficiently substantial to enable the employer to cover the increased wage. The Board refused to make any recommendations for union security. This refusal may account for the complete acceptance of the wage demand, though there was nothing in the record which under criteria then or subsequently established made out a special case for either the union shop or union maintenance.

The Board recommended increased war-risk bonuses in No. 80, *American Merchant Marine Institute.* The practice had grown up of giving monthly bonuses to seamen who voyaged into dangerous belligerent areas and additional flat bonuses for duty into ports such as Suez and Aden which were peculiarly hazardous. The monthly rate had by agreement been stepped up to $60. West-coast seamen asked for $90; east-coast seamen for $150. West coasters wanted the danger zone shifted from 160 east to 160 west meridian; east coasters wanted the Caribbean and the Canadian ports included. Suez had come to be worth $75, the seamen asked for $300; a few other ports were worth $45, they asked for $100, and $50 for certain ports not previously payable. The ship owners were most anxious for an arbitration procedure which would cover future demands, but the unions were set against this. The panel gave an $80 monthly rate; $100 for Suez plus $5 for every day laid over after the first 5 (layovers were usually 20 days or more). It added a few ports to the bonus list and rejected claims on many others. It set the 180th meridian as the danger line; it ignored

the Canadian and Caribbean ports. For future disputes it recommended an arbitration board of 3 to be appointed by the President. The case is interesting because the situation was one in which practice was new and the criteria for rate making completely nebulous, though when the Board received it a structure had been worked out by contract. The Board gave what it considered a generous increase in return for the stabilization which it hoped would come from the arbitral board.

The last of the important wage determinations, decided since the actual commencement of war, was No. 105, *Central States Employers' Negotiating Committee.* The committee, representing about 800 common and contract carriers engaged in motortrucking in the Central States, since 1938 had had collective agreements with the teamsters' (I. B. T.) union. The certification grew out of the negotiation of a renewal contract. The parties agreed to seek the offices of the Board and to abide by its determination. Thereupon the case was certified. The principal demands were for a raise in hourly rates from 80 cents to $1, in mileage rates from 3 cents to 5 cents, and for vacations with pay. The Board found that since 1937 truckers' wages had risen much faster than cost of living. However, "it seems unsound to take real wages in 1937, the year before the first general contract was negotiated, as necessarily the standard, or to assume that the lower standard of living then existing among the drivers was proper and should now be reestablished. We must differentiate between the standards reached by workers through individual bargaining or through bargaining in local and limited groups and those reached by industry-wide bargaining of the type with which we are here dealing. Absolute standards of fair real wages, of course, do not exist. But when dealing with organized industry it seems to us fairer and more desirable to take as the standard that balance between wages and living costs which has been reached through industry-wide bargaining.

"* * * As a general rule, it is only after some years of collective bargaining that the proper competitive balance between a newly organized industry and those longer organized is established. When that balance is reached, of course, can only be judged by rule of thumb. But it seems fair to assume from the evidence before us that if the proper balance in labor costs between this industry and its chief competitor, the railroads, has in fact been reached, it was only when the advances established by the recently expiring contract became effective in 1940."

In view of the recent 10-cent increase given to the railroad workers by the President's Emergency Board, the Board awarded 10 cents per hour and 4 cents per mile more (roughly 12 percent in each class). It will be noted that, despite their somewhat greater elaboration, both the argument and the conclusion are strikingly similar to No. 21, *General Motors.* The companies complained of inability to pay increases. Here the Board replied that in setting a minimum it, like the last War Labor Board, must ignore inability to pay, but that that factor had led the Board "to restrict the increase * * * to the minimum which * * * other factors have seemed to dictate." "In dealing with this question, however, we must of necessity consider the industry in this case as a whole and not the individual carriers."

The Board awarded 1 week's vacation with pay to be taken, however, only in the form of actual vacation and not as a bonus. The companies had urged that the emergency was a bad time to inaugurate vacations. The Board on the contrary, found that the demand for greater productivity, increasing strain and fatigue, would be well served by vacations. It cited a similar conclusion as to railroad employees by the President's Emergency Board and remarks of Prime Minister Winston Churchill with regard to holidays as an aid to staying power.

3. Agreements

(*a*) *Cases in which procedure alone was agreed upon.*—In 3 of these cases, No. 5, *Snoqualmie*, No. 6, *Allis-Chalmers* (Milwaukee), and No. 64, *Curtiss-Wright*, the parties agreed to bargain further concerning wages, the principal issue involving union security or recognition having been disposed of.

Somewhat similar is No. 10, *Phelps Dodge*, in which the Board made recommendations on the union security issue; then stated that it was not prepared without further investigation to express any opinion on wages and recommended that the parties proceed to further bargaining with resort to the Board if no agreement were reached. Similar in No. 50, *Tennessee Coal, Iron & Railroad Co.*, a demand for increased rates was sidetracked, at least temporarily, by an agreement of the employer to institute an incentive system. The union accepted with permission to return later to the Board if no satisfactory solution were reached.

In No. 79, *Hendey Machine Co.*, where the claim for increased wages was in the teeth of an existing contract, the Board suggested and the parties accepted a scheme for an engineering survey of job classifications and job efficiency.

In No. 59, *Erwin Cotton Mills*, it was apparent from the attitude of the panel that it was not prepared to bring pressure for any increase. Increases had recently been made, existing rates were in line with prevailing rates, and the industry was highly competitive. There was an agreement, however, which the union apparently considered valuable, for arbitration on job classifications.

In No. 62, *Todd Galveston Dry Docks, Inc.*, the union wanted bonuses for a form of particularly disagreeable work. The panel was troubled lest the bonuses create a departure from the Gulf Zone Standards Agreement in the shipbuilding industry. The panel suggested that the claim be disposed or through the grievance procedure. This suggestion was accepted.

In No. 35, *E. W. Bliss Co.*, the controversy, involving classifications and minimum rates therefor, was settled by agreeing to arbitration.

(*b*) *Cases in which rates were agreed upon.*—In No. 55, *Borg-Warner Corporation*, the agreement was based largely on a recommendation of a Department of Labor conciliation panel made prior to the certification. In No. 93, *American Engineering*, and No. 96, *Bell Aircraft*, being among those in which the C. I. O. "withdrew," agreements were subsequently negotiated under the auspices of the Conciliation Service of the Department of Labor.

Of the remaining cases, a few things may be said in general and then certain significant cases singled out for special notice. Some 14 seem to have been brought to agreement with relatively little pressure from the Board—No. 3, *Cornell-Dubilier Electric Corporation;* No. 7, *Seas Shipping Co., Inc.;* No. 9, *Cowles Tool Co.;* No. 12, *California Metal Trades Association;* No. 23, *Utica & Mohawk Cotton Mills;* No. 26, *Allis-Chalmers Manufacturing Co.;* No. 28, *Bendix Aviation Corporation;* No. 30, *United Engineering & Foundry Co.;* No. 32, *Allis-Chalmers Manufacturing Co.;* No. 38, *Aluminum Co. of America;* No. 44, *Western Cartridge Co.;* No. 47, *Cheney Bros.;* No. 81, *Consolidated Aircraft;* No. 94, *Sloss-Sheffield;* No. 95, *Alabama By-Products Corporation.*

In No. 81 for example, the agreement was based largely on the Lockheed and North American contracts, the latter of which was importantly influenced by the Board, as is discussed below. The solutions follow the usual lines in wage disputes—either a compromise of opposing positions by finding an arbitrary midway point or else an adjustment to conform wages to some standard considered to be of governing importance such as a prevailing wage or a wage paid by the same employer at other plants.

The Board's offices may be considered to have had varying effect running from strong to medium in the remaining cases in which the wage rate was negotiated by agreement. There are approximately 14 of these. Generally speaking, the Board's suggestions were based upon prevailing rates construed rather liberally in favor of labor and in the light of a generally rising wage trend, with secondary attention to ability to pay.

No. 15, *Arcadia Knitting Mills*, and No. 25, *Curtis Manufacturing Co.*, for example, reflect the fact of the employer's obvious financial stringency. In No. 15, the union demanded a 25-percent increase and a 45-cent minimum wage, the existing minimum being 33⅓ cents. The agreement provided for a 5-percent increase and a 37½-cent minimum. In No. 25, the the union demanded a 10-cent per hour increase and a 50-cent minimum. The agreement provided for a 3-cent per hour increase and 45- and 47½-cent minimums (the minimums had been offered by the employer before the hearing).

In No. 101, *Chris Craft*, the union sought to open up the wage terms of a contract. The company stated its willingness to give increases if Government defense orders were received. It was agreed to continue the status quo unless such contracts were received.

A few cases, particularly in fairly prosperous industries, reflect the influence of the 10-cent per hour rise in steel which thereafter spread to a number of related industries. In No. 54, *Armour & Co.*, where the union asked for a flat 20-cent increase, the agreement provided roughly for 10 cents. A similar result was achieved in No. 75, *Lamson & Sessions Co.* (automobile accessories). In No. 88, *American Cyanamid*, where the union asked for a 10-cent hourly raise the company agreed to give 7 cents at once and 3 cents at the end of 6 months. The company at first was willing only to reopen if living costs rose 5 points.

The most unusual of the cases in this classification is No. 36, *North American Aviation, Inc.* Here the Board was instrumental in raising the general wage level. The Board prevailed upon the parties

to pioneer in establishing a new minimum level for the airplane industry. The union demanded a 75-cent minimum and a 10-cent blanket increase. It showed the large profits of the industry and pointed out that the minimums in it were much lower than those in the body and motor plants of the automobile industry. The employer's minimum was 50 cents. Rates in other plants ran from 50 cents for starters to 63 cents after 6 months' time. A subsidiary question was how long an employee should be held at the minimum starting rate before being raised to the permanent minimum. The employer, apparently, in the course of discussions with the union, had given an opening for an upward wage course by attempting to answer this question on the hypothesis that 50 cents was the starting rate and 75 cents the permanent rate. It appears from a tentative draft that the Board was a one time prepared to recommend 60 cents as the starting rate, 75 cents as the eventual minimum, and the general 10-cent increase. The panel admitted that the wages at North American were not substantially out of line with those of other West-coast airplane factories, but it believed that in view of the enormous importance of airplanes in national defense, the wage levels should be brought to the level of wages in the more highly paid industries with which airplanes are comparable, such as steel and motors. The wages, the panel felt, should be of such a nature as to attract and keep contented the finest workmen in the area. The parties finally agreed along these lines.

Appendix G

Contract Violation

In No. 2, *Vanadium Corporation*, the striking union asserted that the employer had violated the collective contract by hiring certain employees. The corporation, on the other hand, denied this charge and alleged that the strike was in breach of the contract. The Board appointed an investigator and adopted his finding that the union was at fault. In its recommendations, clearing the employer and rebuking the local union leaders, the Board said: "We are passing only upon the legal question of whether or not the company adhered to its contractual obligations * * * not discussing the wisdom or tact of the company officials * * *. The union had no right under the contract to strike." The Board's "findings and recommendations" read not unlike an opinion and judgment of a court.

In No. 35, *E. W. Bliss Co.*, the employer alleged the union's claim for reclassifications of employees was violative of the contract which fixed wages for a definite term, but did not insist on this contention and eventually agreed to arbitrate not this question of legal right but the question of reclassification itself.

In No. 36, *North American Aviation Co.*, a strike of a local union (disavowed by the national union) in breach of an interim promise not to strike, in exchange for the employer's promise to make the wage settlement retroactive, was met with Board approval, by military dispersal of pickets so as to facilitate access of willing workers to the plant. But it may be doubted whether this device to achieve continuity of production was used to vindicate legal obligation as distinguished from a national economic interest. In other words, the same device might have been used whether or not there had been a promise and whether or not the promise were legally binding.

In No. 40, *Bohn Aluminum & Brass Corporation*, the employer invoked the terms of a collective agreement with a year to run as a bar to the union demand for an increase of 10 cents an hour in wage rates. But again the contract issue was avoided by a recommendation (desired by the employer) that a wage increase be given in consideration of the union's agreeing to allow the employer to try an "incentive wage" plan.

A contention of the employer that the Gulf coast zone standards (in the negotiation of which both parties had participated) themselves constituted a complete contract precipitated a break-down of negotiations for a collective contract and a strike in No. 62, *Todd Galveston Dry Docks, Inc.* This contention was disregarded by the Secretary of Labor in certifying the case and by the Board in recommending terms for its settlement. But the same standards were deemed by the Board to become part of an existing collective contract in No. 85, *Alabama Dry Dock & Shipbuilding Co.*, without any

formal incorporation into the contract. This holding was contrary to the contention of the union, which, in seeking a union security clause, asserted that the introduction of zone standards required the "opening up" of the contract for negotiation of other changes. The latter case carefully distinguished two earlier cases. In No. 37, *Bethlehem Steel Co., Shipbuilding Division*, the controversy and strike concerned the formation of a contract. No question of breach of contract was suggested, both because the employer had not participated in the Pacific zone standards conference and because the standards were avowedly effective only as embodied in collective agreements. Nor did the Board see any breach of contract in No. 46, *Federal Shipbuilding & Dry Dock Co.*, in which a strike had eventuated from fruitless negotiation for a contract. Strikes were forbidden by the Atlantic zone standards in the formulation of which the parties had participated, but these zone standards, like those for the Pacific Coast, had been adopted for incorporation into collective contracts. The controversy arose over what terms other than the zone standards such a contract should have. The *Alabama Dry Dock case* distinguished *Bethlehem* and *Federal* because in these earlier cases no contract was in force. (The same fact accounts for the disregard in No. 62, *Todd*, of the allegations of breach of contract.) So in *Alabama* the Board, rejecting the union contention and holding that the contract continued in force as amended by the zone standards, said: "This case is governed by the principle that a collective bargaining agreement once made should be given effect so long as it endures."

In No. 68, *American Car & Foundry Co.*, the wages based on output were falling short of expectations, because, it was alleged, management was inefficient. The workers struck without utilizing the grievance procedure of the contract. Soon after the case was certified to the Board, production was resumed by request of the Board. After hearing, the Board recommended observance of the contract and the addition of a provision for arbitration if the grievance procedure did not provide a solution. The Board did not discuss the lawfulness of the strike, and proposed no remedies that would not have been equally appropriate whether or not there had been a breach of contract.

In No. 78, *Bendix Aviation Corporation*, the union charged the employer with paying certain women workers wages below the contract scale. The employer alleged that the contract scale applied only to men. The Board recommended arbitration. At the same time it recommended continuous mediation in the settlement of new problems of mass production that were arising owing to rapid expansion. The recommendations were accepted and thus the Board appointed two representatives, an arbiter of the legal issue and a mediator of the nonlegal difficulties.

In the recommendations in No. 79, *Hendey Machine Co.*, the Board recognized that the union had struck in violation of the contract, but, work having been resumed as soon as the Board received the case, it proposed as a solution of the wage dispute, "without modification of the contractual rights and responsibilities of the parties, which are clear," a survey of the possibility of more efficient operation. In a later recommendation the Board proposed a trial of the plan evolved by its surveyor.

The war zones bonus case, No. 80, *American Merchant Marine Institute*, raised some discussion about contract obligations. On the East Coast four of the lines were parties to contracts with the Seafarers International Union, which apparently were violated by the union in refusing to arbitrate and resorting to strikes, and on the West Coast there was a contract which expired after certification and before hearing. The Board's solution of the differences was all-coast-wide and took no account of these violations; moreover, it was a solution by arbitration in substantial conformity with the contracts; and the Board's proposals, as it said, did not affect methods of negotiation "or any unexpired contracts."

Another case in which contract questions were raised but not dealt with by the Board is No. 83, *Agar Packing & Provision Corporation.* Here the employers had refused to deduct from wage payments certain fines assessed by the union against its members. Whether or not this was a violation of the collective contract which provided for a "voluntary check-off," the local union, by calling a strike (not authorized by the national organization) violated the contract's directive that "there should be no strike," and disregarded its grievance procedure culminating in arbitration. When appealed to by the employer, the national officers of the union ordered resumption of work. But the companies refused to take back certain employees said to have instigated the outlaw strike. The employers charged also (but vaguely as to any particular persons) sabotage, violence, etc. They said the men that they refused to rehire were persons they could not trust within their plants. The national union officers insisted on reinstatement of all, but agreed to arbitrate any charges against particular individuals. The employers agreed to arbitrate but refused to reinstate these men meanwhile. The national union then authorized a strike, maintaining that such discriminatory rehiring was an unfair labor practice (which overbore any contract provisions). The employers next enlarged the list of employees that they would not take back (unless required by an arbitration award), including therein leaders of the renewed strike, some of whom had been on vacation when the first strike occurred. They also suggested that the breaches of contract by the union justified them in treating the contract as completely broken. These interesting questions of contract law were extensively debated, but the Board, without throwing light on them, attempted to consign the controversy about reinstatement to arbitration by a special board.

In No. 101, *Chris Craft Corporation*, the union demanded higher wages and the employer contended that wages had been fixed by contract till January 1943. The strike was terminated by request of the Board. Owing to shortage of materials, no further work was in prospect when the case came on for hearing. The term of the contract being long and the wage scale low, the company was willing to raise wages provided it obtained defense orders enabling it to get materials. At the suggestion of the Board, the parties signed an agreement to negotiate a new wage scale if the employer "receives an invitation to bid on a defense contract," and the Board used its good offices with the O. P. M. to enable the corporation to obtain such opportunities.

Appendix H

Relation With the National Labor Relations Board

The interrelation of the National Labor Relations Board and the Mediation Board was constant and active. Many cases before the Mediation Board involved first bargaining negotiations between an employer and a union newly certified by the Relations Board. Sometimes the N. L. R. B.'s determination of bargaining representative was made before, sometimes after, the Mediation Board received the case. Also there were several cases which involved charges of unfair labor practices, either not yet presented to the N. L. R. B. (as No. 48, *Scullin Steel*), or pending before it (as No. 22, *Minneapolis-Honeywell*), or already decided by it but contested in the courts (as No. 73, *Kansas City Power*). The issuance of a complaint by the N. L. R. B. between the date of the Mediation Board's first and second recommendations in No. 51, *Air Associates*, led the Board to withdraw its proposal of arbitration of the back-pay question. After recommending maintenance of membership as a term of settlement in No. 46, *Federal Shipbuilding*, the Board obtained an important opinion from the N. L. R. B. supporting the lawfulness of this term.

N. L. R. B. issues were sometimes incidental and did not prevent the Mediation Board from proceeding with its work (as in No. 18, *Roebling*, No. 46, *Federal Shipbuilding*, and No. 51, *Air Associates*), or again caused a suspension of its work until the N. L. R. B. had made its decision (as in No. 4, *International Harvester*), or given its interpretation (as in No. 54, *Armour*). In many cases these were the sole or the outstanding causes of controversy. Then the case was disposed of either without any formal action by the Mediation Board (as in No. 74, *Pressed Steel Car*), or by a recommendation that the parties resort to the N. L. R. B. (as in No. 52, *Federal Mogul*), or by a request to the N. L. R. B. that a case already before that Board be expedited (as in No. 69, *Pullman*, Michigan City). Or again, in order to be able to effectuate a settlement, the Board got from the N. L. R. B. an interpretation of the act (as in No. 108, *Nevada Consolidated Copper*, Santa Rita), or of an order of the N. L. R. B. (as in No. 54, *Armour*), or even an order of a court (as in No. 65, *Solvay Process*).

Though the executive order creating the Mediation Board mentioned the N. L. R. B. only in directing the Mediation Board "to request the National Labor Relations Board, in any controversy or dispute relating to the appropriate unit or appropriate representatives * * * to expedite" its action, the Mediation Board kept its hand off both representation and unfair labor practice matters and was equally ready to request the N. L. R. B. to hasten its consideration of either type of case.[1] Cases in which the N. L. R. B. was an important factor were:

1. As to representation questions: No. 14, *Birdsboro Steel Foundry;* No. 17, *American Car and Foundry;* No. 22, *Minneapolis-Honeywell;*

[1] In No. 42, *Duquesne Light*, the Board applied its hands-off policy where it deemed a State body (the Pennsylvania Labor Relations Board) the appropriate agency to determine a representation issue, and recommended resort to that agency.

No. 48, *Scullin Steel;* No. 52, *Federal Mogul;* No. 53 (half), *Gulf States Utilities;* No. 69, *Pullman*, Bessemer; No. 73, *Kansas City Power;* No. 74, *Pressed Steel Car;* and No. 107, *Burgess Battery.*

2. As to unfair labor practice questions: No. 22, *Minneapolis-Honeywell;* No. 48, *Scullin Steel;* No. 69, *Pullman*, Bessemer; No. 73, *Kansas City Power;* No. 107, *Burgess Battery;* No. 65, *Solvay Process;* and No. 108, *Nevada Consolidated Copper*, Santa Rita.

Case No. 69 was unusual in that the parties agreed that they would accept the determination of the N. L. R. B. trial examiner on a reinstatement demand as a final determination and not seek to have it reviewed by the N. L. R. B. and the courts. The Board recommended in No. 42, *Duquesne Light*, that the parties should agree to take a State labor board's prospective decision on representation as final. The independent union rejected the recommendation, but the State board's decision did in fact end the controversy.

Part IV

Case Histories

Case Histories

CASE No. 1

UNIVERSAL-CYCLOPS STEEL CORPORATION, Bridgeville, Pa.	AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS OF NORTH AMERICA, GOOD WILL LODGE No. 178, C. I. O.

Certified March 27. Strike February 19–March 28. 1,400 workers involved. Closed March 28

Immediately after the Secretary of Labor certified the case, the Board was notified that the dispute had been settled by the parties with the aid of a conciliator from the Department of Labor. Consequently the Board canceled the hearing noticed for March 29 and closed the case.

CASE No. 2

VANADIUM CORPORATION OF AMERICA, Bridgeville, Pa.	UNITED VANADIUM WORKERS LOCAL INDUSTRIAL UNION No. 953, C. I. O.

Certified March 27. Strike February 10–March 31. Hearings March 29, 30, April 30. 274 workers involved. Closed October 24

Panel: March 29: Graham, Lapham (Meyer), Kennedy (Murray).
April 30: Davis, Teagle, Carey.

The following opinion of the Board, signed by Messrs. Davis, Lapham, and Kennedy was issued October 20 (though dated September 23) and was agreed to by the parties.

Findings and Recommendations

October 20

PRELIMINARY RECITAL

On February 10, 1941, the members of the United Vanadium Workers, Local Industrial Union No. 953, went on strike against the Vanadium Corporation of America at its Bridgeville, Pa., plant.

On March 27, 1941, the Secretary of Labor certified to this Board that the strike threatened to burden or obstruct the production of equipment or materials essential to national defense and had not been adjusted by the Commissioners of Conciliation of the Department of Labor. The Board thereupon assumed jurisdiction of the dispute and immediately called the parties to a hearing before it.

On March 30, 1941, at the instance of the Board, the parties agreed in substance that the plant should be reopened upon the following day and that all of the striking employees should be returned to work without discrimination, without prejudice, however, to the rights and defenses of either party respecting the points in issue. The Board, for its part, undertook to proceed at once under section 2, paragraph (d) of the Executive order of March 19, 1941, to investigate the issues in dispute.

Pursuant to this agreement, the striking employees returned to work on March 31, 1941, and production was resumed. On April 2, 1941, the National

Defense Mediation Board appointed Father Francis J. Haas its special representative to investigate the issues in dispute. On April 30, 1941, at reopened hearings before the Board, Father Haas submitted an interim report containing his findings and recommendations for the settlement of the matter. On the same day, the company submitted to the Board a written request for the modification of these recommendations in certain respects.

The matter is now before the Board for the making of final findings and recommendations upon all points in dispute.

THE ISSUES

The union stated before this Board and its special representative that the strike was called because of the failure of the company to comply with the terms of a contract entered into between the company and the union on June 17, 1940, in the hiring of six guards on November 7, 1940. The union contended that under the terms of this contract the company was obligated before appointing such guards to post notices of the existence of the new positions and to give preference among equally qualified applicants to company employees having the greatest seniority. The union further claimed that its protest over the company's failure to comply with this requirement should have been treated by the company as a grievance under the contract and been the subject of discussion between the members of the union shop committee and the general superintendent of the plant. The union claimed that instead of such discussion with the shop committee, the company had dealt throughout with one of the union's national officers. The union demanded the removal of the guards, strike pay, the reemployment of strikers without discrimination, and the enforcement of the contract.

The company contended for its part that the guards hired were confidential employees and as such expressly excluded from the contractual requirement with regard to the filling of vacancies or new positions. It claimed furthermore that it had discussed the matter with the shop committee, as well as with the international representatives of the union. The company's main contention, however, was that the strike had been called in violation of the contract and that the members of the shop committee responsible for this violation should be discharged.

This dispute thus presents to the Board these issues: (1) Whether or not the company violated the contract of June 17, 1940, by employing six guards without posting notice of vacancies, giving preference to qualified employees of greatest seniority, or adequately discussing the matter with the union shop committee; (2) whether or not the six guards should, in the company's discretion, be retained in employment; (3) whether or not the union violated the contract by calling the strike of February 10, 1941; (4) whether or not the striking employees should receive strike pay; (5) assuming that the strike was called in violation of the contract, what penalties, if any, should be imposed upon the members of the shop committee responsible for the violation.

A further issue raised during the dispute as to whether or not the striking employees who removed defense materials from the plant during the strike should be paid for this work has been withdrawn from our consideration by the statement of the union representatives before the Board that the men did not desire such pay.

FINDINGS

1. Section 6 of the contract of June 17, 1940, reads in part:

"Notice of any vacancy or new position as timekeeper, clerk, stenographer, office worker, or salaried employee not in a supervisory, technical, or confidential capacity shall be posted by the company for a period of 1 week to allow time for written application by any qualified employee interested. In filling the position from among those applying or otherwise, the company shall give preference among equally qualified employees to the employee having the longest service with the company."

From that language it is clear that if the six guards hired on November 7, 1940, were hired in a confidential capacity, the company was under no obligation to post a notice of the vacancies or new positions or to give to its senior employees the preference otherwise required by the contract.

The Board's special representative has found that these guards were, in fact, hired as confidential employees. Nothing in the records before this Board

casts doubt upon this finding. The guards were hired in compliance with suggestions of the Federal Bureau of Investigation and as part of the protective measures taken by the company to prevent sabotage to its defense production. Because of the special nature of their work and as a precaution in their selection, the men were taken from the reserve guard list of the Federal Reserve Bank of Cleveland, Pittsburgh branch. Their names were submitted to the Federal Bureau of Investigation and their fingerprints were checked. While it is apparently true, as the union claimed, that the company's watchmen were chosen in compliance with the section of the contract above quoted, it is clear that the principal duty of these watchmen was merely to guard against fire hazards. The task of guarding the plant machinery and products against intentional damage or sabotage is of a different nature and clearly placed these guards in the capacity of confidential employees.

The record indicates, likewise, that the company did not violate the provisions of the contract with regard to grievance procedure either by failing to discuss the matter with the union shop committee, or otherwise. Section 8 of the contract reads in part as follows:

"Should differences arise between the company and the union as to the meaning and application of the provisions of this agreement, or should any local trouble of any kind arise in said plant, there shall be no suspension of work on account of such differences, but an earnest effort made to settle them immediately in the following manner:

"First, between the employee and his foreman, or between the member of the shop committee and the foreman of the department involved;

"Second, between a member or members of the shop committee and the general superintendent of the plant;

"Third, between the representatives of the national organization of the union and representatives of the executives of the company; and

"Fourth, in the event the dispute shall not have been satisfactorily settled, it shall be referred to arbitration. The company shall choose one representative and the union shall choose one representative and these two shall jointly select an impartial third person. A majority decision of the three persons so named shall be final and binding upon both the company and the union. The expense incident to the services of the impartial third person shall be paid jointly by the company and the union.

"Regular monthly meetings shall be scheduled between the shop committee and the general superintendent for presentation of grievances by either party. All grievances shall be presented at this meeting, provided, however, that matters pertaining to discharges or other matters that cannot be reasonably delayed until the time of the next regular meeting may be presented by special appointment in accordance with the foregoing provisions."

It was admitted at hearings before the Board by the union representatives that the matter of hiring guards had been discussed on November 7, 1940, at the regular monthly meeting for the presentation of grievances, by the general manager and the shop committee. The general manager took the position that this matter should not be considered a grievance since the matter was out of the hands both of the local union and the local management. The general manager stated, however, that if the union considered the matter a grievance, they should proceed with the next step called for in the contract and arrange for a meeting between representatives of the national organization of the union and of the company executives.

The members of the shop committee thereafter got in touch with Mr. Bransome, the president of the company. The record is not clear as to exactly what communications passed between Mr. Bransome and the members of the shop committee. It is established, however, that on January 21, Mr. Bransome wired the general manager of the corporation as follows:

"Following telegram received today: 'United Vanadium Workers wish to know why the present guards cannot be replaced by our members as we have men out of work at present. Reply by Western Union as soon as possible. Signed, Shop Committee.' Please advise shop committe that in my opinion protection against outside sabotage so important that no changes could be taken in rotation of men assigned to guard duty. Perfectly willing to discuss this question provided that committee understands that nothing should be left to chance that might occasion accidents that would cause cessation of their work and interruption in production vital to national defense."

It appears to this Board that this telegram constituted an offer by Mr. Bransome to discuss the entire matter with the members of the shop committee. The

union has furnished neither this Board nor its special representatives with any evidence which contradicts this conclusion.

As to the union's claim, finally, that the company should not have discussed this matter with Mr. Federoff, the regional director of the Congress of Industrial Organizations in Pittsburgh, it seems to us that such action, far from constituting a violation of the contract, is expressly provided for as stage three of the grievance procedure as above set forth. It should be noted, of course, that we are passing only upon the legal question of whether or not the company adhered to its contractual obligations. We are not discussing the wisdom or tact shown by the company officials in handling the dispute. The maintenance of industrial peace and harmonious relations often requires more than the mere adherence to the letter of a contract, and we were left with the impression that if the company's representatives had taken a less abstract and more realistic attitude with regard to the union's protest, the entire strike might have been avoided.

On the issue before us, however, we find and conclude that in hiring the six guards in question and in dealing with the union's protest concerning such hiring, the company did not violate the provisions of the contract of June 17, 1940.

2. As to the demands of the union that the six guards should be removed, it is clear from the foregoing, and we find that the company was entirely within its rights in hiring them. We shall recommend that, in the discretion of the company, they be retained in employment.

3. The Board's special representative found that the union violated its contract with the company in calling a strike on February 10, 1941, and recommends that this Board should so declare. From the facts before us, this conclusion is inescapable. Regardless of the merits of the union's claim with respect to the manner in which the guards should have been hired, regardless of the manner in which the company dealt with their alleged grievance, the union had no right under the contract to strike. Its remedy clearly set forth in the contract was a request for arbitration. No such request was ever made. Instead, in the face of their written promise that "there shall be no suspension of work on account of such differences," the strike was called.

We find and declare that this strike of the United Vanadium Workers Local Industrial Union 953 on February 10, 1941, constituted a violation by the union of the contract of June 17, 1940.

4. It follows from this finding, that as the strike was in violation of the contract, the union's demand for strike pay should be denied. We shall so recommend.

5. The Board's special representative recommended that the union officers who called the strike should be appropriately reprimanded and that such reprimand should be made a condition of their retention in employment by the company.

With this recommendation we agree. This Board must condemn without reserve the action of the officers of the local in violating the contract. Labor and the friends of labor have fought for years to achieve for unions contractual provisions for the peaceful settlement of grievances and disputes such as those in the contract before us. Adherence to procedures so established for the orderly settlement of industrial disputes without strikes or lock-outs is fundamental to the whole process of collective bargaining. It is peculiarly essential in this period of national emergency. To disregard such procedures once set up and to call a strike in a defense industry in violation of them is to do a great disservice not only to labor, but to the Nation as a whole.

The company, on the other hand, has demanded that these men should be discharged. Involving as it would the very livelihood of these workers and the welfare of their families and dependents, we feel that such action would be inappropriate. It would be a punishment not well suited to the offense for which it was imposed. In calling the strike, the members of the shop committee acted not as company employees, but as union officials. Disciplinary action as to such actions is primarily a matter of union responsibility. Adequate punishment would seem to involve, therefore, not their separation from employment, but from union office.

Since the last hearing, the Steel Workers Organizing Committee has taken over Local 953 and assumed responsibility for the then existing contract. The local is now affiliated with the Steel Workers Organizing Committee and is chartered as Steel Workers Organizing Committee, Local Union No. 2480. The members of the shop committee which called the strike have all been replaced and at the present time hold no union office. So long as that condition exists, we think that disciplinary action is appropriate and adequate and we are not prepared to recommend the discharge of these men.

RECOMMENDATIONS

Pursuant to section 2 (d) of the President's Executive Order No. 8716, of March 19, 1941, the National Defense Mediation Board recommends:

1. That Frank A. Pugne, John T. Fagan, Andrew Campanucci, Mimi Cherry, John A. Hastings, and Richard Chapple, the members of the shop committee who called the strike of February 10, 1941, who have been excluded from office by Local Union No. 2480 of the Steel Workers Organizing Committee, be reprimanded by having read to them paragraph 5 of the foregoing findings and that they each be given a copy of these findings and recommendations;

2. That the strikers receive no pay for the time they were on strike;

3. That in the discretion of the company the six guards hired on November 7, 1940, be retained in its employment.

CASE No. 3

CORNELL-DUBILIER ELECTRIC CORPORATION, South Plainfield, N. J.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B–1041, A. F. L.

Certified March 27. Strike March 10–April 3. Hearings March 29, April 2. 2,400 workers involved. Closed April 3

Panel: Graham, Ching, Watt.

At the first hearing which was the first held by the Board, the union asked a continuance because the responsible officers of the international union were out of town. After some discussion the Board recommended:

Recommendation

March 29

The National Defense Mediation Board recommends, and this recommendation is agreed to by the representatives of the company, and the union representatives agree to submit it to their international president and general counsel for their approval:

"That all employees of the company now on strike return to work as soon as possible in accordance with the spirit and recommendation of the President of the United States of America in his Executive order creating the National Defense Mediation Board; the understanding being

1. That the employees who are now on strike will in no way have rights jeopardized by the return to work. This assurance has been given them by the Mediation Board;

2. That the company will immediately resume negotiaitons with the union for a satisfactory agreement including wage schedules and in the event no agreement is reached, the entire matter shall again be taken up with the Mediation Board for such further action as is necessary to carry out the purposes of the President's order creating the Board."

The international president refused approval and the strike continued. At the April 2 hearing the parties notified the Board that they had reached an unwritten agreement and that a contract would be signed later. The issues in the case were never discussed before the Board. On April 14 a complete agreement was signed.

CASES Nos. 4, 4A, and 89

INTERNATIONAL HARVESTER CO.

No. 4. Chicago, Ill. (3 plants), Canton, Ill., East Moline, Ill., Richmond, Ind.

No. 4A. Rock Falls, Ill., Milwaukee, Wis.

No. 89. Springfield, Ohio.

FARM EQUIPMENT WORKERS ORGANIZING COMMITTEE, C. I. O.

FEDERAL LABOR UNIONS 22631 AND 22657, A. F. L.

UNITED AUTOMOBILE WORKERS OF AMERICA, C. I. O.

No. 4 certified March 27. No. 4A set off October 30. No. 89 certified October 13. Strikes: Tractor Works, Chicago, January 30–March 31; McCormick Works,

Chicago, February 28–March 31; Richmond, Ind., February 17–March 31; Rock Falls, Ill., January 21–March 31; Springfield, September 23–October 14. Hearings: No. 4: March 31, April 1, 2, July 8, 9. No. 89: October 22, 23. Nos. 4, 4A, 89: October 30, November 1, 3–6, 10, 11. No. 4A: November 12, 13. 30,300 workers involved. Transferred to the National War Labor Board.

Panel: March–April: Dykstra, Teagle, Meyer, Watt, Haywood.
July: Dykstra, Teagle, Meyer, Watt, Brophy. Assistant, Harbison.
October–November (No. 4 and No. 89): Wyzanski, Mead, Carey. Assistant, Gill.
October–November (No. 4A): Seward, Mead, Calvin. Assistant, Gill.

When No. 4 was certified to the Board, the Farm Equipment Workers were on strike at a number of the company's plants, and no collective contracts had yet been made. The strikers returned to work at the Board's request, pending consideration of the dispute by the Board. At the first hearing it developed that the A. F. L. also contended for bargaining rights, and on April 2 an agreement was reached between all parties. The following document, in view of its language, of its signature by all the panel, and of the "dissent" that the C. I. O. member appended to his signature, may be considered as an interim recommendation.

Contract Pursuant to Recommendation

April 2

In the dispute between the employees of the International Harvester Co. and the company, certified by the Secretary of Labor to the National Defense Mediation Board, the Board finds and the parties to the dispute have agreed,

1. That all plants are to be kept open and production for defense maintained pending a recommendation for settlement from the Board.

Meanwhile the Board will proceed under the authority of the President's Executive Order No. 8716 of March 19, "To investigate issues between employers and employees, and practices and activities thereof, with respect to such controversy or dispute; conduct hearings, take testimony, make findings of fact * * * and make public such findings and recommendations whenever in the judgment of the Board the interests of industrial peace so require."

2. To ask the National Labor Relations Board for the earliest possible determination of the appropriate bargaining agencies.

3. The company agrees that all employees reporting for work promptly after call by the company will be returned to work without loss of seniority rights and privileges.

4. In the company's four plants which have been reopened, since after a strike continuous operations at former levels cannot be resumed at once, the company agrees to continue to pay to each employee reporting to work not less than his average earnings during the 4-week period preceding the strike until such time as his former regular work or its equivalent is available to him. It is understood that employees who cannot be given former regular work at once will do such other available work as the company may assign temporarily to them.

5. The employees agree that good order and proper shop discipline will be maintained during the period of investigation and fact finding by the Board.

Mr. Haywood signed the above subject to the following reservation:

"I dissent on the words 'or its equivalent' in paragraph 4, holding that employees should have the right to return to their former jobs when such jobs become available.

"Furthermore, I have suggested that, pending the proposed investigation, means be provided for employees to have grievances adjusted by representatives of their own choosing, this to apply to all groups in order to guarantee against discrimination."

The Board appointed Professor Don Lescohier, of the University of Wisconsin, to investigate wages and other issues in dispute. At the July hearing his report was served on the parties. He made no recommendation on the question of a general wage increase, which was the principal issue, and the hearing was adjourned with the understanding that the company would proceed to bargain with the certified unions at the various plants. Meanwhile the N. L. R. B. was conducting elections, which resulted in the certification of the C. I. O. at six plants and the A. F. L. at two.

Case No. 89, certified to the Board in October, concerned the Springfield, Ohio, plant, where the U. A. W., C. I. O., had been chosen bargaining agent. Several days were spent in mediation efforts concerning that plant only, but the F. E. W. O. C. and the A. F. L., the bargaining agents at the plants in the original case, bombarded the Board with demands for consideration of their problems along with the Springfield negotiations. Negotiations at these plants had not been concluded and the unions were worried lest the U. A. W. strike a bargain for the Springfield plant which would set a precedent for the other plants.

The Board therefore summoned the other unions and separated No. 4A from No. 4. The U. A. W. and F. E. W. O. C. organized a joint bargaining committee to negotiate for all the C. I. O. plants. Several days of mediation efforts brought the parties together on certain of the issues, but the greater part of the controversy was still unsettled when the C. I. O. members of the Board resigned in connection with the captive mines dispute. The hearings in the C. I. O. Harvester cases were then suspended indefinitely because of the lack of a C. I. O. member on the panel.

In the A. F. L. case, No. 4A, after 2 days of further hearing, the Board issued the following:

Interim Statement

November 13

The parties to this case, after several days of direct collective bargaining, have requested the assistance of the National Defense Mediation Board in the settlement of the two most important issues still remaining in dispute between them, i. e., wages and union security.

After consultation with the parties, the Board has concluded that further direct collective bargaining between the parties upon these issues is desirable and that the time has not yet been reached when the Board itself should make recommendations. With regard to the issue of wages, moreover, the Board feels that it has not at present sufficient information before it to permit it to make a recommendation.

The Board is, therefore, adjourning the hearing until further notice with the following understandings:

1. That the Board will at once appoint a special representative to investigate the issues arising out of the union's wage demands. Without restricting in any sense the scope of his investigation, the Board will direct the attention of the special representative, particularly to the cost of living in Milwaukee and Rock Island and the changes in such cost of living, the comparative wage rates paid by the International Harvester Co. and its competitors in other similar industries in these localities, and the financial ability of the company to grant the wage demands. The special representative will be asked to conduct his investigation with all possible expedition and to make his findings available to the parties and to the Board. The parties, if agreement upon these issues has not already been reached by direct negotiations, are requested to negotiate further in the light of the report of the special representative with the understanding that either party may again bring the issue before the Board if such negotiations are unsuccessful.

2. That the Board at this time is not prepared to make any recommendation upon the issue of union security. The Board believes, however, that the incorporation into the contract of the clause attached to this statement as exhibit "A" or of some modification of this clause satisfactory to both parties, would promote stability and harmony in the future relations between the two parties to this case. Without making any recommendation upon the issue, therefore, or in any way committing itself as to the nature of such recommendation, the Board commends this clause to the serious attention of both parties.

The parties, finally, are requested to keep the Board informed from time to time of the course and results of their further negotiations.

On November 24, the Board appointed Stanley P. Farwell, president of the Business Research Corporation of Chicago, as its special representative to conduct the wage investigation. This investigation was still in progress on January 12, 1942, and all three cases remained open.

CASE No. 5

WEYERHAEUSER TIMBER CO. (SNOQUALMIE FALLS LUMBER CO.), Snoqualmie Falls, Wash. — PUGET SOUND DISTRICT COUNCIL LUMBER AND SAWMILL WORKERS, LOCAL 2545, A. F. L.

Certified April 1. Strike October 2, 1940–April 21, 1941. Hearing April 9–14. 1,060 workers involved. Closed April 19

Panel: Graham, Teagle, Watt.

This controversy began early in 1939, when the companies terminated their contract with the union because of a dispute over an issue not important here. The N. L. R. B. shortly thereafter certified the union as exclusive bargaining agent after an election, and late in February 1939 negotiations began for another contract.

Negotiations from time to time until October 1940 yielded no agreement; the major issue was the union's demand for a union shop. A strike began on October 28. Settlement efforts failed and in March 1941 the parties agreed to recommend that the dispute be referred to the newly created National Defense Mediation Board.

Upon certification, the Board requested the union, pending the Board proceedings, to furnish carpenters to resume work at the Snohomish airport, halted by a sympathy strike since March 14. The union agreed to this request the following day.

On April 14, after 5 days of hearings, the Board informally submitted to the parties a compromise proposal embodying a prompt return of all strikers to work, a maintenance of membership clause, a further company undertaking to recommend membership in the union to new employees, and an undertaking by the parties to negotiate the outstanding wage questions by collective bargaining. An agreement on this basis was signed on the same day, and was ratified by the union membership on April 19.

CASE No. 6

ALLIS-CHALMERS MANUFACTURING CO., Milwaukee, Wis. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 248, C. I. O.

Certified April 2. Strike January 22–April 7. Hearing April 5, 6. 7,800 workers involved. Closed April 7

Panel: Davis, Ching, Meyer, Watt, Rieve.

The background of this case was an interunion dispute in which the undisputed majority union, the U. A. W., C. I. O., had become extremely sensitive over the activities on company property of six A. F. L. members. This feeling culminated on December 28, 1940, in a street fight between C. I. O. and A. F. L. employees of the company. The company discharged the two A. F. L. employees, pending investigation, and the A. F. L. filed charges with the N. L. R. B. On January 3, 1941, Local 248 broadened its demand from previous insistence upon permanent discharge of the two A. F. L. members to negotiation of a new contract to include provisions for a union shop and a general wage increase. No formal contract had been in force for several months. A strike broke out January 22.

A provisional agrement to return to work and to establish an impartial referee was negotiated on February 15 by Mr. Hillman, but a misunderstanding over an interpretive clause of this agreement resulted in charges by the union that the company was refusing to accept the agreement in good faith. Additional efforts by the Concilation Service, the Secretary of the Navy, and the Office of Production Management, did not result in termination of the strike, and on April 2 the case was certified to the Board.

After 2 days of hearing, a settlement which included provisions concerning union security, strongly suggested by the Board, was signed by the panel members and the representatives of the union and the company.

Contract

April 6

The terms and conditions of the 1940 proposal to Local 248, U. A. W. A., placed in operation by the company on April 29, 1940, as a company policy shall be and remain in full force and effect for the term of this agreement with the following changes:

A. There shall be added to the agreement exhibit "G" as follows: No employee will be permitted to engage in any activity in any way related to or connected with the work of a labor organization or of collective bargaining on company premises, except as provided in the agreements with labor organizations certified as the exclusive bargaining agencies in the various bargaining units in the plant. It is agreed that if or when the National Labor Relations Board shall find that these provisions are contrary to the National Labor Relations Act, then this provision shall be stricken from the agreement; and it is further mutually agreed that the parties will jointly submit, upon the request of either party, this question to the National Labor Relations Board.

B. The company will maintain discipline on company premises and to that end will strictly enforce the rules and regulations.

(*b*) Shop discipline is necessary for the orderly and efficient operation of the plant. An essential purpose of this agreement is to promote the maintenance of such shop discipline. Any employee guilty of an act which interferes with such shop discipline shall be subject to disciplinary action by the company, which shall be applied to all employees.

(*c*) The union may appeal to the impartial referee in all cases of such disciplinary action or alleged failure of the company to take such disciplinary action. When the appeal is from the taking of disciplinary action, the referee shall specify what discipline the company shall impose, unless he makes one or more of the following findings: 1. That the employee was not guilty of the act interfering with shop discipline for which such disciplinary action was taken, or, 2. That the result of such act, if established, was not interfering with shop discipline, or, 3. That the taking of such disciplinary action constituted discrimination against the union or against the employee involved with respect to his membership or status in the union. If the referee makes one or more of the foregoing findings, the company's disciplinary action shall be set aside and the employee reinstated with full compensation for any time lost.

(*d*) When the appeal is from the failure of the company to take adequate disciplinary action as to any individual employee, the referee shall specify the discipline which the company shall impose, if he makes one or more of the following findings: 1. That the employee was guilty of the act of interfering with shop discipline. 2. That the company's failure to take disciplinary action as to the employee complained of was a discrimination against the union or membership in the union. 3. That shop discipline has been interfered with by the company's failure to discipline an employee for interfering with the status of the union. If the referee makes one or more of the foregoing findings, he shall specify what discipline the company shall impose.

(*e*) It is agreed that the fact that an employee is not a member of the union, or is not a member in good standing, shall not alone and in itself be cause for discipline in the absence of some other fact or facts showing that the status of and conduct on the company premises of such employee is interfering with shop discipline. It is expected that by union members remaining in good standing, such interference with shop discipline will be reduced.

C. In paragraph 14, on page 11 of the proposal in the fourth line, the word "may" shall be changed to the word "shall."

D. All employees on the pay rolls on January 22, 1941, are to be restored to their jobs without discrimination. It is understood that any grievances that had been filed prior to January 22, 1941, may be proceeded with under the provisions of exhibit "A," but that no additional grievances will be filed with respect to things that happened prior to the date of resumption of production.

E. In view of the provision for final arbitration of all disputes arising under the contract, it is mutually agreed that there shall be no strike or lock-out or interruption of production or interference with production during the term of the agreement.

F. The choice of the referee shall be made as follows: The National Defense Mediation Board will submit to both parties a list of names, and the parties will endeavor by mutual agreement to settle upon one of those names. If this fails, then the parties will accept a referee named by the National Defense Mediation Board. The submission of the list shall be made within 5 days, and if the agreement is not reached within an additional 5 days, the appointment shall be made by the Board. It is mutually understood and agreed that the decision of the referee shall be final and binding upon both parties. The expense of the referee shall be shared equally by the parties.

G. The company will submit to the union a full list of the rules and regulations relating to discipline, and these rules and regulations shall be incorporated in the contract. Thereafter the company will make no rule or regulation inconsistent with the terms of this agreement and no rule or regulation of a discriminatory character. It is understood and agreed that if any dispute arises as to whether any rule or regulation in the submitted list or any proposed new rule or regulation is inconsistent with the terms of the agreement or is of discriminatory character, that dispute shall be treated as a grievance under the contract.

H. Within 2 days after the signing of the agreement and the resumption of production, negotiations will be entered upon between the parties for a blanket increase in wages, and those negotiations will be carried forward to a completion as promptly as possible; and it is understood and agreed that any wage increase granted shall be retroactive to take effect as of the day of the resumption of production.

I. The agreement shall remain in force for 1 year from the date when it is signed and thereafter from year to year, unless one party or the other gives notice in writing to the opposite party at least 30 days prior to the expiration of the agreement that it does not want to renew the agreement or that it proposes certain changes therein. If a new agreement cannot be reached within the 30 days, then the existing agreement shall be automatically extended for a period of not more than an additional 30 days, during which the negotiations shall be continued before the United States Conciliation Service.

The foregoing agreement was ratified by the membership of Local No. 248 on April 7. Wage negotiations were completed April 26 in Milwaukee.

In accordance with the agreement, Lloyd Garrison, Dean of the University of Wisconsin Law School, was appointed referee, and on July 13 he announced the terms of a further agreement between the parties covering the disciplinary methods to be followed in cases of antiunion activity of employees.

CASE No. 7

SEAS SHIPPING CO., INC., New York, N. Y. — NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, LOCAL 33, C. I. O.

Certified April 5. Strike March 22–April 12. Hearing April 9–11. 26 workers involved. Closed April 12

Panel: Davis, Lapham, Rieve.

On March 22, 1941, the S. S. *Robin Locksley* and S. S. *Robin Hood* were loaded and ready to sail for African ports with mail and war materials. A dispute between the unlicensed personnel including the "patagonians" and the company was resolved by increasing the war bonus from $30 per month to $50 per month. At the same time the contract between the company and the Marine Engineers' Beneficial Association, which had represented the licensed engineers for some time, was up for renewal and upon hearing of the increased bonus to the "patagonians," the engineers refused to sail unless they were given a war bonus of 50 percent of the new basic wage (that being equivalent to a 57½-percent increase in the war bonus). The C. I. O. union also demanded that two additional junior engineers be employed on the *Robin Locksley*.

Upon hearing, an agreement was reached granting the union a war bonus of 50 percent of the base pay and two junior engineers, though the union agreed to allow the *Robin Locksley* to sail with only one.

CASE No. 8

STANDARD TOOL CO., Cleveland, Ohio. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 217, C. I. O.

Certified April 5. Strike January 27–April 16. Hearing April 10–12. 650 workers involved. Closed April 16

Panel: Dykstra, Meyer, Kennedy.

After 3 days of hearing it became evident that the opportunities for direct negotiations between the parties had not been exhausted. They, therefore, returned to Cleveland and, with the aid of a Labor Department conciliator, completed a contract on April 16.

CASE No. 9

COWLES TOOL CO., Cleveland, Ohio — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 217, C. I. O.

Certified April 5. Strike February 27–April 28. Hearings April 11, 12, 21, 22. 80 workers involved. Closed April 26

Panel: Graham, Swope, Watt (Anthony W. Smith).

Break-down of negotiation for a first collective contract led to a strike. After brief hearing, the parties were sent back to Cleveland to bargain on the basis of pending negotiations in No. 8, *Standard Tool Co.*

When the Board was notified that the union had refused to accept for Cowles Tool Co. a contract similar to the Standard Tool agreement, the parties were recalled to Washington, where the parties agreed on April 22 on a complete contract which was signed also by the panel members, and which was ratified by the union April 24. The union had demanded a 10-cent an hour general increase, and obtained a 7½-cent general increase. The union had demanded a closed shop and obtained the company's agreement to discipline any employee of any other union who engaged in union activity on company time and company premises.

CASE No. 10

PHELPS DODGE COPPER PRODUCTS CORPORATION, Elizabeth, N. J. — UNITED ELECTRICAL, RADIO AND MACHINE WORKERS, C. I. O.

Certified April 8. Strike April 7–May 2. Hearings April 14, 18, 19, 23–25. 1,800 workers involved. Closed May 9

Panel: April 14: Davis, Ching, Rieve (absent). Thereafter (enlarged panel): Davis, Ching, Teagle, Brophy, Golden.

Negotiations for a contract between the union and the company began shortly after an N. L. R. B. election on March 7, won by the union. Negotiations and efforts at conciliation failed and a strike began on April 7.

At the end of the first hearing the Board issued the following:

Interim Recommendation

April 14

The panel of the National Defense Mediation Board has reviewed the points in controversy, and finds several as to which, if the parties cannot agree, considerably prolonged investigation would be required before any findings or recommendations could be made. In order to give the panel opportunity to consider these points in an atmosphere free from the pressure of emergency, the panel proposes that production be resumed on the following basis:

1. That the protest stoppage be terminated and all employees returned to work without discrimination.
2. The panel will resume the hearings beginning Friday, April 18, and attempt to affect voluntary agreement on all points of controversy.
3. Any terms and conditions so voluntarily agreed upon will be retroactive to the date of the resumption of work.

4. Failing agreement as above, the proceedings will be continued to the making of findings and recommendations toward final settlement. Such findings and recommendations will be made on or before the 1st day of May, unless the parties mutually agree to an extension of this time.

Although this recommendation was accepted and signed by representatives of both the company and the union, the union membership refused to ratify it and remained on strike.

After further hearing before an enlarged panel, the Board, referring to the draft of a detailed contract under discussion, issued the following

Recommendation

April 25

The panel is unanimously of the opinion that the attached contract clauses should be taken as a suitable basis for the immediate resumption of production.

The panel is not prepared, without a more extended investigation of the factual situation, to express any opinion on the matter of bonus for night shifts or on the matter of a general increase in wages.

The panel recommends that production be resumed with the agreement that the parties will immediately enter into negotiations on these two questions; if they cannot reach an agreement on or before June 1, 1941, then these two questions will be referred back to the panel, with full factual data supplied by both parties. The panel will then proceed promptly under section 2 (d) of the Executive order to make findings and recommendations.

Although this recommendation also was at first rejected by the union, it was later accepted and the men returned to work on May 2. On May 9 a complete contract was signed between the company and the union.

CASE No. 11

J. SKLAR MANUFACTURING CO., Long Island City, N. Y. — UNITED ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 1225, C. I. O.

Certified April 9. Strike April 4–May 12. Hearings April 16, 17, 21, May 7. 495 workers involved. Closed May 12

Panel: Wyzanski, Connelly, Brophy.

On February 27, 1941, the company and the union had made an agreement which lacked wage provisions, arbitration machinery, a no-strike clause, etc. At the time the agreement was executed the union had stressed these deficiencies but the company, on the advice of its labor relations counsel, had refused to include these provisions in the contract. On April 4 a strike was called over the discharge of two union members. After the strike became effective, the union broadened its demand to include negotiations for a new contract.

After a month of hearings and negotiations the Board issued the following opinion, which had verbally been accepted in advance by the parties, as it resulted from their collective bargaining. It was at once accepted by the company and by the union representatives "subject to ratification by the local union * * * to which the same will be submitted with the recommendation of the undersigned for its approval." This ratification was given May 8.

Recommendation

A panel of the National Defense Mediation Board, consisting of Charles E. Wyzanski, Jr., representing the public; John E. Connelly, representing employers; and John Brophy, representing employees, having heard, on April 16, April 17, April 21, and April 22, 1941, and May 7, 1941, representatives of J. Sklar Manufacturing Co., and of Local 1225 of the United Electrical, Radio and Machine Workers, makes the following recommendations:

1. The strike and picket lines shall be called off forthwith.

2. The company shall reemploy without discrimination all persons employed on April 3, 1941.

3. The parties shall supplement their contract of February 27, 1941, by incorporating the next three paragraphs of these recommendations.

4. As used in this paragraph, the term "grievance" shall include a failure of either party to perform any provision of this agreement. It shall also include a discharge or lay-off if, but only if, the employee affected either (*a*) was employed before May 1, 1941, and has been employed by the company for a total of 3 months or more, or (*b*) was first employed after May 1, 1941, and has been employed by the company for a total of 6 months or more. It shall not include any proposed amendment of this contract nor any proposal for changes in hours, wages, or type of shop. Either party to this agreement may present to the other party a grievance as herein defined. Both parties agree to handle the grievance promptly in good faith and consistent with the procedure heretofore provided in this agreement. If within 10 days after the grievance is presented, it is not satisfactorily settled, either party if, but only if, it has the approval of its highest active officer (that is, the president of the company or the president or other high international officer of the United Electrical, Radio and Machine Workers of America, C. I. O.) may submit the matter to arbitration as herein provided. Each party shall forthwith name one arbitrator and the two so chosen shall, within 1 week, name a neutral arbitrator. If the two cannot within 1 week agree upon a neutral, the American Arbitration Society, upon the application of either party, shall name a neutral. Each party agrees to accept and abide by any award made by the majority of the arbitration board and agrees to pay one-half the expenses of the neutral member.

5. The company will grant, as of May 7, 1941, wage increases as follows:

(*a*) To an employee receiving $0.50 or less an hour, a wage increase of $0.05 an hour;

(*b*) To an employee receiving between $0.50 and $0.55 an hour an increase sufficient to pay him $0.55 an hour;

(*c*) To an employee receiving more than $0.55 an hour, such increase as may be necessary so that his rate as of May 7, 1941, will be $0.05 higher than his rate as of January 1, 1941.

6. Neither party shall engage in lock-outs, strikes, slowdowns, concerted stoppages of work, picketing, or boycotts.

CASE No. 12

CALIFORNIA METAL TRADES ASSOCIATION, San Francisco, Calif. — INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 68, A. F. L.

Certified April 15. Strike April 7–28. Hearing April 22–26. 4,000 workers involved. Closed April 28

Panel: Stocking, Ching, Meany (Wilson).

This case arose out of a break-down in negotiations between the I. A. M. and the employers over the renewal of an agreement which had expired March 31. The association represents approximately 75 out of about 150 machine repair-shop operators in the Bay Cities area, a group known as the "uptown" manufacturers.

The demand of the I. A. M. for $1.25 hourly rate for journeymen machinists was countered by the association with a proposal that the rate should be $1.12½—the same in the uptown repair shops as in the West Coast standards agreement negotiated for the shipyards on April 2.

A strike was called on April 7 and the case was certified April 15. After 1 day's hearing April 22, the union's representatives agreed to transmit a proposal of the association to a meeting of Lodge 68 for consideration that evening. The proposal was sent to San Francisco by telegram without the recommendation of the union's representatives. The union's reply the following morning stated that not only was the offer rejected, but that an assessment was being made to prolong the strike. The telegram further stated that over 90 other shops in the Bay Cities area had signed separate contracts with the lodge.

Further conferences failed to result in an agreement. The employer representatives wished to end the strike but did not wish to assume responsibility for doing so in Washington. They therefore asked the panel to direct the parties alternatively (1) to go back to work under the terms of the West Coast agreement, (2) to go back to work under arbitration, (3) to go back to work under any terms that the panel might direct. The panel advised them that it was not prepared to make recommendations when there was any possibility of the parties

reaching an agreement through collective bargaining directly. The employer representatives thereupon submitted a statement expressing their disappointment that the panel would not order a settlement of the controversy, and advised that they were left with no alternative but to meet the union's demands.

Negotiations were immediately resumed in San Francisco, and an agreement to be effective until March 31, 1942, was promptly achieved.

CASE No. 13

MINNEAPOLIS MOLINE POWER IMPLEMENT CO., HOPKINS MOLINE POWER IMPLEMENT CO., Minneapolis and Hopkins, Minn.	UNITED ELECTRICAL, RADIO AND MACHINE WORKERS, LOCALS 1138 AND 1146, C. I. O.

Certified April 15. No strike. 2,100 workers involved. Closed April 20

The two locals started negotiations with the company on or about December 17, 1940. The negotiations continued without material progress until February 19, 1941, when strike notice was served on the State conciliator, and on February 27, the conciliator certified this dispute to the Governor of Minnesota, under the provisions of the Minnesota Labor Relations Act. Subsequent to this certification, a commission was appointed, which made a report on April 4, but its proposals were rejected by the employer, and the union ordered a strike for April 16. Immediately upon receiving the case the Board successfully appealed for postponement. The parties happened to take the same train to Washington and the discussion of the issues while traveling and after reaching Washington resulted in a memorandum of agreement, signed at the Board's office on April 10. The case was thus closed without having been heard.

CASE No. 14

BIRDSBORO STEEL FOUNDRY & MACHINE CO., Birdsboro, Pa.	STEEL WORKERS ORGANIZING COMMITTEE, C. I. O., and STEEL FOUNDRY & MACHINE CO. EMPLOYEE AND BENEFICIAL ASSOCIATION OF BIRDSBORO

Certified April 17. Strike April 15–22. 1,209 workers involved. Closed April 22

On April 15, the S. W. O. C. struck the plant over the question of whether it or the independent union should be the bargaining agent. No hearing was held because the parties agreed to submit the question to the N. L. R. B. Thus the strike and the case ended.

CASE No. 15

ARCADIA KNITTING MILLS, INC., Allentown, Pa.	FEDERATION OF DYERS, FINISHERS, PRINTERS AND BLEACHERS OF AMERICA, C. I. O.

Certified April 16. Strike April 3–May 5. Hearing April 29. 210 workers involved. Closed May 3

Panel: Graham, Lapham, Brophy. Assistant, Kirstein.

There had been no collective bargaining relations prior to the strike, which related primarily to wages.

Negotiations at the plant had succeeded in securing the employer's agreement to recognize the union and grant a closed shop. At the hearing substantial agreement was obtained without any Board recommendations, on most of the points at issue, which included wages, check-off, vacations, holidays, overtime, etc.

After the hearing the chairman of the panel engaged in telephonic negotiations with representatives of the parties and arranged a meeting of the parties in New York to draft the contract. This was signed on May 3 and ratified on May 4 by the union.

CASE No. 16

KELLOGG SWITCHBOARD & SUPPLY CO., Chicago, Ill. — INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B–713, A. F. L., and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT 8, A. F. L.

Certified April 21. No strike. Hearings April 28–May 1, September 4, 5. 1,000 workers involved. Closed September 8

Panel: Wyzanski, Connelly, Watt. Assistant (in September), Cox.

In April 1940 the two unions won an N. L. R. B. election by the company's production and maintenance employees. After 2 months' negotiations, a strike was called on June 26, ending September 30. On January 2, 1941, the N. L. R. B. ordered the company to bargain in good faith. Negotiations failed to terminate in an agreement, and a strike vote was taken on April 18. The dispute was then certified to the Board. At the spring hearing the parties agreed to the terms of a contract except as to wage classification, which was to be the subject of further negotiation. When the parties were unable to agree on this point a new hearing was called. Actually the controversy was mediated without a panel meeting, for the intervention of the panel assistant achieved on September 5 an agreement, ratified 3 days later, the execution of which it notes, "was recommended by the representative designated by the panel."

CASE No. 17

AMERICAN CAR & FOUNDRY CO., Buffalo, N. Y. — FEDERAL LABOR UNION No. 22518, A. F. L., and STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

Certified April 22. Strike April 15–29. Hearing April 25, 26. 1,500 workers involved. Closed April 29

Panel: Wyzanski, E. Adams, Watt, Golden (Joseph Kovner).

Without prior action by the N. L. R. B. American Car & Foundry Co. executed on January 20, 1941, a 1-year agreement with Federal Labor Union No. 22518, A. F. L., covering many of the company's 1,500 employees at the Buffalo plant. Shortly after the S. W. O. C. began a concentrated drive to organize the same plant. It petitioned for an election but under the practice of the N. L. R. B. the petition could not be entertained until the A. F. L. agreement expired. April 15, the heating department, organized by S. W. O. C., demanded a 25-percent wage increase to be granted in 2 hours. It was not granted. The men struck. April 16 an S. W. O. C. picket line surrounded the plant; the A. F. L. men would not cross it and the plant was shut down.

At the close of the hearing after the Board had been assured by the N. L. R. B. that it would expedite the consideration of the representation petition before it, the following document was signed by the five persons who had served as the Board's panel, which was abnormally constituted in that there were more worker than employer members. Since, in fact, the Board's recommendation embodied an agreement of the three parties, it was at once accepted and promptly ratified.

Recommendation

April 26

The National Defense Mediation Board, acting through the undersigned panel, having heard representatives of the American Car & Foundry Co., the American Federation of Labor Local Union No. 22518, and the Steel Workers Organizing Committee upon the issues involved in the present strike at the Buffalo plant of the American Car & Foundry Co., make the following recommendations to the three parties involved, with the understanding on the part of the panel that these recommendations will be followed:

1. The strike and picket lines shall be called off forthwith.

2. The company shall reemploy all workers employed on April 15, 1941, at its Buffalo plant, without discrimination, as soon as possible, insofar as work is available for them.

3. The National Labor Relations Board, in accordance with the assurances given to the National Defense Mediation Board, shall promptly investigate, and, if appropriate, hear any petitions or charges presented in accordance with the National Labor Relations Act. In such proceedings all parties shall cooperate to expedite hearings, and to that end accept short notice of such hearings.

CASE No. 18

JOHN A. ROEBLING'S SONS CO., Roebling and Trenton, N. J. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 2111, C. I. O.

Certified April 22. Strike April 16–29. Hearing April 25–29, June 5, August 1–5, 11–19. 6,500 workers involved. Closed September 19

Panel: April and June: Graham, Meyer, Brophy.
August: Graham, Hamilton, Brophy. Assistant, Kirstein.

Following requests by the union for recognition, a strike took place at both the company's plants. On April 22, the day the case was certified, the N. L. R. B. ordered an election in order to determine the bargaining representative of the employees, and on May 20 certified the union as such.

At the close of the Board's hearings in April, the parties and the panel signed the following:

Memorandum of agreement

April 29

In view of America's need for maximum defense production and in order to promote cooperation in the Roebling Co.'s plants for this purpose, the company and the Steel Workers' Organizing Committee, on behalf of its members, make the following agreement:

I. The company agrees not to influence or to attempt to influence any employee against joining the union, and agrees to cooperate fully for a fair, free, and prompt election. The Steel Workers' Organizing Committee, in the exercise of their recognized rights of self-organization, agree not to coerce or to attempt to coerce any employee to join the union against his or her will, and agree to cooperate fully for a fair, free, and prompt election.

II. The Steel Workers' Organizing Committee agrees to order all its members who are employees of the company to return to work immediately and that all picketing cease at once.

III. All employees are to return to work promptly without discrimination or loss of seniority.

IV. It is agreed that Mr. J. D. Thompson, works manager, and such other officials of the company who may be necessary shall immediately, upon the return of the men to work, take up in the order of their importance grievances not already disposed of, and the Steel Workers' Organizing Committee may present grievances to the company for such employees as it represents, submitted in a written form, signed by one or more of the complainants, and the company will endeavor to solve such grievances in a fair and just manner. All decisions arrived at shall be made known to such representatives of the employees who presented the grievances. There shall not be more than one meeting per week.

V. Any matters not covered in this agreement or which fail of settlement shall be listed for consideration and disposition in the negotiations between the company and the certified representatives of the employees following the election. If such matters are not settled by negotiation they may be referred to the National Defense Mediation Board for consideration and recommendation.

VI. On account of its special and technical nature, the disputed operation proposed for, but not yet actually put into operation in department 75, shall be the subject of study by an expert adviser, to be appointed promptly by the National Defense Mediation Board. He shall proceed immediately according to his best judgment, to take the steps necessary to test the proposed new opera-

tions, to find and evaluate the facts, on the basis of which he shall make his recommendations for the consideration of the National Defense Mediation Board.

VII. The company and the Steel Workers' Organizing Committee, on behalf of its members, agree that no misrepresentation of the settlement shall be made by either party and nothing will be done by either to cause a stoppage, lock-out, or slowing down of the defense effort.

VIII. The company and the Steel Workers' Organizing Committee agree to cooperate promptly and fully for fair, orderly, and harmonious conduct and for intelligent and efficient production in the Roebling Co.'s plants, which are large producers of materials immediately necessary and vital to the defense of the Nation.

IX. The above agreement is entered into by both parties as a temporary measure in an honest endeavor to settle the present labor dispute, pending the election, as ordered by the National Labor Relations Board by its order of April 21, 1941.

The minutes of the hearing of June 5, signed by the panel members, state:

"The chairman and the panel met with the representatives of the company and the representatives of the union and heard the report read and explained by Mr. Trundle and Mr. Dangler. The representatives of the union and the representatives of the company, respectively, then held private sessions studying the report.

"The chairman then called all parties back together again for further consideration, discussion, and suggestions. It was then agreed that the operations proposed for department 75 should be tried out and seven points agreed upon for the trial period. The transcripts of the agreement on these seven points were to be sent to the representatives of the company and the representatives of the union; two copies to be sent to the company, two copies to be sent to the union, and two copies to be sent to Mr. Trundle. Two copies are to be filed in the Board's offices."

Negotiations for a contract proceeded between the parties in June and July, using the Trundle report as a basis, but no final agreement was reached.

The issues still in dispute, mainly, union security, vacations with pay, grievance machinery, and arbitration, were settled before the Board in August and a contract was completed soon after.

CASE No. 19

AMERICAN POTASH & CHEMICAL CORPORATION, Trona, Calif. — INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL 414, C. I. O.

Certified April 23. Strike March 15–July 2. Hearing April 29–May 2. 1,300 workers involved. Closed June 4

Panel: Davis, Teagle, Carey.

The company had committed unfair labor practices and had been in much litigation with the union. Negotiations with the union, which had won a N. L. R. B. election in December 1940 had broken down because of the company's unwillingness to agree to a union shop and union preference in hiring.

The hearing ended May 2 with suggestions by the panel concerning union security. The parties returned to Trona and continued negotiations, with the Board mediating by telegraph and finally on June 4 informing the parties "that if the Board had to make a formal recommendation * * * it would not go beyond the following:

"That the company agrees that any employee who is now a member of the signatory union shall as a condition of continued employment maintain his membership in good standing in accordance with the provisions of the union's constitution."

With the acquiescence of the parties, the Board "withdrew" from the case on June 4. The plant reopened July 2, the strike having failed.

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CASE No. 20

BITUMINOUS COAL OPERATORS, APPALACHIAN MINES — UNITED MINE WORKERS OF AMERICA, C. I. O.

Certified April 24. Strike April 2–30. Hearings April 25, 27, May 23–29, June 4–5. 400,000 workers involved. Closed July 6

Panel: Davis, Teagle, Golden. Assistant, Cox.

On April 2, when a contract had not been negotiated to replace the one that expired March 31, all coal miners went on strike. Negotiations continued. About 2 weeks later the operators of the mines in the southerly portion of the Appalachian area withdrew from the conference. On April 21, U. M. W. A. and the operators in the northern Appalachian area reached and initialed an agreement. The strike, however, continued, awaiting a settlement of terms for the southern Appalachian field. On April 21 the President of the United States issued a proposal for settling the strike, which was accepted by the northern operators and by U. M. W. A. The operators in the southern portion reserved their acceptance.

On April 24 the case was certified to the Board. Hearings were held continuously until April 27, when the Board issued the following:

Recommendation

April 27

The panel of the National Defense Mediation Board, designated to act in the dispute between the Bituminous Coal Operators and the United Mine Workers of America, has explored at length the matters in controversy. The proceedings have been conducted in the presence of the fact that the President of the United States on April 21, 1941, publicly recommended and urged that:

"1. The miners and operators already in agreement resume coal production under the terms of that agreement.

"2. The operators and miners who have not yet reached an agreement, enter into wage negotiations and at the same time reopen the mines, the agreement ultimately reached to be made retroactive to the date of resuming work."

Throughout the discussion the principal point in controversy, and the one which in the judgment of the panel has prevented an agreement, was the matter of a differential in the daily wage rate, between that portion of the Appalachian coal region which lies principally in the western portion of Pennsylvania, eastern Ohio, and the northern part of West Virginia, on the one hand, and that portion of the Appalachian region which lies principally in the southern portion of West Virginia, eastern Kentucky, and portions of northern Tennessee and western Virginia, on the other hand. The United Mine Workers and the operators in the northerly portion of the Appalachian region have accepted without reservation the President's proposal. The operators in the southerly portion of the Appalachian region have not accepted it. They have not at any time been willing to agree that wages fixed by future negotiation be made retroactive to the date of resuming work. Many formulas have been discussed. The last offer of those who have not agreed to the President's proposal was to fix their wage scale now on the basis of an addition of $1 to the daily wage and a properly related percentage increase in other wage rates; wages not to be subject to further negotiation, and the contract to run to March 31, 1943. This offer as made did not directly mention the differential. The effect of it was that elimination of the differential could be brought about only if the Mine Workers would surrender 40 cents of the $1 increase to which the operators in the northern portion of the Appalachian region had agreed. This offer was rejected.

After the most careful consideration, the panel is unable to recommend this offer as a substitute for the President's proposal.

The panel, therefore, unanimously recommends that the President's proposal, as made on April 21, as quoted above, be accepted today by the miners and all operators in order that production of coal essential to the national defense may begin on Monday, April 28, 1941.

These recomendations were accepted immediately by the northern operators and the union. Late the following evening, after the hearing before the Special Senate Committee Investigating National Defense, the southern operators accepted. On April 30 work was resumed.

Further negotiations between the parties proved unfruitful and the Board recalled the parties to Washington on May 23. Joint and separate conferences were held continuously until the Board issued further—

Findings and Recommendations

June 5

In the matter of the dispute between the Bituminous Coal Operators and the United Mine Workers of America, the National Defense Mediation Board on April 28, 1941, recommended the acceptance of the President's proposal of April 21, 1941, that—

"1. The miners and operators already in agreement resume coal production under the terms of that agreement.

"2. The operators and miners who have not yet reached an agreement, enter into wage negotiations and at the same time reopen the mines, the agreement ultimately reached to be made retroactive to the date of resuming work."

In our recommendation of April 27, we pointed out that the United Mine Workers and the operators in the northerly section of the Appalachian area had accepted the President's proposal. On April 30, the operators in the southerly section of the Appalachian area accepted the President's proposal on the basis of a temporary agreement entered into on that date with the United Mine Workers, and the production of coal throughout the Appalachian region was resumed and has continued since that time. The temporary agreement provided for the continuation of negotiations as to all those provisions incorporated in the new Appalachian agreement which the operators in the northerly section had approved and which the operators in the southerly section had not approved. Negotiations between the United Mine Workers and these operators were accordingly resumed, but they did not lead to an agreement, and on Friday, May 23, the parties again came before the National Defense Mediation Board.

Throughout the discussion the principal point in controversy has been the 40-cent differential in the daily wage rate between that part of the Appalachian coal region which lies principally in the western half of Pennsylvania, eastern Ohio, and the northern part of West Virginia on the one hand, and that portion of the Appalachian region which lies in the southern part of West Virginia, eastern Kentucky, and portions of northern Tennessee and western Virginia on the other hand.

In the N. R. A. Coal Code negotiations in 1933 and 1934, two differentials in favor of the operators in the southern section were agreed upon:

"1. A 40-cent per day lower daily wage. This 40-cent differential in the daily wage rates amounts on weighted average to something between 3 and 3½ cents per ton.

"2. Lower tonnage rates, which on the weighted average amount to about 15 cents per ton."

Under the new Appalachian agreement establishing wage rates up to and including March 31, 1943, the tonnage differentials remain unchanged, so that the operators in the southerly section retain in any event approximately five-sixths of the wage-cost differential in their favor. The sole question of differential before the Board is as to the elimination of the 40-cent daily wage rate differential which amounts to about one-sixth of the total differential.

To understand the problems presented by this principal point in the dispute, it is necessary to know about the way in which wages for coal mining have been established. The coal miner himself—the man who actually mines the coal and loads it into coal cars in the mines—is paid for his work on a tonnage basis. (To this general rule there are some exceptions, of which the principal one is that some of the machine loading is done on a day-wage basis.) The work that is done on a day-wage basis, and that is affected by the controversy about the 40-cent differential, is the work incidental to the actual mining of the coal by inside day workers, such as timbering, track laying, drainage, ventilation, and hauling and hoisting, and the work done on the surface outside of the mines.

Industry-wide collective bargaining in bituminous-coal mining had its beginning as far back as 1886 when a joint conference was initiated between the operators and miners in Ohio, Indiana, Illinois, and Pennsylvania. The area covered by the joint conference has varied from time to time through the years. The tonnage represented has varied from about 40 percent to about 70 percent of the total national production of bituminous coal. At all times the area cov-

ered by the joint conferences has been referred to as the "central competitive field," and collective bargaining in the industry has been characterized by the fact that the wage rates fixed by negotiations for the central competitive field have, under the impact of existing competitive relations, determined the levels of wage rates paid in all other bituminous-coal fields in the United States. These other areas have been referred to as the outlying districts.

From the beginning the competitive difficulties of the operators have been important causes of industrial strife. The United Mine Workers have consistently urged that wages and working conditions should be as uniform as possible for their entire membership; but from the beginning the competitive relation of the operators has had its effect. As early as the joint conference of 1902 this fact was emphasized in the statement "That this movement is founded and * * * is to rest, upon correct business ideas, competitive equality, and upon well-recognized principles of justice." Although the mine workers have recognized the pressure of competitive conditions and because of them have accepted lower tonnage rates in districts where coal-mining conditions are difficult and in districts which are unfavorably located with respect to the market, nevertheless they have continuously insisted upon a uniform basic daily wage rate and have attempted to confine the differentials to tonnage rates. Wherever possible the United Mine Workers have pressed their case for uniformity of wages and working conditions and in the joint agreement of 1898 uniform daily wage rates for all inside labor were established, and after the acceptance in 1906 of the principle that the United Mine Workers had jurisdiction over all work in and about the mines, much progress was made in establishing a uniform daily wage rate for outside workers. In 1924 the joint conference broke up and the industry fell into chaotic competitive and wage conditions which continued until the establishment of the N. R. A. Code in 1933. By that time the production of coal in what is now the lower Appalachian region had greatly increased and the N. R. A. Code set up a new central competitive area including Pennsylvania, Ohio, Maryland, eastern West Virginia, eastern Kentucky, and portions of northern Tennessee and western Virginia, and representing about 70 percent of the total national production of bituminous coal.

Prior to 1933 there existed little or no unionization of the mines in the southerly portion of this area. Wages throughout the industry had fallen to very low levels, and were nonuniform but in general lower in the southerly portion of the new central competitive area than in the northerly portion of that area. This condition resulted in the negotiated agreement fixing the differential in the daily wage rates at 40 cents per day, and also fixing the differential in the average tonnage rates. Both groups of operators, because of the competitive effect of any differential in wage rates, reserved the right to renew at any time their respective contentions about the propriety and the amount of these differentials.

Prior to the joint conference which began in March of this year, the two groups of operators had agreed that the question of the differential would not be raised as between them in the negotiations. At the beginning of the conference the United Mine Workers demanded a wiping out not only of the differential of 40 cents in the daily wage rate but also of the differential in the tonnage rates. As a result of collective bargaining the demand for wiping out the differential in the tonnage rates was eliminated. In the meantime, certain proceedings before the Ways and Means Committee of the House, in an investigation preliminary to reenactment of the Guffey Act, seemed to point to a division of existing price area No. 1 into two sections, putting Pennsylvania in a separate price area. The operators in the northern section who were apprehensive about the competitive threat contained in this suggestion and attributed its instigation to operators of the southerly group, thereupon fell into disagreement with the operators in the southerly section as to the question of wiping out the 40-cent differential in the basic daily wage rate, and swung over to the support of the United Mine Workers in this demand. Thereafter the operators in the southerly section withdrew from the Appalachian conference and organized the Southern Coal Operators Wage Conference.

As a result of this interruption of the unity of the operators there was included in the new Appalachian agreement the so-called "protective wage" or "favored nation" clause in which the United Mine Workers bound themselves to wipe out the daily wage differential—that is, they agreed that if any more favorable terms as to the daily wage rate were granted to the operators in the southerly section, the operators in the northern section would have the benefit.

Such a clause had been customary in the district wage agreements under the old Appalachian agreement, to protect its operators against competitive wage cutting. Its inclusion in the new Appalachian agreement meant that the 40-cent differential was to be wiped out. Any reduction of the 40 cents demanded from the operators in the southerly section would result in a corresponding reduction of the wage increase agreed to by the operators in the northerly section.

Confronted by this realistic result of collective bargaining the representatives of the National Defense Mediation Board, inexpert in matters pertaining to the production of bituminous coal and familiar with the foregoing facts only as a result of this hearing, are called upon in this period of emergency to make recommendations, with the expectation that the recommendations of the Board will be accepted, as to whether or not the new Appalachian agreement heretofore approved by the United Mine Workers and the operators in the northern section should be modified to restore the 40-cent daily wage-rate differential in favor of the operators in the southerly section of the Appalachian area.

The position of the mine workers that the same wages should be paid for equivalent labor throughout the Appalachian area has in itself considerable weight in favor of wiping out the 40-cent differential in daily wage rates. It is conceded that the mine worker in southern West Virginia and eastern Kentucky lays just as much track, sets just as much timber, and mines just as much coal per day as the mine worker in northern West Virginia and western Pennsylvania. But putting this consideration aside we have examined the problem in its competitive aspects, giving careful consideration to each of the points and to all of the evidence brought to our attention.

The first point in the final memorandum submitted by the operators in the southerly section is the suggestion that the 40-cent differential is justifiable on the ground that necessity for a difference in wage rates between the northern and southern industrial areas in the United States is generally recognized. The official figures submitted by these operators to support that contention are based on comparison of the entire northern and southern industrial areas. So far as they relate to wages paid in the bituminous-coal industry, they include the wages paid to the mine workers in Alabama. A substantially lower wage level has always existed in bituminous-coal mining in Alabama. The Alabama basic day wage under the old Appalachian contract was $4.50 as compared with the basic daily wage of $5.60 in the southerly section of the Appalachian area and $6 in the northerly section. The United Mine Workers have always recognized the existence of such a differential and still recognize it. The Alabama wage scales are not included in the present discussion. The operators in Alabama have made a temporary agreement with the United Mine Workers which involves the addition of the $1 per day to the basic wage rate but they have reserved for future negotiations all the other questions raised by the new Appalachian agreement. These official figures which are in general based upon comparison of the entire northern and southern industrial areas, and in particular include the lower wage rates paid the bituminous-coal miners in Alabama, are not at all applicable to the present dispute which has to do with the relative competitive position of bituminous-coal operators within the limited geographical area covered by the Appalachian agreement. The present discussion has nothing to do with the question of wage differential between the northern and southern industrial areas of the United States as a whole.

In the next point presented by the final memorandum of the operators in the southerly section they say that the "principal reason for the original establishment of the differential and its acceptance in 1933 and its subsequent perpetuation" is the freight-rate differential against them in the competitive markets to which approximately 80 percent of their production is shipped, and they go on to compare the total labor costs at the commercial mines in the northern districts (districts 1, 2. 3, 4, and 6) with the total labor costs in the southern districts (districts 7 and 8) for the calendar year 1940.

This comparison between all the districts is not very helpful. The really significant comparison is between the northern low volatile district No. 1, and the southern low volatile district No. 7, and between the northern high volatile district No. 2, and the southern high volatile district No. 8, because it is these districts that enter into direct competition. The Board has therefore directed its attention particularly to the competitive relationships of the commercial operators in districts 1, 2, 7, and 8. District No. 3 might perhaps be included

since its production enters into some substantial competition with districts 1, 2, 7, and 8, but its inclusion would not materially affect the conclusions to be derived from the direct comparison of districts 1, 2, 7, and 8. Districts 4 and 6 should clearly be excluded from the comparison. We are fortunate in having at our disposal the comprehensive figures of the Bituminous Coal Division based upon actual experience over the years from 1936 to 1940, inclusive, and particularly the figures for 1940.

So far as the freight-rate differentials are concerned, we have the actual figures of realization at the mines in the different districts. These realization figures are arrived at by subtracting from the average minimum market price the freight differentials applicable to the producing areas. They, therefore, represent the actual net realization at the mines in the producing areas and afford a basis of sound and direct comparison.

On the basis of the minimum prices fixed by the Bituminous Coal Division effective October 1, 1940, these figures show (1) the realization based on minimum prices, (2) the total production costs, and (3) the difference between total production costs and realization, for these districts as follows:

District	Realization based on minimum prices effective Oct. 1, 1940	Total costs during 1940	Amount that realization is above costs
	Per ton	*Per ton*	*Per ton*
1	$2.1872	$2.1343	$0.0529
2	2.0488	1.9852	.0636
Total, 1 and 2	2.0890	2.0374	.0516
7	2.1931	2.0345	.1586
8	2.0888	1.9026	.1862
Total, 7 and 8	2.1280	1.9537	.1743

The additional day labor, tonnage, yardage, and deadwork costs that would result under the new Appalachian agreement, including the wiping out of the 40-cent differential in the basic daily wage rate for the southern districts, have been estimated by the United Mine Workers on the basis of all the mines in districts 1, 2, 7, and 8, and by the operators in the northerly section and by the operators in the southerly section on the basis of the commercial mines, excluding the captive mines. The figures submitted by the United Mine Workers have taken into account the actual experience in the last 9 months of 1937 under a wage increase that had occurred at that time. They indicate a lower cost than the estimate submitted by the mine operators. Their estimates are as follows:

Submitted by United Mine Workers

District	All mines		
	Total costs, calendar year 1940	Estimated cost increases on day and tonnage rates, yardage, and deadwork	Projected costs (2 plus 3)
(1)	(2)	(3)	(4)
1	$2.1343	$0.1790	$2.3133
2	1.9852	.1779	2.1631
7	2.0343	.1849	2.2192
8	1.9026	.1980	2.1006

The estimates submitted by the two groups of operators of commercial mines are very close together and are as follows:

Submitted by operators of commercial mines in the northerly section

District	Total costs, calendar year 1940	Estimated cost increases on day and tonnage rates, yardage, and deadwork	Projected costs (2 plus 3)
(1)	(2)	(3)	(4)
1	$2.1762	$0.1941	$2.3703
2	1.9269	.1744	2.1013
7	2.0863	.2441	2.3304
8	1.8999	.2303	2.1302

Submitted by operators of commercial mines in the southerly section

District	Total costs, calendar year 1940	Estimated cost increases on day and tonnage rates, yardage, and deadwork	Projected costs (2 plus 3)
(1)	(2)	(3)	(4)
1	$2.1762	$0.2015	$2.3777
2	1.9269	.1919	2.1188
7	2.0863	.2455	2.3318
8	1.8999	.2286	2.1285

Comparison of the old and the new cost figures (taking the estimate of the operators in the southerly section) shows that the old production costs in district 1 were about 10 cents per ton higher than in district 7, and the old production costs in district 2 were about 8 cents higher than in district 8. With the added costs the new production costs in district 1 will still be about 4 cents higher than in district 7, and the production costs in district 2 will be about 1 cent less than in district 8.

Under the Guffey Act there will be an adjustment of the total average minimum prices and of the realization prices in the several districts taking into account any increased costs that may be established by evidence given before the Bituminous Coal Division, and by the terms of the act the adjustment of the realization prices in the several districts will be made for the purpose of maintaining so far as possible "existing fair competitive opportunities." In this connection it may be pointed out, that while the 3 cents to 3½ cents is a real addition to the total labor costs of the operators in the southerly section, they will be protected by the provisions of the Guffey Act against competitive price cutting to the extent of at least half of that added cost, and perhaps more.

It is clearly apparent that these figures which show the relative realization before and after the proposed wage increases do not afford sufficient justification for the maintenance of the 40-cent differential in the basic daily wage rate. The 3- to 3½-cent difference in labor costs that is involved in the 40 cents, although it is a real item in the labor cost, is not sufficient in itself to have any controlling effect on this competitive situation, or to justify a recommendation by the Mediation Board that the differential should be maintained in order to preserve existing fair competitive opportunities.

The final point advanced by the operators in the southerly section is the assertion that if their mines are to survive and furnish employment to their miners, the 40-cent differential must be maintained. We do not find any evidence sufficient to support this assertion. We have already discussed the comparative wage costs and the total realization in the two areas. Another approach is possible by way of an examination of the actual distribution of production from the

northern and from the southern districts over the years since the adoption of the N. R. A. Code. Exact figures have been submitted for the years 1936, 1938, 1939, and 1940. These figures show that, over these years, the two northern districts, 1 and 2, have not quite held their own in the competitive battle; they now produce a slightly lower percentage of the total national production than they did in 1936. On the other hand, the two southern districts 7 and 8 have slightly improved their position: they now produce a slightly greater percentage of the total national production than they did in 1936. These figures hardly support the contention of the operators in the southerly section that the addition to their costs of the 3 cents to 3½ cents represented by the 40-cent differential will subject them to an unendurable competitive burden.

For the foregoing reasons we conclude that there is no ground upon which the Board can recommend that the 40-cent differential in basic daily wage rates should be retained, and the Board recommends that it be eliminated.

In approaching the remaining points in controversy it should be remembered that the provisions of the new Appalachian contract have been accepted by the operators in the northerly section who produce approximately 55 percent of the total tonnage in the Appalachian area and that these provisions have also been accepted by all outlying districts except Alabama. On the whole, therefore, the provisions have been accepted by the producers of at least 70 percent of the total national tonnage of bituminous coal.

The additional points in dispute are as follows:

1. *Basic tonnage rates.*—The controversy here is about the proposed addition to the basic tonnage rate provisions of the words "The minimum rate for pick mining shall not be less than the aggregate of short-wall machine cutting and loading rates."

Pick mining is defined in the contract as "The removal by the miner of coal that has not been undercut, centercut, or overcut by a machine." This definition includes the so-called "squeeze coal" which in general requires neither cutting, drilling, nor shooting.

The dispute has practical effect only upon operators in the Pocahontas district and one mine in the Winding Gulf district. In other districts throughout the southerly section the now established minimum rate for pick mining is the aggregate of short-wall machine cutting and loading rates; in the northerly section the established minimum rate for pick mining is 11 cents higher than the aggregate short-wall machine cutting and loading rates.

By local agreement written into the smokeless district agreement, the miner in the Pocahontas district and in the one mine in the Winding Gulf district is paid on "shovel coal" or "squeeze coal" a tonnage rate equal to the machine loading rate alone, and which is substantially lower than the aggregate of short-wall machine cutting and loading rates. This local agreement expressly provides that the special tonnage rates shall not be extended to any mines where it is not now in effect, unless by mutual consent of the operators and the district officials of the United Mine Workers.

The operators in the northerly section regard this isolated and localized practice as a special privilege, and demand either that the practice be extended to all districts of the Appalachian area or that it be eliminated. The limited local agreement is the residue of a long battle in which the United Mine Workers have consistently fought for the position that the miner should be paid the pick-mining tonnage rate for all coal not machine cut, as the existing Appalachian contract requires. The United Mine Workers assert that the additional hazards, timbering difficulties, etc., which accompany the mining of "squeeze coal" explain and justify the fact that the minimum pick-mining rate has been and is now being paid for mining "squeeze coal" in all other districts; and they contend that the locally agreed-to practice covered by the smokeless district agreement is contrary to the language and to the intent of the pick-mining clause of the old Appalachian agreement, and is not justified by any special or peculiar conditions in the Pocahontas district. The operators in the southerly section, on the other hand, contend that the physical conditions of the coal in the Pocahontas district do not prevail in other sections, and that these special conditions were recognized and taken into account by the United Mine Workers when the local provisions were written into the smokeless district agreement.

Under these circumstances the Board cannot recommend that the local and restricted practice should be extended to all districts of the Appalachian area. On the factual controversy as to whether there are special and peculiar physical conditions of the coal in the Pocahontas district not met with in any other districts in the Appalachian area, no evidence has been submitted to us by either side. Reliable factual evidence on the subject could be assembled only by a care-

ful field investigation. The old Appalachian and the new Appalachian agreements contain an identical clause relating to the settlement of disputes, and this clause seems to us to afford adequate machinery for such investigation. The Board accordingly recommends that the tonnage rates for "shovel coal" or "squeeze coal" in the limited area where the special rate now prevails be redetermined by a board set up in accordance with the "settlement of disputes" clause of the Appalachian agreement, with the provision that if any deadlock arises in the setting up of the board, or in the selection of an umpire, or in the prompt redetermination of the tonnage rates, the matter shall be referred back to this Board for appropriate action.

2. *Reject clause.*—The so-called "reject clause" which has been the subject of protracted dispute before the Board and elsewhere, was introduced for the first time in 1934. Briefly stated, the practice objected to is that the tonnage rate paid to the miner is measured by the amount of clean and marketable coal delivered at the output end of the coal-cleaning or coal-handling plant, rather than upon the amount of coal delivered by the miner to the coal-cleaning or coal-handling plant.

The industry has had long experience with, and years of disagreement about, practices which measure the tonnage after it has passed over or through mechanical equipment, such as screening plants; and has substantially eliminated such practices by establishing tonnage rates on the run-of-mine basis. The trouble with such practices is that the miner's wage is made to depend more or less upon the perfection or imperfection of mechanical equipment installed by the operator. This is not fair either to the miner or to the competitive producer.

Our examination of the situation leads us to the conclusion that the practice now carried on under the so-called "reject clause" reintroduces into the industry this same sort of disagreement and discrimination. It penalizes both the mine worker and the competitive operator who has invested in a more efficient cleaning plant. We think the practice should be eliminated.

The method of eliminating the practice proposed by the United Mine Workers and supported by the operators in the northerly section is to eliminate the so-called "reject clause" from all district agreements. We have considered the possibility that the elimination of the practice may result in hardship on certain operators who in reliance upon the reject clause have made substantial investment since that clause was introduced, unless some provision is made for working out by agreement a substitute tonnage basis that will eliminate the objectionable practice but still take into account any special position in which such operators have been placed. To minimize that possibility we think it should be understood and agreed that in any such cases the particular operators may take up with the district representatives of the United Mine Workers their particular problems and endeavor to dispose of them by local agreement, and failing such agreement the case shall be disposed of by application of the provisions of the "settlement of disputes" clause of the contract, with the proviso which we have set forth in connection with the preceding discussion of basic tonnage rates.

With this limitation, the Board recommends the acceptance of that provision of the new Appalachian agreement which eliminates the so-called "reject clause" from all district agreements.

3. *Vacations with pay.*—The Board recommends the acceptance of the new Appalachian contract provisions as to an annual vacation period. This vacation period has been accepted not only by the bituminous-coal operators in the northerly section but also by the anthracite industry.

Under normal conditions we would approve the fixing of a period including July 4 as the vacation period. In this critical stage of the Nation's affairs, and with the greatly increased demand for coal to meet the defense program, the Board recommends that there should be no cessation of production in the coming Fourth of July period unless the industry by agreement can arrange to at least make up the loss of an estimated 15,000,000 tons, the production of which would be lost from such cessation.

4. *Safety practices.*—The casualty rate in the coal mines, which has always been high, is a matter of grave and common concern shared and expressed by each and all of the parties to this controversy. Its reduction is a matter of careful planning and constant vigilance on the part of the operators and the mine workers alike. All parties agree that an effective safety clause should be included in the contract. The disagreement relates to the form rather than to the substance of the clause.

The Board recommends that the "safety practice" clause of the agreement be rewritten as follows:

"Reasonable rules and regulations of the operator for the protection of the persons of the mine workers and the preservation of property shall be complied with.

"At each mine there shall be a safety committee. This committee shall be designated from the employees at each mine by the district president of the United Mine Workers of America, who shall also have authority to change the personnel of the mine employees designated. The committee shall consist of not more than three mine workers, unless a greater number is established by local agreement. No member of the mine committee shall be a member of the safety committee. The safety committeemen shall serve without compensation.

"This committee shall have the right to inspect any mine development or equipment used in producing coal, for the purpose of observing its safe or unsafe condition when such questions are brought to its attention. If the committee believes conditions found are dangerous to life or property, it shall report its findings to management."

The principal point of dispute in connection with this safety practice clause is the sentence which reads "The International Union, United Mine Workers of America, may designate memorial periods provided it shall give proper notice to each district."

The operators in the southerly district have expressed apprehension about this clause, on the ground that it is so indefinite as to give to the United Mine Workers the power to call unlimited memorial periods which would interfere with production. We do not so interpret the clause. Rather, we interpret this clause as being subject to the "settlement of disputes" clause of the contract, so that the proposed memorial period provision in the new contract gives to the mine workers no right to bring about a suspension of work in the mines, except by local agreement.

Inasmuch as the mine workers have in any case the right to designate a memorial period at any time which would not interfere with normal production, and since they have as a matter of course the right to negotiate locally for memorial periods that might interrupt normal production, the Board recommends that the clause above quoted be excluded from the contract.

5. *Seniority.*—The only dispute here, we think, is whether the displaced employees who are to have preference in rehiring shall or shall not be limited to employees of the same mine, or employees of the same employer in the same residential area. The Board suggests the following substitution for the last sentence of paragraph 2 of the seniority clause:

"Employees displaced at a mine or in the same residential area by new mining methods or installation of new mechanical equipment, so long as they remain unemployed, shall constitute a panel from which their former employer shall select new employees at that mine or in that residential area."

6. *Pay day.*—The question here is whether the discounting of scrip shall be prohibited without prohibiting the issuance of scrip.

It is recognized that the discounting of scrip lends itself to abuse against which the employee should be protected, and in our opinion the discounting of scrip should be prohibited. The Board, therefore, recommends that the clause as written in the new Appalachian contract be accepted.

7. *Medical and hospitalization services.*—The difference between the parties here is that the mine workers, wherever the miner contributes out of his earnings to medical and hospitalization services, are asking that they be given a voice in the administration of such services by agreement arrived at in district conferences. The operators in the southerly section desire to continue the present system which provides that the contribution of the mine workers be deducted from the pay roll and any dissatisfaction with the medical or hospital services becomes a grievance under the contract.

It seems to us reasonable that when men contribute to the maintenance of these services they should be given a voice in their administration; that this is a matter of such intimate concern to the individuals involved that it should be administered cooperatively rather than by the grievance and complaint procedure. The Board therefore recommends that the clause as written in the new Appalachian agreement be accepted.

8. *Physical examinations.*—The dispute about this clause of the contract seems to be one of definition rather than one of substance. The Board recommends that the clause be rewritten to read as follows:

"Physical examinations required as a condition of or in employment, shall not be used to discriminate against any employee or any prospective employee."

9. *House rents.*—The provision in the proposed agreement as to house rents is "Equitable adjustment of house rents shall be made in district conferences." The suggestion of the mine workers is that the increase in wages in some instances has

been, or may be, partially offset by increases in the rental of company-owned houses.

The Board understands that there is no requirement on the part of the operator that employees live in company-owned houses. Also that camps and company towns are in the main, and increasingly, accessible by public highways. The Board recommends that any increase in current rentals for company-owned houses be taken up for adjustment locally and subject to the provisions of the "settlement of disputes" clause of the contract.

10. *Protective wage clause.*—The operators in the southerly section have expressed great apprehension about the probable effect of the last half of this clause, which reserves to the United Mine Workers the right "to call and maintain strikes throughout the entire Appalachian area when necessary to preserve and maintain the integrity and competitive parity of this agreement." This is a limitation of the broad and sound provisions of the "settlement of disputes" paragraph of the agreement which provides for no suspension of work during the term of the agreement and also provides machinery for settling any disputes arising under the agreement "or any local trouble of any kind." The last half of the "protective wage clause" was inserted in the Appalachian agreement primarily to implement the so-called "most-favored-nation" provision of the first half of that clause.

If all the other recommendations of the Board are accepted, then the wages and working conditions for the entire Appalachian area will have been agreed to for a period up to March 31, 1943, and this clause may well be omitted. The Board so recommends.

11. *Tonnage conveyor rate adjustments.*—During the discussion a new point has been raised by the operators in the southerly section which has to do with the application of the new wage scale to tonnage conveyor rates. The suggestion of these operators is that the tonnage conveyor rates be tied to the machine cutting and loading rates by a formula which has been applied in some districts in the North. This formula as applied in the North results in a tonnage conveyor rate which yields to the worker a better income than he would earn on a day-rate basis. If the day rate is increased in the southerly section by a greater percentage than the day rate is increased in the northerly section, while the machine cutting and loading rates are increased in the two sections in a lesser percentage ratio, then the application of the same formula might result in a tonnage rate in mines in the southerly section which would yield to the miner a less income than he would earn on the new day-rate basis. This possibility is increased by the fact that the machine cutting and loading rates vary in the different districts.

It is apparent that such a result would create an artificial incentive to switch from a day-rate basis to a tonnage-rate basis depending upon the conditions in a particular district or even in a particular mine; and would cause dissatisfaction not only on the part of the miners but also on the part of competitive producers.

The Board cannot approve of the suggestion unless it is so limited as to protect from loss any part of the increased daily wage above recommended. This protection would be afforded by a provision, which now exists in the northern West Virginia area, that the tonnage loading rate shall not yield to the worker a less income than he would earn on a day-rate basis. The Board suggests and recommends that the working out of conveyor tonnage rates be left to local negotiations in the several districts.

On July 6 a contract more or less based on these recommendations was signed but it contained the memorial and protective wage clauses, the union's demand for which had been refused by the Board. The northern operators had finally agreed to them to get their mines open and, though the southern operators protested (and were in some measure supported by the President and by the Board), they finally capitulated.

CASE No. 20A

BITUMINOUS COAL OPERATORS: INTERNATIONAL HARVESTER CO., WISCONSIN STEEL COAL MINES, Benham, Ky.

UNITED MINE WORKERS OF AMERICA, C. I. O., and INTERNATIONAL UNION OF PROGRESSIVE MINE WORKERS, A. F. L.

Covered by certification of No. 20. Set off as No. 20A July 11. Strike April 2. Hearing July 16, 17. 750 men involved. Closed July 17

Panel: Stacy, Mead, Connelly, Lynch, Lyons. Assistant, Cox.

As the result of a victory in a consent election, the Progressive Mine Workers of America signed an exclusive bargaining contract with Wisconsin Steel Coal

Mines, which, with one renewal, was effective until June 1, 1941. This mine had long been the only mine in the area not organized by the United Mine Workers of America.

On May 10, after the intervention by the Governor of Kentucky, a new consent election was held, with the Progressive Mine Workers again successful.

On May 12 the company started to reopen the mine, which had been shut since the beginning of the coal strike, April 2. About half the workers reported and were greeted by about 1,000 shots from the surrounding hills. The United Mine Workers informed the company they were dissatisfied with the election and planned to protest. Later a protest was filed on the ground that there had been misconduct by the representatives of the N. L. R. B., by the company, and by the Progressive Mine Workers. The regional director who, under the consent election agreement, had sole authority to decide the question, ruled on July 7 that the protest had no foundation. In the meanwhile, violence continued. One person was killed and 28 houses destroyed. All efforts by the Governor of Kentucky, the Kentucky Commissioner of the Department of Industrial Relations, and the Conciliation Service of the Department of Labor, failed. The mine was then operating at about 50 percent of capacity.

The Board, acting under certification No. 20, *Bituminous Coal*, called the parties to be heard. After exploring in vain for 2 days the possibilities of settlement, the panel and the parties signed the following:

Statement

July 17

It appearing upon the hearing that the dispute is one between two rival unions which properly comes within the jurisdiction of the National Labor Relations Board, it is the thought of all concerned that it is not advisable for the National Defense Mediation Board to proceed further with the case.

CASE No. 20B

BITUMINOUS COAL OPERATORS, CAPTIVE MINES — UNITED MINE WORKERS OF AMERICA, C. I. O.

Covered by certification of No. 20. Set off as No. 20B September 15. Strikes September 15–22, October 27–November 3, November 17–24. Hearings September 17–19, 24–25, October 7–9, October 31–November 10. 53,000 workers involved. Closed November 22[1]

Panel: Davis, Teagle, Lyons. Assistant, Cox.

On September 15, the United Mine Workers called a strike at the mines of all companies which had not signed union-shop contracts. Hearings opened September 17 and the strike continued until September 22, when it was terminated in accordance with the Board's

Interim Recommendation

September 19

1. That U. M. W. recommend the return to work of the strikers for 30 days and thereafter until the expiration of a 3-day notice in writing given by either party to the other;
2. That the parties accept during such period the Appalachian agreement;
3. That the union-shop provisions of the Appalachian agreement be inoperative during such period; and
4. That the Board retain jurisdiction.

The panel continued the hearing and a month later in the name of the Board issued the following opinion, Mr. Lyons dissenting:

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[1] Documents in this case subsequent to the final recommendation of the Board on November 10, 1941, which was not accepted by the union, are given in pt. V.

Recommendations

October 24

In this dispute the sole question is whether the United Mine Workers of America shall be given a union-shop agreement in the noncommercial (captive) mines operated by the companies represented in these negotiations.[1] These companies operate the mines for the production of coal for use in the manufacture of steel only, but not for sale in the commercial market.

The strike which led to the certification of this dispute arose out of the request of the United Mine Workers of America that these operators should sign, and the refusal by these operators to sign, the Appalachian joint wage agreement executed by the Appalachian conference of commercial operators and the United Mine Workers in Washington on June 19, 1941. The operators involved in the dispute now before us were prepared to accept the substance of the Appalachian agreement with the exception of the union-shop provision.

At the request of the National Defense Mediation Board on September 19, 1941, the parties agreed to resume production for a period of at least 30 days and thereafter until the expiration of a 3-day notice on the condition that both parties agree with the Board to accept for that period the provisions of the Appalachian agreement, and the United Mine Workers of America agree with the Board that during that period the union-shop provisions of the Appalachian agreement. which require membership in the United Mine Workers of America as a condition of employment, should be inoperative.

The evidence presented during the conferences before us shows—

1. That on the one hand the mines involved in this dispute have been operated under contracts with the United Mine Workers since 1933. which contracts did not include the union-shop provision, and on the other hand that the union-shop provision has been accepted by substantially all of the commercial operators and by some of the operators of captive mines, including some of the steel companies, so that substantially 90 percent of the total annual production of bituminous coal is under union-shop contracts.

2. That all of these mines have the voluntary check-off of union dues from the wages of those workers who indicate their desire to have the company make the deduction. The figures submitted to us by the companies on the basis of these voluntary check-off cards show that a very large majority of the mine workers, exceeding 95 percent in many of the mines, now belong to the union.

We put to the conference before us the question—Why, under such circumstances, the United Mine Workers press the demand for a union shop; and the correlative question—Why, under such circumstances, the operators are not willing to accept the union-shop agreement?

Fundamentally the operators based their reply on the ground that every worker has the right to choose for himself whether he will or will not join the union, and his employment should not be made to depend upon union membership. To this the United Mine Workers opposed the right of union workers to refuse to work with nonunion men.

The question of the union shop is one which has been very widely discussed. and as to which there has been sharp conflict of opinion. This conflict appeared in the Congressional discussions of the Wagner Act. The consensus of that discussion is fairly summarized by the statement of Senator Walsh, chairman of the committee that reported the bill, pointing out that the proposed act neither prohibited nor required a closed or union ship.

Senator Walsh said:

"Nothing in this bill requires any employee to join any form of labor organization.

"Nothing in this bill requires an employer to compel his employees to organize. All employees are free to choose to organize or not to organize, to join any or whatever labor organization or union they choose."

and again—

"All this bill says is that no employer may discriminate in hiring a man, whether he belongs to a union or not, and without regard to what union he

[1] The Carter Coal Co., whose operations are involved in this dispute, is a commercial operator and has not accepted the union-shop provision. nor has that company been a member of the Appalachian conference or taken part in the negotiations between the Appalachian conference and the United Mine Workers of America.

belongs; but if an employer wishes to agree and to make a contract of his own volition with his employees to hire only members of a company union or of a trade-union, he can do so."

Senator Wagner said—

"While outlawing the organization that is interfered with by the employer, this bill does not establish the closed shop or even encourage it. The much discussed closed-shop proviso merely states that nothing in any Federal law shall be held to illegalize the confirmation of voluntary closed-shop agreements between employers and workers."

The Wagner Act provides that nothing in the act or in any other statute of the United States shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in the act as an unfair labor practice) to require, as a condition of employment, membership therein if such labor organization is the representative of the employees as provided in section 9 (a) of the act, in the appropriate collective bargaining unit covered by such agreement when made. And the act further provides that nothing in it shall be so construed as to interfere with or impede or diminish in any way the right to strike. By these provisions the Congress included within the allowable scope of labor agreements a closed-shop or union-shop agreement arrived at by collective bargaining with full retention of the right to strike.

In this national emergency the fullest production of coal is essential to the national defense program. This dispute has arisen, mediation has not brought about a meeting of minds, and the Mediation Board has been called upon to make recommendations.

It became clear to the members of the Mediation Board that there could be no meeting of minds in the conference before it with respect to the two conflicting rights asserted in the present dispute, because of the possible repercussions of any agreement here made on the steel and shipbuilding industries, in one or both of which most of the interests involved in this dispute are engaged. There are very real and important problems of union organization in those industries, and in the opinion of the Board they should be disposed of, if and when they arise, solely on their own merits unaffected by any recommendations made by the National Defense Mediation Board in this case.

Under these circumstances we are unwilling to substitute our recommendations for a voluntary agreement. We must find some way in which an agreement between the parties can be arrived at without requiring either party to surrender beforehand the right which it asserts. That result can be reached in either one of the two ways which we now proceed to suggest.

1. If the parties are willing to agree beforehand that the recommendations of the National Defense Mediation Board will be accepted, the chairman of the Board will refer the question for final decision to a full Board composed of 11 members, with the proviso that the parties shall agree to a continuation of production at the mines, under the same conditions that resulted from our recommendations of September 19, 1941.

The conditions of the agreement which resulted from our recommendations of September 19, 1941, when applied to such an extension, would read as follows:

(*a*) That both parties agree with the Board to accept for such period the provisions of the Appalachian agreement.

(*b*) That the United Mine Workers agree with the Board that during such period the provisions of the Appalachian agreement which require membership in the United Mine Workers as a condition of employment shall be inoperative.

2. If the parties are unable to agree on that procedure, then we are of the opinion that, in this dispute in the coal industry, resort should be had to a procedure similar to that adopted under the National War Labor Board during the emergency of 1917.

In line with that procedure, and in the event that the parties do not agree to submit the controversy for final decision to a full membership of the National Defense Mediation Board, we recommend:

(*a*) That the parties agree to a continuation of production at the mines under the same conditions that resulted from our recommendations of September 19, 1941.

(*b*) That the parties agree upon a joint board made up of one or more representatives fully empowered to act for the companies which control the mining operations here in controversy and an equal number of similarly empowered repre-

sentatives of the United Mine Workers of America, the number of representatives to be agreed to by the parties.

(c) If in any case an agreement cannot be reached by individual negotiations with any or all of the operators, then the dispute will be referred to a joint board; and if this board cannot bring about an agreement, then the members of the board shall thereupon jointly select an arbitrator who shall have the power to make a final decision binding upon both parties.

Mr. Lyons said in dissent:

"I think that under the circumstances recited the United Mine Workers of America are entitled to demand and the operators should grant the signing of the Appalachian agreement without change."

These recommendations were accepted by the coal operators. On October 26 John L. Lewis, president of the United Mine Workers, wrote President Roosevelt a letter in which he refused to call off the strike set for the following day and said of the Board's recommendations: "The Board now emerges with a report devoid of conclusions as to merit, evasive as to the responsibilities of the Board, and dumps its own sorry mess into the already overburdened lap of the Chief Executive." To this, the President replied in part on the same day: "I am, therefore, as President of the United States, asking you and your associated officers of the United Mine Workers of America, as loyal citizens, to come now to the aid of your country. I ask that work continue at the captive coal mines pending the settlement of the dispute."

On October 27 the strike was resumed. That day Mr. Lewis replied to the President's letter, saying in part: "If you would use the power of the state to restrain me, as an agent of labor, then, sir, I submit that you should use that same power to restrain my adversary in this issue, who is an agent of capital. My adversary is a rich man named Morgan, who lives in New York. * * * In the interest of settlement, I would be glad, Mr. President, if you concur, to meet with you and my adversary, Mr. J. P. Morgan, for a forthright discussion of the equities of this problem." To this the President replied in part: "Whatever may be the issues between you and Mr. Taylor or you and Mr. Morgan, the larger question of adequate fuel supply is of greater interest and import to the national welfare. For the third time your Government, through me, asks you and the officers of the United Mine Workers to authorize an immediate resumption of mining."

On October 29, following a conference with Mr. Davis, Myron C. Taylor, former board chairman of United States Steel, and Mr. Lewis, the President wrote the following letter to Mr. Davis:

"I have asked the United States Steel Corporation and the United Mine Workers of America if they will immediately reopen the mines, on the understanding that the National Defense Mediation Board will proceed in full session to consider the merits of the dispute and make its final recommendations. It is understood that neither party is committed in advance to the acceptance of the final recommendations. You have informed me that the full Board is meeting on Friday and will be prepared to consider the matter continuously until it makes its final recommendations."

On October 30 the district presidents of the union voted unanimously to return to work. The following day, the full membership of the Board opened consideration of the dispute and sat continuously until it decided November 10 by a vote of 9 to 2 against the union's demand.

On November 11 Mr. Murray announced that the C. I. O. members of the Board had resigned in protest against the decision. He and Mr. Kennedy wrote the President:

"We hereby respectfully tender to you our resignations as members of the National Defense Mediation Board.

"We accepted membership on this Board with a single purpose. We were and still are in wholehearted support of the national defense program. The call for maximum production under this program creates the need for every sincere effort to assure continuity of production. In our judgment the National Defense Mediation Board offered an instrument to labor and management whereby our problems could be disposed of without the need of industrial conflict or the relinquishment of any legitimate rights of either party.

"We have, therefore, consistently counseled the affiliated unions of the C. I. O. to utilize in full all available machinery for mediation to achieve the peaceful solution of the problems arising between labor and management. We are still of the opinion that such a policy is desirable.

"However, in the recent decision of the Board involving the captive coal mines of the bituminous-coal industry the Board has made it impossible for labor to retain any confidence in its future actions. The United Mine Workers of America has a perfectly meritorious case. Our reasons are set forth in the minority opinion. The uncompromising attitude of the majority opinion is in itself a negation of the basic principles upon which the Board was established by you in the effort to promote mediation in lieu of industrial conflict. This opinion discloses that regardless of the merits of any case, labor unions shall be denied the right of normal growth and legitimate aspiration, such as the union shop, and the traditional open-shop policy of the antilabor employers shall prevail.

"For these reasons we do not feel that in good conscience we can continue as members of this Board."

The Board's recommendation of November 10 and the several accompanying opinions follow.

Recommendation of the Board and opinion of Chairman Davis

November 10

In the recommendations of the National Defense Mediation Board in this case dated October 24, 1941, the Board expressed its desire to find some way in which an agreement between the parties might be arrived at without requiring either party to surrender beforehand the right which it asserts—the right asserted by the operators to refuse to make employment in their mines dependent upon union membership, in order to preserve to every worker in their employ the right to choose for himself whether he will or will not join the union; and the right, asserted by the United Mine Workers, of union workers to refuse to work with nonunion men.

To that end the Board proposed that the parties agree to submit the matter to arbitration either by the National Defense Mediation Board or by an arbitration board set up according to the procedure adopted under the National War Labor Board during the emergency of 1917–18. The parties have now chosen to submit the dispute to this Board, on the understanding that neither party is bound in advance to accept the recommendations of the Board.

In the recommendations of October 24, the Board pointed out that substantially 90 percent of the total annual production of bituminous coal is under union-shop contracts, and that in the open-shop captive mines involved in the present dispute approximately 95 percent of the mine workers have voluntarily become members of the United Mine Workers of America. There has been no substantial alteration of that picture in this discussion before the full Board. The figures have been brought more closely up to date, and reference has been made to the anthracite industry in which the union-shop status has been in effect since May 1939. The situation may be briefly stated by saying that all but 10 percent of the annual production of coal in the United States is under union-shop conditions, and 95 percent of the mine workers who produce coal under open-shop conditions are members of the United Mine Workers of America. In other words, for every 200 mine workers there is one individual who has not joined the union.

The United Mine Workers stress the importance and the desirability of industry-wide collective bargaining resulting in a uniform contract for the whole industry. When the War Labor Conference Board in April 1918 made a declaration of principles and policies to govern relations between workers and employers in war industries for the duration of the war, it included the declaration that "the right of employers to organize in associations or groups and to bargain collectively through chosen representatives is recognized and affirmed" and there is a great deal of other evidence in this country and abroad that such collective bargaining leads to stable and mutually satisfactory industrial relations and to continuity of production under a uniform written agreement.

Collective bargaining in the bituminous-coal industry has never attained this level. The United Mine Workers of America have always pressed for an industry-wide contract, and they did so in the negotiations in 1933 and 1934. At that time the Appalachian conference was established in which the United Mine Workers of America bargained with the commercial operators in the Appalachian area as a unit, and the contract negotiated in the Appalachian conference became the determining factor in fixing the terms and conditions of

contracts in the outlying districts. In 1933–34, however, the captive mine operators, whose coal production is usually consumed in the manufacture of steel by the companies which produce it and not sold on the commercial market, did not enter the Appalachian conference. As the Board pointed out in its recommendations of October 24, 1941, the mines involved in this dispute have been operated under individual contracts with the United Mine Workers of America since 1933 and those contracts have not included the union-shop provision. In 1939 the United Mine Workers of America proposed to the Appalachian conference and to the operators involved in this dispute a union-shop agreement. The agreements in effect prior to 1939 provided for the settlement of disputes arising under the contract without suspension of work, with grievance machinery leading up to final decision by an umpire, and a clause reciting that a strike or stoppage of work on the part of the United Mine Workers would be a violation of the agreement. The union-shop provision proposed in 1939 provided, with respect to all workers in and about the mines eligible for membership in the United Mine Workers of America, that "as a condition of employment all employees shall be members of the United Mine Workers of America." It was further agreed that any expulsion or suspension from membership could be reviewed by the executive board of the International Union, United Mine Workers of America, and that the employer would be free to hire without regard to union membership. Membership in the union as a condition of employment was to become effective only within a reasonable time after the individual worker was employed.

When this union-shop provision was proposed to the industry in 1939 the United Mine Workers of America proposed also to fortify the no-strike provision of the agreement by a penalty clause which provided that if any mine worker violated the no-strike rule he would be subject to specified fines deducted from his earnings, the proceeds of all fines to be paid to such charities as might be agreed upon between the company and the United Mine Workers. In 1939 the commercial operators, parties to the Appalachian conference, chose to accept the union shop with this penalty clause. The operators involved in the present controversy chose to reject it.

When we look at the resulting situation from the point of view of the 1 individual in 200 who has not chosen to join the union, in spite of the action of the overwhelming majority of his fellow workers and the fact that he enjoys the benefits of the contracts negotiated and administered by the United Mine Workers of America at great expense, it is hard to think of a reason why the individual should persist in refusing to join the union. In our opinion these individuals could make a great contribution to untroubled labor relations in the coal industry and to the national welfare in this period of crisis by voluntarily joining the United Mine Workers of America, at least for the duration of this contract.

When we turn to look at the dispute from the opposing points of view of the United Mine Workers and the captive operators, we are impressed at once with the fact that the intensity of the dispute and the stubbornness with which the parties stick to their positions, in spite of the great emergency that confronts the country, seem out of all proportion to the minute fraction of the individual workers in and about the mines who have not joined the union. That intensity and stubbornness which at first sight appears so unreasonable arises out of the inherent nature of the question in dispute. It is important that the exact nature of that question should be clearly understood.

In its investigation of the facts the Board has made every effort to find out what, if any, effect the acceptance of the union-shop agreement has had or might have on the physical operation of a coal mine where, as in the majority of the present instances, there already exists a strong union with which the employers have for years been in contractual relations and which has built up a substantially complete membership among the workers. The operators concerned in the present dispute were unable to give any direct evidence on that point. They expressed, however, the fear that the union-ship agreement would decrease the efficiency of their operations because of resentment of some individuals who did not want to join the union and because, as they thought, the conduct of the union officers would tend to become arbitrary, since it would no longer be restrained by fear of resignation of disgruntled members. It was apparent that there had been actual experience on this subject in the mines of the commercial operators and of many operators of captive mines, who have within recent years accepted and operated under the union-shop agreement. Inquiry from these operators produced evidence which can fairly be summarized by saying that while there have been

some protests from individuals, there has been no loss of employees and no perceptible detrimental effect upon the efficient operation of the mines, while the penalty clause has to some extent, but not entirely, prevented the interruption of production.

From this immediately practical point of view, and since the acceptance of the union-shop provision in the coal mines is, in our opinion, divorced by the peculiar and exceptional conditions of this case from effect as a precedent in other industries, it would seem to be the part of wisdom for the operators involved in this dispute to accept the offer of the United Mine Workers with its added assurance of full and uninterrupted production at the mines throughout the period of the contract.

The extended discussion before the Mediation Board has not however succeeded in bringing about a voluntary acceptance of this provision. Both parties to the controversy want the issue squarely decided by the National Defense Mediation Board.

The only question in this dispute is the single question—whether the operators here involved, who produce 10 percent of the coal in the United States. shall join with the producers, who produce 90 percent of the coal, in making with the United Mine Workers an agreement which requires as a condition of employment membership in the United Mine Workers of America, when approximately 95 percent of the eligible workers in and about their mines are already members of the United Mine Workers. The question at issue does not go beyond that. It is definitely a different question from a provision for union security that requires of an employee who has voluntarily joined the union that as a condition of his employment he must maintain membership in that union. Nor do we think that a forthright decision on the facts by the Board under the circumstances of submission in this case would serve or could be urged as a precedent in any industry in which these peculiar and exceptional conditions do not exist. If we were not of this opinion we would not be able to make recommendations in this controversy at all, because that proposition cuts both ways. If this decision cannot be isolated by its peculiar circumstances from questions of union security that arise in other industries then a recommendation by this Board in favor of the United Mine Workers would mean that we are prepared to recommend the same contract in all other industries, and on the other hand a decision in favor of the operators would mean that we are not prepared to recommend the union shop under any circumstances whatever. The Board is not prepared to take either of these positions. The Board in the future may recommend as it has recommended in the past various kinds of union security appropriate to the particular case.

This brings us down to the ultimate reasons advanced by the parties for and against the recommendation that the operators involved in this controversy sign the Appalachian agreement with the union-shop provision and the penalty clause. The mine workers say that they want and are entitled to the union shop in these mines because the organizational activities of the United Mine Workers have in the past been opposed by these powerful interests, and the mine workers want security against any such attacks in the future in case, for instance, of a period of depression and unemployment. They point to the ruthless disruption of the United Mine Workers, at the instigation of these interests, in the years from 1920 to 1933. The operators in reply give us assurance in most positive terms that they are not now opposed to and do not intend to oppose the voluntary growth of union membership at their mines, and they point out that the history of the growth of the United Mine Workers in recent years, and the figures submitted to us showing substantially complete union membership at some of the mines, show that the United Mine Workers are in no need of any assurance of security. They take the position, in other words, that the special and particular facts adduced in these proceedings show that the union shop is not really needed by the United Mine Workers of America.

It is clear that the Wagner Act has something to do with these final points of the argument. So long as that act remains in force many of the things that were done in opposition to the United Mine Workers of America in 1920 cannot be done again. The forceful interference by employers with self-organization of the workers that occurred in those years cannot be repeated so long as the Wagner Act remains in force. The possibility that these provisions of the act will not remain in force in the United States is too remote, in our opinion, to be given serious consideration. And if these provisions were to be repealed it would only be by such a reversal of national policy that in any event would surely sweep away the union shop.

But the Wagner Act, as the Board pointed out in its recommendations of October 24, bears also in other ways on the present dispute. That act disposed of many of the arguments that have been advanced, by one side or the other, before us. It declared the national purpose to be to mitigate and eliminate obstructions to production "by encouraging the practice and procedure of collective bargaining," and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing. It declared that an employer shall not be precluded from making an agreement with a lawfully selected or designated labor organization "to require as a condition of employment membership therein." Thus the closed or union shop in private industry is not precluded by the Wagner Act, and closed- or union-shop agreements exist in great numbers in a great many industries, in addition to the 90 percent of the bituminous-coal industry. But the clear consensus of the discussion of the Wagner Act was that such labor agreements should be arrived at by collective bargaining with full retention of the right to strike—not by governmental compulsion.

If we were convinced by the arguments presented on behalf of the United Mine Workers that the further postponement, for the duration of the emergency, of their demand for the union shop in that 10 percent of the industry involved in this dispute would seriously impair the security of the United Mine Workers or threaten its existence, we would not be prepared to recommend that the United Mine Workers should waive the union shop in these captive mines at this time, because in our opinion the recommendations of the National Defense Mediation Board should be made in the light of the principle that the emergency should not be used either to tear down or to artifically stimulate the normal growth of unionism in defense industries.

But we do not believe that the signing of the union-shop agreement by the operators involved in this dispute is necessary to the security of the United Mine Workers. The very reason given by the United Mine Workers for raising the issue now, is, in our opinion, sufficient evidence to the contrary. That reason is that in 1939 the United Mine Workers were not strong enough to raise the issue, but they are strong enough now. That added strength has been built up in the face of the very conditions which are now said to threaten the security of the union.

But the final and determining consideration in our opinion, is that the past performance of the United Mine Workers indicates very clearly that they are well able by themselves to complete the full organization of the bituminous-coal industry and the mature development of industrial relations in that industry, if their efforts to do so are not interfered with by management. And we are convinced that a 100-percent organization voluntarily arrived at through negotiations by the United Mine Workers themselves will be very much more able to resist the stresses of any period of depression or any attack that may occur in the future, than if the efforts of the United Mine Workers were now buttressed by the aid of a Government agency, or if the goal were achieved by interrupting defense production.

On the other hand, if the United Mine Workers are protected by adequate assurance that the present attitude of the operators of no opposition to the voluntary growth of union membership at the mines will not be departed from, and if in support of the national defense which is essential to the preservation of those fundamental rights without which the United Mine Workers could not exist, they now decide to suspend for the duration of the national emergency their unquestionable right to match their economic strength against that of the operators of these mines by refusing to work with nonunion workers, then it seems to us reasonably clear that their decision would greatly strengthen their position before the people of the United States, that in this emergency period they would be well able to continue as heretofore to extend the voluntary membership of their organization, and that they would erect the most effective protection against destructive forces of reaction that could be thought of.

It has been urged upon us that the United Mine Workers are legally and morally bound by the "wage protective clause" of the Appalachian agreement to surrender the union-shop provisions and withdraw the accompanying penalty clause in their contracts with the 90 percent of the industry who now operate under the union shop, if they do not secure the union shop in the 10 percent of the industry here represented. It seems to us very difficult to so interpret the "protective wage clause" as to give it any effect on the union-shop provision of the Appalachian agreement, particularly when the United Mine Workers and certainly many, if not all, of the operators under the union-shop agreement regard

that agreement as more favorable from the point of view of practical operation of the mines; but however this may be, we have no reason to suppose that the operators who now have the union-shop agreement would take advantage of our recommendation in this case to demand a return to the open-shop arrangement without the penalty clause. If they did, it would be a dispute within the broad certification of the bituminous-coal industry to this Board, and we may here point out that in such a case the interposition of the force of Government to achieve something which could not be achieved by voluntary collective bargaining would not exist.

We. therefore, recommend:

That the United Mine Workers of America and the operators involved in this dispute proceed immediately to sign the Appalachian agreement, with the reservation that the provision of the Appalachian agreement which requires membership in the United Mine Workers of America as a condition of employment shall be inoperative for the duration of the contract.

In presenting this recommendation the National Defense Mediation Board has in mind that important purpose for which the Board was given power to find the facts and make recommendations. That purpose was that the facts might be widely known; that informed public opinion might pass upon the justice and fairness of the recommendations, and that as a result uninterrupted production of defense materials might be achieved without depriving labor or management of the rights which they enjoy in a free and democratic society. We express the hope that in considering this recommendation the parties to the controversy will bear that purpose in mind, and that they will take sufficient time, in deciding whether they will or will not accept the recommendation, to permit sober and thoughtful consideration by everyone who may be affected by their decision.

Concurring Opinion of Frank P. Graham

November 17

In my support, in the main, of the able majority opinion of our chairman, Mr. William H. Davis, I wish to summarize my own with the majority opinion of the Board. Each member of this Board has tried to the best of his ability to make his own decision in the case of the "captive coal mines." The public representatives, upon whom rested the special responsibility of hearing the two sides to the end before reaching a conclusion, felt the impact of the facts and arguments presented for the two sides by men who revealed both industrial statesmanship and patriotic concern over the issue of union security in this case.

EXAMPLES OF MEDIATION REGARDING UNION STATUS

The public members of the Board, as chairmen of panels in many cases, have attempted, by such lights as were available, to be open-minded and constructive in the consideration of the basic issues of union security. They have refused to accept the view that the matter of union security should be left in status quo for the duration of the emergency. It would be unfair to industrial workers in a period of expanding production to hold their organizational position rigidly fixed and static in a dynamic industrial society.

To see this case and these recommendations in the context of other cases and other recommendations it would be helpful to summarize some illustrations of the content of mediation and recommendations involving union security. As representative examples of mediation, Board panels have mediated in the settlement of disputes by mutual agreements which provided in one case for a closed shop, in others for maintenance of membership clauses, in others for voluntary check-offs, and in others for contractual assurances by the company not to tolerate any antiunion activity by its agents against the certified or signatory union, and for pledges by the union and the company against coercive tactics, for orderly and responsible relations, and for creative cooperation for efficient shop discipline and maximum production. It must be said in all fairness and in grateful acknowledgement that in the negotiations of agreements before this Board the representatives of business management and of labor have been for the most part public-spirited, enlightened, and cooperative for the defense of the Nation. These voluntary agreements for union security have tended to promote good faith and good will and have helped to make better unions, better companies, more responsible relations, and more and better production.

EXAMPLES OF RECOMMENDATIONS CONCERNING UNION STATUS

The mediating influence of the Board has been against a reluctant or merely acquiescent recognition of the certified or signatory union and for a positive recognition of and cooperation with the union as actually a basic part of the economic and human structure of an industrial plant and potentially a constructive partner in American industry. The Board has also in some cases helped to restore or create, according to the facts, the union's confidence in the integrity and good faith of management. When mediation has failed and voluntary arbitration has been rejected by either party, the Board has then made recommendations. Sometimes such recommendations are made with the knowledge that both parties will accept, though it has seldom been agreed in advance that the recommendations are binding upon the parties. It has been learned, through painful experience, that these formal recommendations carry a public and moral sanction which, when persistently resisted, have resulted in a few cases in the use of the authority and force of the Nation.

THE CASE OF AIR ASSOCIATES

In the recent case of Air Associates the executive branch of the Government acted to prevent a company, which rejected the Board's recommendations, from nullifying the Wagner Act and causing industrial disorder in defense production by its refusal to accept and cooperate with the union and by its maneuvers to confuse and frighten the union which had won the plant election. The Board held that the existence of this certified union, though only a struggling infant, was the lawful responsibility of the Government and essential to the national defense. The spokesmen for the corporation attacked the Board as being concerned not with production but with the security of the union. The Board held that the defense of the union in its lawful rights was necessary to insure harmonious relations and was an essential part of the defense of the Nation. Defense production by Air Associates has since been greatly improved.

A CASE INVOLVING THE CLOSED SHOP

Early in its history the full Board supported a panel's recommendation for the acceptance by the Bethlehem Shipbuilding Co. of a master agreement, made between 38 companies and 20 constituent unions by collective bargaining, in which was included a provision for the closed shop as part of the master agreement made for an emergency expanding defense situation. This provision did not, however, result in a Nation-wide labor monopoly by the union involved. The union was willing to accept less than the strictly union shop but the company preferred to accept the formal recommendations at the hands of the Board rather than to accept less by agreement with the union.

MAINTENANCE OF MEMBERSHIP CLAUSES

The Board has also, in very special circumstances, such as the Puget Sound, the North American Aviation, Western Cartridge, Lincoln Mills, and Federal Shipbuilding cases, made formal recommendations of maintenance-of-membership clauses. The maintenance-of-membership clause does not require any old or new employees to join the union but requires those who have voluntarily joined or hereafter voluntarily join to maintain membership in good standing during the term of the contract as part of their responsibility to maintain the contract made in their name. In the Federal Shipbuilding case, to safeguard a union in an emergency expanding defense industry against later disintegration, the Board made a recommendation for a maintenance-of-membership clause which, on account of the refusal of the company to accept, resulted in seizure by the Nation of the property of the most powerful corporation in the world. All of the public members supported this recommendation and would doubtless in such special circumstances of a union endangered by the emergency defense program do as much again.

THE CAPTIVE COAL MINES ISSUE

In the Bituminous Coal Operators case as the facts, issues, and their implications emerged and developed, the Board faced the question as to whether it would make a formal recommendation, which, though neither party was bound to accept, might by a consequent train of events, potentially result in govern-

mental compulsion upon workers to join the union against their wills. The question immediately arose as to the need of the union for such governmental compulsion as a substitute for the use of compulsory economic power through a strike.

THE PRESENT SECURITY OF THE UNION

The United Mine Workers of America, which in 1933 was but a depleted shell, has, through the N. R. A., the consequent organization, strikes, and collective bargaining, the Bituminous Coal Code, the Bituminous Coal Act, and the Appalachian agreement, grown to be one of the most powerful, disciplined, and productive unions in the world. This union in those recovery years had able and masterful leadership. Congressional legislation has, in the last 8 years, thrown around unionization and collective bargaining in general and the bituminous-coal industry in particular the protection of the laws of the Nation. Labor's magna charta, the Wagner Act, as a basis of union security, can be preserved by the wisdom of a farseeing labor statesmanship. The membership in this union has through all these factors grown to an overwhelming majority. Public opinion, acts of Congress, political, industrial, and labor statesmanship, and the strength of this union in collective bargaining in the most basic industry of the Nation, which all combined helped to make all this growth and strength possible, will not again tolerate the senseless destructive antagonisms to labor unions on the part of the coal operators and the steel companies, and the consequent destructive labor reprisals and ruthless strife. Tremendous strides have been made by the United Mine Workers in 8 years and, if sustained by public opinion, more progress will be made. An index of the security of this union is revealed in the fact that, when a suggestion was made by a public member and renewed by another public member the next day for the consideration of a maintenance-of-membership clause, it was pointed out by representatives of the C. I. O. that they did not desire such a clause, since, with the already acquired check-off for the overwhelming majority of union members in the captive mines, the union had protection as good as or better than the maintenance-of-membership provision. The security of this union can now be threatened only by an abuse of its power and the loss of the public support which plays a decisive part in both the development and restriction of our human institutions.

PRIVATE MONOPOLY AND PUBLIC CONTROL

Public support is deeply involved in a public policy which, as most ably pointed out in the opinion of Charles E. Wyzanski, Jr., would, for all practical purposes, require that no worker could work or ply his trade as a coal miner in the United States except through membership in this union. To press for this private monopoly, through private agreement between the parties or through the use of economic power, raises questions not only of public regulation of labor unions but also of hasty restrictions in an unpropitious hour. Analogously, the public enforcement of a private Nation-wide monopoly requiring that a citizen could invest his capital in the oil business, for all practical purposes, for example, only through X company would be sure to lead to drastic governmental controls beyond the detailed restrictions already imposed in the public interest by the Nation against private monopoly in business. Once a great oil company which was tending to control so basic a natural resource as oil in one vast monopoly raised this question for public concern and restrictions.

Time and calm intelligence were required to work out the evolving American system of the public controls of private and monopolistic business in the United States. Such grave issues of public policy need for decision more time and a wider sanction than belong to an emergency administrativve agency set up for the national defense. The best interests of labor unions, industry, national defense, and wise democratic processes suggest that the question of a public enforcement of a Nation-wide private monopoly should not be pressed and fought out in the midst of a great crisis in the world involving the very existence of free labor unions, the corporate and cooperative association of free men, and all the basic charters and institutions of human freedom.

CONCLUSION

In the present state of the nations, in the world crisis of democracy in general and the associations of free men in particular, my position, reached after

giving due weight to the special facts in this case, after thinking through the related experience of this Board and exploring, in lonely vigils, alternative ways, is that, in the long run, the cause of labor unions and all free institutions will best be served by a governmental agency refraining from making formal recommendations, requiring workers against their will to join an organization which, potentially by the sanction and force of Government, would become in a basic industry a private monopoly unregulated by the Nation. This matter becomes graver when we consider that this governmental compulsion may be against the convictions of men regarding other than trade-union issues and policies. It will take more than emergency time to work out the wise and fair basis and structure of public responsibility for such a Nation-wide or industry-wide labor union. We need time, perspective, a national industrial conference of the authoritative representatives of labor and management, suggestions on both sides, and the reference frame of the public welfare, as conditions precedent to the public sanction of a private monopoly involving power over basic industries and the strategic natural resources of the Nation.

As we look down the centuries and back to this the world's darkest hour, we see centuries-old charters of human liberty torn and trampled under the ruthless heels of dictators. As we look around the earth today we see freedom and democracy, lately the goal of modern nations, now renounced or crushed in more than half the world. As we look inside the totalitarian nations we see subjugated the most precious institutions of human freedom—the church, parliament, the press, the radio, the university—and the labor union high on the list in its once vital democratic meaning to the freedom and security of the millions who now in servile subjection do the work of the totalitarian states. This is part of the ground and background of our opposition to any governmental sanction of an unregulated private monopoly and to any formal recommendation which, through the logic and force of governmental sanction, may likely lead to governmental limitation upon the rightful freedom and function of the labor union as one of the most indispensable of the free institutions now imperiled in the world.

For these reasons I concur in the majority opinion of the chairman.

Concurring Opinion of Charles E. Wyzanski, Jr.

November 12

The Board has before it two companion cases, one involving the captive mines and the other involving the Carter Coal Co.

The first case involves, on the one side, about 50 coal mines, commonly called captive mines, owned by subsidiaries of 7 different steel companies, and, on the other side, the United Mine Workers which, for present purposes, we assume to be the bargaining agent for the 53,000 miners employed there. The second case involves an independent commercial operator, the Carter Coal Company, and the same union which represents and has as members 100 percent of the eligible employees.

The facts are simple. There are in this country independent commercial coal mines, captive coal mines owned by steel companies, and captive coal mines owned by railroads, utilities, and miscellaneous industrial companies. In tonnage, number of workers employed, and similar bases of comparison, the independent commercial mines and captive mines owned by other than steel companies are more than nine-tenths of the total.

The owners of all the commercial mines, except Carter, as a result of negotiations with the United Mine Workers, now operate under the Appalachian agreement which provides for the "union shop." This makes membership in the United Mine Workers a condition of employment; it does not require the company to hire only persons who are already members of the union. This agreement also has what is called a "wage protective clause" which provides that if, during the period of that agreement, the union makes a wage agreement covering wages or working conditions more favorable than in the Appalachian agreement then the Appalachian agreement shall be modified so that all parties shall receive the benefits of such more favorable wage agreement.

The Appalachian agreement has been accepted in full by substantially all the captive coal mines owned by railroads, utilities, and miscellaneous industrial companies. It has also been accepted in full by a few steel companies.

The subsidiaries of the seven steel companies here represented, as well as Carter Coal Co., have accepted all the Appalachian agreement except the union-

shop provision. In each subsidiary company and in Carter Coal Co., the United Mine Workers affiliated with the C. I. O. claims a majority of the miners as members; in the individual mines the percentage of miners whose dues are checked off runs, on the average, close to 90 percent; in a few cases as high as 100 percent; in a few cases less than 50 percent. In a few individual mines labor organizations affiliated with the A. F. L. and unaffiliated labor organizations have members.

The sole issue is whether this Board shall now recommend that the mines owned by Carter and by the subsidiaries of the seven steel companies and the employees at these mines shall operate under the union-shop clause of the Appalachian agreement, which provides that a miner shall, as a condition of employment, be a member of the United Mine Workers. Both parties to this case want the issue squarely decided. They and a division of this Board have explored and rejected compromises.

The union's basic position is that the special facts in the coal industry support the union-shop demand. They observe that the union shop is a nondiscriminatory practice which has been adopted by the overwhelming majority of companies through collective bargaining on an industry-wide basis. They see no reason why it should not be adopted by the minority.

They say that the union shop is a normal demand by workers. It assures the union member that he will not have to work beside a man who does not belong to the union. It makes certain that all who share in the benefits of collective bargaining will share in the burdens. It represents, as no other symbol can, the fact that the employer accepts labor organization as a permanent characteristic of the enterprise.

The union urges that on the record of the parties before us a union shop has special merit here. They observe that in the past some of the steel companies destroyed unions, broke union contracts, and fought the development of collective bargaining. The union suggests that after the emergency, if the union shop has not been granted in the meantime, the conflict may be renewed and that at that time there may be no National Labor Relations Act for protection. They imply that if the operators actually operate under the union shop, either the operators will come by experience to accept the union or the union will be strong enough economically and politically to prevent disintegration.

The union also refers to its own record. It alleges that its constitution is democratic, that admission is unrestricted, that disciplinary procedure is orderly, that dues are moderate, and that contractual promises are kept.

The union notes that the union shop is lawful under State and national law. The union shop has often been proposed as a desirable solution of a labor dispute by Government mediators, including representatives of this Board. It exists, if not by contract at least by informal understanding, in some Government agencies and on some projects financed by the Government. In the union's opinion, it has been and will be a great aid to defense production wherever it exists.

The union points out that if the Government had not intervened the union would have been free to strike and, in their estimate, would have won the strike and the union shop. The union says that if the Government asks the union to withhold its power to strike, the Government should have an open mind on the union-shop question and should recommend it if the special facts justify that result. They say that any other course would not be fair. If this Board will not in any case recommend the union shop, then the Board ought not to ask a union to call off a strike on a union-shop demand and submit that demand to this Board. To do so, they say, is to require a surrender—not an open and fair arbitration.

The union also draws to our attention possible repercussions of our decision. They point to the wage protective clause of the Appalachian agreement. They say that if the union gives the captive mines or the Carter Coal Co. an open shop, it has an obligation to offer the open shop to the commercial operators.

The union also points to more serious repercussions from a decision of this Board against the union shop. The claim that, whatever may be our reasoning, the Nation will interpret our decision as indicating a universal open-shop policy by the Board. They say that this Board will lose the confidence that it has enjoyed and that workers who heretofore have been willing to call off strikes and to come voluntarily before our Board for a hearing will no longer do so because they will not trust our impartiality. They say that a decision by us against the union in this case will give the few undisciplined or malevolent leaders of labor support for their charge that the many mature moderate leaders

of labor were wrong when they advised workers not to strike but to bring their cases before governmental mediation boards and similar agencies.

They ask us to bear in mind that for almost all unions the union shop is an aspiration, and that a decision against the union shop in all cases during the emergency would gravely affect the morale of workers throughout the Nation.

The basic position of the employers is that the Government should never, and particularly should not in this defense emergency, make union membership a condition of employment. However, they also call attention to certain facts peculiar to this case.

The first special fact is that all but one of the companies here involved own open-shop steel mills. Having that in mind, in 1939 they made a trade whereby, in their coal negotiations, they gave up the no-strike clause and the penalty clause and the union gave up the union-shop-clause demand. They say that that trade should stand for the period of the emergency.

They note that the labor organization which comes here with such claims to virtue has defied the Government's policy by calling strikes before this Board could hear their case and also after the Board had heard their case and made recommendations. They note also that this labor organization has been slow to respond to the thrice repeated reasonable requests of the President of the United States made in the name of national defense.

They observe that although this union is before us in its capacity as a labor organization it also performs other functions in other spheres. It has contributed on a grand scale to political parties. Its leadership takes an active part in political affairs both domestic and foreign. And its manifold activities have recently led to special assessments which have caused revolts among its membership.

They urge that the record of success achieved by the union at the mines here involved shows that there is no need for the union shop now. They disagree with the union's prophecy of future dangers, and they point to the National Labor Relations Act. They say that even if there were a risk of repeal of that act in the future, labor and business alike must, on account of this crisis, forego some of the security which they would otherwise demand.

These employers say that the wage-protective clause of the Appalachian agreement has no application to the union shop. They say that the history of the negotiations of that agreement, and the prior usage of the parties to that agreement, show that the phrase "working conditions" as used in that agreement has no reference to the type of shop. If it did, they say that the reference would not help the union since the clause applies only to differences unfavorable to the commercial employers and the union has always argued that the union shop is more favorable than the open shop to the commercial operators. They add that even if the union's construction of the clause were correct, many of the Appalachian operators have said they will not invoke the clause in case we do not now recommend the union shop to the captive mines and to the Carter Coal Co. Finally, on this point of the wage-protective clause, they say that the union cannot make a side agreement which prevents our doing justice in this case.

However, the chief points made by the operators cover less technical matters.

They urge that there is a fundamental American principle that a worker has the right either to join or not to join a union. They say that employers should not intermeddle in the membership campaigns of any labor organization. They say that the National Labor Relations Act preserves that principle and that viewpoint except where an employer voluntarily chooses to sign an agreement providing for union membership as a condition of employment. The act, in their opinion, permits an employer to deny a demand for a union shop if he believes it restricts production, adversely affects managerial prerogatives, shifts the balance of power previously existing in his enterprise, or makes it easier for the union to fall into the grip of racketeers, or for any other reason.

The employers say that in this case we must not overlook the reality of the issue we face. In their view the issue is whether a temporary governmental agency shall virtually command that the small minority of coal miners who have chosen not to join the United Mine Workers must become members of that particular private organization or seek a different trade.

They ask us to remember that our recommendations in a case that vitally affects national defense are not mere proposals which we suggest to the parties as a sound basis for the voluntary composition of their differences. Our recommendations, they say, become commands. They cite the Government's action in the North American Aviation, the Federal Shipbuilding, and the Air

Associates cases and they conclude that in a vital defense industry the parties are not free to ignore our recommendations. They add that the fact that in this case the parties are not "committed in advance to the acceptance of the final recommendations" of the Board does not give them a special immunity which they would not otherwise enjoy.

On their view that the problem is not one of persuasion but of command, the employers ask us to distinguish between a case where the union shop results from collective bargaining or from private or public contract and a case where the union seeks to attain the union shop by governmental compulsion.

In commenting on this issue, the employers and others have brought the case to an even sharper focus. In their view the issue is not whether after a worker has voluntarily joined an organization and authorized his agent to make a contract requiring him to maintain membership, the Government shall enforce the contract. The issue is not whether a particular shop shall be limited to members of one union, leaving other shops open. The issue, in their judgment, is whether membership in one private organization shall be a condition of following the trade of a coal miner. They say this because there are almost no coal mines left where the United Mine Workers are not in a majority. They also observe that coal miners do not readily change their trade. Thus to them the issue is in part an issue of monopoly.

Viewing, as they do, the issue as one of governmental command and private monopoly, the employers suggest that we are not the appropriate agency of Government to solve the issue. With all due respect, they observe that we are a body of limited functions. This Board has no permanent relationship to labor policy. It hears only those special cases which are referred to it during the defense emergency. It has no power to exercise a continuous supervision over the parties that appear before it. Its members were not selected by the people and do not devote their full time to public service. It has no fixed constitutional status.

In the employers view, the fundamental issues here should not be decided by us at all. They want us to put the matter before the Congress. The Congress, they say, can determine whether a man ought to be required to join a union, and if so what conditions if any should be imposed upon that union. We are told that the Congress can decide whether reports should be filed, fees fixed, methods of voting supervised, office holding regulated, activities confined to labor questions, and like matters which the employers say are relevant if the Government is to permit a monopoly and require workers to adhere to it.

The employers invite our attention to what they foresee as consequences of a decision on our part favorable to the union's demand. They predict that such a decision, even if it purported to rest on special facts, would be everywhere interpreted as a decision broadly upholding the union shop, or as they sometimes inexactly call it the closed shop. They say that this would lead to widespread demands for the union shop which would not otherwise be made and that these demands will lead to strikes that would not otherwise be called. It is pointed out that the records of this Board as well as the experience of the country at large support that argument. After this Board, on what it regarded as very special facts, recommended a maintenance-of-membership clause in the North American Aviation, Western Cartridge, and Federal Shipbuilding cases, the demand for that type of clause became more insistent in cases that lacked the peculiar elements upon which the Board had there relied.

The employers also emphasize that if this Board yields to this union solely because of the defiant attitude of its chieftain, the pattern of "strike first—mediate later" will become universal. A dozen lesser union leaders, it is said, will become imitators of the leader of this union, and the defense effort will be irreparably handicapped.

I agree with all my associates that this case can be decided on its special facts. It is not necessary for this Board to prescribe forever, or even for all cases that arise during the emergency, a general rule on the issue of the open shop versus the union shop.

The facts, in my opinion, represent a weak case for the union shop at the present time.

This union seeks to occupy not in one plant, or in one area, or even in one branch of industry, but in an entire calling a monopolistic position without subjecting itself to any regulation. Coal miners follow a specialized craft which they can pursue only in the coal industry. They do not change their trade readily. If the union succeeds in securing a union shop throughout the industry, the individual miner will have no economic choice except to join this union. He cannot go to another shop and exercise his calling.

A monopoly on such a scale is not necessarily against the public interest. But a monopoly on such a scale which remains unregulated is, in any opinion, against the public interest whether achieved with or without governmental imposition. This does not mean that I favor governmental regulation of unions. It does not mean that I am opposed to the union shop. It does not mean that I am opposed to any union shop until and unless the unions are regulated. All that I find it necessary to say is that it is against the public interest to require that a worker as a condition of following his calling anywhere in the United States should be a member of a wholly private association. A wholly private association retains the right to determine for itself entrance fees, dues, proper objects for expenditure, participation in or withdrawal from political activities, publication or concealment of records, methods of procedure, conditions of admission, and conditions of expulsion. Perhaps the association should continue to retain such freedom; but, if so, then the worker should retain a freedom to carry on his calling somewhere in the United States without joining that association. Otherwise in the name of unionism the worker will be forced either to quit his trade entirely or to join a group that may have objectives beyond the purpose of improving working conditions.

I may add that I agree with the majority that the facts here show that there is no immediate need for this union to achieve the security of the union shop. The leader of the union himself testified at our hearings that the operators are not "at this time" opposed to the voluntary growth of unions; that in some mines this union has 100 percent of the miners; and that in others its membership is extraordinarily high and growing rapidly without hindrance from any source. Moreover, the labor members from the C. I. O. did not accept the suggestion made by the public members of the Board that the Board consider, as a possible solution of this case, a clause such as was used in the Federal Shipbuilding and Dry Dock case which provides that an employee who has voluntarily joined the union shall, as a condition of employment, continue to maintain membership in the union. The C. I. O. members stated that they already had greater protection than a maintenance of membership clause could give them. The only danger which the union sees is a reactionary labor policy in the future. I agree with the opinion of the majority of this Board that if the union shop were to be recommended by us in a monopoly situation or achieved by a strike in the present temper of the country the result would be not to lessen but to increase that danger.

I, therefore, concur in the recommendation.

Minority Opinion of Philip Murray and Thomas Kennedy

November 10

The majority opinion of the Board establishes the following facts as conceded:

(*a*) The United Mine Workers of America has consummated industry-wide collective bargaining for the anthracite and bituminous-coal industry resulting in a uniform contract for such industry.

(*b*) Ninety percent of the annual production of coal, both bituminous and anthracite, is under union-shop conditions. Only 10 percent of the annual coal production, confined to the captive coal mines of the steel corporations in the bituminous-coal fields, has refused to accept the Nation-wide collective bargaining agreement, including the union shop. Several steel corporations such as the Jones & Laughlin Steel Corporation and The Inland Steel Co. have accepted the uniform union-shop contract.

(*c*) In the captive coal mines 95 percent of the mine workers are members of the United Mine Workers of America.

(*d*) The industry-wide collective bargaining agreement which has been accepted by the entire coal industry, with the exception of the captive coal mines, guarantees continuity of production by the mine workers without any stoppages until May 1, 1943.

The simple request of the United Mine Workers of America in this case is that the steel corporations, owning and operating the captive coal mines, be requested to accept a collective bargaining agreement which has been accepted by the overwhelming portion of the industry.

On June 18, 1941, the National Defense Mediation Board issued its recommendations in a case involving the shipbuilding industry on the West coast, and the Bethlehem Steel Co. In this case the facts were as follows:

(*a*) A standard agreement had been negotiated providing for uniform wages and working conditions in shipbuilding operations on the Pacific coast. One of the provisions of this contract provided for a closed shop.

(*b*) The total number of employees in the shipbuilding industry on the West coast was 30,000. Shipbuilding employers embracing some 24,000 employees, accepted the agreement.

(*c*) The balance of 6,000 employees (20 percent of the industry) were those of Bethlehem Steel Co. which refused to accept the master agreement.

The National Defense Mediation Board in that case decided the following:

"The master agreement is the product of industry-wide collective bargaining on a regional basis. It has been approved as an instrument for stabilizing working conditions and contributing to the uninterrupted production of ships by all the shipbuilding employers on the Pacific coast employing 24,000 workers, except the Bethlehem Steel Co., which employs 6,000, and by representatives of the Bay City's Metal Trades Council, certified by the National Labor Relations Board as the bargaining agency for the employees of the Bethlehem Steel Co.

"Under these special circumstances, the Board recommends that the master agreement be accepted and signed by the Bethlehem Steel Co."

This recommendation by the National Defense Mediation Board in the Bethlehem Steel case was approved by the entire Board, including the representatives of the Congress of Industrial Organizations and those of the American Federation of Labor whose affiliated unions were involved in the controversy.

The National Defense Mediation Board, including the representatives of the employers, the public, and of the American Federation of Labor, have now rejected the request of the United Mine Workers of America. On the merits there is no basis for distinguishing the captive coal case from the Bethlehem Steel Co. case. Representatives of the public and of the employers have offered no argument in reason or logic to refute the merits of the request of the United Mine Workers of America.

On the contrary, the representatives of the American Federation of Labor, who made the motion in support of the position of the United Mine Workers of America, stultified themselves to the extent of voting against their own motion.

The President of the United States, in submitting this controversy to the National Defense Mediation Board, requested that—

"The National Defense Mediation Board * * * proceed in full session to consider the merits of the dispute and make its final recommendations."

This obligation has not been discharged by the National Defense Mediation Board. The dispute in question has not been considered on its merits. To the contrary, the National Defense Mediation Board has now decided that henceforth, regardless of the merits of any case, labor unions must be denied the right of normal growth and legitimate aspirations, such as the union shop, and the traditional open-shop policy of the antilabor employers must prevail.

Such a decision as an expression of national policy endangers all labor unions and threatens to rip asunder peaceful industrial relations established in other industries where a union-shop relationship has already been established.

There can be no question as to the wholehearted support which the C. I. O. unions have accorded the national defense program. We have appreciated that the call for maximum production under this program created the need for every sincere effort to assure continuity of production. In the judgment of the C. I. O., the National Defense Mediation Board offered an instrument to labor and management whereby our problems could be disposed of without the need of industrial conflict or requiring the relinquishment of any legitimate rights of either party. We have therefore consistently counseled the affiliated unions of the C. I. O. to utilize in full all available machinery for mediation to achieve the peaceful solution of the problems arising between labor and management. We are still of the opinion that such a policy is desirable.

However, the decision of the majority of the Board makes it impossible for labor to retain any confidence in its future actions. The United Mine Workers of America has a perfectly meritorious case. The precedent had already been established in the Bethlehem Steel Co. case. Without reason, without logic, without argument, the claim of the United Mine Workers of America is denied.

The uncompromising attitude of the majority opinion is in itself a negation of the basic principles upon which the Board was established in the effort to promote mediation in lieu of industrial conflict.

For the foregoing reasons we submit that the merits of the controversy compel the conclusion that the steel corporations should be requested to accept the collective bargaining agreement, including the union-shop provision, covering the overwhelming portion of the coal industry.

CASE No. 20C

BITUMINOUS COAL OPERATORS, ALABAMA MINES — UNITED MINE WORKERS OF AMERICA, District 20, C. I. O.

Covered by certification of case No. 20. Set off as No. 20C, September 3. Strike September 3–6. Hearings September 10, 19–25, October 2, 3. 22,500 workers involved. Closed October 24

Panel: Davis, Teagle, Lyons. Assistant, Cox.

This dispute was heard under the general certification of the dispute between employers and employees which arose in April 1941 in the bituminous-coal industry. The employers in this dispute fall into two groups—commercial operators who employ approximately 12,500 men; steel companies employing 10,000 men in their coal mines. On September 3, 8,000 miners went out on an unauthorized strike because the negotiations between the Alabama operators of both captive and commercial mines and district 20 had reached an impasse. Work was immediately resumed at the request of the Board, pending hearing.

When these negotiations started there were 4 major and 14 minor points of difference. After a general discussion of all the issues the Board suggested that the minor issues be settled by direct collective bargaining between the parties without further assistance from the Board. That was done. On the major issues, the Board made formal recommendations, Mr. Lyons dissenting. These were accepted October 24.

Findings and Recommendations

October 21

This dispute was heard by the National Defense Mediation Board under the general certification by the Secretary of Labor of the dispute between employers and employees, which arose in March 1941, in the bituminous coal producing areas. Alabama is one of the outlying districts where the practice has been to await the execution of the Appalachian agreement before negotiating a local contract.

On April 1, 1941, the Alabama mines were shut down along with those in the Appalachian area. Thereafter all of the mines were reopened on the basis of the President's proposal for the resumption of work pending further negotiations, the final agreement to be retroactive. The final agreement between the northern Appalachian operators and the United Mine Workers increased the basic daily wage rate $1 and the basic tonnage rate 12 cents. During the protracted negotiations which led to the final settlement with the lower Appalachian operators, these wage increases were made effective by a temporary agreement. The final settlement in the lower Appalachian area included an additional increase in the basic daily wage rate of 40 cents, making a total daily wage increase of $1.40, an advance from $5.60 to $7.

Since May 8, 1941, under a temporary agreement between the Alabama Coal Operators and the United Mine Workers of America the Alabama mines have been operated with an increased basic daily wage rate of $1 and an increased tonnage rate of 12 cents. No final agreement has been reached in Alabama. On September 2, 1941, an unauthorized strike broke out, but the miners promptly returned to work at the request of the Board, pending this hearing.

When these negotiations started there were 4 major and 14 minor points of difference. After a general discussion of all the issues the Board suggested that the minor issues be settled by direct collective bargaining between the parties without further assistance from the Board. That was done. The agreements reached on these issues are expressed in the attached document marked exhibit A.

The four major points of difference are:

(*a*) Whether the Alabama miners shall receive a 40-cent increase of the basic daily wage, in addition to the $1 increase now in effect under the temporary agreement.

(*b*) Whether the mine workers of Alabama shall be paid the $20 vacation payment for the year 1941, it having been agreed that they will be paid $20 for the vacation period in 1942.

(*c*) Whether the deduction of washer losses from the check-weighed tonnage weights, in calculating the payment to tonnage workers, shall be eliminated.

(*d*) Whether the Alabama contract shall provide that tonnage rates on conveyor loading shall not yield to the worker a less income than he would earn on the day-rate basis.

1. The request of the mine workers that the contracts shall include a provision that tonnage rates on conveyor loading shall not yield to the worker a less income than he would earn on the day-rate basis, involves in Alabama the same considerations as in the controversy which was before us in the lower Appalachian area, and we notified the parties that we were disposed to make the same recommendations here that we made there. Thereafter the parties reached an agreement on this point.

We recommend, therefore, that in accordance with the agreement between the parties the contract provide as follows:

The tonnage loading rates on conveyors shall be such as to yield to the worker an opportunity to earn a net income equivalent to what he would earn on the day-rate basis. Computations shall be made semimonthly.

At mines where hand loading and mechanical loading exists, the hand loaders shall be given their share of mine orders and at least given the opportunity to make earnings equal to "miner on company work."

2. From the outset of the discussion before us great stress was put by both sides on the question of washer-waste deductions. The insistence of the mine workers was that in Alabama, as in the Appalachian area, the wages of a miner on tonnage rates should be paid on the total checked tipple weights without any deduction. They urged that the proper procedure to insure the mining of clean and marketable coal is the dockage procedure which has been followed in other areas, and that this procedure is sufficient to insure that the miners will carry out their contract which is "to load the coal as free from impurities as it is practical to do so." The mine workers pointed to the uncertainties and inequities of deducting from the tipple weights amounts which the mine workers are not permitted to check, and which may vary with the efficiency of the washing operation, and with the desire of the operator to produce a higher grade of coal for a particular market.

The Alabama operators from the start recognized that any deduction from the checked tonnage rates should not be arbitrarily made by the operators, but should be made on a basis that would be agreed upon, and well understood, and that was fairly and honestly applied. They gave us the assurance that they desired and welcomed an entirely honest administration of the washer-loss provisions, and saw no reason why those provisions could not be so administered. They pointed out that in Alabama, 82 percent of the coal produced passes through the washers, whereas in Kentucky only 3.3 percent is washed, in Tennessee 5.8 percent, and in the United States as a whole 18.2 percent, so that in Alabama the passing of the coal through washers is not an exceptional condition as in the lower Appalachian area, but is the usual and almost universal procedure. They expressed great apprehension that any radical departure from the established custom would create more problems than it solved.

In the Appalachian case we recognized the inequities and uncertainties involved in the method of calculating tonnage by deducting from the checked tipple weights the unchecked amount of the cleaning losses, and for that reason we recommended the elimination of the reject clause which had been introduced to a limited extent in the contracts in that area. On the other hand, we there considered the possibility that the elimination of the reject clause in those few mines of the whole Appalachian area where its use had been introduced, might result in hardship on certain operators who in reliance upon the reject clause had made substantial investments since that clause was introduced, and we there recommended that in such cases these particular difficulties should be worked out by negotiations under the "settlement of disputes" clause of the Appalachian contract.

The extended discussion before the Board led to similar suggestions by the Board on the subject of the washer-waste provision in Alabama, and these suggestions in turn led to further direct negotiations between the parties, in which, by concessions on both sides, they were able to work out an agreement in principle, which is expressed under the heading "Preparation of coal" on pages— to — of the attached exhibit A. This agreement completely covers the matter of washer-waste deductions except for one point. It includes in item H on page — for the absorption by the operator of a portion of the washer loss by the payment of —— cents per ton in addition to the regular tonnage rate. The parties have agreed that 1 cent per ton is equivalent to the absorption of a washer loss of 1 percent of the total tipple tonnage, but they have not been able to agree what portion of the washer loss the operators will absorb.

It is left to the Mediation Board to make findings and recommendations on that one point.

While the parties thus by mutual agreement in collective bargaining covered the greater part of the washer-waste problem, yet it is unfortunately true that the part left for recommendation by this Board—the part which has to do with money costs—is one of those things as to which it is particularly desirable that conclusions should be reached by negotiations between the parties themselves, rather than left to the relatively uninformed opinion of outsiders. Nevertheless, the residue of the problem has been left to us, and we must try to arrive at a just and fair recommendation. It is obvious that in such matters there is no absolute and exact way of arriving at a precise result. We can only take into account such considerations as might reasonably be advanced pro and con in collective bargaining discussions. From that point of view we have carefully considered all the arguments and all the relevant facts presented at the hearings and obtainable, supplemented by the full data supplied by the Bituminous Coal Division.

The real objective of the procedure which has been agreed to between the parties, as to this washer waste deduction, is, as near as may be, to finally arrive at an arrangement under which the miner will be paid, at a tonnage rate which will give him a fair income relative to the day-wage workers, for the full tonnage of coal which he loads "as free from impurities as it is practical to do so" as provided in the contract, while the operators may retain the full and fair use of their washers to eliminate any dirt in excess of what would be loaded by a clean loader, and further to reduce the ash content of the coal to the normal standard upon which he bases his market practice. It is, of course, true that the conditions vary widely from mine to mine, and even from time to time in the same mine, so that any figure agreed to for absorption by the operator can only be an average figure.

Perhaps the best, although by no means perfect, single guide toward the proper figure, presented in the proceedings before us is found in the following considerations: A minimum estimate of the amount of dirt that a good clean loader would on the average include in his loaded coal is from 5 to 8 percent. The over-all average of dirt left in the marketed coal after it has passed through the washer is, as an average estimate, from 2 to 3 percent. Averaging and subtracting these estimates gives 4 percent, as an approximation of the amount of dirt removed in the washer that should be paid for by the operator. This figure is fortified, on the whole, by all the other considerations which have been presented to us.

It is true, and there has been much discussion of the fact, that a certain amount of clean coal is eliminated as refuse and in the refuse water, by the washers. The most careful estimate presented to us gives as a maximum an elimination of clean coal in the refuse and in the refuse water of 2½ percent. This is, however, more than offset by the fact that there is a considerable amount of water, estimated to average about 4 percent, added to the washed coal in the washer, and included in the tonnage reported to the State of Alabama. This weight of water included in the total weight deducted from the tipple tonnage reduces by that much the washer-waste deduction. We may in addition point out that provision is made in the new agreement negotiated between the parties for fixing upon the operator all losses of coal in transit, losses due to the inefficiency of a washer and the losses caused by washing the coal to a better analysis than the operator's normal standard.

We recommend, therefore, that in item H of the agreement as to "Preparation of coal" in the attached exhibit A, the operators shall agree to absorb during the period of the contract up to March 31, 1943, a portion of washer loss by the payment of 4 cents per ton, in addition to the regular tonnage rate, to be divided appropriately between the machine men and the loaders. The proportion to the loaders to apply alike to each bracket.

3. The next item as to which we have to make a recommendation is the matter of paying to the mine workers in Alabama the $20 vacation payment for the year 1941, it having already been agreed that they will be paid $20 for the vacation period in 1942.

Here the position of the mine workers is that, the principle of a vacation payment having been recognized and accepted as a part of the industry-wide 2-year agreement which is to become effective as of April 1, 1941, and to continue in effect to March 31, 1943, there is no ground upon which the mine workers in Alabama can fairly be asked to forego the payment for the year 1941.

In reply to this the operators point out that at the time the vacation was allowed this year (1941) they were operating under a temporary contract with no vacation provision, and that while their coal has been sold this year at a high price it has not produced funds to meet this expense, and finally, that many commercial operators will not have the cash to meet the expense in 1941.

During the proceedings before us, and having particular regard to the last item of the operators' contentions, the mine workers agreed to adjust themselves so far as possible to that difficulty by agreeing that the vacation payment may be made half on the last regular pay day in November 1941, and half on the last pay day immediately preceding Christmas 1941. This concession having been made, we cannot find in the alleged inability of some of the commercial operators to find the cash necessary, any reason for denying to all the miners in the Alabama area this vacation payment for 1941. The operators' first point, that they have been operating this year under a temporary contract, applies to the whole industry; it is nothing peculiar to Alabama. The operators' second point, that the prices of coal so far this year have not produced funds to meet this expense, goes to the economic condition of the industry and its ability to pay increased wages. We will consider that aspect of the matter more fully in our discussion of the proposed additional daily wage increase of 40 cents per day.

We recommend as to the vacation payment for 1941 in the item identified as "Vacations with pay" on page 18 of exhibit A, provision be made for the payment of the sum of $20 to be paid half the regular pay day in November 1941 and half the last pay day immediately preceding Christmas 1941.

4. The next point presented to us for recommendation is whether the miners in Alabama should get a further increase, above the temporary agreement, of 40 cents per day in the basic daily wage.

On this subject the operators took the position that the temporary wage increase had been assumed by them "with grave misgivings as to their ability to operate under such increase" and that "experience under the present wages has shown the misgivings to have been well founded." Evidence was presented, on behalf of the operators, to show that the commercial mines in Alabama have been and are in a precarious economic position, a large proportion of the total number of mining companies being referred to as marginal producers. It was further said that the markets in which the Alabama operators have been able to sell their coal in competition with coal from other districts have been shrinking, and that in that area of district 13 wherein the Alabama coal meets no competition with other coal it has been and is meeting increasing competition with other fuels—oil, natural gas, and electric power. And finally it was pointed out, on behalf of the operators, that the production per man per day is lower than in any area with which Alabama coal competes, and that the addition of $1.40 to the 1940 basic daily wage of $4.50 in Alabama is a greater proportional increase than in the competing districts, and that this disproportion is additionally burdensome because of the relatively low output per man per day and the accompanying higher cost per ton.

The United Mine Workers took the position that the miners of Alabama should not be asked to accept a less wage increase than was given to the miners in the lower Appalachian area, not only for the reason that the miners all belong to the same union and naturally strive for equalization of wages, but also because the current rate of wages in Alabama is not a fair living wage. It was pointed out that past experience shows that a mine worker cannot expect to get work more than 200 days a year, and is lucky if he gets that many; that 200 days multiplied by the 1940 daily wage of $4.50 per day is an annual wage of only $900, and that even the $5.50 rate prevailing under the temporary agreements gives an annual rate of only $1,100, and even with the proposed increase to a basic wage of $5.90 the annual wage on the basis of 200 days per year would be only $1,180. The old wage differential between the $4.50 rate in Alabama and the $5.60 rate that prevailed in the lower Appalachian area was $1.10 per day. The mine workers do not seek to wipe out that $1.10 difference, but they do insist that it shall not be increased. They further point out that the 12-cent increase in tonnage rate which has been agreed to by the Alabama operators is the same tonnage rate increase that has been applied in the lower Appalachian area, and they urge that the same treatment should be accorded to the daily-wage increase.

The considerations advanced by the operators with respect to the economic condition of the commercial mines in Alabama are, of course, of critical importance to the Alabama commercial operators, and even to the miners if added wage increases should in fact lead to the shutting down of Alabama mines. The economic conditions referred to by the Alabama operators are not, however, peculiar to the Alabama district. We are, after all, in this discussion consider-

ing only a fractional part of a substantial wage increase which has been agreed to by the whole industry for the period from April 1941 to April 1943. The basic problems which confront the Alabama operators with respect to competition with other fuels, and the diminishing consumption of coal in the United States, confront the whole industry. The Mediation Board is not asked to solve that problem, and no evidence has been submitted to it in that connection. What we are concerned with here is the relative competitive parity among the competing districts, particularly with respect to railroad coal for which special minimum prices are fixed by the Bituminous Coal Division and which amounts to about 45 percent of the total production of the Alabama commercial mines, and the commercial coal that enters into direct competition with the coal from competing areas, which is approximately 10 percent of the total production.

Under the old wage scales the daily wage in Alabama was 80.3 percent of the daily wage in the lower Appalachian area. With the $1 increase of the temporary agreement in Alabama and the $1.40 increase in the lower Appalachian area, the Alabama wage is only 78.5 percent of the lower Appalachian wage. It would require an addition of approximately 12½ cents to restore the percentage relationship to 80.3 percent. But the United Mine Workers urge that it is customary and desirable, when general wage increases are made, to prefer flat dollar-and-cent increases to percentage increases, thereby tending to reduce the un-uniformity of existing wage rates.

In our discussion of the 40-cent increase in the lower Appalachian area, where like competitive relations were involved, we directed our attention to the comparison on the basis of the minimum prices fixed by the Bituminous Coal Division effective October 1, 1941, in relation to the costs of mining in those several districts during the year 1940, and we further directed our attention to an examination of the actual distribution of production, in the past, from the several competitive areas. We will make like comparisons here, selecting districts 8 and 9 as the dominant competitive areas with district 13.

The realization of the Alabama commercial mines on the basis of 1937 distribution, the minimum prices effective October 1, 1940, and the reported costs for the year 1940, compared with the like figures in districts 8 and 9 are as follows:

District	Total costs 1940	Realization based on minimum price effective Oct. 1, 1940	Amount that realization is above cost
	Per ton	*Per ton*	*Per ton*
8	$1.9082	$2.0888	$0.1806
9	1.4272	1.5889	.1617
13	2.3391	2.4635	.1244

Supplementing this comparison, we have figures on the actual net realization in the Alabama mines under the wage increases which have been put into effect by the temporary agreement and with the increased prices which have been made effective in Alabama.

We are now primarily concerned with the possible realization in the years covered by the contract, that is from April 1, 1941, to March 30, 1943. In the year 1941 no useful information as to possible net realization is to be derived from the months of January, February, March, April, and May, although it is a fact that during those months, because of the strike from April 2 through May 8, when the new wage scales and the new prices were put into effect, the operations were conducted at a loss. We have, however, the figures on the net actual realization of the Alabama commercial mines for the months of June, July, and August during which the wage increases of the temporary agreement were effective and the operators have made increases in their prices to consumers. These figures of actual net realization for those months are as follows:

Months	Actual realization	Actual costs	Net realization
	Per ton	*Per ton*	*Per ton*
June	$2.7267	$2.5912	$0.1355
July	2.7741	2.6674	.1067
August	2.8284	2.7255	.1029

The average net realization for these 3 months was 11.5 cents per ton.

When we turn to the reported figures of distribution, we find that under the competitive conditions which have existed throughout the years 1937 through 1940, the competitive position of the Alabama commercial producers in the total national production has remained practically stationary. This was admitted by the Alabama operators who said, "During these years the competitive position of Alabama rail commercial production in the national production picture has remained practically stationary."

Further supplementing these comparisons of net realization and of distribution records, we turn to what seems to us the most important one—the fact the same daily wage increase applied in Alabama as in the lower Appalachian area would exaggerate the existing cost differential, thereby tending to upset the competitive parity as it has heretofore existed.

Figures based upon reports filed with the Bituminous Coal Division gave the following comparison:

District:	Estimated cost of increasing the daily wage by $1.40, together with 12 cents on tonnage rates and 15 percent on yardage and dead work	Percent that wage increase is to total 1940 costs
8	$0.2269	12
13	.3440	15

It will be seen from these figures that the $1.40 increase in Alabama would tend to upset the competitive parity with district 8. There would be the same tendency, although perhaps not exactly the same percentage figures, with respect to the effect in Alabama of the $20 vacation cost, and in addition there would be an increased cost in Alabama of the absorption of washer loss which we have recommended. The total cost of that can be closely estimated. The evidence presented to us shows that 40 percent of the commercial mines in Alabama are operated wholly on a day-wage basis and 60 percent of the operators pay tonnage rates to the miners, but in these mines approximately 50 percent of the total wage cost is in day wages to others than the miners. Thus, 30 percent of the wage bill of the Alabama operators is paid to tonnage miners. The increase of 4 cents in the tonnage rate will add 4 percent to the wages paid the tonnage miners, thus increasing the total wage bill on the average of 1.2 percent. In Alabama labor cost per ton in 1940 was $1.44. The recommended absorption of a portion of the washer losses will therefore amount to an added cost per ton of approximately 1.728 cents.

Offset against all these unfavorable cost factors, and affording an explanation of the fact that notwithstanding them the Alabama miners have been able to operate, is the fact that a ton of coal in Alabama yields a greater return in dollars than in the competing areas. This is due to several factors, among which are the local consuming market in the Alabama area, in which there is no competition with other coal, but only with other forms of fuel, and the suitability of the Alabama coal for special uses.

It is the purpose of the Guffey Act to maintain so far as possible existing distribution of coal from the several producing areas to the several market areas set up under that act, and presumably new minimum prices will be established on the basis of the increased costs in the several districts, perhaps with adjustment of minimum market prices to maintain so far as possible the existing distribution. The equalization in this manner of the different cost increases in the different markets, including the railway fuel markets, by minimum price fixing under the Guffey Act admittedly presents many difficulties, and while it is fair to assume that some of the competitive disadvantage imposed on Alabama by the greater relative increase in the cost of mining per ton will be equalized in time, it is not possible to say that all of it will be.

Taking into account this uncertainty as to whether any action by the Bituminous Coal Division under the Guffey Act will be able to fully restore the competitive parity which would be upset by the additional cost in Alabama of the absorption of washer loss and the 1941 vacation payment, plus the total increase of 40 cents in the basic daily wage, it seems to us that the full 40-cent increase should not be made at the present time.

We therefore recommend that the Alabama daily wage rate be increased, effective as of April 1, 1941, above the wages paid under the temporary agreement, by 25 cents per day.

This recommendation, made for the reasons above indicated, carries with it the suggestion that if experience proves, during the term of the present

contract, that the Alabama miners and operators are jointly able to reduce the cost of production, or if the Alabama operators are able to effect a greater realization under new price adjustments than they have been able to realize in the months of June, July, and August of this year, then the additional 15 cents should be awarded to the Alabama miners.

We, therefore, further recommend—

1. That there be no further liability on the operators for any daily wage increase beyond the 25 cents per day for any part of the year from April 1, 1941, to March 31, 1942, but if a new cost determination is made by the Bituminous Coal Division at any time prior to April 1, 1943, and that determination shows a reduction in cost below the estimated total cost of production, including the added cost of the adjustment which we have here recommended, then the miners shall be given the benefit of one-half that reduction in cost up to but not exceeding an additional 15 cents per ton.

For the purpose of this determination we recommend that the estimated total labor cost per ton for the commercial mines be taken as $2.70. We arrive at that figure by adding together the following items:

(*a*) Reported total cost per ton in 1940	$2.3391
(*b*) Reported cost of the wage increase under the temporary agreement	.2745
(*c*) Estimated cost of an additional increase of 25 cents in the daily wage rate	.0434
(*d*) Estimated cost of the $20 1941 vacation payment	.0282
(*e*) The estimated cost of the recommended absorption of washer waste	.01728
Making a total of	2.70180 [sic]

2. A determination shall be made, as soon after April 1, 1942, as possible, by the Bituminous Coal Division, of the net realization of the Alabama operators during the period from June 1, 1941, to March 31, 1942, and if the net realization so determined exceeds the average realization for June, July, and August 1941, taking seasonal factors into account, then the basic daily wage for the period from April 1, 1942, to March 31, 1943, shall be increased by an amount that reflects one-half of the additional realization, but not to exceed 15 cents a day.

It is to be understood that the two foregoing recommendations are not to be retroactive but are to be applied if and when they appear after April 1, 1942, until the daily wage rate has been increased an additional 15 cents per day, but not beyond that.

We earnestly believe that the modifications of the existing temporary agreement which we have here recommended will result in a fair and equitable contract for the Alabama miners and the Alabama operators alike, and we recommend that these provisions be incorporated forthwith in a final contract to be immediately signed, with the recommended wage changes and the immediate payment under the retroactive provision of the temporary agreement.

Minority Opinion of Hugh Lyons

October 21

I dissent from the recommendations of the Board upon two points—first, the washer-loss clause and, second, the increase in the daily wage rates. In all other respects I concur with the Board's recommendations.

For many years it has been the practice in Alabama to pay tonnage men not on the basis of tipple weights, but on the basis of tipple weights less a deduction for losses in washing coal to remove impurities. Investments may have been made and the Alabama tonnage rates may have developed upon the assumption that these washer-loss deductions would be made. The recommendations quite properly take this into account.

The practice of making washer-loss deductions, however, is contrary to the fundamental principle that tonnage miners should be paid on the basis of tipple weights—a principle long fought for and now recognized in all other districts. Any other basis of payment permits the uncertainties and inequities mentioned in the Board's recommendations and which arise from forcing a tonnage miner to bear losses from causes beyond his control.

The conclusion reached on this point seems to me unsound because it temporizes with an admitted evil. Tonnage miners in Alabama should be paid on the basis of tipple weights just as miners in other districts are paid. I recognize that the sudden elimination of all washer-loss deductions would cause an overpowering burden upon the Alabama operators which might seriously endanger the industry. However, a formula for reaching that goal over a period of time could and should be established now. Such a formula might well provide for the Alabama operators to assume an increasing proportion of the washer losses with each decrease in costs or increase in their earnings so that after a fair period of time the operators would be bearing all washer losses and the tonnage miners be paid on the basis of tipple weights.

As for the daily-wage rate, I hold that the Board should recommend that the full additional increase of 40 cents a day be granted immediately.

In the absence of a compelling reason to the contrary, the relationships between the various districts should not be upset. The only reason that has been advanced is that the Alabama operators cannot fairly be expected to carry the burden of the added costs. I am not persuaded that any substantial part of them are unable to do so. The difficulties that the Alabama operators have labored under in the past 3 years are no worse than in the Appalachian districts. Moreover, the increased demand for coal holds out a prospect of increased production and higher prices followed by increased earnings.

I conclude, therefore, that there is no compelling reason to upset the relationships between the districts and that the full increase should now be granted in Alabama as elsewhere.

CASE No. 21

GENERAL MOTORS CORPORATION, Detroit, Mich.

UNITED AUTOMOBILE WORKERS OF AMERICA, C. I. O.

Certified April 25. Strike May 16–17. Hearing May 1–10, 13, 14. 160,000 workers involved. Closed June 3

Panel: Davis, Swope, Meyer, Brophy, Carey.

Negotiations for a renewal contract having come to a deadlock, the union on April 10 served the notice required by Michigan law of intention to strike. On April 20 it postponed the strike deadline and set no future date for a strike. The union asked for a 10 cents per hour increase and the union shop. The company had slowly in course of negotiations before the Board raised their offer to 8½ cents. At that point the Board suggested a possible agreement of 8½ cents and the union shop. The company expressed its unwillingness to accept that arrangement.

On the evening of May 14, the Board told the parties what it was going to recommend. It offered voluntary arbitration, which was accepted by the company and rejected by the union. The Board then formally made its recommendations at 4:30 a. m., May 15. These were accepted by the union. The corporation asked 24 hours to accept or reject. At the request of the Board, the union also postponed its strike deadline 24 hours, until 7 a. m., May 16. Word of this postponement, however, apparently did not reach some of the locals at Flint, Mich., in time and they went on strike. At about 12:30 a. m. May 16 the corporation notified the Board of its acceptance, at which time the terms were made public. The unauthorized strike at Flint was ended very quickly. A contract was signed June 3. The recommendations follow:

Recommendations

May 15

Since April 28 the dispute between the General Motors Corporation and the International Union United Automobile Workers of America, C. I. O., the lawfully designated bargaining agents for General Motors employees in over 60 of its plants, has been before the National Defense Mediation Board on a certification from the Secretary of Labor that the dispute threatens to burden or obstruct the production of materials essential to national defense, and that the Commissioners of Conciliation of the Department of Labor have been unable to

adjust it. During this time production has been maintained on an agreement that any settlement finally arrived at will be retroactive to April 28, 1941.

For 4 years collective bargaining relations between General Motors Corporation and the United Automobile Workers of America, C. I. O., have been in the process of development. In their growth they have passed through many troubles. The protracted negotiations before the National Defense Mediation Board have given us the distinct feeling that very real progress has been made away from the relatively chaotic condition which existed 4 years ago, and in which these collective bargaining relations were initiated to that stable and peaceable relationship which emerges when parties have been accustomed to deal with one another on the basis of equality, and have built up mutual confidence and respect.

In the negotiations before the Board a number of points were disposed of by continued collective bargaining. Certain other points, as to which the recommendations of the Board are set forth below, could not be agreed upon. As to each of them the parties were given an opportunity to adopt the process of voluntary arbitration, if they felt that the whole or any part of the unsettled portion of the dispute could be disposed of in that way.

Voluntary arbitration not being acceptable to the parties as to any of these remaining points, the Board has proceeded, under the Executive order of March 19, 1941, to make findings and to formulate recommendations for the settlement of the dispute. The facts as to the background against which the controversy is projected are substantially stated above. The facts as to the particular points in controversy are stated in connection with the following recommendations:

1. A main point of the union's demands is the so-called "union shop"—that there be included in the contract a provision that "A condition of employment in the corporation shall be membership in the United Automobile Workers of America, C. I. O., after 30 days of employment." Under the circumstances, and in the light of the fact that very real progress has been made in the growth of the union and in its accompanying power to discharge the responsibilties which it has undertaken in the contract, the Board has not felt prepared to recommend the adoption by the company of this demand. Modifications, down to the limited proviso that any employee who has voluntarily joined the union shall, as a condition of continued employment, remain a member of the union throughout the term of the contract, have been suggested and extensively discussed. The Board is not prepared at this time and under these particular circumstances to recommend any of these proposals.

2. The second principal point of dispute is the amount of the general wage increase which the corporation is prepared to give to all its employees. The union asks for a flat increase of 10 cents per hour. Before the case was certified the company had offered from 3 cents per hour to 5 cents per hour. During the negotiations the company increased this offer to 5 cents per hour for all production and nonproduction employees not classed as skilled, with a proviso that the skilled classifications would have the minimum raise of 5 cents per hour and a maximum raise of 10 cents per hour. This offer was made on the basis of the present 60-day termination clause in the contract. We have made the most painstaking and extended examination of every point that has been brought to our attention in this connection.

The position of the union is that General Motors employees are entitled to a general wage increase comparable to the increase that has been given in the more closely related of the larger production industries. The company points out that the hourly wage rates in the automotive industry are already higher that in these other industries. Investigation shows that such a differential does exist and that it has exised over the past years. There are, of course, economic reasons for its existence, including among other things the effect of the seasonal nature of the automotive industry which tends to reduce the annual earnings of the workers. The Board has directed its attention to every point of fact or argument brought forward in this connection. The only considerable point that could be developed was that, to a substantial extent, the automotive business of General Motors is going to be subject to a percentage restriction after August 1, 1941, with possible further restriction later on. It is possible to estimate the immediate extent of this reduction in the automobile business of the company; it is not possible to look very far ahead. There is no doubt that General Motors, even with the now agreed to percentage reduction is amply able to pay the increased wages this year. The union, on the other hand, stresses the insecurity of the future of the workers in the light of a possible increase in the

cost of living and the fact that this cutting down of automobile production by the company will tend to reduce the workers' opportunity to get overtime, and thereby accentuate the perennial problem of the industry, arising from its seasonal nature and reflected in the relatively low annual earnings of the workers. The present contract may be terminated by either side on 60 days' notice. This affords a mechanism for adjustment to wide changes in the economic situation, but at the same time it introduces uncertainty as to the continuation of the contractual relation and consequently of defense production.

Taking all these matters into account the Board recommends a flat wage increase of 10 cents per hour, and that the contract be made for the definite term of 1 year from April 28, 1941.

The Board is not prepared to recommend at this time either the increase in night shift premium, or the additional 40 hours vacation pay or any provision for increase in wages in proportion to further increases in the cost of living, or the demand for time and one-half for all work on the sixth day of the employee's workweek.

3. The existing contract entered into June 24, 1940, has a no-strike clause and a provision for an impartial umpire empowered to make final decision on grievances arising under specified sections of the agreement, but without power to modify any penalty imposed by the management in disciplinary lay-off and discharge cases. The umpire has only the power in such cases to adjudge the employee innocent or guilty of the offense charged. It has been learned by experience and the parties agree, that there should be some enlargement of the discretion of the umpire in such cases, but the parties have not been able to agree as to the extent of this enlargement.

The Board recommends that the umpire be given full discretion in cases of violation of shop rules, and that in cases of violation of the strike, stoppage, and lock-out section of the agreement the umpire should have no power to order back pay, but if the penalty imposed by the company is 2 week's lay-off or more, the grievance machinery must be expedited so that the umpire's decision will come within 2 weeks.

4. It became quite clear during the discussions that the paragraph of the agreement (par. 8, p. 22) dealing with the consideration that will be given to seniority in transferring employees has been given by the management a very restricted interpretation which has led to dispute and dissatisfaction. The umpire seems at least in one instance to have given the clause a broader interpretation.

The Board recommends that to eliminate this cause of misunderstanding and friction the paragraph be rewritten as follows:

"8. The transferring of employees is the sole responsibility of the management. In the advancement of employees to higher-paid jobs, when ability, merit, and capacity are equal, employees with the longest seniority will be given preference.

"Any claims of personal prejudice or any claims of discrimination for union activity in connection with transfers may be taken up as grievances. Such claims must be supported by written evidence at the time the grievance is filed."

5. For the purpose of giving some security to temporary employees during the 6-month trial period provided for in the existing contract, the union has asked for a subseniority list for such employees. The Board is not prepared to recommend the setting up of such a list at this time but it does recommend that paragraph 1 of the seniority provisions on page 20 of the existing contract be supplemented by adding thereto the following: "or on the grounds of personal prejudice."

6. The union has demanded a modification of the present provisions as to how seniority shall be broken. Under the present agreement a lay-off for 24 consecutive months breaks seniority. The union asks to eliminate this provision entirely.

The Board recommends that it be replaced by the following:

"If he is laid off for 24 consecutive months, except that if his seniority exceeds 24 months, he shall not lose seniority until he has been laid off for a period of time equal to his seniority."

7. The umpire has requested a better definition of the term "local wage agreements" in the contract, and the union has additionally asked for a better definition of the limits within which local negotiations are to be conducted.

The Board recommends that there be added to the contract the following clause:

"It is understood that local wage agreements consist of the present local wage scale by job classification plus any future negotiated adjustments thereof, together with any rules regarding the application of such wage scale that are in effect locally.

"With respect to any matter that is to be negotiated locally, the company will fully inform the union as to the limits, if any, set by higher authority upon the scope of the local negotiations."

To bring paragraph 19 of the "grievance procedure" on page 18 of the existing contract into accord with this recommendation, the words "that may be hereinafter executed by the parties" should be deleted from lines 19 and 20 of paragraph 19.

8. Under the heading of "Exceptions to above overtime payments" on page 28 of the existing agreement, the company has taken the position that under "Working hours," paragraph 6, page 28 of the agreement, it is entitled to set up a four group, swing shift system to operate its machines 160 hours a week, but it has proposed a more specific agreement. The union is unwilling to accept that plan and takes the position that it prefers to negotiate the plan after a national policy has been adopted by the Labor Policy Board of the Office of Production Management, on the ground that this policy will affect industry in general. The Board is unwilling to attempt to resolve this point.

9. The union has requested that the existing "strikes and stoppages" clause be modified to include a reciprocal agreement on the part of the company that it will not lock out its employees. This seems to the Board a reasonable request and the Board recommends that the heading which appears on page 36, be changed to "Strikes, stoppages, and lock-outs," and that the first line of paragraph 2 of this section be rewritten to read: "2. During the life of this agreement, the company will not lock out its employees and the" and that on page 18 of the contract, subparagraphs 19, line 17, the words "strikes and stoppages" be changed to "strikes, stoppages, and lock-outs."

10. There was prolonged discussion of the wording of subparagraph (*b*) in paragraph 21 proposed to be added to the "Grievance procedure." Subparagraphs (*a*), (*c*), and (*d*) had been agreed upon and the principle involved in subparagraph (*b*) had also been agreed upon. In the end, however, the parties were unable to agree on the details of wording. To resolve this last point of dispute the Board recommends the following language:

"(*b*) In claims arising out of the failure of the corporation to give the employee work to which he was entitled, the corporation before the next seniority lay-off and within 6 months, shall give him extra work for a number of hours equal to the number of hours that he had lost prior to the written filing of his claim, and this work shall be paid for at the hourly rate he would have received had he worked, or if paid for at a less rate the company will make up the difference in cash. By extra work is meant work to which no other employee is entitled on a seniority basis. Failing to give the employee work within 6 months, the company will pay the back wages."

CASE No. 22

MINNEAPOLIS-HONEYWELL REGULATOR Co., Minneapolis, Minn — UNITED ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 1145, C. I. O.

Certified April 28. Strike May 22–24. Hearing May 5, 6. 2,000 workers involved. Closed October 6

Panel: Wyzanski, Lapham, Rieve.

No exclusive bargaining agency had been established and charges of unfair labor practices had been filed by the union with the N. L. R. B. A threatened strike was called off at the Board's request following certification. After the Board hearing, a 2-day strike occurred, but was promptly called off upon the Board's informal intervention. The hearing resulted in the following plan, which was accepted by the parties.

Recommendation

May 6

In the above entitled matter, a panel of the National Defense Mediation Board having heard on Monday, May 5, 1941, and on Tuesday, May 6, 1941, representatives of Minneapolis-Honeywell Regulator Co. and representatives of local 1145 of the United Electrical, Radio and Machine Workers of America recommends the following five points:

1. The National Defense Mediation Board will request the National Labor Relations Board to determine as rapidly as possible case No. 18-C-377 involving review of the trial examiner's report dated December 26, 1940. Both parties will agree to comply with the Board's determination without seeking further judicial review.

2. The National Defense Mediation Board will request the National Labor Relations Board immediately to investigate and, if appropriate, hear the charges filed against the company with the regional director for the eighteenth region of the National Labor Relations Board on March 7, 1941.

3. The parties will within 60 days of the date of the execution of this agreement jointly apply to the National Labor Relations Board, pursuant to section 9 of the National Labor Relations Act, and in accordance with the National Labor Relations Board certification procedure, for an election to be conducted by the Board (after or simultaneously with the disposition of the matter referred to in par. 2), to determine what, if any, labor organization has been selected as the collective bargaining representative by the production employees in the company's Minneapolis plant. All parties will cooperate in that election and execute a consent election agreement substantially in the National Labor Relations Board's usual form; by accepting short notice of hearings; by furnishing pay rolls to the National Labor Relations Board; and by acknowledging the jurisdiction of the Board under the "commerce clause." It is understood that if the parties do not agree, the Board shall fix the exact appropriate unit.

4. Until the results of the election are certified to the company, the company will, upon request, discuss in good faith any grievances which may arise with its employees or the labor organization, if any, representing them. It is understood that, as here used, the term "grievances" includes individual or group wages but does not include negotiations for changes in general wages, hours, or general working conditions. If, when a grievance is presented, the matter is not satisfactorily adjusted, either the company or the labor organization if it presents the grievance, may request the National Defense Mediation Board to appoint, and the National Defense Mediation Board shall appoint, a special agent to confer with the parties to aid in reaching a settlement.

5. It is agreed that there shall be no lock-outs, strikes, slowdowns, boycotts, or picketing during the proceedings conducted by the National Labor Relations Board in accordance with the first three paragraphs of this agreement. If the recommendations of the National Defense Mediation Board's special agent are disregarded, parties will retain liberty of action.

On May 23, the Board appointed Prof. Edwin E. Witte, succeeded on June 16 by Prof. Nathan P. Feinsinger, both of the University of Wisconsin, as its special representative to aid the parties in settling grievances pending the determination of a bargaining agency by the N. L. R. B. Both complaint and representation proceedings continued before the N. L. R. B. Many ballots in the election, held by the N. L. R. B. on September 11 between the C. I. O. and the A. F. L., by now also in the picture, were challenged, and the result remained undecided in January 1942. Meanwhile, Mr. Feinsinger continued to act in a mediatory capacity and succeeded in warding off several threatened stoppages of production. (Though the Board formally closed the case, it was, in substance, transferred to the National War Labor Board, which at once appointed Mr. Feinsinger as its representative in the case.)

CASE No. 23

UTICA & MOHAWK COTTON MILLS, INC. Utica, N. Y. — TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Certified April 30. Strike April 24–May 19. Hearing May 6, 7, 12, 13. 2,000 workers involved. Closed May 16

Panel: Stocking, Adams, Haywood.

The Utica & Mohawk Cotton Mills had never been under contractual relations with the union although there had been several attempts at organization in the past 20 years. In January 1941 the T. W. U. A. began its present organizing campaign. About the beginning of April, the union requested a conference with

the management to discuss union recognition and a collective bargaining agreement. The company replied with a letter saying that it would be glad to deal with the union members as individuals but that, in the absence of evidence that the union represented a majority, the company could not recognize the union for purposes of collective bargaining.

On April 10, the company granted a 7 percent wage increase, and a week later, an additional 3 percent. Three conferences having resulted in no progress toward union recognition and a collective bargaining agreement the union went on strike on April 24.

The Labor Department conciliator and representatives of the O. P. M. entered the situation immediately and persuaded the company to agree to a consent election to be held by the National Labor Relations Board, which the T. W. U. A. won. Two further mediation conferences indicated that a deadlock had been reached and on April 30 the Secretary of Labor certified the dispute to the Board.

It transpired on May 7 that the company's representatives did not have authority to negotiate a settlement on the basis of any form of union shop. The chairman of the panel therefore adjourned the hearings and asked the company's representatives to secure the necessary authority from the board of directors, which they did.

The principal problem was as to union security. The company was transporting loom-fixers from the South who, it was alleged, preferred their friends in allocation of work and showed bias against union members. The union demanded a union maintenance clause. The company agreed to a clause saying it was the "purpose" of the agreement that members maintain membership and calling upon the company to "discipline" those who did not. An agreement on all matters was reached on May 13, ratified May 16, and production was resumed May 19.

CASE No. 24

BUSCH-SULZER BROS. DIESEL ENGINE CO., St. Louis, Mo. — INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 9, A. F. L., and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. L.

Certified May 2. No strike. 500 workers involved. Closed for want of jurisdiction May 8

A strike was threatened by each of the unions if members of the other union were employed in installing machinery on a construction job in St. Louis. The Board in its next executive session discussed its authority to handle a dispute primarily between unions and decided to refuse to act.

CASE No. 25

CURTIS MANUFACTURING CO., St. Louis, Mo. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1128, C. I. O.

Certified May 2. Strike April 7–June 2. Hearing May 26–28. 300 workers involved. Closed June 1

Panel: Stacy, Connelly, John C. Lewis.

After negotiations for a renewal of a contract broke down, the union struck on April 7. The issues were wages and union security. At the hearings, a settlement was reached by mediation providing 3 cents per hour increase, an increase in the minimum from 45 cents to 47½ cents (previously offered by the company), and confirmation by the company of the employee's right to join the union without company interference. On June 1 the employees ratified the settlement and returned to work the following day.

CASE No. 26

ALLIS-CHALMERS MANUFACTURING CO., Pittsburgh, Pa. — UNITED ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 613, C. I. O.

Certified May 3. No strike. Hearings May 7–9. 1,252 workers involved. Closed May 9

Panel: Dykstra, Ching, Golden.

Negotiations for a renewal of a contract broke down over wages and union security and the union voted a strike for May 5. Upon certification the strike was called off at the Board's request and a settlement was reached by mediation at the hearing.

The union demanded a 10-cent hourly wage increase to parallel the similar increase in steel. The wage issue was disposed of as follows:

1. The union accepted a proposal to call in the bargaining committee not later than October 25 to discuss the question whether third-quarter earnings would justify further general increases.
2. The company agreed to consider through grievance procedure all cases in which a man working on a higher-paid job than his normal classification felt himself qualified for the higher rate.
3. The company agreed that any general wage increases above the agreed-upon current 5-cent increase granted in other company plants would automatically apply to the Pittsburgh plant.

The union, having an approximate membership of 95 percent of the employees, claimed the need of an all-union shop or some device to discipline its membership. It was agreed that:

1. The company would make an express statement that only the union may bargain for the group it represents.
2. No employee or group would be permitted to engage in any activity connected with the work of a labor organization except as provided in the union's agreement.
3. The union would assist the company in the enforcement of the company's disciplinary rules.

This solution was roughly similar to that in the company's West Allis plant. See No. 6, *Allis-Chalmers*.

CASE No. 27

CONTINENTAL RUBBER WORKS, Erie, Pa. — UNITED RUBBER WORKERS OF AMERICA, LOCAL 61, C. I. O.

Certified May 5. Strike April 2–May 15. Hearings, May 9, 10, July 16, 17. 840 workers involved. Closed September 11

Panel: Graham, Lapham, Payne. Assistant, Leiserson.

The union's contract expired on March 31. It demanded an increase of 10 cents per hour for all day workers and 10 percent for all piece workers and a 60 cents per hour minimum. The company offered 5 cents per hour; 5 percent to piece workers. The matters of union shop and vacations with pay were also in controversy. A number of conferences brought no agreement. The Board did not ask the union to resume production. On May 10 on the basis of the Board's suggestions, the parties arrived at agreement. The agreement was ratified by the union members on May 13. The contract provided for a 7-cent increase for day workers. It provided no increase for piece workers but it was agreed that Trundle Co. would make a study of the rate structure. In the meantime the company agreed to make up the difference if a piece worker fell below a certain minimum due to causes controllable by management. The company agreed to train two union representatives to consult on methods of settling and applying piece rates. On the coming in of the Trundle report a further hearing was held. Further negotiations were had and a supplementary agreement entered into and ratified on September 11 relating to guaranteed piece-work earnings, a time study, and training program.

CASE No. 28

BENDIX AVIATION CORPORATION, South Bend, Ind. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 9, C. I. O.

Certified May 7. No strike. Hearing May 12–16. 8,100 workers involved. Closed May 26

Panel: Stacy, Teagle, Rieve.

Negotiations were in progress to revise an agreement dated November 15, 1940, with respect to job promotion, a student program, working conditions, and wages. The Conciliation Service was able to effect an agreement on all issues except the wage question.

At the hearings, representatives of both parties agreed to a 7½-cent increase, but this increase was rejected by the union membership. A strike deadline was set for May 29. The union officers attempted to have the case reopened. The panel members, as was not unusual, had signed the agreement. They felt that by reason of this their action was nearly the equivalent of a recommendation and believed it contrary to good practice to permit the agreement to be reopened, though Judge Stacy stated that if a strike threatened it was the duty of the panel to do what it could to settle it. On May 26 a Commissioner of Conciliation visited the plant and was able to effect ratification of substantially the original agreement with the addition of a clause which reopened the wage question if the Bureau of Labor Statistics cost of living index rose above 5 points.

CASE No. 29

EX-CELL-O CORPORATION, Detroit, Mich. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 157, C. I. O.

Certified May 8. Strike May 5–16. Hearing May 12–14. 3,500 workers involved. Closed June 18

Panel: Wyzanski, Ching, Lewis.

The issues in this case were primarily wages and union shop.

When the case was certified, the strikers were asked to return to work but voted to continue the strike. The union demanded a 10-cent per hour increase. The company offered 5 cents to all who had not received increases through recent job classification adjustments. After hearing the Board proposed—

Interim Recommendation

May 14

1. The strike shall be called off forthwith.
2. The company shall reemploy without discrimination all persons employed on May 5, 1941.
3. The company shall give to every employee an increase of 5 cents an hour above his rate on April 28, 1941. This wage increase shall be effective as of April 28, 1941.
4. After the strike is called off and the men have returned to work, the company and the union shall bargain collectively further with respect to (*a*) the elimination of the first three sentences of article I, section 2, of their proposed new contract; (*b*) the vacation clause of that proposed new contract; (*c*) the classifications of that proposed new contract and general wages. Any wage changes shall be retroactive until April 28, 1941. If, after 30 days from the date bargaining is resumed, the parties have not reached an agreement, either of them may request the National Defense Mediation Board to hold further hearings.

This recommendation resulted in resumption of production, renewal of bargaining, and a full contract on June 18.

CASE No. 30

UNITED ENGINEERING & FOUNDRY CO., Pittsburgh, Pa. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1388, C. I. O.

Certified May 9. Strike May 7–10. Hearing May 14, 16. 900 workers involved. Closed May 19

Panel: Graham, Connelly, Payne.

Since May 13, 1937, the company and the union had operated under a members-only contract and an extension thereof dated April 14, 1938. The union on April 16, 1941, formally served notice terminating the contract under a proviso therein, and demanding inter alia the union shop. Negotiations failed, the existing contract expired May 6, and the union struck. Upon receiving the case the Board requested the men to return to work pending the Board's consideration of the dispute, which they did. The Board at the company's request, informally made a recommendation on union security. The proposal, providing in substance that the company insert a provision approving the right of the employees to join the union and agreeing to discipline antiunion conduct in the plant, was accepted by both sides. The balance of the contract was bargained out without suggestions by the Board. On May 16 an agreement was consummated settling all issues, and was ratified by the union membership on May 19.

CASE No. 31

EMPLOYERS NEGOTIATING COMMITTEE, Puget Sound, Wash. — INTERNATIONAL WOODWORKERS OF AMERICA, C. I. O.

Certified May 9, Strike May 9–June 16. Hearings May 19–23, June 3–4. 12,000 workers involved. Referred to National War Labor Board

Panel: Dykstra, Lapham, Ching, Golden, Brophy.

This dispute arose out of an attempt to negotiate a general contract for the Puget Sound area logging and saw-mill operations. The union demanded wage increases, union shop, vacations with pay, and elimination of busheling (a form of piece-work compensation).

No agreement was effected and as a result of strike threats the operators offered a union maintenance clause (similar to that agreed upon in case No. 5, *Weyerhaeuser Timber Co.*) conditioned upon the union's withdrawal of certain of its demands. However, the parties could not reach an agreement on any of these proposed bases and the case was certified to the Board May 9, a few hours after a strike had begun.

The May hearing resulted in a recommendation (signed by Messrs. Dykstra, Ching, and Golden).

Recommendation

May 23

Fifty-two lumbering operations in the Puget Sound area are involved in this case and some 12,000 men have been on strike for more than 2 weeks. In brief, the issues are—the closed shop, a wage increase, vacations with pay, and the abolition of piece work. The men demand a full union shop, including "the hiring hall," a flat wage increase of 7½ cents "for every worker," a week's vacation with pay for all who have been employed for 1 year prior to January 10 of the current year, and the doing away with piece work in the industry. The employers have offered in response to these demands:

1. A union maintenance of membership agreement for all employees now members of I. W. A. and an agreement to recommend membership to all new employees.

2. A wage increase of 7½ cents on the basic wage with certain variations in the brackets which had a 5-percent increase in wage last fall. Such an adjustment would amount to 12½ cents increase for everyone as of last September. This is in addition to any individual wage adjustments which have been made since September 1940.

3. Continuation of piece work with the suggestion that insofar as accident hazards are concerned, committees of employers and employees shall undertake to study the relation between safety and piece work.

4. One week's vacation with pay in sawmills for all who have been employed during the period May 1, 1941, to May 1, 1942, and who have worked 1,400 hours of straight time; a vacation allowance of 2 cents per hour worked for those in logging camps to be paid at the time or times agreed upon between the employers and employees.

Several days of negotiation before a panel of the N. D. M. B. have failed to bring the parties together in an agreement. Meanwhile there are rumors of new difficulties in the lumber areas of the Pacific Northwest, and one other logging case has been certified to this Board from the Columbia River area. The fir industry is of great importance to our national defense and any stoppage of work will have an effect upon other defense industries within a few weeks. This appears to be a time when every effort should be made to unite the forces which operate the industry. Interrelationships between the various operations are so close, the competitive nature of work so keen, the division between employing groups so marked, and the disunity among various elements in the different labor organizations and locals so intense, that nothing short of an attempt to deal with a whole situation can bring order and stability into the Douglas Fir Belt lumbering area.

There are so many uncertainties in the various operations, so much division of testimony as to the facts and such an apparent lack of uniformity in the conditions of work and pay schedules that only a careful survey of all the facts by impartial investigators can furnish the basis for a final recommendation from the Board in cases that may come before it from this area.

This Board therefore proposes that it make provision for such an impartial study by a competent commission immediately. This commission shall be authorized to report on such matters as the following: (1) Union and management relationships in the Douglas Fir Belt; (2) Wage practices in the area; (3) The general condition of the industry; (4) The influence of seasonal and climatic conditions as they affect the industry; (5) The problems of hazard; (6) The piece-work practices now in effect; (7) Vacation practices and policies; (8) The possibilities for the stabilization of the entire industry for the period of emergency; (9) Other relevant facts and situations which may be deemed important as the study progresses.

This commission shall be charged with establishing any conclusions which develop from the study and it shall report to the Mediation Board at the earliest possible moment. The Board will then be in a position to make positive and intelligent recommendations to the industry in the interest of national defense.

Pending the finding of facts as indicated above the Board proposes in the case now before it—

A. That the representatives of the I. W. A. unions accept: (1) The union maintenance agreement here offered and the proffer of the employers representatives to recommend union membership to all new employees pending any further recommendations of the Board; (2) the basic wage increase amounting to 7½ cents together with the schedule which gives a 12½-cent increase "across the board" as of last September; (3) the revised vacation suggestion which reduces the 1,600-hour proposal for the mills to 1,400 hours and the 2-cent suggestion for logging camps; (4) the proposal for a study by joint committees of the relation of piece work to hazard.

B. That work be resumed pending the findings of the investigating commission and the final recommendation of the Board with the understanding that any final proposal on wage rates or increases shall be retroactive to the time of resumption of work and any findings on vacation which affect payments of any kind shall also be retroactive as of the same time.

If this proposal is accepted by the parties now in dispute, the Board is hopeful that within a comparatively short time a recommendation from this Board will be found useful to the whole Fir Belt in establishing a pattern which will bring stability and unity to an industry of unique importance to our national defense. The time is here when the maximum of intelligence and good will must be applied in an industry which has lacked cohesion and unity and which is perhaps ready just now for a constructive plan of organization and operation. This undertaking cannot be piecemeal and sporadic in a time of emergency. It must be as inclusive and comprehensive as joint effort can make it.

The union rejected the Board's proposal and voted to continue the strike. Meanwhile, the President on May 27 proclaimed the existence of an unlimited national emergency and the Board wired O. M. Orton, international president of the I. W. A., calling his attention to the appeal of the President in his proclamation to all loyal workmen to "merge their lesser differences in the larger effort to insure the survival of the only kind of Government which recognizes the rights of labor or of capital." The Board's telegram called upon "all the striking employees, as patriotic citizens, to reconsider their decision and to accept the Board's recommendation. The Board requests that you bring this telegram to the personal attention of everyone with power to vote upon the acceptance or rejection of the Board's recommendation." An exchange of telegrams which followed failed to clarify the situation and on May 31 the Board called Mr. Orton, in a telegram signed not only by the chairman of the Board but also by the president of the C. I. O., to a hearing on June 3.

Following the hearing of June 3 and 4, in which not only the Chairman of the Board but also the president of the C. I. O. urged acceptance of the Board's recommendation, Mr. Orton issued a statement in which he accused the Board of offering a recommendation which was in no way different from that offered by the employers. "This is a very peculiar situation," the statement said. "Here a Government agency takes a proposition from employers as its own; then, by cajolery, threats, and tricky propaganda, advises the workers to take it or leave it, saying, 'If you don't take it, you're not patriotic.' * * * This effort to deprive us of our bargaining strength destroys every pretense of collective bargaining and reveals Mr. Dykstra's action in this case as an all-out labor-busting and strike-breaking device." He announced that the strike would last until the workers obtained a decent living.

The full Board considered the situation at its regular meeting the following day. At the end of the session, which lasted until 11:00 p. m., the Board issued a formal statement outlining its position. This statement was signed unanimously by all 19 members of the Board present at the meeting.

Statement

June 5

The National Defense Mediation Board today unanimously approved the findings and recommendations of the panel of the Board which heard the dispute between the Employers Negotiating Committee representing 52 employers in the Puget Sound lumber industry and the International Woodworkers of America, representing about 12,000 Puget Sound workers.

The recommendations are designed to do three things; First, to secure the immediate resumption of production upon the basis of an equitable temporary settlement; second, to institute at once thereafter a study of the entire question by an impartial commission whose report will furnish the basis for further negotiations and a permanent settlement; and third, to protect the interest of the employees during the period of this study by providing that any benefits granted in the permanent settlement shall be retroactive to the date work is resumed.

When the employers and the union came before the Board they were in disagreement principally on four points: Union protection, wages, vacations, and piece work. On these four points the following were the original views of the parties and the recommendations made by the panel and endorsed by the full board.

On union protection, the union wanted a closed shop with a union hiring hall. The employers at first opposed anything beyond the requirements of the National Labor Relations Act, but later offered to accept the terms of the Snoqualmie Falls settlement applying to another group of workers in the same industry in the Northwest. The Board, taking into account settlements in the same area recommended that first, every present employee who belongs to the union and every future employee who joins the union shall, as a condition of employment, maintain union membership in good standing and, second, the employers shall recommend that new employees shall join the union within 40 days after being employed. This is substantially the same provision that has been accepted by representatives of the parties in the Columbia River Basin case, and that has been overwhelmingly ratified by the workers in the Snoqualmie case in April 1941.

As to wages, the union asked 7½ cents an hour increase for every employee. The employers were willing to raise wages, but not to the extent that the union asked. The Board found that in October 1940 the employers had raised wages 4 percent in some classifications and 5 percent in others, and in December 1940 had further raised wages 2½ cents per hour per man. The Board recommended that the wages should be again increased so that every class of workers should receive 12½ cents an hour above the rate prevailing in September 1940. This brings the wages into line with those agreed upon in the Columbia River Basin case on June 5, 1941.

As to vacations, the union asked for a retroactive vacation-with-pay clause. The employers were reluctant to grant any vacation with pay in view of the wage increases. The Board recommended that provision should be made for vacations with pay to be effective in 1942 and to be included in the contract now to be negotiated.

The question of piece-rate compensation presented complicated issues which cannot be briefly summarized and which could not be promptly solved by the Board. The Board, therefore, recommended that it should at once appoint a commission to study that problem together with the three other problems as to which temporary solutions had been recommended and also numerous related labor and industrial problems in the Douglas Fir Belt. The recommendations of the commission are to be the basis for a report to the Board and for collective bargaining between the parties. The final settlement is to be retroactive to the date work is resumed. When work is resumed the Board will direct the commission to report within 60 days.

The recommendations of the Board members who heard the case were submitted at the regular meeting of the Board and were unanimously approved. The recommendations providing for higher wages and improved working conditions were made to bring about immediate resumption of production upon a fair and equitable basis pending a full investigation of the facts by an impartial commission. The emergency declared by the President demands that prompt action be taken. No injustice can result to anyone from the suggested procedure. It is expected that upon a proper understanding of the situation the workers will accept those impartial recommendations which involve substantial immediate benefits to them.

At the same time the president of the C. I. O. issued a statement in which he announced that he had personally recommended acceptance of the Board's proposal to the officers of the I. W. A. and that in refusing them these officers "have indulged in a campaign of misrepresentation, slander, and abuse, contrary to all the well-defined policies of the Congress of Industrial Organizations."

"In a statement released to the newspapers yesterday," the statement continued, "Mr. Orton, president of the I. W. A. accused the National Defense Mediation Board, if not directly, then by implication, of being a labor-busting organization. This is, of course, a most reprehensible, lying defamation for the very simple reason that the statement implies that Thomas Kennedy, secretary-treasurer of the United Mine Workers of America, and Philip Murray, president of the Congress of Industrial Organizations, are engaging in this kind of activity.

"It is the considered, calm judgment, not only of myself but of all other C. I. O. representatives who are either members or alternate members of the National Defense Mediation Board, that the interests of the I. W. A. will be better served by accepting the recommendations of the Board.

"A continuation of the strike, under existing circumstances, is no longer regarded as being directed against the employers, but rather against the National Defense Mediation Board.

"The position of the president of the Congress of Industrial Organizations should not be misunderstood. I want it to be definitely known that I am opposed to a grant of arbitrary powers to any Government tribunal which would seek to deprive workers of the right to exercise their economic power for the purpose of seeking redress of wrongs.

"The president of the Congress of Industrial Organizations is wholeheartedly in sympathy with all of the legitimate aspirations of all the members of the I. W. A., and with his associates will strive consistently not only to maintain but to improve conditions for workers employed in American industry.

"I, therefore, strongly urge the need of meetings to be held at the earliest possible date for the purpose of giving consideration to the recommendations made by the president of the Congress of Industrial Organizations to return to work.

"The recommendations of the Board consolidate the gains which the International Woodworkers of America have already secured. It is a reasonable expectation that the report of the special commission, which the panel has proposed, will make recommendations for a permanent agreement which will be mutually satisfactory to everyone.

"I express the confident hope that, in your own best interests and in the spirit of real unionism, you will accept the recommendations which have been made to you by the Board."

Ten days later, June 16, after several of the locals had taken Mr. Murray's advice and voted to return to work, Mr. Orton issued a statement announcing that the delegates from striking locals had voted 30 to 1 to accept the Board's recommendation and call off their strike.

On July 22 the Board, pursuant to the terms of its recommendation, appointed a 3-man commission to study the issues in the dispute and make recommendations to the Board. After several weeks of investigation the commission, composed of Dexter Keezer of Reed College, chairman, Wayne Morse of the University of Oregon, and Paul Eliel of Stanford University, was asked by the unions and employers to extend its study to include the entire Douglas fir industry in the States of Washington and Oregon. Since the commission was unable to complete its study by January 12, the case was referred to the National War Labor Board.

CASE No. 32

ALLIS-CHALMERS MANUFACTURING CO., La Porte, Ind. — FARM EQUIPMENT WORKERS ORGANIZING COMMITTEE, LOCAL 119, C. I. O.

Certified May 9. Strike May 7–15. Hearing May 16, 17. 1,150 workers involved. Closed May 20

Panel: Wyzanski, Lapham, Golden (Henry Adams). Assistant, Leiserson.

Disagreement in negotiation for the renewal of a collective agreement led to a strike. The major points in difference were wages and union security. Though the Board's request to resume production was not promptly heeded by the union, the parties were able to reach an agreement after 2 days before the Board without any formal recommendation. The settlement was similar to that agreed to in case No. 26, involving the same company's Pittsburgh plant. The resulting contract was ratified by the union on May 20.

CASE No. 33

SMOOT SAND & GRAVEL CORPORATION, Washington, D. C. — SAND AND GRAVEL WORKERS' UNION, LOCAL 22075, A. F. L.

Certified May 10. Strike May 12–15. 300 workers involved. Closed May 15

Before a hearing could be held, a strike occurred on May 12, primarily over the issue of wages. On May 15, the parties, without the intervention of the Board, came to an agreement on the points that were in dispute.

CASE No. 34

COLUMBIA BASIN AREA LOGGERS & SAWMILL OPERATORS — COLUMBIA RIVER DISTRICT COUNCIL NO. 5, INTERNATIONAL WOODWORKERS OF AMERICA, C. I. O.

Certified May 12. No strike. Hearing May 28. 4,000 workers involved. Closed June 5

Panel: Wyzanski, Lapham, Ching, Golden, Brophy.

While negotiations for the renewal of an agreement were still proceeding, this case was certified to the Board. It was understood by the parties that negotia-

tions would continue and they were to appear before the Board only in case the major issues could not be settled directly. These issues were mainly wages, union security, abolition of piece work, and certain shop practices. All of the issues were disposed of except union security. As this case was closely allied with No. 31, *Employers Negotiating Committee*, which was settled by the recommendation of maintenance of membership, the parties in this dispute informed the Board that they would accept a similar recommendation, which was thereupon made and accepted.

Recommendation

June 5

The Secretary of Labor certified this dispute to the National Defense Mediation Board May 12, 1941. A panel of the Board, consisting of Charles E. Wyzanski, Jr., representing the public, Roger D. Lapham and Cyrus Ching, representing employers, and Clinton S. Golden and John Brophy, representing employees, heard the case beginning May 28, 1941.

The parties had operated under a working agreement between them which expired April 1, 1941. Previous to the hearings in Washington, they had been engaged in negotiations among themselves and with the cooperation of United States Commissioner of Conciliation, Charles A. Wheeler, looking toward a new contract. Much progress had been made. However, there remained unsettled a number of questions including abolition of piece work, hours of work, board charges and cook-house hours, wage scales, and union protection.

In accordance with section 2 (a) of Executive Order No. 8716 creating the National Defense Mediation Board, the panel suggested to the parties that they should settle between themselves so much of their controversy as they could by collective bargaining. Both parties carried out this suggestion in a patriotic and friendly spirit. Within a relatively short time, the representatives of the parties reported to the panel that they had reached complete agreement on every point but one of those which had previously separated them. That point was the degree of so-called "union protection." On that point they inquired whether the panel had any recommendations to make in accordance with section 2 (d) of the Executive order.

The panel then discussed with the parties and considered among themselves this point and gave particular attention to these among other factors: First, the commendable attitude shown by the parties in subordinating their own individual interests to the larger interests of the Nation by continuing production while negotiating among themselves in good faith; second, the views and offers of each of the parties as expressed at various stages of the negotiations in the West and in Washington; third, the provisions of the working agreement which had expired April 1, 1941, and which in article XIV had included a modified type of preferential hiring clause; and fourth, the suggestions, findings, and recommendations of the Board in other cases involving the same type of work in the same industry and the same area.

On the basis of these considerations, the panel makes the following recommendations and findings which the panel has been assured by the representatives present in Washington they will, consistently with the President's proclamation of May 27, 1941, recommend to their principals for prompt acceptance, ratification, and incorporation (together with points upon which they have reached an agreement by themselves) in a new collective bargaining contract.

The parties shall include in their new contract these three provisions:

1. The employer agrees that any present regular employee who is now a member of the union recognized as the sole collective bargaining agency or who after this date becomes a member, or is reinstated as a member of the union shall, as a condition of continued employment, maintain membership in good standing.

2. The employer approves of its employees who are employed in the classes of work covered by this contract becoming members of the union which is a party to this contract. So far as is consistent with law, the employer agrees to recommend that all new employees in the classes above described who are found satisfactory to the employer after a probationary period of 40 days' work join the union recognized as the sole collective bargaining agency.

3. The employer shall have the right to hire directly at his office or place of operation. In so doing, he will give first consideration to local unemployed members of the union, provided they are qualified and readily available. When satisfactory men cannot be obtained in the above manner, the hiring of others shall not be deemed a breach of this agreement.

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CASE No. 35

E. W. Bliss Co., Brooklyn, N. Y. — United Electrical, Radio and Machine Workers, C. I. O.

Certified May 22. No strike. Hearings May 27, 28, 29, June 19, 20. 1,500 workers involved. Closed June 20

Panel: Graham, Meyer, Rieve.

The union demanded the establishment of classifications and minimum wages. A strike for May 20 was called but did not take place. The Board requested that production be continued. After mediation failed the Board appointed George T. Trundle, Jr., of Cleveland, to investigate and requested the union to continue production pending his report. At the hearing to consider the investigator's report the parties agreed to submit the issues to arbitration. The Board appointed Paul R. Hays, of New York, as arbitrator. His decision was rendered on October 2.

CASE No. 36

North American Aviation, Inc., Inglewood, Calif. — United Automobile Workers of America, Local 683, C. I. O.

Certified May 22. Strike June 5–9. Hearing May 27, June 2–4, 17–20, 25–28. 11,300 workers involved. Closed July 1

Panel: June 2–4: Dykstra, Adams, Kennedy.
June 17–20, 25–28; Davis, Swope, Kennedy. Assistant, Kirstein.

Negotiations between the union and the company followed a closely contested N. L. R. B. election. Although there were several conferences, virtually no agreement was reached on any issues and the wage matter seemed particularly difficult.

No panel members were available to hear the case when the parties arrived in Washington May 27. The Board assigned its executive secretary, Ralph T. Seward, to help the parties negotiate an agreement which would postpone the strike threatened for midnight that night. The union negotiators said that they were empowered to accept only one of two alternatives. Either the company must agree that day to a 10-cent blanket increase in wages and an increase in the minimum wage from 50 cents to 75 cents per hour or it must agree to make any wage increases later negotiated retroactive to April 16, the day that negotiations were first entered into by the company and the union. The union said the only alternative to acceptance of either of these demands was a strike that midnight. About 9 p. m., with the aid of Judge Stacy, who was called in from another case, Mr. Seward worked out the following agreement:

Memorandum of Agreement

May 27

1. Agreements when and if reached to be retroactive to May 1.
2. No stoppage of work or interference in any way with production will be permitted during the pendency of this case before the National Defense Mediation Board and for 3 days after the Board's recommendations are made.
3. The issue of retroactive benefits is hereby removed from the list of items to be considered during negotiations, it being understood that this issue has not been settled finally.
4. Failure in any respect to abide by the terms of paragraph 2 hereof automatically invalidates the company's obligations expressed in paragraph 1 hereof.
5. It is hereby agreed that neither the union nor the company will make any statement to the press.

After a 45-minute telephone conference with the strike committee in California, the union negotiators succeeded in postponing the strike. While this telephone conference was in progress, President Roosevelt told the nation by radio that he was declaring an unlimited national emergency.

Panel hearings opened June 2. After 3 days and in violation of the interim agreement, a strike was called at 3 a. m. June 5 at the huge aircraft plant. The

negotiating committee at first disclaimed responsibility for the strike, but later it appeared that they were instrumental in arranging it. Hearings, of course, were recessed.

On June 6, the local leadership of the union was informed that neither the national leadership of the U. A. W. nor the national leadership of the C. I. O. would authorize the strike under the circumstances. On Saturday, June 7, the White House announced that if the strike were not ended by Monday, the United States Army would be ordered to occupy the plant. That night Richard T. Frankensteen, director of aircraft for the U. A. W., in a Nation-wide broadcast said in part:

"This is a wildcat strike. * * * The irresponsible, inexperienced, and impulsive action of local leaders in violation of their own agreement will find no support from myself or our organization. * * *

"Yesterday I notified the chairman of the National Defense Mediation Board, Dr. Dykstra, of our official attitude. I told him that the record of the Board in situations involving our organization had been outstandingly fair. Its actions had been speedy, just, and decisive. * * * Any imputation to the contrary by local spokesmen purporting to represent the policy of the C. I. O. is incorrect, unfair, and only plays into the hands of those forces on the right and left which are anxious to scrap the democratic methods of negotiation, conciliation, and mediation and to substitute repressive antilabor legislation. * * *

"Into the inexperienced ears of local union leaders and to a rank and file whose patience had been strained by the lethargy of the company negotiators, came propaganda spread by enemies of responsible unions, enemies of the democratic way of negotiation, conciliation, and mediation.

"I am speaking with the full knowledge and complete accord of President Philip Murray of the C. I. O. and President R. J. Thomas of the U. A. W.–C. I. O., when I say that the C. I. O. does not intend to allow the interests of a majority of the North American workers, or the interests of 5 million members of the C. I. O., to be endangered by the irresponsible action of a minority group in the local union * * *.

"To all North American workers, I say this simply and soberly:

"You are on strike without the authorization of your international union or the C. I. O. You are out on a strike in violation of a sincere agreement which your leaders made to exhaust the facilities of the Government's Defense Mediation Board * * *. You have allowed yourselves to be jockeyed and stampeded into the position of striking against the recommendations of the C. I. O., and against an agency of the Federal Government which has given our organization every cooperation and consideration.

"You have allowed yourselves to be put in the position of complicating and endangering those procedures through which you had every chance of obtaining your wage demands, which are fair and consistent with the financial condition of the company and long overdue.

"I may state also that although the overwhelming majority of the North American workers have approached this economic problem of theirs with a true perspective of their position as patriotic American workers, the infamous agitation and vicious underhanded maneuvering of the Communist Party is apparent."

The following day when Mr. Frankensteen attempted to address a mass meeting of North American workers to plead with them to return to work, he was greeted with such a chorus of boos, hisses, and catcalls that he was unable to deliver his speech.

At 7 a. m. the following morning, June 9, the company opened its gates, but not more than a dozen men were able to work their way through the mass picket line thrown about the plant. Forty minutes later, President Roosevelt issued an Executive order directing the Army to take possession and operate the plant. Within an hour after the issuance of the Executive order, troops with fixed bayonets cleared the entrances to the plant and men started returning to work. There was no resistance to the troops. The texts of the President's order and accompanying press statement are as follows:

Statement of the President

June 9

Continuous production in the Los Angeles plant of North American Aviation, Inc., is essential to national defense. It is engaged in the production of air-

planes vital to our defense and much of the property in the plant is owned, directly or indirectly, by the United States. Production in this plant has ceased because of a labor dispute.

Conciliation was resorted to and efforts at conciliation failed. The dispute was then certified by the Secretary of Labor to the National Defense Mediation Board.

The course of mediation has now been interrupted in violation of an agreement entered into by the bargaining representatives of the workers to continue production during the course of the mediation. Full stoppage of production has resulted. This has created a situation seriously detrimental to the defense of the United States.

Because of this situation, as President and Commander in Chief of the armed forces of the United States, I have determined that this plant must be reopened at once. I have therefore directed that the Secretary of War shall immediately take charge of the plant and remain in charge and operate the plant until normal production shall be resumed.

Our country is in danger and the men and women who are now making airplanes play an indispensable part in its defense. I call upon the workers to return to their jobs, with full confidence in the desire and ability of this Administration to protect their persons and their interests. I have an abiding confidence in the loyalty and patriotism of the American workers and I am sure that they will seize this opportunity to cooperate in the national interest. Their fundamental rights as free citizens will be protected by the Government and negotiations will be conducted through the process of collective bargaining to reach a settlement fair and reasonable to the workers and to the company. The company already has stated that any such settlement will be retroactive to May 1.

The Army has been directed to afford protection to all workers entering or leaving the plant, and in their own homes.

Executive Order

June 9

WHEREAS on the twenty-seventh day of May 1941 a Presidential proclamation was issued, declaring an unlimited national emergency and calling upon all loyal citizens in production for defense to give precedence to the needs of the Nation to the end that a system of government which makes private enterprise possible may survive; and calling upon all our loyal workmen as well as employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital, and calling upon all loyal citizens to place the Nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use, all of the physical powers, all of the moral strength, and all of the material resources of the Nation; and

WHEREAS North American Aviation, Inc., at its Inglewood plant in the City of Los Angeles, State of California, has contracts with the United States for the manufacture of military aircraft and other material and articles vital to the defense of the United States; and the United States owns aircraft in the course of production, raw material, machinery, and other property situated in the said company's plant, and

WHEREAS a controversy arose at said plant over terms and conditions of employment between the company and the workers which they have been unable to adjust by collective bargaining; and whereas the controversy was duly certified to the National Defense Mediation Board, established by the Executive order of March 19, 1941; and whereas before the negotiations had been concluded before the said Board, and in violation of an agreement between the bargaining representatives of the company and the workers authorized to appear before the Board and conduct the negotiations, production at said plant of said aircraft and other articles and materials vital to the defense of the United States was interrupted by a strike which still continues, and

WHEREAS the objectives of said proclamation of May 27, 1941, are jeopardized and the ability of the United States to obtain aircraft essential to its armed forces and to the national defense is seriously impaired by said cessation of production, and

WHEREAS for the time being and under the circumstances hereinabove set forth it is essential in order that such operations be assured and safeguarded that the plant be operated by the United States:

Now, THEREFORE, I, FRANKLIN D. ROOSEVELT, pursuant to the powers vested in me by the Constitution and laws of the United States, as President of the United States of America and Commander in Chief of the Army and Navy of the United States, hereby authorize and direct that the Secretary of War immediately take possession of and operate the said plant of North American Aviation, Inc., through such person or persons as he may designate, to produce the aircraft and other articles and material called for by its contracts with the United States or otherwise, and to do all things necessary or incidental thereto. Such necessary or appropriate adjustments shall be made with respect to existing and future contracts and with respect to compensation to the company, as further orders hereafter issued by the Secretary of War shall provide. The Secretary of War shall employ or authorize the employment of such employees, including a competent civilian advisor on industrial relations, as are necessary to carry out the provisions of this order. And I hereby direct the Secretary of War to take such measures as may be necessary to protect workers returning to the plant.

Possession and operation hereunder shall be terminated by the President as soon as he determines that the plant will be privately operated in a manner consistent with the needs of the national defense.

FRANKLIN D. ROOSEVELT.

The following day, Lt. Col. Charles E. Branshaw, United States Army Air Corps, who was put in charge of the plant, wired all employees as follows:

"I invite and request that all employees of the company return to their jobs at once. I guarantee to them absolute safety and protection while they are on the job, while they are proceeding to and from work and while they are in their homes. Report for your regular shift."

The same day Colonel Branshaw issued the following press release:

"Lt. Col. Charles E. Branshaw said this morning that the policy with regard to labor relations was stated by President Roosevelt in the following words: 'The fundamental rights (of American workers) as free citizens will be protected by the Government and negotiations will be conducted through the process of collective bargaining to reach a settlement fair and reasonable to the workers and to the company. The company already has stated that any such settlement will be retroactive to May 1.'

"Colonel Branshaw said further that workers at the North American Aviation plant can be assured that the action taken yesterday in opening the plant under Government control in no way impairs their right to bargain collectively. The action of the Government has a twofold purpose: To prevent interference with the program of national defense and to safeguard the fundamental rights of labor. Nothing has been done or will be done to interfere with the right of labor to bargain collectively or otherwise take lawful action. These rights cannot be further interfered with by irresponsible individuals. Labor will be fully protected in continuing lawful negotiations through accredited representatives."

That afternoon, after a majority of the men had returned to their jobs, the local leaders of the union, who had been suspended by Colonel Branshaw, called a mass meeting, which voted to return to work. They termed this "a strategic retreat." By the next day employment and production were back to normal.

Mr. Frankensteen returned to Washington with a new set of negotiators June 17 as the Board reopened hearings on the case with a different public and employer member on the panel. After 11 days of negotiations, an agreement was reached on all the issues except union security. The agreement called mainly for a 10 cents an hour wage increase and a graduated scale for trainees, starting at 60 cents and increasing 5 cents automatically every 4 weeks until 75 cents is reached. It called for immediate classification of all jobs at the plant, the classification not to increase wages more than an average of 2 cents an hour per employee. No one's wage was to be reduced by the classification.

On the union security question the Board made the following—

Recommendation

June 28

Since May 27, 1941, the dispute between North American Aviation, Inc., and Local No. 683, United Automobile Workers of America, C. I. O., has been before the National Defense Mediation Board on a certification from the Secretary of

Labor. During this time the parties by collective bargaining have reached an agreement on all clauses of a proposed contract, to become effective as of May 1, 1941, except as to union security.

After full consideration the Board recommends the acceptance by the parties of the following provision as to union security:

"The company agrees that any present employee who on May 1, 1941, was a member of the union or who has become a member of the union since May 1, 1941, shall as a condition of continued employment maintain membership in good standing; and any employee who hereafter, during the life of this agreement, becomes a member or is reinstated as a member of the union shall as a condition of continued employment maintain membership in good standing."

On July 1 the company accepted the Board's recommendation, and the same day the membership of the union also voted acceptance.

(For text of Executive order restoring plant to management, see pt. V.)

CASE No. 37

BETHLEHEM STEEL CO., SHIPBUILDING DIVISION, San Francisco, Calif. — BAY CITIES METAL TRADES COUNCIL, A. F. L.

Certified June 2. Strike May 12–June 3. Hearing June 12. 5,000 workers involved. Closed June 23

Panel: Stocking, Meany, Swope.

Under the leadership of O. P. M., a stabilization agreement was ratified by all the shipyards on the west coast except three, which were dealing with C. I. O. unions and Bethlehem Steel. This agreement covered basic wage rates, overtime, etc. Bethlehem Steel had been invited to participate, but had declined. On May 2 Local 68 of the machinists union notified the company that its members would not work at the zone rates. On May 10 they struck and on May 12 set up pickets. The other craft members refused to cross the picket line. The Metal Trades Council, having been designated by N. L. R. B. on May 14 as bargaining agent for Bethlehem employees, began negotiations with the company on the master agreement on May 20. Agreement was reached on all points except a closed shop, to which all other signatory shipbuilding companies had agreed. On June 3, when the council voted to resume work pursuant to the Board's request, the machinists union withdrew from the council and continued their strike against the provisions of the Zone Standards Agreement. When requested by the President of the United States to return to work they refused by a vote of 385 to 370. In their telegram to the President they stated that to comply would be "a sacrifice of every principle and ideal long cherished by Lodge No. 68 and leave our members completely at the mercy of the Bethlehem Shipbuilding Co. and any discrimination they might choose to invoke."

The certification was restricted to the closed-shop issue, which made mediation difficult. The union offered to accept as a substitute a preferential hiring clause, but the company was unwilling to agree to anything which would set a precedent for its dealings with its employees elsewhere, particularly in its steel plants. The matter was considered in executive session by the full Board, which recommended on June 18 that the company accept the closed-shop clause. The machinists still refused to return to work despite the plea of the president of their international. The company accepted the recommendations June 23. Shortly thereafter the strike was called off. The text of the recommendations follows:

Recommendations

June 18

On June 2, 1941, the Secretary of Labor certified to this Board that the dispute between the Bethlehem Steel Co., Shipbuilding Division, Union Iron Works, San Francisco, Calif., and the Bay Cities Metal Trades Council, threatened to burden or obstruct the production or transportation of equipment or materials essential to national defense and had not been adjusted by the Commissioners of Conciliation of the Department of Labor. The Board thereupon invited both parties to appear at a hearing before a division of its members on June 12, 1941, in Washington, D. C. The hearing was continued through June 13, 1941. It having become clear that the parties could not agree on the issues in dispute, it has become incumbent upon this Board, pursuant to the terms of the Executive order of March 19, 1941, to make its findings of fact and its recommendations in the matter.

The dispute involved certain provisions of a so-called master agreement which had been submitted to the Bethlehem Steel Co. by the Bay Cities Metal Trades Council on behalf of the company's employees. Under the leadership of representatives of the Office of Production Management a shipbuilding stabilization conference had been conducted on the Pacific coast at various dates between February 3 and April 2, 1941. Out of this conference had come an agreement, approved by the Office of Production Management, the Maritime Commission, and representatives of the Navy Department, providing for uniform wages and working conditions in shipbuilding operations on the Pacific coast. Specifically it included provisions for a basic wage rate for skilled mechanics of $1.12 per hour, for time and one-half for hours worked in excess of 8 in 1 day and 40 in 1 week and for all work done on Saturdays, and for double time for work performed on Sundays and holidays. It likewise provided for a 10-percent premium over the hourly wage rate for employees working on the second shift and a 15-percent premium for employees working on the third shift. Equally important, it contained a prohibition against strikes on the part of the employees and lock-outs on the part of employers. All disputes arising out of the agreement which could not be settled by conciliation were to be submitted to arbitration. These provisions were approved not only by the representatives of the shipbuilders and of labor, who had participated in the conference, but by representatives of the Office of Production Management, the Maritime Commission, and the Navy Department under whose auspices the conference had been conducted.

Subsequent to the negotiation of the above provisions, they were incorporated into the so-called master agreement in negotiations conducted between the shipbuilding employers and representatives of the unions whose members were employed in shipbuilding operations. Included in the master agreement, in addition to the zone standards, were provisions covering a closed shop, vacations with pay, the details of machinery for the arbitration of disputes growing out of the agreement, and other matters which had not been negotiated at the stabilization conference.

The Bethlehem Steel Co. was invited to participate in the stabilization conference but did not choose to do so, and, therefore, was not a party to the negotiations in which the master agreement was worked out.

Subsequent to the negotiation of the master agreement by the shipbuilders and representatives of labor, it was submitted to the rank and file of the several craft unions whose representatives had participated in the shipbuilding conferences. Although a few locals of the unions voted not to approve the master agreement, the great majority accepted it, and contracts incorporating the master agreement were thereafter entered into between the several shipbuilding employers and their respective employees. As of the week ending June 15, 1941, all shipbuilding employers on the Pacific coast, with the exception of the Bethlehem Steel Co., had accepted the master agreement, and some 24,000 out of a total of 30,000 employees of the shipbuilding industry on the west coast were working under the agreement. The balance of 6,000 employees are those of the Bethlehem Steel Co.

The failure of the Bethlehem Steel Co. to accept the master agreement is the basis of the dispute before the Board.

The master agreement is the product of industry-wide collective bargaining on a regional basis. It has been approved as an instrument for stabilizing working conditions and contributing to the uninterrupted production of ships by all the shipbuilding employers on the Pacific coast employing 24,000 workmen, except the Bethlehem Steel Co., which employs 6,000, and by representatives of the Bay Cities Metal Trades Council, certified by the National Labor Relations Board as the bargaining agency for the employees of the Bethlehem Steel Co.

Under these special circumstances, the Board recommends that the master agreement be accepted and signed by the Bethlehem Steel Co.

CASE No. 38

ALUMINUM CO. OF AMERICA, Cleveland, Ohio — NATIONAL ASSOCIATION OF DIE CASTING WORKERS OF AMERICA, LOCAL 55, C. I. O.

Certified June 4. Strike June 9–11. Hearing June 9–10. 4,500 workers involved. Closed June 11

Panel: Stacy, Ching, Rieve. Assistant, Kirstein.

In April the N. L. R. B. certified the union as the bargaining agent for the Cleveland works. Negotiations became deadlocked over wages, grievance ma-

chinery, vacations, and night-shift bonus. A strike was set for June 4, but was postponed at the request of the Board. During the hearing the works were struck. The following day agreement on all points was reached and was embodied in a memorandum signed by the parties and initialed by the members of the panel. The wage demands were for a 75-cent minimum rate per hour and a 4½-cent per hour raise. There had been a raise of 8 cents in April. The settlement added 1 cent to the wage of all hourly workers and an additional 3 cents and 5 cents to that of certain night workers.

CASE No. 39

MARLIN ROCKWELL CORPORATION, Plainville, Conn. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 197, C. I. O.

Certified May 18, 1941. Strikes May 27–June 9; August 21–25; September 19–30. Hearings June 16, 17, 18; September 22, 23. 1,225 workers involved. Closed September 30

Panel: Graham, Ching, Lyons. Assistant, Gill.

Negotiations for a first collective bargaining contract broke down resulting in a strike on May 27, 1941. At the request of the Board, work was resumed pending hearing. The Board proposed these terms of settlement:

Interim Recommendation

June 18

The National Defense Mediation Board, having held sessions for 2 days in connection with the dispute between the Marlin-Rockwell Corporation, Standard Division Unit, Plainville, Conn., and the United Automobile Workers of America, C. I. O., Local No. 197, and having been unable to effect a settlement through mediation, makes the following recommendations:

1. That all matters in dispute involving money contained in the union's proposal, as submitted to the Board, be referred to a board of arbitration, the findings of such board to be binding on both parties. The parties to this dispute are to have 5 days to select the arbitrators or arbitrator. If they are unable to agree, the National Defense Mediation Board will select the arbitrators or arbitrator.

2. That the other matters in dispute are to be negotiated as promptly as possible between the parties. In the event of disagreement, a report is to be made to the National Defense Mediation Board.

This recommendation was accepted by the union but partially rejected by the employer. The Board then appointed Prof. Harry Shulman, of Yale Law School, as its special representative to investigate and report concerning wage rates. Upon receiving this report the Board made its second recommendation.

Recommendation

July 24

The Marlin-Rockwell Corporation is engaged in manufacturing steel balls and bearings for aircraft, automotive, and machine use. It has two plants, one at Plainville, Conn., known as the Standard Division, and the other, somewhat smaller, at Jamestown, N. Y. The Plainville plant has a forge shop and a ball plant which make bearings for both divisions of the corporation. The present controversy involves only the Plainville plant, which employs now about 1,100 persons of whom about 155 are women. The plant operates two shifts—the night shift on which only male help is employed, working 60 hours a week, 12 hours a night for 5 nights, and the day shift working 58 hours a week.

The union involved in the controversy is Local 197, United Automobile Workers of America, C. I. O.

A United Automobile Workers union was first organized in Plainville in 1937. After an unsuccessful strike for recognition and other demands, the union disintegrated. The present union began organization in November 1940. In the latter part of April 1941, a consent election was conducted by the National Labor Relations Board at Plainville and the union was chosen as representative of the

employees by a vote of about 840 to 46. Early in May, the parties began negotiations for a collective agreement. The union presented a proposed contract, the employer subsequently made a counterproposal of a contract, and the negotiations stalled. Mediators from the Connecticut Board of Mediation and Arbitration, the United States Conciliation Service, and the Office of Production Management were called in and endeavored to procure a settlement but without success. Several representatives of the C. I. O. also tried, but unsuccessfully. On May 27, the employees at Plainville went on strike. At the request of the National Defense Mediation Board, the employees returned to work on June 9. On June 16, 17, and 18, a panel of the Board in Washington heard the parties, and on June 18 made its recommendation as quoted above.

The union accepted the recommendations of the panel at once. The employer, after taking a few days for consideration, accepted the recommendations in part and qualifiedly, which qualification was unacceptable to the union and to the Board.

Thereupon, the Board appointed Harry Shulman, Sterling Professor of Law, Yale University, its special representative, "to investigate the matters in dispute, to report his findings of fact, and make recommendations to the Board with regard to these issues."

Professor Shulman has made a thorough investigation and has filed with the Board his findings of fact and recommendations. On the basis of the evidence disclosed by the investigation, Professor Shulman made the following recommendations:

1. The company should grant an additional increase of 5 cents an hour to its female employees, retroactive to June 9, 1941.

2. The company should grant a vacation bonus to its employees. If the parties cannot agree upon the details for the bonus, Professor Shulman recommends: (*a*) That the vacation bonus be paid to all employees who, on July 1, 1941, were in the service of the company for 6 months or more; (*b*) that the bonus of each employee having 1 year or more of service on that day be 40 times his average hourly earnings, exclusive of overtime extras in the month of June 1941; and (*c*) that the bonus of each employee having 6 months or more, but less than 1 year of service on that date, be 20 times his average hourly earnings, exclusive of overtime extras, in the month of June 1941.

3. No special bonus should be paid for work on Saturdays, that is work on Saturdays shall be compensated in the same way as work on other week days. But the union shall be permitted to take up through the grievance machinery any cases, if such should occur, in which employees are laid off on week days and asked to work on Saturday in order to avoid overtime payments.

4. Work on Sundays and holidays should be compensated at one and one-half the regular rates.

5. Good Friday should be recognized as a holiday for the purpose of holiday compensation as recommended in paragraph 4 above. Armistice Day should not now be recognized as such a holiday.

6. The company should guarantee at least 2 hours' work, or 2 hours' compensation, at regular rates, to employees who are called to work, or who report for work in regular course, without being properly notified that there will be no work for them on the day in question.

7. The company should pay a minimum of 5 cents an hour bonus to employees on the night shift. Employees who now receive more than this minimum under an existing different personal bonus should continue to receive it without reduction.

Professor Shulman also recommends that union representation be permitted in the first stage of the grievance procedure, that is, the attempt at adjustment with the proper foreman. This can be accomplished by providing that: (*a*) An individual grievance may be taken to the proper foreman by the employee involved, or if the employee so wishes, by a shop steward or other union representative performing a similar function, or (*b*) that an individual grievance should first be taken to the foreman by the employee himself and if no adjustment results, then it may be taken up with the foreman by the shop steward, or (*c*) that the grievance be taken up with the foreman by the involved employee himself, or if he so wishes, along with the shop steward.

After considering the record in the case and all the evidence, the Board concurs in the recommendations numbered 1 to 7, inclusive, made by Professor Shulman and adopts them as its recommendations. The Board also suggests to the parties that they consider his recommendation with respect to the

different grievance machinery as a guide for their negotiations.

As to the other matters in dispute between the parties, the Board recommends that they be the subject of direct negotiations between the parties and that such negotiations should begin as promptly as possible.

This proposal also was accepted by the union and partially rejected by the employer, and the employees again struck. The employer thereupon signed an agreement with the union, embodying some of the recommendations, and promised to negotiate concerning the others. Work was resumed. During the negotiations the union made further demands. The Board thereupon called another hearing. The employees again went on strike and remained out until a complete collective contract was made at Washington on September 24 and ratified by the union membership on September 29.

CASE No. 40

BOHN ALUMINUM & BRASS CORPORATION, Detroit, Mich. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 208, C. I. O.

Certified June 9. Strike June 10–11. Hearing June 16–20. 4,600 workers involved. Closed June 24

Panel: Wyzanski, Hamilton, Brophy. Assistant, Kirstein.

An agreement existed between the company and the union which dictated wages until April 1942. The union demanded a wage increase of 10 cents per hour and struck for it on June 10. The strike was terminated on June 11 at the request of the Board. Developments at the hearing are set forth in the Board's subjoined

Findings and Recommendations

June 20

This case was certified to the Board by the Secretary of Labor, June 9, 1941.

Hearings were held June 16, 17, 18, 19, and 20 by a panel of the Board, consisting of Charles E. Wyzanski, Jr., representing the public; Rolland J. Hamilton, representing employers; and John Brophy, representing employees.

The parties had executed on December 11, 1940, a collective bargaining contract which does not expire until April 1, 1942. That contract incorporates by reference a wage schedule. Both parties assumed that under ordinary circumstances the contract bound the company to pay not less than those wage rates and bound the union to work at those wage rates.

The union, however, asked that the company should, as of June 9, 1941, raise wages 10 cents an hour for each hourly worker covered by the contract. This request was based principally upon the ground that the union said the cost of living in Detroit had risen sharply since December 1940, and upon the ground that other companies in allied industries had recently given substantial wage increases, sometimes in cases where they had unexpired labor contracts setting lower rates.

The company stated that it had a binding contract with this union, that the practice of other employees in other industries was not relevant, and that the cost of living had not risen so sharply as the union contended. Supporting this last statement, the Cost of Living Division of the Bureau of Labor Statistics of the United States Department of Labor informed the panel that in Detroit from December 1940 to May 1941 the cost of living rose according to their indexes 2.5 percent. This figure was higher than shown by other authoritative indexes—the rise in Detroit from December 1940 to April 1941 was 1.9 percent according to the Michigan State Department of Labor and was 1.5 percent according to the National Industrial Conference Board. However, these figures may not take account of certain changes in purchasing habits and rentals, upon which the union relied particularly.

However, the company informed the panel that it was not seeking a purely legalistic vindication of its position. The company stated that it was concerned with the best possible standards of production and with that end in view the company was prepared to grant a wage increase on condition that the union would not oppose the introduction of an incentive system.

The parties then discussed the question of the incentive system. Everyone agreed that there were injustices in the incentive system as it had operated at this company at some times in the past. On the other hand, everyone agreed that the incentive system as it now operated in plant 2 and part of plant 3 worked fairly and would be approved by employees in those plants if the matter were voted upon.

At this point, the panel strongly recommended that, in view of the defense emergency, the incentive system should be tried out, provided that there were fair guarantees against abuses. The reason the panel took this view was that the plants of this company are engaged in defense work of the greatest importance. In this work there is a shortage of plants and a shortage of manpower. These plants must not be allowed to become a critical bottleneck. The management and each worker owes it to the country to put forth their best efforts. In return for this best effort the worker ought to be fairly paid. The company ought not to derive any undue advantage from this program. To make sure of these principles, each worker's participation in the incentive system should be voluntary, and each worker should receive at least the present rate of pay for the present standards of work (unless these standards are modified by the union and the company in accordance with their contract).

After several days' discussion, the parties finally agreed that the company shall be free to introduce in one or more plants an incentive system for production workers on the following understanding:

1. If the company introduces an incentive system in any plant, the company will guarantee the present rate of pay for the present standards of work, subject to the provisions of the present contract.
2. The company shall select the time when the system will be introduced in each plant.
3. The company shall be free by written and oral statements to explain the system in each plant before it is introduced. In such explanations the company shall not coerce any employees.
4. The international officers of the union and the negotiating committeemen shall not discourage the employees from accepting or cooperating in an incentive system.
5. The company in introducing an incentive system shall consult with the stewards and the plant bargaining committees and shall discuss with them the proposed system of compensation.
6. Every employee subject to the incentive system shall get at least as much per hour as he did before the introduction of the system. If the employees cooperate, it will be expected that the average weekly earnings of those persons affected by the system will be materially higher than they were before the system was introduced.
7. In each plant where the incentive system is introduced there shall be a trial period of 60 working days (unless the company and the union mutually agree in a particular case on a different period of time). After that trial period, the production employees in that plant affected by the system shall have a right to vote by secret ballot on the continuance of the system as applied to them. The vote shall be conducted by a National or State agency agreed upon by the parties. If the parties cannot agree on the agency, the National Defense Mediation Board shall name the agency. The company and the union agree to abide by the results of that vote until April 1, 1942.
8. During the trial period the individual employee can work under the incentive system or not, as he chooses.

Following agreement on those eight points, the parties discussed a general wage increase (in addition to such increased earnings as may be involved on introduction of the incentive system).

The parties negotiated by collective bargaining a wage increase of 8 cents an hour for each hourly worker in the plants covered by the Secretary of Labor's certification in this case. This wage increase, by agreement of the parties, will be retroactive to June 9, 1941. Moreover, the union agreed with the company and the Board that it would not seek to reopen the wage question during the period of the present contract, which expires April 1, 1942. This corresponds with the recommendations of the Board in case No. 21, *General Motors*. There it was agreed that the wage rates should, regardless of changes in living costs, be "for the definite term of 1 year from April 28, 1941."

On the basis of the foregoing, the panel recommends that the parties supplement their existing contract by including the wage increase just referred to, the union's covenant not to seek further wage increases before April 1, 1942, and the incentive system subject to the 8 conditions set forth, and a no-strike, no-lock-out clause.

The panel understands that the representatives of the parties who appeared before the Board will use their best efforts to have these recommendations ratified.

The panel further understands that the company will post or distribute to its employees this statement of the National Defense Mediation Board without change or explanation.

This proposal was ratified by the respective parties. After a 60-day trial in two plants, the employees in these plants, pursuant to condition 7, voted on permanent adoption of the plan. The balloting was conducted jointly by the company and the union on October 8 and resulted in rejection. The company claimed that the union had violated condition 4 during the trial period, but there was no further action requested of, or taken by, the Board.

CASE No. 41

CURTISS-WRIGHT CORPORATION (CURTISS PROPELLER DIVISION), Neville Island, Pa. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 2170, C. I. O.

Certified June 12. No strike. Hearing June 18–20. 960 workers involved. Closed June 22

Panel: Stacy, Meyer, Kennedy.

Negotiations for a renewal contract broke down. On certification, the Board requested the postponement of a strike set for June 12. A contract was negotiated before the Board and ratified on June 22. The union asked for and received a 10 cents per hour increase. It asked for a 75 cents per hour minimum and received 72½ cents, except for general labor, which would get 70 cents. A closed-shop demand was dropped. The company informally agreed to arrange a meeting between the union and some 24 employees who had thus far refused to join the union. The union desired that the contract be open to further negotiation on 10 days' notice. The company wanted the contract firm for 1 year. On the Board's suggestion the union acceded.

CASE No. 42

DUQUESNE LIGHT CO. (COLFAX POWER STATION), Pittsburgh, Pa. — UTILITY WORKERS ORGANIZING COMMITTEE, LOCAL 117, C. I. O., and INDEPENDENT ASSOCIATION OF EMPLOYEES OF DUQUESNE LIGHT CO. AND ASSOCIATED COMPANIES

Certified June 18. No strike. Hearing June 25, 27. 312 workers involved. Closed June 27

Panel: Wyzanski, Hamilton, and Lyons. Assistant, Gill.

The facts in the controversy are fully set forth in the Board's opinion which is noteworthy because of its citation of precedents.

The Board's proposal was rejected by the independent union, which refused to waive its right of litigating a decision of the State labor board. Nevertheless, the State board held hearings, ordered an election, and certified the C. I. O., which won the election, as the exclusive bargaining agent. None of the parties contested this certification in the courts. The text of the recommendations follows:

Findings and Recommendations

June 27

1. The Secretary of Labor certified the case to the Board June 18, 1941, and amended the certification June 26, 1941.

2. The parties are Duquesne Light Co., Utility Workers Organizing Committee, Local 117 (C. I. O.), and Independent Association of Employees of Duquesne Light Co. and Associated Companies.

3. The panel designated to hear this case was composed of Charles E. Wyzanski, Jr., representing the public; Rolland J. Hamilton, representing employers; and Hugh Lyons, representing employees. Since the independent union was not affiliated with any labor organization from which employee members of panels have been drawn, the Board at the outset asked the independent union whether it wished to suggest some additional employee member of the panel; but the independent representatives expressed themselves as satisfied with the panel.

4. Hearings were held in Washington June 25 and 27.

5. The principal controversy relates to questions of representation of employees.

6. The company is a subsidiary of the Philadelphia company. It operates a light, heat, and power public utility system which need not be described in detail. The system includes, among other enterprises, a power plant at Colfax, two power plants about 15 miles distant located on Brunot Island (these plants being called the Brunot Island plant and the James H. Reed plant), and clerical, accounting, and general offices.

7. The number of hourly rated employees in this system is about 3,000. Of these, about 250 are employed at the Colfax plant, and a somewhat smaller number at the 2 plants on Brunot Island.

8. During 1937, organizing campaigns in the Colfax plant were conducted by an unaffiliated labor organization and by the United Electrical and Radio Workers of America (C. I. O.). Neither of these organizations is a party to the proceedings before this Board. The company, in 1937, dealt with and entered into contracts with each of these organizations on behalf of its members.

9. Subsequently, organizational activities were carried on by the independent association and the U. W. O. C., both of which are parties before this Board.

10. In 1937 two proceedings involving this company were begun before the Pennsylvania Labor Relations Board. Without attempting to state those proceedings in detail, it wil be sufficient here to say that the Pennsylvania board considered and dismissed charges that the independent association was dominated by the company in violation of section 6 (b) of the Pennsylvania Labor Relations Act. The Pennsylvania board determined that the appropriate units for collective bargaining were: (1) All hourly rated or outside employees in the company's entire system (including the Colfax station); and (2) all monthly rated or inside employees.

11. After an election, the Pennsylvania board certified, on May 15, 1940, the independent association as the representative of the company's employees in those units.

12. After this certification, the association and the company negotiated a collective bargaining contract which was executed August 14, 1940. Section 9 of that contract provided in its first paragraph:

"This agreement shall remain in effect for 1 year from the date hereof and thereafter from year to year until canceled or otherwise terminated, as herein provided. Either party may cancel the agreement at the expiration of 1 year from the date hereof, or at the end of any subsequent yearly period, by giving to the other written notice thereof at least 60 days in advance of such anniversary date."

13. The U. W. O. C. continued its organizational activities among the hourly rated employees in the Colfax plant, and claims that those employees now constitute an appropriate unit and that the U. W. O. C. represents a majority of those employees. On June 2, 1941, the U. W. O. C. requested the company to recognize it as the exclusive bargaining agency for the hourly rated employees at the Colfax station. On the same date, the company replied that in view of its contract with the independent association it could not grant the U. W. O. C.'s request. The U. W. O. C. then threatened to strike to enforce its demand.

14. The U. W. O. C. thereupon requested the Conciliation Service of the United States Department of Labor to assign to the dispute a Commissioner of Conciliation. Commissioner Michael J. Crosetto held conferences with the parties in Pittsburgh. Subsequently the Director of the Conciliation Service, Hon. John R. Steelman, and some of his staff held further conferences with the same parties in Washington. The Conciliation Service then made proposals dated June 15, 1941.

15. These proposals may be summarized as follows: (1) The parties shall cooperate in securing a prompt and final determination by the Pennsylvania State Labor Relations Board of whether the hourly rated employees at the Colfax plant are an appropriate unit; (2) if the Pennsylvania board determines it is an appropriate unit and the U. W. O. C. is the representative, then after

August 15, 1941, the unit shall not be covered by the August 14, 1940, contract between the company and the independent; (3) pending the Pennsylvania board's determination, employees may present grievances through any representative; and (4) as an aid to the Pennsylvania board's ruling there should be an immediate method of determining the desires of the employees in the Colfax station.

16. The representatives of all the parties signed (subject to ratification in the case of the unions) these proposals. They also agreed to recommend those proposals to their principals. The U. W. O. C. then ratified. However, the independent did not. The three men who negotiated on their behalf took the proposal back to a so-called general committee of 42, one of the members of which was one of the Washington negotiators. That committee unanimously rejected the proposal. Thereafter, the matter was drawn to the attention of some, but not all, of the divisions into which the membership of the association falls. It has not yet been put to a vote of those members who are employed at the Colfax plant.

17. In the hearings before the panel of the National Defense Mediation Board, the parties took these positions:

(*a*) The company acquiesced in the Conciliation Service's proposals. It, therefore, was willing to have the Pennsylvania Board determine what was the appropriate unit; to have an election among the Colfax plant employees prior to the Pennsylvania board's ruling on what was the appropriate unit; and to abandon any right of judicial review. The company saw nothing in its contract with the independent association which prevented the Pennsylvania board from determining at once, effective August 15, 1941, the unit and certification issues.

(*b*) The U. W. O. C. also accepted the Conciliation Service's proposals.

(*c*) Those who came as negotiators for the independent asserted that the Pennsylvania board was the proper tribunal for this case; that no one had asked that Board to act; that the independent would not in advance agree to an election or to waive any right of judicial review; and that the dispute did not affect national defense.

18. The panel, in the course of drawing out the views of the negotiators, asked what authority they possessed. The company executives stated that they had authority to make an agreement. The U. W. O. C. negotiators said they had authority to negotiate subject to ratification by their membership; and that as individuals they would pledge themselves to vote and support in Pittsburgh anything to which they agreed in Washington. The independent negotiators made, but subsequently withdrew, such a pledge. They stated that although they could, as messengers, carry proposals back to the general committee of 42, it was only that general committee which under their organizational set-up could recommend or disapprove of ratification. This statement was supported by their recital of what had happened in the case of the proposals of the Conciliation Service dated June 15, 1941.

19. The panel, in accordance with its procedure in the case of Case No. 23, *Utica & Mohawk Cotton Mills, Inc.*, and in accordance with the Board's policy of requesting parties to send only persons who have authority to negotiate and who will support at home whatever they agree to before the Board, then by telegram requested the members of the independent's general committee of 42 to attend the hearings of the Board. The committee of 42, through the vice president of the independent union, replied that it would not attend the hearing because "we will not agree to the separation of our bargaining unit," and stating that the Pennsylvania board was available to anyone who wanted to raise the question of representation. This answer, in effect, was a refusal on the part of the committee of 42 to follow the procedure for settling disputes affecting national defense as outlined in the President's Executive order creating this Board.

20. The panel concluded that it could not allow its duty under the Executive order to be frustrated either by the failure of parties to appear or by the parties' preference for another tribunal, or by the unwillingness of negotiators to give their personal word of honor that they would vote for and support at home anything to which they had agreed in Washington. Accordingly, the panel proceeded with the case and now makes (pursuant to section 2 (d) of the Executive order under which it functions) "recommendations * * * in * * * the interests of industrial peace."

21. Before coming to the recommendations, some procedural determinations (not strictly findings) should be stated. It was contended by the representatives of the independent (*a*) that there was not, as required by the Executive order, a

controversy or dispute "which threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense," and (*b*) that if there was such a controversy or dispute, the independent was not causing it and therefore was no party to the case. The panel ruled that under the Executive order the Secretary of Labor was given the duty of determining whether a controversy or dispute obstructed national defense. The Secretary's certificate that a controversy obstructing national defense is involved is conclusive, at least on the parties. The Board will not, at the request of any party, take evidence on a question determined in accordance with the President's direction by a member of his cabinet. Moreover, the Secretary's determination of who are the parties is likewise conclusive upon them. And in this case the amended certificate clearly names the independent association. Finally, the fact that there is not a strike, or that the independent has not threatened a strike is clearly irrelevant. Repeated interpretations of the phrase "labor dispute" as used in labor legislation (such as the Norris-LaGuardia Act and the Wagner Act) leave no doubt that there may be a labor dispute although there is no strike or even threatened strike.

22. All the parties have said, and the panel agrees, that the proper agency to determine the appropriate unit for collective bargaining in this company is the Pennsylvania State Labor Relations Board.

23. All the parties have said that they were willing to have the Pennsylvania board act promptly. Moreover, the Pennsylvania board has informed the National Defense Mediation Board that it is willing to entertain a case and dispose of it promptly upon our Board's request. This cooperative action is in general conformity with section 2 (e) of the Executive order which authorizes this Board to request certain agencies "to expedite as much as possible the determination of the appropriate unit or appropriate representative of workers."

24. While the National Defense Mediation Board does not purport to rule on any question of State law, it is informed by sources in which it has confidence (*a*) that under Pennsylvania law the certificate issued to the independent association will expire August 14, 1941 (and that the automatic renewal clause does not alter this conclusion); (*b*) that the Pennsylvania State Labor Relations Board is free to entertain new representation or certification proceedings at once and hold an election prior to August 14, 1941, although the new certificate, if any, would not go into effect until that date; and (*c*) that the Pennsylvania State Labor Relations Board in determining what is an appropriate unit is free, as a preliminary step, to put to the employees in the Colfax plant the question whether they want to be a separate unit.

25. The Board believes that it would be in the national interest for all the parties to agree that they would accept as final, for the next year, the anticipated determination of the Pennsylvania board as to what the appropriate unit or units are among this company's employees and that they would not exercise their right of judicial review. In recommending this the panel has in mind two points. First, if the Pennsylvania board determines the Colfax plant is a unit or that the units are the same as last year, there is no substantial probability that any court would overturn this administrative conclusion on this particular type of issue. (In this connection see the opinion of the Supreme Court of the United States in *Pittsburgh Plate Glass Co.* and *Crystal City Glass Workers' Union* v. *National Labor Relations Board* (April 28, 1941) and the unanimous current of cases in the Circuit Courts of Appeal.) Second, the National Defense Mediation Board has always attempted to persuade parties to agree upon some mechanism for swift and final determination of questions which might otherwise impede national defense. (See, for example, the first point in the settlement of case No. 22, *Minneapolis-Honeywell Regulator Co.*)

26. In the light of the foregoing, we summarize our recommendations as follows:

(*a*) The National Defense Mediation Board will request the Pennsylvania State Labor Relations Board to entertain and to expedite as much as possible a proceeding for the determination of whether or not the hourly rated employees (excluding supervisory and clerical employees) at the Colfax plant of this company constitute an appropriate collective bargaining unit.

(*b*) The parties shall execute an agreement that they will accept as final for the ensuing year and without judicial review the determination of the Pennsylvania State Labor Relations Board.

(*c*) The parties shall cooperate in any election which may be held by the Pennsylvania State Labor Relations Board to determine the wishes of employees as to appropriate units or representatives.

CASE No. 43

SEALED POWER CORPORATION, Muskegon, Mich. — INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 637, A. F. L.

Certified June 21. Strike July 8–21. Hearings June 30, July 10. 1,163 workers involved. Closed July 19

Panel: Stacy, Mead, Brown. Assistant, Harbison.

Negotiations for a renewal contract had proceeded for 3 months when on May 5 the union took a vote to strike on June 9. The strike was postponed for 2 weeks and again on the request of the Board. The issues were closed shop and wages. The union presented no particular case for closed shop, but when the employer member of the panel stated at the hearing that he could see no objection to a union maintenance clause and the labor member agreed, the panel felt itself thereby committed to a recommendation of union maintenance. The original wage-increase demand had totaled about $210,000; before the Board it was scaled down to $150.000. The company offered $100,000. The earnings in 1940 had been about $293,000. The Board's recommendation totaled about $125,000.

The company announced its willingness to accept the recommendations. The union officers put it to the membership without urging its acceptance. Acceptance was refused and a strike authorized for July 8, the following morning. The plant was shut down July 8. The panel reconvened July 10–11 and sent telegrams urging resumption. On July 11 the panel assistant went to Muskegon and found new evidence sufficient to warrant rehearing. He then conducted mediation on the spot. The company made a further offer bringing the wage to about $145,000, which the union accepted on July 19.

CASE No. 44

WESTERN CARTRIDGE CO. (EAST ALTON MANUFACTURING CO.), Alton, Ill. — CHEMICAL WORKERS UNION, LOCAL 22574, A. F. L.

Certified June 24. No strike. Hearings June 28, July 11, 12, 14, 15. 500 workers involved. Closed September 29

Panel: Wyzanski, Lapham, Brown. Assistant, Gill.

In this case a threatened strike was called off at the Board's request. The facts in the case are fully set forth in the three following recommendations, dated June 28, July 24, and September 15. All of these were eventually accepted by the parties, the union membership ratifying the agreement, pursuant to the Board's September 15 recommendations, on September 23. The final contract between the parties was signed on September 29.

Findings and Recommendations

June 28

1. The Secretary of Labor certified this case to the Board June 24, 1941.

2. A panel of the Board composed of Charles E. Wyzanski, Jr., representing the public, Roger D. Lapham, representing employers, and Edward J. Brown, representing employees, heard this case June 28, 1941.

3. The principal issue raised was whether the Western Cartridge Co. would now recognize Chemical Workers Union, Local 22574 (A. F. L.), as the exclusive representative of the hourly paid production and maintenance employees of the company's smokeless-powder division at East Alton, Ill.

4. The company operates a plant at East Alton where it manufactures small-arms ammunition, explosives, brass, brass specialties, traps, and targets. It employs a total of about 6,500 employees in the plant as a whole and about 550 in the smokeless-powder division.

5. The company has had individual contracts with employees at various times since 1914, and continuously since 1933, and has had so-called basic and working

agreement since 1937 with the Western Cartridge Employees Independent Union covering production, maintenance, and other employees throughout the company.

6. In January 1941 the Chemical Workers Union, Local No. 22574, began organizational activities among the employees of the smokeless-powder division of the company. The Chemical Workers claimed a majority in that division of the company, and asked for exclusive bargaining rights for the production and maintenance workers in that division. The company refused to grant such recognition on the ground that the employees of the smokeless-powder division do not constitute a proper unit and on the ground of an outstanding contract with the independent union.

7. March 28, 1941, the Chemical Workers filed with the National Labor Relations Board a petition asking to be certified as the exclusive representative of the production and maintenance employees of the smokeless-powder division of the company. The National Labor Relations Board held hearings. At the company's request the National Labor Relations Board subpoenaed officers of the independent to appear. They did so. In writing they had previously stated that they did not object to the unit claimed by the Chemical Workers and that they waived any bargaining rights they might have for the employees in the smokeless-powder division. The National Labor Relations Board on May 15, 1941, issued a decision ruling that the smokeless-powder division was an appropriate unit and directing an election therein.

8. May 26, 1941, the National Labor Relations Board conducted an election in that unit. In that election 527 were eligible to vote, 459 voted, 377 voted for the Chemical Workers and 82 voted against them. Thereupon the National Labor Relations Board on June 10, 1941, certified that the Chemical Workers are the exclusive representatives of the production and maintenance employees in the company's smokeless-powder division.

9. June 10 the Chemical Workers asked the company to enter collective bargaining negotiations. In reply the company, after repeating that the unit was inappropriate and that other contracts were obstacles, wrote "that the company does not recognize Chemical Workers, Local Union No. 22574, affiliated with the American Federation of Labor, as the representative for the purpose of collective bargaining under the provisions of the National Labor Relations Act of any of its employees within said proposed bargaining unit."

10. Commissioners of Conciliation conferred with the parties in Washington June 23. The company's lawyers drafted or participated in the drafting of a proposal to be submitted to their clients which provided for the company recognizing the Chemical Workers as the exclusive representative in the smokeless-powder division. The union negotiators, duly empowered for that purpose, executed the draft. The company's executive officers refused to execute. They stated that unless the directors and perhaps the stockholders of the company acquiesced they would not abandon the company's right to a review in the court of what was the appropriate unit.

11. In the hearings before the National Defense Mediation Board, it at once became apparent that the principal issue which was dividing the parties was whether the company would now recognize the Chemical Workers as the exclusive representative in the unit found by the National Labor Relations Board to be appropriate, or whether the company would insist on proceeding to seek court review of that determination.

12. That this was the principal issue became undeniable when the panel asked the vice president of the company whether the company would execute a contract with the Chemical Workers which had in it only two clauses, the first providing that wages, hours, and working conditions shall be the same as those now prevailing under the company's contract with the independent union, and the second providing that the Chemical Workers shall be the exclusive bargaining representative of the employees in the unit certified by the National Labor Relations Board as being appropriate. To this inquiry the company answered that it would not agree to the second clause.

13. In trying to persuade the company to change its position the panel presented various considerations. The panel pointed out that the Supreme Court of the United States in *Pittsburgh Plate Glass Co.* and *Crystal City Glass Workers' Union* v. *National Labor Relations Board*, decided April 28, 1941, and the Circuit Court of Appeals in a uniform series of cases had indicated that a ruling of the National Labor Relations Board on what is an appropriate unit is virtually conclusive unless there has been a lack of procedural due process of law. Hence there is no substantial probability that an appeal to the courts on this issue would

accomplish any purpose except delay. The panel also point out that only yesterday this Board had, in a similar case, recommended that a labor organization should not seek a judicial review of a determination by a State labor relations board. (See Case No. 42, *Duquesne Light Co.* See also the first point in the settlement of Case No. 22, *Minneapolis-Honeywell Regulator Co.*)

14. Not having been able to secure any agreement from the parties we are authorized by the Executive order to make recommendations in this case.

15. In making recommendations it should be clearly understood that our purpose is not to pass upon the correctness of any decision of the National Labor Relations Board. It is not our function to determine appropriate units. But it is our duty under the Executive order to aid in the establishment of industrial peace in defense industries. In accordance with that duty we recommend that the company should now bargain in good faith with the Chemical Workers as the exclusive representative of the employees in the unit certified by the National Labor Relations Board as appropriate.

Findings and Recommendations

July 24

PRELIMINARY RECITALS

1. This is the same case which was the subject of hearings, findings, and recommendations on June 28, 1941.

2. At that previous hearing the Board, acting through the same panel as is now sitting in this case (that is, Charles E. Wyzanski, Jr., representing the public; Roger D. Lapham, representing employers; and Edward J. Brown, representing employees) recommended that Western Cartridge Co. should bargain in good faith with Chemical Workers' Union, Local No. 22574 (A. F. L.) as the exclusive representative of the employees in the unit certified by the National Labor Relations Board as appropriate. That unit included "all hourly paid production and maintenance employees of the smokeless-powder division of the company, including hourly paid foremen, technical employees, and maintenance clerks, but excluding superintendents, general foremen, watchmen, and office employees."

3. The Western Cartridge Co., under date of July 2, wrote the Board a letter in which it took exception to these recommendations but stated that "If it is necessary for the company to bargain separately for this unit, then we are prepared to explore the possibilities of reorganizing the operations of the company's plant and business and of taking the necessary steps to create a separate integrated economic unit for the so-called smokeless-powder division."

4. The Board, insisting that its recommendations should be complied with, on July 3 telegraphed the Western Cartridge Co. that it recommended that its representatives should meet in East Alton with the union's representatives July 5; that if no progress was made, the parties should be free to return before the Board in Washington and that production should be continued throughout the negotiations and proceedings before the Board. The Board also relayed to the union the Western Cartridge Co.'s proposal to organize a new corporation to carry on the work of the smokeless-powder division.

5. July 5, the Western Cartridge Co. telegraphed that its representatives would on that day meet the union representatives. The telegram further stated that "Negotiations contemplated on our part shall be for and on behalf of contemplated corporation to be formed representing reorganization of operations of company's plant and business comprising a separate integrated economic unit for the so-called smokeless-powder division."

6. At about the same time, persons associated with the Western Cartridge Co. formed a wholly owned subsidiary, East Alton Manufacturing Co. The principal officers of the two companies are expected to be substantially identical. Western Cartridge has not yet transferred, but plans to transfer, to East Alton the jobs which were performed by the hourly paid production employees of the smokeless-powder division except magazine storekeepers and probably junior physicists and junior chemists. It also plans to have East Alton assume (so far as may be practically and lawfully done) obligations and contracts affecting production, sales, and employment in the smokeless-powder division. Furthermore, it plans to transfer to East Alton the smokeless-powder plant and such other assets as will enable East Alton in good faith to carry out the obligations it assumes and incurs.

7. On July 5 the parties met for collective bargaining in East Alton. Some progress was made. The union, however, regarding as improbable any further accomplishments through negotiations in Illinois, asked the Board to take the case back to Washington, in accordance with the Board's telegram of July 3.

8. July 7, the counsel for the two companies stated to the Board that he was surprised at the sudden interruption in the Illinois negotiations, as at the conclusion of the July 5 session all parties had joined in making to the press a statement of progress and a date had been set for a further hearing. He suggested that the Board encourage further negotiations in Illinois.

9. The Board, by telegram dated July 7, urged the parties further to negotiate in Illinois and if they could not agree, to return to Washington for a hearing July 11.

10. Further negotiations in Illinois proved fruitless. The companies charge the union with being responsible by insisting on disposing first of a union-shop demand made by the union. The union charges the companies with being responsible by refusing to bargain in good faith regarding the more critical questions which divided them, including not only the type of shop, but also wages and the so-called "individual contracts" later to be discussed. The union also complained that shortly after the opening of the conference on July 5, the companies were represented only by a plant superintendent and by lawyers and that John Olin and Spencer Olin withdrew. In this connection the union pointed out that the direction of the two companies rested primarily with these two men and their father, F. W. Olin, who are the principal officers and the principal common stockholders as well as a majority of the board of directors. As a rejoinder to this contention, the Messrs. Olin emphasized the extent to which all of them were engaged in other corporate affairs affecting not only their own but also the national interest. Moreover, they stressed the fact that they had given broad powers to those who were engaged in the actual negotiations.

11. The Board reopened hearings in Washington July 11. The three members of the original panel were present. The union sent its local committee and also its regional officers who were given by the membership the power to make a final commitment without the necessity of returning for ratification. The companies sent a plant superintendent and three lawyers (two of whom were connected with different private firms, and one of whom was a corporate secretary who in prior negotiations at the Department of Labor did not have the power to commit the company). The three Olins informed the panel that these persons were at this time adequately empowered to act. However, the panel, in line with the discussions at recent Board meetings, in accordance with the precedent in case No. 23, *Utica & Mohawk Cotton Mills*, and in the light of its own best judgment as to how a settlement in the instant case could most fairly and rapidly be achieved, requested that one or more of the Olins participate in the proceedings and further requested that in the meantime those who had assembled should continue (in the absence of the panel but in the presence of the panel's secretary) to carry on negotiations with the hope of narrowing the area of controversy.

12. These requests were honored. The parties negotiated some relatively minor matters Friday afternoon, July 11, and Saturday, July 12. The three Olins and a labor relations counsellor arrived on Monday, July 14. Thereupon the panel reconvened the hearings and extended discussions occurred on that day and the day following.

13. At the outset of the session of July 11, the union agreed that it would be prepared to negotiate its labor contract exclusively with East Alton on the understandings (*a*) that all the jobs included by the National Labor Relations Board in its finding of an appropriate unit at Western Cartridge should be transferred to East Alton, (*b*) Western Cartridge should furnish East Alton with adequate assets to fulfill appropriate labor obligations, (*c*) neither the N. L. R. B. nor this Board lost such jurisdiction and power as either tribunal might have with respect to matters in controversy affecting the parties, and (*d*) East Alton would recognize the union as the exclusive representative of the employees in the jobs embraced in the National Labor Relations Board's certificate. The company agreed to (*b*) and (*d*). The panel informed the union that no steps here taken could prejudice any jurisdiction and power the National Labor Relations Board might have, particularly in view of the second sentence of section 10 (a) of the National Labor Relations Act; and that the National Defense Mediation Board would not release such jurisdiction as it might have over Western Cartridge but would merely add to the already included parties the name of the East Alton Manufacturing Co. As to condition (*a*), the transfer to East Alton of all hourly paid production jobs in the smokeless-powder division, more is said below.

14. At the outset of the July 14 session, the parties agreed that the principal issues which still divided them were: (*a*) The individual contracts, (*b*) the type of shop (sometimes called the "union security issue"), (*c*) wage rates, (*d*) vacations, (*e*) the extent to which Western Cartridge would be relieved of a duty to bargain for such employees of the smokeless-powder division as were not transferred to East Alton, and (*f*) seniority. (It should be added that at this stage there also was some difference of opinion as to whether an employee should be given a copy of any medical report on his health. That issue, however, was subsequently negotiated to a mutually satisfactory conclusion and requires no further statement here.)

15. The session on July 14 brought none of these six issues to a conclusion. Much time was spent on general discussions of wages and an attempt to inform the panel of the practices on wages presently prevailing in the smokeless-powder division.

16. In that division, all of the 550 employees within the coverage of the National Labor Relations Board's certificate are hourly paid. That is, there is no bonus, piece, or incentive system.

17. Most of these employees have been taken on within the last year to meet the sudden expansion principally consequent upon orders placed with Western Cartridge by Great Britain. Thus the number on the division's pay roll has risen in 1 year from 110 to 550.

18. The minimum rate among these 550 employees is 52 cents an hour. The average rate is 71.8 cents an hour.

19. These employees fall roughly into three main divisions—330 in production, 125 in laboratories, and 95 in maintenance. Production subdivides itself into 7 classifications, laboratories into 4 classifications, and maintenance into 20 classifications.

20. The company's practice as to wages is illustrated in the following rough break-down of the production division. In this break-down the figures were derived from the companies' oral testimony. An accurate, detailed statement of the wages is set forth in the companies' exhibit "C," but these details are too complicated to be repeated here. An employee is hired at a learner's rate, 58 cents an hour. All learners (of whom there are now about 20 in production) are paid that rate. It is expected that after about 3 months a learner will step up another grade, and that in due time, if he has ability and efficiency and if there is an opening, he may be given a personal increase or upgraded, as the case may be. The grades and pay scales above learners in the production division are: Truck drivers' helpers, 58 to 62 cents an hour; truck drivers (who together with helpers are about 30 in number), 63 to 75 cents an hour; helpers (about 75 in number), who are paid 60 to 66 cents an hour; powder operators B (about 75 in number), 69 to 72 cents an hour; powder operators A (about 75 in number), 75 to 79 cents an hour; and hourly paid foremen (about 12 in number), 83 to 91 cents an hour.

21. After the general exploration of the wage issue, the panel and the parties on July 14 discussed principally the individual contracts and the type of shop. After formal adjournment that day, there were further informal discussions between the parties on these and other subjects.

22. On July 15 the parties appeared as requested at the Board's offices again. In the hope of securing greater progress, the panel conferred with each group separately in the morning. These conferences plainly disclosed that further collective bargaining would not be successful unless the issue of the individual contracts were first resolved. In view of this impasse and in view of the importance of continued production at this plant to effectuate the national policy of supplying Great Britain with the arms and ammunition necessary for its and our national defense, the panel is of the opinion that this case is appropriate for findings and recommendations pursuant to section 2 (d) of the Executive order creating the Board.

A. INDIVIDUAL CONTRACTS

23. *Issue.*—The first issue on which the panel makes findings and recommendations relates to individual contracts.

24. *Facts.*—Beginning in 1914 and continuing to date, with the exception of an intervening period from 1920 to 1923, Western Cartridge Co. has offered each of its employees, after he has served a probationary period, an individual contract. The full text of that contract in its present form (exhibit "A") is attached hereto. Approximately 5,100 employees of Western Cartridge have executed contracts of this type. These contracts were executed at different times, but in each case

the contract expires 1 year after execution. Included in these 5,100 are 428, or all but 2, of the employees here involved for whom this union is the certified collective bargaining agent.

25. *Union's contentions.*—The union claims that these individual contracts are invalid as a matter of law, particularly in view of the National Labor Relations Act and the decisions thereunder, and in view of the certificate issued by the National Labor Relations Board. The union points to paragraphs 3, 4, 6, 8, and 9 which it interprets as permitting the company to discharge an employee who goes out on strike and as permitting the company to withhold a promised 6 percent annual bonus if, during the year, he strikes. The union also places some reliance on the point that these contracts were not signed voluntarily since they were presented to employees for signature by the company, and the union asserts that the mere employment relationship puts the employee in such a position that on matters of this sort an employee does not act with complete free will which the union says the law guarantees him. Some reference is also made to the fact that some of the terms included in the contract so plainly relate to general wages, hours, and working conditions as not to be appropriate for individual negotiation once a collective bargaining representative has been certified. Furthermore, legal arguments aside, the union asserts that these individual contracts are in their spirit contrary to and hence subversive of sound collective bargaining relationships. For these reasons the union seeks to have this type of contract, so far as it affects employees in the smokeless-powder division, terminated by Western Cartridge, not assumed by East Alton, and not hereafter offered by East Alton.

26. *Companies' contentions.*—The companies' contention is that these individual contracts are lawful and are conducive to a sound employment policy. The companies stress the thrift features of the contracts, the interest the employees have in the past shown in these contracts, and the concern of the companies in protecting their patents and trade secrets. The companies assert that the contracts were executed voluntarily, that an employee who does not want such a contract can (like the two present nonsignatories) decline to execute such a contract without loss of his job, and that (as Western Cartridge's contract with an unaffiliated union shows) these contracts are not repugnant to a collective bargain. Western Cartridge also draws to our attention the indirect impact of any disposition of the 428 contracts in the smokeless-powder division upon the balance of the approximately 5,100 similar contracts. Both companies contend that the contracts are not terminable at the will of the employer alone. In making this contention, East Alton does not assert that it, as distinguished from the Western Cartridge Co., is now bound by such contracts, and moreover neither company contends that if it were directed by a governmental agency to discontinue such contracts it would not be protected by the force majeure clause in article 9 of the contracts exonerating the company for "causes beyond the control of the company." Both companies also suggest that if the contracts were unlawful, there are available appropriate judicial processes to test the matter. It is not clear whether the companies take the position that, despite the second sentence of section 10 (a) of the National Labor Relations Act, a judicial tribunal could properly pass on the question in any way except upon review of an order of the National Labor Relations Board.

27. *Proposals advanced during the collective bargaining process under section 2 (a) of the Executive order.*—During the collective bargaining stage of these proceedings, the panel suggested three alternative solutions for consideration and bargaining by the parties. Succinctly stated, these were the alternative proposals: (1) That the question of the legality be referred for final determination by the chairman of the Board or by any neutral qualified person mutually acceptable; (2) that neither company should take any step to carry out these individual contracts with any of the employees in the smokeless-powder division until and unless required so to do by a court of competent jurisdiction; and (3) that all parties should submit to the National Labor Relations Board the question of law upon an agreed statement of facts and upon a stipulation for expeditious consideration and that pending judicial review, if any, of that Board's order, the parties abide by that order. The union was willing to accept any one of these alternatives. The companies were unwilling to accept any of these proposals or, during the course of the collective bargaining in Washington, to suggest any alternative course. On Wednesday, July 23, after these recommendations were in draft form, John Olin informed the panel that he had in a confidential letter to a third party for transmission to the panel indicated three

possible methods of dealing with individual contracts. The relevant parts of this letter are quoted in exhibit "C" attached hereto.

28. *Recommendations.*—Regardless of whether the individual contracts are or are not valid under the National Labor Relations Act, the panel regards these contracts in their present form as being inconsistent with a sound collective bargaining relationship between East Alton Manufacturing Co. and this union. We, therefore, recommend that East Alton Manufacturing Co. should not assume or offer to its employees any such individual contracts; that Western Cartridge Co. or East Alton Manufacturing Co. should repay as of August 1, 1941, to each employee in the unit represented by this union the amount he personally has paid to the companies under his contract; that Western Cartridge Co. and East Alton Manufacturing Co. should take no other steps to enforce the individual contracts with respect to employees in the unit represented by this union; and that the union execute on behalf of those it represents, whether members or not, a release from liability on these individual contracts. This recommendation does not preclude the East Alton Manufacturing Co. from exacting from each employee an appropriate personal pledge confined to the nondisclosure of patents and trade secrets.

B. TYPE OF SHOP

29. *Issue.*—The second issue on which the panel makes findings and recommendations relates to the type of shop, or as it is sometimes called, "union security."

30. *Union's contentions.*—The union seeks a union shop in which every present employee within the unit, whether or not he is now a member of the union, must be and remain a member of the union in good standing as a condition of employment, and in which every new employee in the unit must, after a probationary period of 30 days, become and remain a member of the union in good standing as a condition of employment. The union agrees that it will take into membership every present employee of the smokeless-powder division but it will take in only such future employees as meet the standards of the union. In support of its position, the union emphasizes the special facts in this case. The union asserts that the Western Cartridge Co. and East Alton Manufacturing Co. in their dealings with the union in Illinois and in Washington and in what the union claims are the companies' dilatory tactics before this Board have shown an obvious hostility toward collective bargaining which gives reasonable ground for fear that unless the union is protected by some type of union security provision the management will undermine and seek to eliminate it. Among other indicia of the attitude of the management, the union makes reference to the following: Western Cartridge's refusal promptly to honor the National Labor Relations Board's certificate or this Board's recommendations of June 28, 1941; Western Cartridge's creation of East Alton as part of what the union fears is a device for checkmating normal growth; the Olins' refusal to adopt a formula evolved at the Department of Labor by Western Cartridge's own lawyers (acting admittedly only as lawyers, not as corporate officers); the withdrawal of the Olins personally from negotiations in St. Louis, coupled with their delay in coming to and their promptness in withdrawing from hearings before this Board; the conferences which supervisory officials of Western Cartridge had with individual employees in St. Louis to secure their views on individual contracts at the very time that issue was the subject of collective bargaining negotiations in Washington before this Board; the grant by Western Cartridge to the unaffiliated union of a wage increase averaging 5 percent effective July 13, despite the fact that earlier is the same week both Western Cartridge and East Alton had not made any offer or concession to the American Federation of Labor union in the hearings before this Board in this case; and the charges (as yet untried) filed before the National Labor Relations Board to the effect that Western Cartridge has violated the National Labor Relations Act by discriminating against union members.

31. *Companies' contentions.*—Despite Western Cartridge's earlier position of going to court to contest the National Labor Relations Board's certification, East Alton has now recognized the union as the exclusive representative of the employees of the company in those classifications which that Board grouped together as an appropriate unit. The companies are not ready to grant voluntarily a closed shop or a union shop. In their brief, the companies stress their objections to the union's proposal: (1) "This proposal of the union would mean that approximately 200 employees in this separate unit, who have up to now refused to join the union, would be compelled to become members" (Co. Br. 9); (2) There is an "obvious inappropriateness of such (closed or union shop) restrictions upon

a man's right to work and an employer's right to select his employees in the present emergency, particularly having in mind the occupational responsibility of the employees by reason of the character of the work" (Co. Br. 10); and (3) in view of the companies' willingness to recognize individual assignment of wages for union dues, there is no need for the union "to fear a loss of the present membership and hence to insist upon the 'freezing' of such membership for the duration of the contract." The companies also allege that the union's demands in this case and its attitude during negotiations in St. Louis were such as to indicate that a union shop would not work satisfactorily.

32. *Recommendations.*—The panel recommends that East Alton Manufacturing Co. and the union include in a collective bargaining contract the following provisions: "The company agrees that any present employee who, on June 24, 1941 (the date this case was certified), was a member of the union or who has become a member of the union since June 24, 1941, shall, as a condition of continued employment, maintain membership in good standing; and any employee who hereafter, during the life of this agreement, becomes a member or is reinstated as a member of the union shall, as a condition of continued employment, maintain membership in good standing.

In making this recommendation, the panel notes that it in no way impinges upon the freedom of any individual who has not chosen to join the union. It does not exercise the type of compulsion specifically adverted to in the companies' brief. It does not restrict the employer in the choice of his employees—a restriction to which, as noted above, the employer expressed particular opposition. It goes only so far as to preserve the union in the status it has already achieved and may achieve through voluntary adherence of employees. It protects the union in its capacity to fulfill its contract, and makes certain that those who authorized the union to act for them will aid their agent in performing its obligations.

This case seems to us to present strong evidence that some formal assurance of a stable status of the parties is necessary here. In the hearings before this Board the companies showed what at best must be described as a complete unfamiliarity with the realities of collective bargaining. Either by accident or by design, the management resorted to practices which undermined the confidence of others sitting at the same table with them. If the management's tactics were not deliberately dilatory they, at any rate, gave that impression. If by wage increases to other than those represented before the Board the management meant merely to carry on in good faith bargaining with the independent union, the management nonetheless gave the appearance of discrimination. A workman might reasonably conclude that these companies did not want and were going to try to eliminate this union's members. Against this fear, based upon the recent record, the union members are, we believe, entitled in this case to be protected. We add that we hope that there are no grounds for the fear the union has expressed and that the effect of our recommendation will be to make for better relations by the removal of suspicion.

C. WAGE RATES

33. *Issue.*—The third issue on which the panel makes findings and recommendations relates to wage rates.

34. *Facts.*—As already noted, the present hourly rates for the smokeless-powder division are at a minimum of 52 cents an hour and an average of 71.8 cents an hour. We are not informed whether this figure of 71.8 cents is calculated on the basis of the basic rate for a 40-hour week or whether it is increased by including in the computation overtime hours for which time and one-half is paid.

35. From the brief submitted by the companies, we learn that since January 1, 1941, Western Cartridge has granted "615 separate wage increases affecting a total of 463 separate employees in the unit" and that these wage increases are "equivalent to approximately 10 percent (Co. Br. 13). We cannot tell from this submission whether basic wage rates have been increased. The statement would be consistent with an entirely different interpretation; for example, that the learners' or the helpers' basic rate has not been increased, but that individuals have received peresonal increases either by being advanced from one job to another or by being given an individual merit raise within a particular classification.

36. As previously noted, Western Cartridge as recently as July 13, 1941, negotiated effective as of the same date, a wage increase averaging 5 percent for employees outside the smokeless-powder division.

37. Wage data were submitted by the parties. In addition, the Bureau of Labor Statistics of the Department of Labor has given us the following information as to plants (other than Western Cartridge) which have as their major product smokeless powder and which report wage data to the Bureau: In April 1941 the five plants then reporting averaged 88.3 cents per hour (including overtime hours); in the same month the hourly rate in the lowest-wage plant then reporting averaged 71.1 cents including overtime hours or approximately 69.7 cents excluding overtime hours, and in the highest-wage plant then reporting averaged 97.9 cents including overtime hours or approximately 97 cents excluding overtime hours; in June 1941 the four plants then reporting averaged 86.7 cents per hour (including overtime hours); in the same month the hourly rate in the lowest-wage plant then reporting averaged 74.9 cents including overtime hours or approximately 69.4 cents excluding overtime hours and in the highest-wage plant then reporting averaged 104.5 cents per hour including overtime hours or approximately 104.4 cents excluding overtime hours. Some of these plants may be engaged in the manufacture of powder as well as the processing of powder.

38. *Union's contentions.*—The union contends that substantial wage-rate increases, in some classifications as high as 50 percent, are warranted because of the earnings and profits of the Western Cartridge Co., the Nation-wide scope of its business, the hazard of the work, union scales in St. Louis, and the bonus now available to the Western Cartridge employees under the individual contracts which the union seeks to have terminated. The union proposes a minimum of 78 cents an hour (Union Br. 7).

39. *Companies' contentions.*—The companies contend that their present wage scale is satisfactory if "tested first, by the wages being paid generally in the Alton industrial district, in which they are located; and, second, by wages being paid in those explosive plants which by reason of geographical location, similarity of operations and products, and otherwise are most nearly comparable" (Co. Br. 11).

40. *Recommendations.*—The panel, upon the basis of the evidence before it and of its own limited knowledge, cannot intelligently judge what would be fair rates of wages in the various classifications of the former smokeless-powder division. From the fact that Western Cartridge has recently given other employees a raise and from the general data supplied by the Bureau of Labor Statistics, the panel is of the opinion that some wage increase is due. The panel does not suppose that a wage increase of the magnitude proposed by the union is, however, due or appropriate. The panel is not prepared to resolve this issue by an arbitrary proposal of a wage increase of a fixed percentage or a fixed number of cents. Instead it divides its recommendations into these two parts:

(*a*) The companies or one of them shall, as of July 13 (the date when Western Cartridge gave wage increases to other employees), give to employees in jobs formerly grouped together in the smokeless-powder division, wage increases averaging not less than the 5 percent which Western Cartridge gave to its other employees.

(*b*) The companies and the union shall submit to arbitration the determination of whether the companies should give to the employees in those jobs which formerly constituted the smokeless-powder division any additional wage increases. The arbitration shall be by three persons, one named by the companies, a second by the union, and the third by those two. If the three are not named within 7 days after these recommendations are issued, i. e., by August 1, 1941, then this Board shall forthwith name one person to act as arbitrator and he shall exercise all the arbitral functions. The arbitrators or arbitrator shall have the power to change general basic wage scales by a fixed percentage or amount and/or to change particular basic wage scales in the several classifications among the employees in those jobs which formerly constituted the smokeless-powder division. These wage changes, if any, shall be retroactive to the date the hearings in this case closed, i. e., July 15, 1941. These wage changes shall be accepted by both parties, and, unless the arbitrators or arbitrator for good cause shown otherwise provide, shall be binding for 1 year. In reaching a determination the arbitrators or arbitrator shall state findings and reasons as well as conclusions.

D. VACATIONS

41. *Issue.*—The fourth issue on which the panel makes findings and recommendations relates to vacations.

42. *Facts.*—The companies now give 1 week's vacation with pay to any employee who has had 1 year of service with the Western Cartridge Co. or its

affiliates. To an employee who has had 10 years of service, the companies give an additional vacation of 25 percent of 1 week's pay. After 15 years of service, the companies give an additional 25 percent of 1 week's pay; after 20 years an additional 25 percent, and after 25 years an additional 25 percent of 1 week's pay is given.

43. *Union's contentions.*—The union requests a paid vacation of 1 week after 1 year of service and 2 weeks after 2 years of service.

44. *Companies' contentions.*—The companies are prepared to revise their schedule of vacations so that an employee after 1 year of service gets 1 week's vacation with pay (just as at present) and that after every 5 years he gets for that 5 years of service 25 percent of 1 week's additional vacation with pay.

45. *Recommendations.*—The panel is of the opinion that the question of vacations with pay is so closely allied to the question of wages that it, like the wage question, should go to the arbitrators or arbitrator provided for in paragraph 40 (*b*) of these findings and recommendations. The arbitrators or arbitrator shall have the power to determine what vacations with pay shall be given by the companies on and after July 15, 1941 (the date the hearings in this case closed), to the employees in the jobs which were formerly grouped together in the smokeless-powder division of the Western Cartridge Co. The parties shall be bound by the award of the arbitrators or arbitrator. In making an award, the arbitrators or arbitrator shall set forth their findings and reasons as well as their conclusions.

E. JOBS IN THE SMOKELESS-POWDER DIVISION NOT TRANSFERRED TO EAST ALTON MANUFACTURING CO.

46. *Issue.*—The fifth issue on which the panel makes findings and recommendations relates to the status for purposes of collective bargaining of those jobs formerly in the smokeless-powder division of Western Cartridge Co. which were included by the National Labor Relations Board in the unit of election but which have not been transferred from Western Cartridge Co. to East Alton Manufacturing Co.

47. *Facts.*—Representatives of the companies indicated that they might or might not transfer from Western Cartridge Co. to East Alton Manufacturing Co. the jobs known as magazine storekeepers, junior physicists, and junior chemists, which were within what the National Labor Relations Board has found to be an appropriate unit for which the union has been certified as the collective bargaining representative.

48. *Union's contentions.*—The union contends that if any jobs in the unit found by the National Labor Relations Board to be appropriate are not transferred from Western Cartridge, then for those employees Western Cartridge is under duty to bargain with the union.

49. *Companies' contentions.*—The companies contend that insofar as jobs are not transferred from Western Cartridge to East Alton, there is no duty on the part of any company to bargain for them with this union.

50. *Recommendations.*—Under its recommendations of June 28, 1941, the panel recommended that Western Cartridge Co. should bargain with the union for the employees in all the jobs in that unit which were found by the National Labor Relations Board to be appropriate. Necessarily this recommendation embraced the magazine storekeepers, the junior physicists, and the junior chemists. Moreover, quite apart from this Board's earlier recommendations, it would appear that Western Cartridge Co.'s duty in the premises was clearly defined by section 8 (5) of the National Labor Relations Act and that it could not escape the duty to bargain with the union as to those employees who continue in jobs which originally were in the unit found by the National Labor Relations Board to be appropriate. Accordingly, we recommend that if Western Cartridge Co. does not transfer the jobs of magazine storekeepers, junior physicists, and junior chemists to East Alton Manufacturing Co., it should bargain collectively respecting them with the union. Furthermore, regardless of whether the jobs just referred to are or are not transferred from Western Cartridge to East Alton, all our recommendations (including those relating to individual contracts, type of shop, wage rates, vacations, and seniority) should be construed as applicable to those jobs.

F. SENIORITY

51. *Issue.*—The sixth issue on which the panel makes findings and recommendations relates to seniority.

52. *Facts.*—At the conclusion of the hearings before the panel on July 15, 1941, the parties agreed to negotiate the question of seniority in the presence of the secretary to the panel, Mr. Gill. A seniority clause, a copy of which is annexed hereto lettered "B" was drafted and agreed to by Mr. Schotters, plant superintendent of the companies (the only representative of the companies present), and by the union committee, in the presence of Mr. Gill.

53. *Union's contentions.*—The union is willing to take the seniority clause negotiated on July 15, 1941.

54. *Companies' contentions.*—The companies apparently take the position that the seniority clause attached hereto "might furnish a basis for working out of a final agreement on this question" (Co. Br. 15). This statement seems to be the equivalent of a repudiation of the negotiations hitherto conducted.

55. *Recommendations.*—The panel is of the opinion that the seniority clause as embodied in the annexed exhibit "B" furnishes a satisfactory working arrangement and should be incorporated in a collective bargaining contract between the parties.

The Board requests each party to notify the Board of its acceptance of these recommendations not later than July 28, 1941.

Concurring Opinion of Roger D. Lapham

I concur in all the recommendations of the panel. The reasons for the recommendation on type of shop or "union security" (par. 32) I find no fault with per se.

But, I believe unless parties voluntarily agree to such a clause the Board ought ordinarily not to recommend it. It touches upon what is perhaps the most delicate problem in the whole field of management-union relations. If a general policy is to be adopted on that problem Congress is, in my opinion, the proper organ of government to adopt the policy.

However, in view of the action the Board has taken today in the *Federal Shipbuilding Corporation case*, I see no reason as a member of this panel to bring this case to the Board.

EXHIBIT A

EXTENSION AGREEMENT

This agreement, made this ——— day of ———, 19—, by and between the Western Cartridge Co., a corporation organized under the laws of the State of Delaware, as party of the first part and hereinafter called "company," and ——— of ———, party of the second part and hereinafter called "employee"

Witnesseth

That for and in consideration of the mutual covenants herein contained it is hereby agreed:

1. That for a period of 1 year, beginning ———, the company agrees to engage the services of the employee at such time and for such periods as in the discretion of the company its business may require and it is understood that the company shall have the right at any time during the period of this contract to reduce the number of employees by lay-offs and that if employee is so laid off he shall not be entitled to any wages during the period of any such lay-off. The company agrees to pay the employee the prevailing rate for the class or classes of work that the employee shall perform from time to time during the period of this contract. As a declaration of policy both parties hereto recognize the necessity for modifying wage rates to meet changes in economic and competitive conditions.

2. Employer agrees to pay one and one-half the regular wages to employee for overtime work.

3. That the employee in accepting said employment, represents himself to be in good physical condition, and agrees to devote his entire time and his best energies during working hours to the business of the company; to well and faithfully perform the duties delegated to him by the company, its superintendents, or foremen; to abide by the rules of the company; to lend the utmost

cooperation to the company, its superintendents, or foremen, to the end that his efficiency and productiveness may be increased and the manufacturing cost of any work or article, upon which he may be engaged, decreased; and in all reasonable ways to advance the welfare and protect the interests of the company.

4. That should any of the representations herein made by the employee prove to be untrue, or should the employee fail during working hours to devote his entire time and best energies to the interests of the company, or fail to cooperate with or carry out the rules and the instructions of the company, its superintendents, and foremen, or should his efficiency become impaired, or should he refuse to perform his duties as provided herein, this contract shall become null and void, and such employee shall be subject to immediate suspension or dismissal at the option of the company.

5. That inventions and discoveries relating to the manufacture of ammunition, or any products made by this company, or any appliances connected therewith, or applicable thereto, developed mentally or by research or experimental work carried on in whole or in part with material or apparatus, or at the expense of the company, resulting from the efforts of the employee during the term of his employment by the company, shall be the property of the company, and upon its request and at its expense, the employee shall make full disclosure thereof, shall sign, acknowledge, and verify all petitions, specifications, claims, powers of attorney, and other papers proper, convenient, or necessary for the making of application for letters patent and the prosecution of said application, and will assign such inventions and discoveries and letters patent to be issued thereon to the company: *Provided, however,* That nothing in the foregoing shall be construed to prevent the company from compensating or rewarding the employee in any manner as may seem fit and proper to the company for such inventions or discoveries.

Any inventions and discoveries made by employee which are not covered by the foregoing paragraph shall be offered by employee to the company and the company shall have a reasonable time in which to investigate such invention and discoveries and to negotiate with employee for the purchase of same before employee discloses or offers said inventions or discoveries to others.

The company declares and employee acknowledges that by action of the board of directors the business of the company has been declared a secret business and employee agrees not to disclose to others, not a party hereto, any of the trade secrets, detail of process of manufacture or equipment, or other information concerning or related to the company's business.

6. Both parties hereto agree that on account of the experience necessary to satisfactorily produce the products of manufacture of the company and to insure the maintenance of a high standard of quality of such products a minimum labor turn-over is desirable and therefore, in consideration of the compliance by the employee with the covenants upon his part above set out, the company agrees to pay the employee, in addition to the total earnings paid to him as provided in paragraphs 1 and 2 the following bonus, it being expressly understood that such bonus is to be paid only in the event employee faithfully fulfills all his obligations under this agreement.

(*a*) Two and one-half percent of the total earnings paid the employee under paragraphs 1 and 2, shall be paid the employee within 3 weeks after the completion of this contract: *Provided, however,* And it is hereby understood and expressly agreed, that upon the violation by the employee of any of the covenants upon his part herein contained the bonus specified in this paragraph shall be forfeited forthwith.

(*b*) In lieu of the aforementioned 2½ percent the company agrees to permit the employee to sign an order authorizing the pay-roll department of the company to deduct from the earnings paid the employee under paragraphs 1 and 2, a sum up to 4 percent in even multiples of one-half percent of such earnings, which will be deposited with the company, and upon which the company will pay interest at the rate of 6 percent per year, and the company will match the amount so deducted and deposited plus an additional 2 percent of such earnings, which together with the employee's contribution outlined herein shall be paid the employee within 3 weeks after the completion of this contract: *Provided, however,* And it is hereby understood and expressly agreed that upon the violation by the employee of any of the covenants upon his part herein contained all of that amount to be contributed by the company and specified in this paragraph shall be forfeited forthwith and only the money contributed by the employee shall be returned to the employee.

7. That employee agrees to accept and be guided by and conform to the instructions issued or given by authority of the board of directors or executive committee or the executive officers of the company, acting through or by its various managers, superintendents, or foremen.

8. It is understood and expressly agreed that in the event the employee fails to continue in the employ of the company for the entire period of this contract, that the company shall not be obligated to the payment of any bonus under paragraph 6 hereof, and shall pay to the employee only the amount deducted from said employee's wages under paragraph 6 (*b*) hereof.

9. That in the event of the nonoperation, or the material curtailment of the operations of the plant of the company due to fire, flood, strikes, business depression, changing economic conditions, acts of God, or other causes beyond the control of the company, this contract may be terminated by the company: *Provided, however*, That in the event of the termination of this contract by the company as outlined in this paragraph for any reason not due to the fault of the employee, the bonus and deductions, if any, as provided in paragraph 6 shall become due and payable within 3 weeks after such termination.

10. If employee is laid off, and if such lay-off shall continue for 6 consecutive weeks or more, the employee may terminate this contract, and in that event the company shall, within 3 weeks after such termination by the employee, pay over to employee the bonus and deductions, if any, as provided in paragraph 6.

11. It is mutually agreed that this agreement is an extension of an agreement entered into by the employee and the company on ———, 19—, and it is further agreed that the employee shall have the right to withdraw all or part of the accumulated fund due him or, so long as employee is employed on an hourly rate, leave on deposit with the company with interest at the rate of 6 percent per annum all or any part of the accumulated fund due him on ———, 19—, which is the expiration date of the previous agreement.

12. That this contract may with the agreement and consent of both parties hereto, be amended, renewed, or replaced by a different contract, mutually satisfactory to both employee and company, at any time during the period thereof.

In witness whereof, the company has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its authorized officers, and the employee has hereunto subscribed his name as of the day and year first above written.

WESTERN CARTRIDGE CO.,
By ——— ———, *Secretary.*
———, ———, *Employee.*

EXHIBIT B

AGREED

In cases of promotions, transfers, and lay-offs, where the factors of (*a*) ability to do the job in question, (*b*) attitude toward safety, and (*c*) skill, are approximately equal, seniority shall govern. Any disputes in regard to qualifications other than those listed above which the company believes necessary to consider, shall be handled through the regular grievance procedure. The employer agrees not to tolerate any favoritism by foremen or supervisors and to make available to qualified employees such opportunities for advancement as may arise, from time to time, even though such employees are particularly qualified on their present job. All employees laid off shall be returned in the reverse order of having been laid off before new employees are taken on.

EXHIBIT C

1. Individual contracts, so far as union members are concerned, may be cancelled by the action of the union organization. That is to say, we will honor any cancellation request signed by any employee, secured by the union or otherwise, and pay the employee his contribution made to the contract. The same proposal will extend to nonmembers of the union. This is, of course, limited to the employees of the East Alton Manufacturing Co.'s operations.

2. The same as No. 1, except I indicated to you in confidence the maximum which the companies would agree to with respect to the amounts of money involved. I will not even record the full text of the suggestion herein because I think you have it clearly in mind.

3. As an alternative to the above, or in connection therewith, under proper circumstances we will consider the establishment of a safety or accident reserve fund similar in principle to the plan which is in effect in several of our explosive-manufacturing operations—that is to say, explosive plants in associated companies. There is attached hereto a copy of the agreement outlining the accident-reserve fund in some of our explosives operations that where there are no serious accidents, the amount of fund accumulated is equivalent to approximately 6 percent of the wages of the employees and therefore a transfer could be made from the individual contracts to the accident-reserve fund without material difference in wage or bonus payments. Under these circumstances and with the union's cooperation and acceptance of the plan, we would endeavor to transfer the individual contract plan to the accident-reserve fund plan.

Recommendations

September 15

STATEMENT OF FACTS

1. This is the same case which was the subject of hearing, findings, and recommendations on June 28, 1941, and again the subject of hearings from July 11 to 15, 1941, resulting in further findings and recommendations on July 24, 1941.

2. Pursuant to the recommendations of July 24, 1941, representatives of the East Alton Manufacturing Co. and the union resolved almost all the points in controversy and embodied their agreement in a collective-bargaining contract dated August 2, 1941.

3. The principal issue left unresolved by the contract of August 2, 1941, concerned wage rates, wage classifications, and vacations with pay.

4. East Alton's representatives presented a first proposal which was rejected by the representatives of the union. Further negotiations resulted in a second proposal by East Alton Manufacturing Co., which was modified still further, after presentation, by the parties. This last proposal, as modified, provided in substance for an average increase of approximately 14 percent over the wages in effect July 12, 1941, or of approximately 29 percent over those in effect on January 1, 1941 (or, in the case of employees hired since that date, the entering rate of pay). The average hourly wage rate proposed is approximately 79½ cents. Moreover, 395 employees will each get a further 3 cents an hour increase before January 1, 1942, and some employees will get further increases before July 1942. The proposal likewise contained certain provisions for vacations with pay which it is unnecessary to detail here. In support of this proposal, East Alton's representatives pointed out, inter alia, before this Board that some 73 percent of the employees affected had had no experience in manufacturing operations prior to their employment with the companies and that most of the employees were new—of the total of approximately 600 employees involved, 300 had been employed during 1941 and almost 200 more were employed during the last 6 months of 1940.

5. This proposal was accepted by the representatives of the union, who agreed to recommend its acceptance by the membership of the union. At a meeting of the union membership on September 3, 1941, 87 voted in favor of the proposal and 67 voted against the proposal. However, the balloting continued into the next day, so that other union members could cast their ballots, and the final tabulation was 112 in favor of the proposal, and 120 against the proposal, out of a total of approximately 500 union members eligible to vote.

6. This Board subsequently scheduled the hearing of September 15, 1941, at the request of both the union and the companies' representatives.

CONCLUSION

7. The Board has examined the as yet unratified agreement negotiated by the representatives of the East Alton Manufacturing Co. and of the union. The Board finds nothing unfair in this agreement. The Board believes that the interests of national defense and of collective bargaining will best be promoted by the membership of the union ratifying the agreement negotiated by their accredited representatives.

CASE No. 45

WESTERN PENNSYLVANIA LABOR RELATIONS ASSOCIATION, Pittsburgh, Pa. — INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL 249, A. F. L.

Certified June 25. Strike June 1–30. Hearing June 30–July 1. 2,800 workers involved. Closed July 8

Panel: Stocking, Connelly, Woods. Assistant, Gill (Maxwell Feller).

On May 31 contracts with the union covering three branches of the trucking industry in the Pittsburgh area, namely, city freight, heavy hauling, and road hauling, had expired. After unsuccessful efforts of the Conciliation Service and the Mayor of Pittsburgh to mediate the dispute, a strike was called on June 1. The Board's arbitration award, entitled "Findings," states the facts relating to the settlement.

Findings

July 8

The above case was certified to the National Defense Mediation Board on June 25, 1941. Subsequent to this date the parties to the controversy entered into a voluntary arbitration agreement under the terms of which the striking employees were to return to work with a general increase in hourly wages of 6 cents to all employees, with the exception of those working on heavy-duty trailers (over 20 tons) and helpers on machinery, who were to receive an increase of 10 cents per hour. The arbitration agreement further provided that this wage adjustment should prevail only until the question of the difference between the wage rates as proposed by the union and those tentatively granted by the employer should be determined by the National Defense Mediation Board. It further provided that the Board's findings should be final and binding upon both parties, and that the wage adjustment as decided by the Board should be retroactive to the date upon which work was resumed.

The panel designated to hear this case was composed of George W. Stocking, representing the public; John E. Connelly, representing the employers; and Herbert Woods, representing the employees. Hearings were held in Washington on June 30 and July 1.

In the course of the hearings it developed that matters other than wages were in controversy between the parties and both parties requested the Board to make a finding on these other matters and agreed to accept the Board's findings as final and binding.

As a result of the arbitration agreement previously entered into and the discussions during the hearings, the matters placed before the Board were as follows:

1. Hourly wage rates.
2. Vacations.
3. Arbitration machinery for the settlement of grievances.
4. Conditions governing lay-over time for road drivers.
5. Minimum hours of pay for reporting to work in heavy hauling operations.

All other matters initially in controversy were settled by negotiation and agreement between the parties.

After hearing the parties and on the basis of all of the evidence and arguments presented, the Board's findings with regard to these matters are as follows:

1. All employees other than those working on heavy-duty trailers (over 20 tons) and helpers on machinery shall receive an increase in hourly wage rates of 7½ cents above those prevailing immediately prior to the strike. Workers on heavy-duty trailers and helpers on machinery shall receive the 10 cents per hour increase as granted in the arbitration agreement.

2. Conditions and practices governing vacations prevailing prior to the strike shall continue, with the exception that temporary lay-offs of employees caused by lack of business not exceeding 60 days in the aggregate, or absence due to illness not exceeding 60 days in the aggregate, shall not limit or abridge the employee's right to vacation with pay, and except as further modified by the agreement already reached between the parties.

3. The following provisions shall govern the settlement of grievances and disputes arising under the agreements between the employees and employers:

In the event of any grievance, complaint, or dispute on the part of a union member, it shall be handled in the following manner:

(1) The union member shall report it to his shop steward who shall attempt to adjust the matter with the employer.

(2) Failing to agree, the shop steward shall report the matter to the union which shall submit it in writing and attempt to adjust the same with the employer.

(3) Failure to agree shall be reported in writing to the employer and to the union, and thereupon each shall select three representatives to hear and adjust the matter within 48 hours.

(4) In the event any matter cannot be adjusted by the method set forth above, or in case of any other dispute arising under this contract pertaining to its meaning or application, each party shall forthwith name three arbitrators and the six so chosen shall within 48 hours name a neutral arbitrator. If the six do not agree upon a neutral within 48 hours, the Director of Conciliation of the United States Conciliation Service, shall be requested to name such neutral. The expense of the neutral, if any, shall be shared equally by the parties. Each party agrees to accept and abide by any award made by the majority of the arbitration board so constituted.

(5) There shall be no cessation of work during the pendency of the arbitration proceeding.

4. Road drivers on a trip or hourly basis, held away from their home terminal, shall be paid lay-over time after 16 hours at the rate of the first 8 hours out of each 24 hours.

5. Any regular employee ordered to work under the agreement governing heavy hauling shall receive no less than 6 consecutive hours' pay; any extra man called from the union under the heavy-hauling agreement shall receive no less than 4 hours' consecutive pay.

CASE No. 46

FEDERAL SHIPBUILDING & DRY DOCK CO., Kearny, N. J. — INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 16, C. I. O.

Certified June 30. Strike August 7–24. Hearing July 8, 10, 14, 15. 16,000 workers involved. Closed August 23

Panel: Stacy, C. E. Adams, Carey. Assistant, Kirstein.

In May, the Government, through O. P. M., the Maritime Commission, and the Navy, was able to work out an agreement, with employers and representatives of employees, entitled Atlantic Coast Zone Standards. This agreement set up wage rates, grievance procedure, and some other major matters. Its purpose was to stabilize the shipbuilding industry for a period of 2 years. These standards were to be embodied in all east coast collective contracts.

The company and the union agreed to include the Atlantic Coast Zone Standards, but their negotiations about other points did not result in an agreement. Certain matters pertaining to yard procedure and methods were settled during the hearings, but not the question of union security. The panel, also unable to agree, referred the matter to the full Board. The issues were canvassed. A majority of the Board voted to return the case to the panel for further consideration and decision. On July 26, the Board (i. e., the panel) issued the following recommendation, Mr. Adams dissenting without opinion.

Recommendation

July 26

Since July 8, 1941, the dispute between the Federal Shipbuilding & Dry Dock Co. and the Industrial Union of Marine and Shipbuilding Workers of America, involving a number of questions in difference, has been before the National Defense Mediation Board on a certification from the Secretary of Labor. During this time the parties have reached an agreement in collective bargaining on all questions in difference except the one pertaining to union security. It is conceded that further effort to reach an accord on this issue would be fruitless.

The matter was referred to a regular meeting of the Board with full opportunity to dispose of it. After discussion, it was remanded to the division originally assigned to hear the case. Upon further consideration a majority of the division recommends the acceptance by the parties of the following provision in respect of this item.

"In view of the joint responsibilities of the parties to the national defense, of their mutual obligations to maintain production during the present emergency, and of their reciprocal guaranties that there shall be no strikes or lock-outs for a period of 2 years from June 23, 1941, as set out in the 'Atlantic Coast Zone Standards,' incorporated herein and made a part hereof, the company engages on its part that any employee who is now a member of the union, or who hereafter voluntarily becomes a member during the life of this agreement, shall, as a condition of continued employment, maintain membership in the union in good standing."

Some weeks later, Mr. Adams wrote the following letter to the chairman explaining his dissent:

August 18, 1941.

Hon. WALTER P. STACY, *Chairman.*
Federal Shipbuilding & Dry Dock Co. Panel.

DEAR JUDGE STACY: As the dissenting member of the division of the National Defense Mediation Board which considered the Federal Shipbuilding & Dry Dock Co. case, I wish to place in the record a short statement indicating my reasons for dissenting.

The issue, on which the parties who conducted collective bargaining finally and definitely split, was the open shop versus the closed shop. The management, at the instigation of one of the National Defense Mediation Board, agreed to incorporate in the contract between it and the union the following clause:

"Your attention is called to the fact that the Federal Shipbuilding & Dry Dock Co. has a labor agreement with the Industrial Union of Marine and Shipbuilding Workers of America, Local No. 16.

"In view of the parties' mutual guaranties that there shall be neither strikes nor lock-outs for a period of 2 years from June 23, 1941, you are advised that the employer approves of its employees being members of the union and your doing so will not interfere in any way with your employment nor retard your advancement.

"The management requests that you examine a copy of the agreement handed to you herewith.

"For further information you are referred to the union shop steward in your department or to the union office at 582 Westside Ave., Jersey City, N. J."

As a result of this clause the plant would remain, as it always has been, an open shop, but a modified open shop, in that the management throughout the life of the contract would always be publicly on record as approving of its employees joining the bargaining union.

The union, at the instigation of two of the National Defense Mediation Board, agreed to incorporate in the contract the following clause:

"In view of the joint responsibilities of the parties to the national defense, of their mutual obligations to maintain production during the present emergency and of their reciprocal guaranties that there shall be no strikes or lock-outs for a period of 2 years from June 23, 1941, as set out in the 'Atlantic Coast Zone Standards,' incorporated herein and made a part hereof, the company engages on its part that any employee who is now a member of the union, or who hereafter voluntarily becomes a member during the life of this agreement, shall, as a condition of continued employment, maintain membership in the union in good standing."

As a result of this clause the plant would become for the first time a closed shop, though a modified closed shop. The clause quoted above was referred to in just these terms by one of the negotiators for the union, and has been in the past so referred to by the Labor Department.

I was and am convinced that the adoption of the modified closed-shop clause in the proposed contract means a completely closed shop in a very short time. The word voluntarily has no factual effect. A militant minority only has to force an employee into line once and then the company has to keep him there. Under the conditions at Kearny the result is inevitable.

I am opposed to the National Defense Mediation Board using the power of its recommendation on this issue where such conditions exist, both in principle and

for the reason that I feel strongly that, in the all too near future, it will result in decreased production of essential defense materials.

The union can determine within itself whether or not any employee is in good standing, and if not, demand his discharge. The union, I understand, can change its constitution or union rules with the greatest of ease to suit its own purpose, and certainly management is not consulted with reference to such changes. The result of this feature of the proposed clause is the transfer of a large share of discipline from management to union, and the slowing down of individual effort to the rate of the least efficient man.

The question of the union agreement not to strike under the zone stabilization plan is one that can be determined on the facts. Both sides agreed to no strikes and no lock-outs while the matter was before our panel.

In this case, as in many others now coming before the Board, the unions are using the emergency and, I fear, trying to use the Board to force a closed or modified closed shop on industry in cases where the open shop has been in successful operation for many years, in cases where the unions have been able to make great strides in their membership and where management is intelligent, skillful, and open minded, as witnessed in this instance, by the clause offered by it.

Sincerely yours,

CHARLES E. ADAMS.

The Board's recommendation was twice rejected by the union—first at a meeting July 27, then by mail ballot the following week. Finally, at a meeting August 3, the union voted to accept the recommendation. Meanwhile, the Board received word from the company that it refused to accept. The union called a strike effective at midnight on August 6. After considering the case at its regular meeting the following day, the full Board voted to take no further action in the dispute.

On August 11, L. H. Korndorff, president of the company, in a telegram to the Secretary of the Navy, offered the shipyard to the Navy Department for immediate possession and operation. At the same time, he issued the following statement:

Statement by L. H. Korndorff, President, Federal Shipbuilding & Dry Dock Co.

Kearny, N. J., August 11

Federal Shipbuilding & Dry Dock Co. has sent a telegram this afternoon to the Secretary of the Navy reading as follows:

The Hon. FRANK KNOX,
Secretary of the Navy, Washington, D. C.

In the interest of national defense we hereby offer our shipyard at Kearny, N. J., to the Navy Department for immediate possession and operation. The yard has been closed for 4 days by a strike which involves no issue but the maintenance of the open shop. We are unwilling to abandon the defense of the freedom of the American worker to choose whether he will belong to a union or not. We will fully cooperate with you in making this offer effective.

FEDERAL SHIPBUILDING & DRY DOCK CO.
(Signed) L. H. KORNDORFF, *President*

At midnight last Wednesday an unjustified strike was called at our shipyard at Kearny, N. J., by local 16 of the Industrial Union of Marine and Shipbuilding Workers of America in violation of the union's recent agreement outlawing strikes in our yard for a period of 2 years—a strike having for its sole purpose the enforcement of the union's demand for a closed shop. In our opinion the issue involved in this strike is of vital importance to this Nation and the best interests of all our citizens. That issue is whether the American worker shall be permitted to retain his traditional freedom of action and be allowed to determine for himself whether or not he shall belong to a labor union.

In our judgment no union should be permitted to use the present national emergency as a club to obtain its own selfish ends through forcing industry to accept the closed shop. If this union is successful in this instance, a similar contest is almost certain to follow in all other Atlantic coast shipyards, soon spreading to defense industries in general.

The closed shop has no legitimate connection with national defense—its aim is purely selfish, namely, to enhance and perpetuate the power of the union.

Furthermore, we believe that a right on the part of the union to dictate that an employee shall not be permitted to work in our shipyard unless he maintains his union membership in good standing will seriously interfere with our efficient operation of the yard and with the successful fulfillment of our defense contracts. Such a right to dictate is thoroughly undemocratic and contrary to long-established American principles of individual freedom of action. If these principles are to be fundamentally altered and the closed shop made a mandatory national labor policy, it should be brought about by an act of Congress. When one thoroughly believes in the right and soundness of his convictions and furthermore that these convictions are distinctly in the public interest, there can be no compromise with principle. Accordingly, this company could not conscientiously accept the recommendation of two members constituting a majority of a division of the National Defense Mediation Board, one additional member dissenting, that this company voluntarily accede to the union's demand for a closed shop.

The Secretary of Labor certified this matter to the Mediation Board while collective bargaining negotiations with the union were still in progress. There was never any agreement on our part to abide by the recommendation of the Mediation Board.

Naturally, we will be sorry thus to give up our shipyard, which has established a remarkable performance record, but we sincerly believe that a proper solution of the vital principle involved in this strike is of far greater moment in carrying forward the all-important national defense effort and in safeguarding the welfare of this Nation than the fate of any single shipyard or company.

On August 13, William H. Davis, Chairman of the Board, wrote the following letter to the Secretary of the Navy:

NATIONAL DEFENSE MEDIATION BOARD,
August 13, 1941.

The Hon. FRANK KNOX,
Secretary of the Navy, Washington, D. C.

MY DEAR MR. SECRETARY: In the matter of the Federal Shipbuilding & Dry Dock Co., it seems to me a pity that discussions should proceed under the misapprehension revealed in the statement released to the press by Mr. Korndorff and of which copies were sent to you and to the Mediation Board.

1. Mr. Korndorff says that the "issue is whether the American worker shall be permitted to retain his traditional freedom of action and be allowed to determine for himself whether or not he shall belong to a labor union," and it might be supposed from the whole tenor of his statement that the Mediation Board has recommended that the company shall employ or retain in its employment only members of the union. The fact is that though the union's demands included such a provision the Mediation Board declined to recommend any provision which would compel any present employee or any future employee to join the union or lose his job.

The Board's recommendation of maintenance of membership for the duration of the proposed new agreement between the company and the union applies only to employees who are now members of the union, or who hereafter voluntarily become members. The Board's recommendation is predicated upon the voluntary act of the worker who has chosen to join the union, so that each worker is allowed to determine for himself whether or not he shall belong to the union.

Among the employees of the company, of whom there are more than 16,000, some 2,000 have not chosen to join the union. Under the agreement recommended by the Mediation Board these 2,000 would be under no more compulsion to join the union than they have been in the past. The right of the company to freely choose its new employees, regardless of union affiliation, is in no wise limited and new employees are not required to join the union if they do not choose to do so.

2. Mr. Korndorff has expressed apprehension that under the recommended agreement the union could bring about the discharge of an employee who is a member of the union by arbitrarily determining that the member is not

in good standing. No such arbitrary action is possible. Under the constitution and bylaws of the union the right of membership is amply protected by express provisions for charges, trial, appeal to the full membership, and further appeal to the international executive board. Every member of the union has a property right to his membership and cannot be arbitrarily deprived of that right.

3. As you know, the Board's recommendation was made in connection with the shipbuilding stabilization plan, and the recommended agreement includes the "Atlantic Coast Zone Standards" which fixes wages for a period of 2 years, and the agreement includes a provision that there shall be no strike or lock-out. The purpose of the Board's recommendation was to secure stability without impairing the right of the workers to maintain and extend voluntary self-organization.

The no-strike provision was not, however, to become effective in the plant of the Federal Shipbuilding & Dry Dock Co. until the new agreement incorporating the Atlantic Coast Zone Standards and the no-strike provision was signed. The present strike is not, as Mr. Korndorff in his statement says it is, "in violation of the union's recent agreement outlawing strikes in our yard for a period of 2 years."

Very truly yours,

WILLIAM H. DAVIS,
Chairman, National Defense Mediation Board.

On August 16 this letter was made public together with the following statement by Mr. Davis:

Statement by Mr. William H. Davis, Chairman, National Defense Mediation Board

August 16

Word has gone across the country that in the case of the Federal Shipbuilding & Dry Dock Co. at Kearny, N. J., the National Defense Mediation Board has recommended a closed shop. That is not true. The Mediation Board refused to recommend a closed shop or a union shop or any provision which would compel anyone to join the union. I explained this in my letter of August 13 to the Secretary of the Navy, commenting upon the statement released to the press by Mr. Korndorff, president of the company. A copy of my letter to the Secretary is attached.

The maintenance of membership clause recommended by the National Defense Mediation Board in that case requires that an employee who has already voluntarily joined, or who hereafter voluntarily joins the union must, as a condition of employment, remain a member of the union in good standing during the limited period covered by the contract between the company and the union. There is no restriction of the worker's choice as to whether he will or will not join the union.

It has been suggested that this clause does restrict the worker's freedom of action in some measure, because when he has joined the union he cannot get out. But a few words will show that this is in reality a restriction which he has chosen to impose upon himself; and self-imposed restriction is the essence of freedom. Every man who joins the union agrees to be bound by its majority action, and those who are now members of the union have voted by overwhelming majority for a union shop which would make their jobs depend upon their union membership. New employees who may hereafter voluntarily join the union will know beforehand that if they join the union they will have to remain members for the 2-year duration of the shipyard contract.

The maintenance of membership clause is not a new device. It has been widely used in American labor agreements and gives stability and develops disciplined and responsible conduct. It has virtually become the pattern voluntarily adopted by management and labor in the northwestern pulp and lumber industries, where it has tended to minimize union friction for the duration of the contract after the contract is signed with one or the other of the two competing unions. It has not led to a closed shop.

The records of the Mediation Board show that the clause is not at all regarded by the Mediation Board as appropriate in all cases. On the contrary, it has been recommended only for special reasons developed by the facts in particular cases. In a majority of the cases in which the issue of union security has been raised the Board has made settlements or made recommendations which include no union security clause of any kind.

The Mediation Board was set up to prevent interruption of defense production. It was instructed to and it does explore every possibility of working out a mutually satisfactory agreement by mediation. If despite all efforts it fails in mediation, it is instructed to offer the parties voluntary arbitration of any part or all of their dispute. If that fails, the Board is authorized to make an investigation with findings of fact and to formulate recommendations for the settlement of the dispute. It has been and will be the purpose of the Mediation Board to make fact findings that are accurate and recommendations that are fair and just in the light of the facts as they are found in each case. The Board profits by criticism and welcomes enlightened discussion which may help it in its emergency task of substituting reason for force in industrial disputes which affect the defense of our country.

A week later, the President directed the Secretary of the Navy to take over the plant.

Executive Order

August 23

WHEREAS on the 27th day of May, 1941, a Presidential proclamation was issued, declaring an unlimited national emergency and calling upon all loyal citizens in production for defense to give precedence to the needs of the Nation to the end that a system of government which makes private enterprise possible may survive; and calling upon our loyal workmen and employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital, and calling upon all loyal citizens to place the Nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use, all of the physical powers, all of the moral strength and all of the material resources of the Nation; and

WHEREAS the Federal Shipbuilding & Dry Dock Co. has contracted with the United States, its departments and agencies for the construction and manufacture of vessels, facilities, and other material and equipment vital to the defense of the United States, and such vessels, facilities, material, and equipment have been in the course of construction and manufacture at the plant of said company and the United States owns vessels and facilities in the course of construction and material and equipment there situated; and

WHEREAS a controversy arose concerning the terms and conditions of employment between said company and its workers which they have been unable to adjust by collective bargaining, and the controversy was duly certified to the National Defense Mediation Board, established by Executive order of March 19, 1941; and the said Board has made a recommendation which the company has refused to accept; and

WHEREAS as a result of such refusal, the construction and manufacture at said company's plant of vessels, facilities, material, and equipment has been interrupted by a strike which still continues, the objectives of said proclamation of May 27, 1941, are jeopardized, and the immediate resumption of the construction and manufacture of said vessels, facilities, material, and equipment is essential to the defense of the United States; and

WHEREAS for the time being and under the circumstances set forth, it is essential, in order that operation at said plant be continued, that the plant be operated by or under the control of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, pursuant to the powers vested in me by the Constitution and laws of the United States, as President of the United States and Commander in Chief of the Army and Navy of the United States, hereby authorize and direct the Secretary of the Navy immediately to take possession of and operate the plant of the Federal Shipbuilding & Dry Dock Co., through and with the aid of such person or persons or instrumentality as may be designated, and insofar as may be necessary or desirable, to produce the vessels, facilities, material, and equipment called for by the company's contracts with the United States, its departments and agencies, or otherwise, and do all things necessary or incidental to that end. There shall be employed such employees, including a competent civilian adviser on industrial relations, as are necessary to carry out the provisions of this order, and, in furtherance of the purposes of this order, the Secretary of the Navy may exercise any existing contract rights with said company, or take such other steps as may be necessary or desirable.

Possession and operation hereunder shall be terminated by the President as soon as he determines that the plant will be privately operated in a manner consistent with the needs of national defense.

FRANKLIN D. ROOSEVELT.

The union returned to work with the taking over of the plant by the Government, which operated it from August 25 to January 7, when it was returned to the corporation pursuant to Executive order of January 5, 1942. During this period the question arose whether the Board's maintenance of membership recommendation was in conformity with the National Labor Relations Act and should be put in force as well as the other terms on which agreement between the union and the company had been reached. The President asked the Board to consider this question, "if necessary with the members of the National Labor Relations Board." The general counsel of the Labor Relations Board thereupon rendered the following opinion:

"Does an employer engage in unfair labor practices within the meaning of section 8 of the National Labor Relations Act by making an agreement with a labor organization—not established, maintained, or assisted by an unfair labor practice, and the exclusive representative of the employees in an appropriate unit when made—to require as a condition of employment that employees in the appropriate unit who become members in such labor organization should maintain their membership therein? (Such a provision is hereinafter referred to as a maintenance-of-membership clause.)

"The proviso to section 8 (3) of the act[1] provides that nothing in the act or in any other statute of the United States shall preclude an employer from making certain agreements. Consequently, if a maintenance-of-membership clause comes within the terms of the proviso to section 8 (3) it is not unlawful under section 8 of the act. The proviso states two requirements which may be disposed of summarily: (*a*) the contracting labor organization must not be one established, maintained, or assisted by an unfair labor practice and (*b*) it must be the exclusive representative of the employees in an appropriate unit. This memorandum assumes that the maintenance-of-membership clause is incorporated in a contract between an employer and an unassisted labor organization which is the duly designated exclusive representative.

"The agreements protected by the terms of the proviso to section 8 (3) are those which 'require as a condition of employment membership' in the contracting labor organization. Clearly the maintenance-of-membership clause does no more than 'require as a condition of employment membership' in the contracting union. By virtue of this type of clause an employee who becomes a member of the union must, upon pain of discharge, remain a member for a limited period. The closed-shop provision and the maintenance-of-membership clause differ only in that the former makes union membership a condition of employment with respect to all employees, whereas the maintenance-of-membership clause is more limited, making membership a condition of employment only with respect to employees who have already joined the union, either before or during the life of the contract. While one provision is more severe than the other, both fall within the terms of the proviso, since they 'require as a condition of employment membership' in the contracting union

"While the respective reports of the House and Senate committees recommending adoption of the act discuss the proviso to section 8 (3) in relation to its effect upon closed-shop contracts, the legislative history of the act does not warrant any conclusion that Congress intended to confine the protection of the proviso to closed-shop contracts. As the reports on their face disclose, the congressional committees discussed the closed-shop type of provision specifically because they felt that the effect which the proviso would have upon the practice of having closed shops and upon industry was being misinterpreted. Thus, for example, the report of the United States Senate Committee on Education and Labor states in this connection: 'Propaganda has been widespread that this proviso tends to supply legal sanctions to the closed shop or seeks to impose it upon all industry. This propaganda is absolutely false.' The report, continuing, explains that the proviso does not compel the closed shop but simply provides that if the conditions prescribed in the proviso are

[1] SEC. 8. It shall be an unfair labor practice for an employer—
(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (*a*), in the appropriate collective bargaining unit covered by such agreement when made.

met, the closed-shop contract should not be deemed unlawful under the act or under other Federal legislation. (74th Cong. 1st sess., S. Rep. 573, p. 11.) In sum, although the legislative history of the act shows specific discussion of the relation between the proviso and closed-shop contracts, there is no reason to believe that Congress intended the proviso to section 8 (3) to protect only one species of agreement requiring as a condition of employment membership in a contracting labor organization.

"The National Labor Relations Board has frequently held, of course, that the closed-shop contract may be lawful because of the proviso to section 8 (3) (*Matter of Ansley Radio Corporation* and *Local 1221, United Electrical and Radio Workers of America, C. I. O.*, 18 N. L. R. B. 1028, and cases therein cited). The Board, however, has not confined the protection of the proviso to closed-shop contracts. Thus, in *Matter of Isthmian Steamship Co.* and *National Maritime Union of America*, 22 N. L. R. B. 689, the employer and the exclusive representative executed a non-closed-shop contract providing for preference of employment to members of the contracting union, as vacancies occurred. The Board sustained the validity of this preferential hiring contract under the act and held, accordingly, that the employer acted lawfully in filling vacancies with members of the contracting union. That the preferential employment contract, that is, a contract which requires union membership as a condition of employment but not amounting to a closed-shop contract, comes within the scope of the proviso to section 8 (3) has also been established in court (*Peninsular and Occidental Shipping Co.* v. *N. L. R. B.*, 98 F. (2d) 411 (C. C. A. 5), cert. den'd, 305 U. S. 653).

"Upon the basis of the above discussion I conclude: (1) That the proviso to section 8 (3) makes it lawful under the National Labor Relations Act and under any other statute of the United States for an employer to make an agreement with an unassisted union, which is the exclusive representative of the employees in an appropriate unit, requiring as a condition of employment that such employees be members of the contracting union; (2) that the proviso is not confined to the closed-shop variety of contract; and (3) that an employer does not engage in unfair labor practices within section 8 of the National Labor Relations Act by including in a contract with a proper labor organization, a maintenance-of-membership clause."

On September 17, Chairman Davis informed the President that the Board was unanimous in holding that the language of the National Labor Relations Act, section 8 (3) "constitutes an express statutory sanction of the maintenance-of-membership clause" recommended by the Board and that this opinion was confirmed by that of the general counsel of the National Labor Relations Board.

The same day the Secretary of the Navy issued a directive, stating that if any case arose to which this recommendation would apply, it would be referred to the Board for action. On November 7, the union charged that 10 men had failed to maintain their membership in good standing and requested that they be discharged. The Secretary of the Navy referred these charges to the Board which appointed Burton A. Zorn, New York attorney, to investigate them. Pursuant to authorization by the Board, the chairman made findings with respect to these employees and transmitted them to the Secretary of the Navy December 9. No further action was taken during the life of the Board.

(For subsequent documents in this case see pt. V.)

CASE No. 47

CHENEY BROTHERS, South Manchester, Conn. — TEXTILE WORKERS UNION OF AMERICA, LOCAL 63, C. I. O.

Certified July 2. No strike. Hearing July 8–10. 2,300 workers involved. Closed July 16

Panel: Graham, Hamilton, Lyons. Assistant, Cox.

An agreement had existed between the parties for 4 years. The company had encouraged union membership. An impasse was reached in respect of a demand

for the closed shop. Because the company made parachutes the case was certified, though the panel doubted that defense operations were seriously involved. The president of the company, though apparently friendly to the union, was opposed to the principle of the closed shop or the check-off. The union complained that it was losing its members to the higher-paid neighboring plants. On the suggestion of the panel chairman there was finally agreement to a voluntary check-off with an escape clause for causes unconnected with working conditions; the right to escape was to be judged by a joint employer-employee committee. If the committee did not agree, the question was to be arbitrated. This clause was a Board innovation. Thereafter other issues were easily disposed of. Chief of them was a demand for a 10 cents per hour increase which was settled at 5 cents.

CASE No. 48

SCULLIN STEEL CO., St. Louis, Mo. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1062, C. I. O.
SCULLIN STEEL CO. EMPLOYEES MUTUAL AID ASSOCIATION, INC.

Certified July 7, 1941. No strike. Hearing July 14–15. 2,200 workers involved. Closed July 15

Panel: Stocking, Teagle, Kennedy. Assistant, Leiserson.

The S. W. O. C. did not attempt to renew its contract with the company which ran from May 15, 1937, to February 28, 1938. On December 19, 1938, the company recognized and signed a contract with the Scullin Steel Co. Employees Mutual Aid Association, Inc. S. W. O. C. renewed its organization in January 1941, asked for recognition in March, and charged that the association was company-supported. After hearing, the S. W. O. C. accepted the panel's informal recommendation that it place the issues before the N. L. R. B.

CASE No. 49

BREEZE CORPORATIONS, INC., Elizabeth, N. J. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 871, C. I. O.

Certified July 12. Strikes October 2–3, November 12–14. Hearings July 22–24, September 30, October 1, 2, 6–10, 14, 15. 520 workers involved. Closed November 24

Panel: Wyzanski, Meyer, Brophy. Assistant, Cox.

On June 4 the National Labor Relations Board certified Local 871, U. A. W., as representative of the company's Waverly plant employees. The company has three plants. Previously the company had signed contracts with the same union covering the two Newark plants. Although signed at separate dates, the two contracts were virtually the same, both to expire December 22, 1941. The certification named only the Waverly plant. At the hearing it was deemed advisable to include the other two plants in negotiations.

The union demanded an increase in wages, liberalized vacations with pay, and a union shop. It already had a union maintenance clause.

As a result of the first hearing, the Board appointed Messrs. Harold B. Bergen, Ewing W. Reilley, and Philip S. Babb as agents to investigate the issues. Upon receipt of their report, the parties were recalled on September 30 and after 2 weeks of negotiations no agreement was reached. Then it was agreed that the parties return home to negotiate concerning the Waverly plant alone, with the understanding that the Board would recommend terms for Waverly if called upon. During the hearing there was a short strike, which was called off at the Board's request. Another brief strike occurred before the parties on November 24 signed a final agreement.

CASE No. 50

PART I

TENNESSEE COAL, IRON & RAILROAD CO., Birmingham, Ala. — OFFICE AND TECHNICAL WORKERS, LOCAL UNION No. 2210, C. I. O.

PART II

TENNESSEE COAL, IRON & RAILROAD CO., Birmingham, Ala. — INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-287, A. F. L.

Certified July 14. No Strike. Hearing July 18, 19, 21. 1,000 workers involved. Closed August 8

Panel: Graham, Ching, Hamilton, Watt, Rieve. Assistant, Kirstein.

PART I

Negotiations between the office workers and the company became deadlocked and a strike was threatened on July 14. The strike was postponed at the request of the Board and after several hours of negotiations between the union and the company an agreement on all points in difference was reached. The Board took little or no part in shaping this agreement, which was promptly ratified.

PART II

A dispute arose between the Electrical Workers and the company over the issues of recognition and wages. A strike deadline was set for July 18, and this case was certified at the same time and with the same case number as the one above. After 2 days of conferences, the question of recognition of the union was withdrawn by the union which recognized that this matter came under the jurisdiction of the N. L. R. B. An agreement was reached on the wage matter by company's promising to confer about instituting an incentive plan which had been long under consideration and which would result in a substantial increase in hourly earnings. After some delay this was ratified August 8.

CASE No. 51

AIR ASSOCIATES, INC., Bendix, N. J. — UNITED AUTOMOBILE WORKERS OF AMERICA, C. I. O.

Certified July 17. Strike July 12–27. Hearings July 22, 23, October 6, 8, 15. 525 workers involved. Closed December 31

Panel: Graham, Ching, Lyons. Assistant, Gill.

The facts up to the time of the issuance of the Board's final findings and recommendations on October 9 are set out in detail therein. These, together with the Board's earlier recommendations of July 23 and 29 are printed below.

The union accepted the recommendations of October 9, but the company rejected them, and on October 21 the Board "transferred" the case to the Office of Production Management "for appropriate action." Efforts by the O. P. M. and the War Department (which had important defense contracts with the company), to induce the company to accept the recommendations, were of no avail, and a complete stoppage of production was imminent. On October 30, the President directed the Secretary of War to take over and operate the plant. The Army immediately put all the strikers back to work; production well in excess of the previous level was quickly attained. The board of directors of the company thereafter installed a new management, which on December 26 signed a complete collective bargaining contract, settling all outstanding issues. The Army then immediately withdrew and turned the operation of the plant back to the management.

(The Executive order directing the Secretary of War to take over the plant, as well as the text of the agreement of December 26, 1941, are given in pt. V.)

Recommendation

July 23

Following hearings in Washington, D. C., on July 22 and 23, 1941, the Board makes the following recommendations:

1. The prompt return to work of all employees in any way involved in this dispute, without discrimination.
2. All questions in dispute involving back pay to be submitted to an arbitrator appointed by this Board.
3. The parties immediately to start negotiations at a mutually agreeable place with a view to arriving at a satisfactory collective bargaining agreement by August 9, 1941. If satisfactory progress is being made, the time for negotiations may be extended by the Board or by mutual agreement of the parties. In event they are unable to agree, the matters in dispute to be submitted to the arbitrator.
4. All decisions of the arbitrator are to be binding on both parties.
5. That the parties cooperate to the fullest extent in promoting orderly, responsible, and harmonious relations for the maintenance of shop discipline and maximum defense production.

Recommendation

July 29

The National Defense Mediation Board having, on July 23, 1941, issued recommendations in this case, the following is a supplement to and clarification of those recommendations, and is the position of the National Defense Mediation Board.

1. All employees in any way involved in this dispute are to return to work promptly, without discrimination.
2. Due to the fact that the National Labor Relations Board, subsequent to the issuance of this Board's recommendations on July 23, has issued a formal complaint covering the question of back pay for the 24 employees allegedly discriminated against in this case, that back-pay issue automatically is subject to the decision of the National Labor Relations Board.
3. Negotiations for a collective bargaining contract between the company and the union are to begin immediately at a mutually agreeable place. A representative of the National Defense Mediation Board will sit in on these negotiations as an observer.
4. The Board sets the date of August 9, 1941, as a reasonable time in which negotiations can be concluded. The period for negotiations may be extended by mutual agreement of the parties. Such issues as are not agreed to between the parties may be submitted to arbitration by mutual agreement of the parties. The Board appoints Harry Shulman, Sterling Professor of Law, Yale University, to serve as arbitrator for such purpose. Issues on which no agreement is reached and which are not submitted to arbitration shall be the subject of a prompt and thorough investigation by Professor Shulman. Following such investigation, he shall make his report to the National Defense Mediation Board and the Board will issue formal findings and recommendations.
5. The parties shall cooperate to the fullest extent in promoting orderly, responsible, and harmonious relations for the maintenance of shop discipline and maximum defense production.

Findings and Recommendations

October 9

PRELIMINARY RECITALS

This case was certified to the National Defense Mediation Board by the Secretary of Labor on July 17, 1941. The Board held hearings in Washington, D. C., on July 22 and 23, 1941, and issued preliminary recommendations on July 23. On July 29 the Board issued supplemental and clarifying recommendations. Further hearings were held in Washington, D. C., on October 6, 7, and 8, 1941, and the Board now makes the following findings and recommendations:

FINDINGS

1. The company produces aircraft parts, and has its manufacturing plant at Bendix, N. J., employing over 600 workers. It has defense contracts totaling over 5 million dollars, the major part of which consists of subcontracts with virtually all of the leading aircraft companies, and the balance consisting of direct contracts with the Government.

2. On July 1, 1941, the National Labor Relations Board conducted an election among the company's employees, resulting in a vote of 206 in favor of representation by the union, and 188 against such representation. The parties were apprised of the results of the election promptly after it was held, although the formal certification of the N. L. R. B. was not issued until July 18, 1941.

3. On July 2 and 3 the company laid off a number of employees, assertedly because of lack of materials. The union charged that the lay-offs were discriminatory and filed charges with the National Labor Relations Board to that effect.

4. On July 11, the union-shop committee waited upon Mr. F. Leroy Hill, president of the company, to discuss a grievance, and a heated controversy ensued over Mr. Hill's refusal to discuss the matter with the committee unless a verbatim transcript of the discussion was recorded on a dictaphone installed in his office. The committee withdrew from the office to discuss this matter among themselves, and the facts as to what happened next are in serious conflict. The company asserts that the members of the committee proceeded through the plant, attempting to incite a strike, and that they were for that reason evicted from the plant; the union asserts that the committee merely stepped outside one of the plant doors to consider the problem of presenting their grievance under Mr. Hill's conditions, and were locked out when they attempted to step back into the plant. In any event, both sides are agreed that the committee then got in touch with the union representatives, who called an immediate strike in protest over the alleged lock-out.

5. The strike, beginning on July 12, was still in progress when the case was certified here on July 17. The Board held hearings on July 22 and 23 and issued preliminary recommendations on the evening of July 23.

6. These recommendations provided in substance that all strikers should promptly return to work without discrimination, that questions in dispute involving back pay for the workers allegedly discriminated against should be settled by an arbitrator appointed by the Board, and that the parties should begin bargaining negotiations promptly, with any issues on which agreement could not be reached to be submitted to the arbitrator.

7. The union accepted the recommendations immediately. On July 27 the company responded, agreeing to take back all striking employees without discrimination, and to start negotiations for a contract immediately. The company pointed out, however, that the back-pay issues had by that time become the subject of a formal complaint by the N. L. R. B. The company rejected the Board's proposal of arbitration of unsettled bargaining issues.

8. On July 29, the Board issued supplemental and clarifying recommendations, providing that all employees should return to work promptly without discrimination; that bargaining negotiations should begin at once; that if the parties agreed to submit any particular issues to arbitration, Harry Shulman, Sterling Professor of Law, Yale University, should act as arbitrator; that disputed issues not submitted to arbitration should be the subject of prompt investigation and report to the Board by Professor Shulman; and that the back-pay questions should be left to the determination of the N. L. R. B. in view of the fact that it had by that time issued a formal complaint covering such matters.

9. These recommendations were satisfactory to the parties, and contract negotiations were conducted in New York City from July 30 through August 8, 1941. At the company's insistence, the union reluctantly agreed to permit the company to make a verbatim transcript of all these negotiations. Such a transcript was made and was thereafter distributed by the company, in part at least, to the employees in the plant and to the press.

10. The bargaining negotiations concluded on August 8, 1941, with the parties in disagreement on virtually the entire contract. The only important issue on which agreement was reached was that the company recognized the union as the exclusive bargaining agency of the employees pursuant to the N. L. R. B. certification of July 18, 1941.

11. The union then proposed that all disputed issues be submitted to arbitration by Professor Shulman as was permitted, but not required, under the Board's recommendations.

12. The company responded to this proposal by refusing to arbitrate any questions except two.

13. The first was a claim by the company for "reparation" from the union for alleged damage suffered during the strike. The union refused to arbitrate that claim, taking the position that such a matter had no place in bargaining negotiations, and that if the company pressed the matter, the union was prepared to submit a counterclaim against the company for losses suffered by the union and its members during the strike.

14. The second point which the company offered to arbitrate concerned the recognition of the union. Although the company had previously agreed to recognize the union pursuant to the N. L. R. B. certificate, the company now claimed that there was doubt as to whether the union continued to represent a majority of the employees. The union refused to arbitrate this question.

15. Since that time, the company has consistently adhered to the position that the status of the union as bargaining agency for its employees should be redetermined now, despite the N. L. R. B.'s certificate of July 18, 1941. As the Board has made clear to the parties during the hearings in Washington on October 6–8, 1941, it is the position of this Board that it must and does honor the certificate of the N. L. R. B., dated July 18, 1941, that the union is the duly selected bargaining agency of the employees. The N. L. R. B. is a coordinate agency of the Federal Government established to determine questions of representation, and the rulings of the N. L. R. B. on such questions are not subject to review before this Board. The company's position is particularly without merit in view of the short time which has elapsed since the N. L. R. B.'s certificate.

16. Since the company refused to arbitrate the disputed contractual provisions, all of which the union proposed to submit to arbitration, and since the union refused to arbitrate the two other matters which the company desired to arbitrate, Professor Shulman proceeded to make his investigation of the issues in dispute pursuant to the Board recommendations.

17. On September 30, 1941, before Professor Shulman's report was completed, the union called another strike at the company's Bendix plant. The company contends that this strike was entirely without cause. The union advances a number of reasons for its action. The first is the company's insistence, already referred to above, upon reopening the question of representation after having previously agreed to abide by the N. L. R. B. certificate. The second is the fact that the union shop committee had recently been unsuccessful in attempting to secure meetings on grievances with Mr. Hill, president of the company and the sole executive empowered to make final decisions in labor matters. This was a departure from the company's former practice, Mr. Hill having previously met with the committee upon request. Whether or not the company so intended, the reversal of policy led the union to feel that the company was determined to undermine its organization. The third is what the union describes as a campaign of harassment of union members in the plant on the part of the company's supervisors, including threats of loss of employment. It should be noted in this connection that the N. L. R. B. has recently issued a formal complaint charging the company with a wide variety of unfair labor practices directed against the union and its members during the period in question, and that on July 9, 1941, the Circuit Court of Appeals for the Second Circuit handed down a decision approving N. L. R. B. findings in a previous case against the company to the effect that the company had discharged 5 employees for union activities. Finally, the union asserts that just before the strike, the company began moving various machines out of the plant and into another building at a nearby town. In the absence of being given any explanation of this move by the company, the union felt that it was another antiunion maneuver. The company sharply disputes the fact in this latter connection, stating that it merely placed some new machinery in this other building, pending expansion of the plant to provide for additional space.

18. At about this time, Professor Shulman submitted his report to the Board, and the Board scheduled a hearing for the afternoon of Thursday, October 2, 1941. Mr. Hill informed the Board that he was obliged to be elsewhere at that time on urgent defense business, and neither he nor any of his associates appeared for the hearing, although the members of the panel and the representatives of the union came to Washington for the hearing. The chairman of the panel hearing the case spent 3 hours on the afternoon of October 2, and a large part of

the morning of October 3, in an effort to reach Mr. Hill by telephone, the representatives of the union and the members of the panel meanwhile standing by and waiting. Mr. Hill was finally reached by telephone on October 3, having returned to the plant, and he consented to be present in Washington on Monday, October 6.

19. At the hearings on October 6, 7, and 8, the Board undertook to work out with the parties a mutually satisfactory contract. Professor Shulman's report was not served on the parties, pending the outcome of these efforts in securing a mutual agreement by the parties themselves. On October 7, the members of the panel drafted a suggested form of contract, exclusive of wages, embodying parts of the contracts proposed by each party, and conforming closely to established practices. On the morning of October 6, the parties expressed their views as to this informal proposal by the Board. The union listed a few points which it desired to have added to the contract, and the company requested various changes and additions.

20. In the middle of the afternoon of October 8, at which time the negotiations were just getting under way, following the preliminary statements outlined above, Mr. Hill and Mr. Walter Chalaire, counsel for the company, informed the Board that they would have to return to New Jersey that evening because of an urgent appointment on the following morning with representatives of the United States Army on defense-contract matters. The Board got in touch with the Army representatives involved and secured their agreement to postpone the conference in question until Friday morning, October 10, in view of the urgency of the dispute before the Board. When this information was transmitted to Mr. Hill and Mr. Chalaire, they informed the Board that they were leaving Washington that evening, anyway, Mr. Hill asserting that he had to be at the plant in the morning irrespective of the conference with representatives of the Army.

21. The company representatives adhered to this position despite the urgent request of the Board to stay here until the next day and attempt to work out a fair contract with the assistance of the Board. This is the first occasion in the existence of the Board when representatives of either party have walked out on the Board in the middle of its mediation efforts.

22. In view of the adamant position of the company in insisting on leaving the negotiations that evening, the Board attempted to work out during the balance of afternoon some form of interim settlement of the dispute, the first point being a request that the union call off the strike and that the company return the strikers to their jobs in the plant immediately. The company representatives stated that they had hired new employees to take the places of the strikers, and that they were unwilling to dismiss these new employees to make room for the strikers, but that they would take the strikers back whenever jobs were available. The members of the panel pointed out that the Board was not asking them to dismiss the new employees out of hand, and that the company was quite free to find other jobs for these new employees, either in the company's plant or at other plants, or indeed to make whatever financial settlements with these men the company felt obligated to make. The only recommendation of the Board was that the strikers be returned to work immediately if the union would agree to call off the strike in the interests of national defense—a request which, it was pointed out, is the standard practice of the Board. The company flatly refused to accept this proposal.

23. The Board thereupon informed the representatives of both parties that since the company refused to take the strikers back to work, efforts to settle the strike were necessarily unavailing at this time, and that the Board was forced to proceed to issue formal recommendations.

RECOMMENDATIONS

1. The Board recommends that the union, in the interests of national defense, immediately call off the strike.

2. The Board recommends that the company, in the interests of national defense, immediately return all the strikers, upon application, to their former jobs, without discrimination.

3. Following the return of the strikers to their jobs, the Board will call the parties to Washington for a further hearing in an effort to reach a speedy and reasonable agreement upon a collective bargaining contract to insure harmonious relations and maximum defense production.

In issuing these recommendations, the Board urgently calls to the attention of the parties the vital importance to the national defense effort of harmonious relations between the company and the union, which is the exclusive bargaining agency certified by the National Labor Relations Board. On the basis of the

entire record in this case, the Board feels obliged to observe that this company has not exhibited toward either this certified union or the National Defense Mediation Board that attitude of cooperation to which the public is entitled on the part of a company whose operations are essential to the defense of the nation.

The parties are given until 10 a. m. on Saturday, October 11, 1941, to inform the Board, by telegram, of their acceptance of these recommendations.

CASE No. 52

FEDERAL MOGUL CORPORATION, Detroit, Mich.

UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 202, C. I. O.

Certified July 2. Strike (slowdown) July 10–22. Hearing July 25–26. 1,500 workers involved. Closed September 19

Panel: Stocking, Connelly, Lyons. Assistant, Kirstein.

The facts are stated in the following opinion by which the Board in substance referred the case to the National Labor Relations Board.

Recommendation

July 26

On July 21, 1941, the Secretary of Labor certified to this Board that the dispute between the Federal Mogul Corporation, Detroit, Mich., and the United Automobile Workers of America, Local 202, C. I. O., threatened to burden or obstruct the production or transportation of equipment or materials essential to national defense and had not been adjusted by the Commissioners of Conciliation of the Department of Labor. Thereupon, the Board set a date for a hearing of this matter and notified the parties of the said hearing and requested their attendance thereon. In doing so, the Board wired both parties in part as follows:

"In the meantime the Board expresses to both parties its serious concern over the present slowdown in the defense production of the Federal Mogul Corporation. In view of the unlimited national emergency recently proclaimed by the President, the Board calls upon all parties concerned to cooperate to insure full production pending the Board's consideration of this dispute."

The panel designated to hear this case was composed of George W. Stocking, representing the public, John E. Connelly, representing employers, and Hugh Lyons, representing employees. Hearings were held in Washington, D. C., on July 25, 1941, and July 26, 1941.

BACKGROUND OF CONTROVERSY

In 1939 a strike of 6½ weeks' duration was conducted by the employees of the Federal Mogul Corporation at the corporation's Detroit Shoemaker Avenue plant. The strike was precipitated by negotiations over the renewal of a contract which had been in force since 1937. The strike appears to have been characterized by extreme bitterness but was settled by a new agreement. Subsequent to the strike, in November 1939, the Federal Mogul Corporation opened a small plant at Greenville, Mich., about 150 miles from Detroit. Thereafter the company expanded its Detroit operations by erecting a plant about 150 yards from its Shoemaker Avenue building. As there was an interchange of operations and workers between these adjacent plants, the contract in existence with the United Automobile Workers of America, C. I. O., was extended to cover the employees of the new plant. After a comparison of union signatures with the company's pay roll, the company recognized the United Automobile Workers of America, C. I. O., as the proper bargaining agency for the employees of the company at its John R service plant.

In February 1941, after a comparison of union signatures with the company's pay roll, the Federal Mogul Corporation recognized the Federal Mogul Employees Association, an independent association incorporated under the laws of the State of Michigan, as the bargaining agency for its members at the Greenville plant.

In the spring of 1941 the United Automobile Workers of America initiated an effort to organize the Greenville plant. On July 3, 1941, two of the organizers while in Greenville in connection with their organization campaign were taken from a car as they were departing from a Greenville hotel and were subjected

to physical violence by a group of men, with injuries sufficiently serious that they had to be hospitalized. Subsequent to these events, on July 10 a slowdown occurred in the Detroit Shoemaker Avenue plants of the Federal Mogul Corporation. Two or three days later the slowdown spread to the John R service plant. According to the company's statement, the slowdown resulted in a stoppage of about 90 percent of the plant's current production.

The efforts of the Michigan State Mediation Board and the Federal Conciliation Service of the Department of Labor failed to result in a resumption of full production and the case was certified to the National Defense Mediation Board.

UNION'S POSITION

The union contends—

1. That the plant at Greenville was established by the Federal Mogul Corporation as a means of escaping its obligations under its agreement with the United Automobile Workers of America at its Detroit plant;

2. That the company has transferred nondefense work which normally would have been done at the Detroit plant to the Greenville plant as a part of a program to expand the Greenville plant at the expense of the Detroit plant;

3. That the Federal Mogul Employees Association at the Greenville plant is company dominated and is, in fact, a company union;

4. That the employees at the Greenville plant have been intimidated;

5. The union representatives imply in their discussions that the company was in some way implicated in the assault on their organizers on July 3 and allege that the organizers are denied police protection for the lawful organizing activities in Greenville.

6. The union contends, further, that it should be recognized as the agency for collective bargaining representing the employees in the Greenville plant.

COMPANY'S POSITION

1. The company denies that the Greenville plant is being expanded at the expense of its Detroit operations. On the other hand, it declares that the Detroit operations have been expanded to a greater extent than operations at the Greenville plant and that no work has been transferred except in the interest of efficient operation;

2. The company denies that the Federal Mogul Employees Association at the Greenville plant is company-dominated or is a company union. It alleges that the Federal Mogul Employees Association was recognized in the same manner as was the United Automobile Workers of America, C. I. O., union, at the John R service plant.

3. The company denies any connection with the physical violence suffered by the organizers on July 3.

4. The company contends that it cannot recognize the United Automobile Workers of America as the bargaining agency for its Greenville employees, inasmuch as it has a contract with the Federal Mogul Employees Association.

5. The company contends that the slowdown was in violation of section 5 of the agreement with the United Automobile Workers of America, C. I. O., signed November 1, 1940. Section 5 reads as follows:

"The union and its members individually and collectively agree that during the term of this agreement they will not cause or permit or take part in any picketing, strike, or other curtailment of work until the procedure provided herein for settlement of grievances has been completely exhausted and in no case until negotiations have continued for at least 10 days, and then not until sanctioned by the international union."

The procedure for settling grievances is set forth in the agreement, as follows, in sections 7 through 14:

"7. For employee representation and disposition of grievances, there shall be an executive shop committee consisting of 7 employee members including the president of the local union, each of whom shall have been in the continuous employ of the company for at least 1 year. One of these committeemen shall be chosen from either tool room, machine repair, millwrights, or sample room and one shall be chosen from the foundry building. Not more than five committee members, however, are to be present during meetings with the manage-

ment. It shall be the responsibility of the committee to select from its members the five representatives who are to attend the meetings.

"8. Within 24 hours after the executive shop committee and stewards designated in the preceding sections take office, the secretary of the union shall furnish in writing to the personnel office of the company the names and offices held by each. Upon any change in personnel of either the executive shop committee or the stewards during the term of this contract, written notice of such change shall be furnished in similar manner.

"9. In case a grievance, complaint, or request arises which cannot be immediately settled by the steward of the department or group in which it arises and the foreman of that department or group, the steward shall present such grievance, complaint, or request to the foreman of the department in writing in quadruplicate and signed by the steward and the complaining employee on forms provided by the company.

"10. Upon receipt of the grievance in writing on forms provided by the company, the chief steward shall take the matter up with the division superintendent who will attempt to adjust the grievance.

"11. If the procedure outlined above does not result in a satisfactory adjustment, the case shall then be referred to the executive shop committee who shall then take the matter up with the plant manager of the company.

"12. Cases which cannot be satisfactorily settled as hereinbefore provided, shall be reviewed jointly by a representative of the company and a representative of the international union, with such additional representatives as either party may desire.

"13. The departmental steward and the employee will be notified by the foreman in writing before an employee is discharged or transferred from his department. It is further agreed that no emloyee shall lose any time by discipline for any cause without first receiving a hearing between the shop committee and the management: *Provided, however,* An employee may be sent home and pay terminated immediately in case of an emergency, but should it be found in the hearing that the employee was unjustly sent home, the company agrees to pay this employee for all time lost for such discipline.

"14. The steps set forth in paragraphs 9 and 10 shall take place immediately upon a grievance, complaint, or request being made. The meeting between the executive shop committee and the company shall take place by appointment during working hours on company time. An agenda of grievances shall be submitted by the executive shop committee to the management at the time of request for the appointment."

THE ISSUES IN THE CONTROVERSY

1. Is the Federal Mogul Employees Association a company union?
2. What constitutes the proper unit and the proper agencies for representing the employees in the Greenville plant for the purpose of collective bargaining?

FINDINGS OF FACT AND RECOMMENDATIONS

The Board finds that the issues in this controversy are matters which properly come within the jurisdiction of the National Labor Relations Board and recommends that the controversy be disposed of by the United Automobile Workers of America, Local 202, filing with that Board appropriate complaints in order that the issues may be heard and properly determined. In accordance with paragraph 2, section (e), of the Executive order of March 19, 1941, establishing the National Defense Mediation Board, the Board will thereafter request the National Labor Relations Board to expedite, as much as posible, the disposition of these issues.

The Board further recommends that the company cooperate in insuring that any complaint filed with the National Labor Relations Board will be expeditiously handled.

The Board further recommends that all grievances or controversies which may meanwhile threaten to obstruct or curtail production be disposed of in accordance with the provisions of the agreement now in effect between International Union United Automobile Workers of America, C. I. O., and the Federal Mogul Corporation.

CASE No. 53

GULF STATES UTILITIES CO.
Baton Rouge, La.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. L., and GULF STATES ELECTRICAL SERVICE EMPLOYEES ASSOCIATION

Certified July 22, 1941. Strike July 9–20. Hearing July 28, 29. 200 workers involved. Closed July 29

Panel: Fisher, Mead, Wilson. Assistant, Leiserson.

This controversy arose over union recognition. The I. B. E. W. in November 1940 began organizing the employees of the company in Louisiana. The company operated also in Texas. In December 1940 the Gulf States Electrical Service Employees Association began to organize employees in both Louisiana and Texas. The company recognized and signed a contract with the latter union.

The I. B. E. W. filed a petition with N. L. R. B. requesting certification as sole bargaining agent for its members. This petition was dismissed by N. L. R. B. Charges of company domination were then filed. The union requested recognition for presentation of grievances, which was refused.

The panel heard the case and issued the following recommendations to which both parties agreed.

Recommendations

July 29

To facilitate and expedite an adjustment of the controversy presently existing between the Gulf States Utilities Co. and the International Brotherhood of Electical Workers, the National Defense Mediation Board recommends that the following procedures be carried out:

1. The employees of the company now on strike shall immediately return to work with all employment relationships unimpaired, including their classifications and seniorities.

2. Any individual employee or group of employees shall have the right to present any grievance or grievances to the company regarding the application of any rules or standards of employment, either in person or by any person or persons, including representatives of the International Brotherhood of Electrical Workers, when such employee or employees desire such representation.

3. These procedures shall be effective immediately and pending a disposition of the charges of unfair labor practices now on file with the National Labor Relations Board, made by the International Brotherhood of Electrical Workers.

4. In the event the parties hereto are unable mutually to agree to a satisfactory adjustment of any grievance or grievances referred to herein, the matter shall be taken up with the proper Federal agencies or with the Labor Division of the Office of Production Management for assistance in effecting a settlement.

CASE No. 54

ARMOUR & Co. (15 plants)

PACKINGHOUSE WORKERS ORGANIZING COMMITTEE, C. I. O.

Certified July 26. No strike. Hearing August 7 and 8. 14,000 workers involved; number elsewhere unknown. Closed September 7

Panel: Wyzanski, Mead, Carey (Brophy). Assistant, Leiserson.

During 1938 and 1939 National Labor Relations Board certified the union in 15 of the company's plants. In February 1941 the union proposed a master agreement in renewal of the 15 separate contracts. The company refused. Local bargaining proceeded, but was broken off in April by the union. The principal demands were for a 20 cents per hour wage increase and the closed shop.

Without consulting the union, the company announced a general 8-percent increase in wages. This the union resented. Negotiations were resumed, which again bogged down in June. A commissioner of conciliation was assigned to assist, but no agreement was reached.

The major issues which came before the Board, in addition to the master agreement proposal, were a grievance procedure, wages, and the closed shop. After

2 days' negotiation before the panel, an interim agreement was reached on the basis of a letter from the National Labor Relations Board providing that the parties would negotiate a single master agreement, which should include a provision permitting shop stewards to handle grievances, and give a 10-cent increase over the old rates. The closed-shop issue was tacitly dropped by the union.

Negotiations toward such a contract began the last week in August. On September 7 a single master agreement was signed.

CASE No. 55

BORG-WARNER CORPORATION (MECHANICS UNIVERSAL JOINT DIVISION), Rockford, Ill. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 225, C. I. O.

Certified July 26. Strike August 20–27. Hearing August 5, 6. 868 workers involved. Closed September 11

Panel: Stacy, Connelly, Rieve. Assistant, Leiserson.

The issues were wages and union security. On July 18 a conciliator and an O. P. M. representative recommended (1) 13-percent increase in wages, and (2) maintenance of membership. The union accepted both but the company accepted only the wage term.

When the hearing adjourned it was understood the panel would meet again to make recommendations, but instead it asked the parties to hold one more conference. They did on August 20, but it failed. The union leaders called a strike the same day and notified the Board that the union considered the panel's conduct an indication of disinclination to act on the case. Chairman Davis informally advised the union that if the Board did act, it would probably not favor the maintenance of membership clause and he suggested the union accept settlement on the basis of the 13-percent wage increase. On August 27 after the local negotiations such a settlement was made.

CASE No. 56

ALUMINUM CO. OF AMERICA, Vernon, Calif. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 808, C. I. O.

Certified July 28. No strike. Hearing August 6, 7. 1,750 workers involved. Closed August 7

Panel: Graham, Swope, Golden. Assistant, Kirstein.

Unsuccessful negotiations for a contract followed an N. L. R. B. election held in April 1941. A strike threatened over the issues of wages, vacations, night-shift bonus, union security, and check-off. Agreement was reached before the Board on August 7. The union had demanded a 78 cents minimum and a 15 cents per hour raise; it got 72 cents and 9 cents, which more or less conformed to the company's Cleveland rate, but which, according to the company, was in excess of prevailing local rates. Though protesting night-shift bonuses as unusual in the Los Angeles area, it gave 3 cents and 5 cents to the respective night shifts. Other issues were postponed pending a joint conference to work out the general relationships between the C. I. O. and Alcoa.

CASE No. 57

LINCOLN MILLS OF ALABAMA, Huntsville, Ala. — TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Certified July 28, 1941. Hearing August 4–7. 1,800 workers involved. Closed October 13

Panel: Fisher, Adams, Lyons. Assistant, Cox.

The contract between the company and T. W. U. A., the company's first, expired September 23, 1940. Negotiations for a renewal extended to July 1941,

with the old contract continued from time to time for short periods. A strike was voted for July 29. The Board asked that production be maintained.

The issues were (1) union security, (2) wages, and (3) arbitration of future wage disputes. From remarks made by the company's officers the Board came to understand that the company was not strongly opposed to a union maintenance clause; consequently it recommended it with a so-called "escape clause" as well as a voluntary check-off; and it appointed Mr. Francis Goodell to investigate the wage question. Mr. Goodell recommended that all employees receiving more than the minimum rates should receive increases so as to establish sufficient spreads to provide incentive which, he believed, the increase of the minimums under the Wage and Hour Law had destroyed. His recommendations involved a total increase of about 7.3 percent. Hearings were resumed on September 16. After Mr. Goodell's report had been submitted to the parties an agreement on the wage issue was reached.

The company rejected the Board's recommendation on union security. T. W. U. A. called a number of departmental strikes and, on September 26, the company closed down the plant "indefinitely." On October 10, the parties signed an agreement including the Board's recommendations. It is understood that apprehension with respect to securing Government contracts may have been instrumental in the acceptance ultimately of the recommendations. The recommendations follow:

Findings and Recommendations

August 7

Following certification to this Board, extensive hearings and informal conferences have been held before the division named to act in the controversy, on the questions in issue in the negotiation of a renewal contract between the company and the union. By collective bargaining the parties have agreed on all clauses of the proposed contract except those relevant to wages and to union security. It is apparent that further negotiations would be fruitless at this time.

1. The Board recommends that the parties shall execute at this time a contract embodying the clauses upon which they have agreed together with those hereafter recommended.

2. Upon the wage issue the union asks for a 10-percent wage increase, for establishment of a minimum wage of 40 cents an hour, and for provision that wages be the subject of negotiation at the end of 6 months and, in the event of disagreement, of arbitration. The company urges that under present conditions the wages paid by it are equitable and offers to include in the contract appropriate provisions for reopening the wage question for negotiation, but not for arbitration, at the end of 90-day periods.

In order that it may be fully informed upon this issue the Board will appoint a special agent to investigate the question of what will be appropriate wages for the company to pay and to report to the Board within 3 weeks. Upon receiving the special agent's report, the Board will endeavor to promote an agreement on the matter by collective bargaining. If an agreement is not reached the Board will make findings and recommendations on this issue.

To cover this matter in the agreement now to be executed, the Board recommends the inclusion of this clause:

"(*a*) The wage rates, including piece rates, to be paid by the company are left for future determination. The parties agree to resume negotiations concerning them after 30 days. In the meantime the existing rates shall be paid."

3. Upon the issue of union security the union asks for a check-off and some form of union shop or maintenance of membership clause. The company is unwilling to assent to either.

The Board recommends, after full consideration of all the circumstances of this case, that both parties accept the following clause for inclusion in the contract between them:

"Upon receipt of proper authorization the company agrees to deduct from the weekly earnings union dues in the amount of 25 cents per week, to be paid to the union.

"All employees now members of the union, or who may become members of the union shall, as a condition of employment, remain members in good standing during the life of the contract, provided that individuals may withdraw from the organization for legitimate reasons. Any individual desiring to withdraw from the union shall set forth in writing the legitimate reason for such

withdrawal. Such legitimate reasons shall not be related to wages, hours, and conditions of employment and shall be subject to review and approval of a Board consisting of two representatives of the union and two representatives of the company. In accepting or rejecting the reasons advanced by the employee wishing to withdraw, a decision of the Board shall be unanimous. In the event the Board is unable to agree unanimously as to whether or not the reasons advanced are legitimate reasons, the matter shall then be referred to an impartial person for determination. Should the Board be unable to agree to an impartial party to whom the matter is to be referred, he shall be selected by the Director of Conciliation, United States Department of Labor. Decisions of such impartial persons shall in no way be considered as establishing precedents."

CASE No. 58

OHIO BRASS CO., Mansfield and Barberton, Ohio — **UNITED ELECTRICAL, RADIO & MACHINE WORKERS, LOCALS 747 and 758, C. I. O., and NATIONAL BROTHERHOOD OF OPERATIVE POTTERS, A. F. L.**

Certified August 1. Strike June 16–September 16. Hearings August 11, 12, 13, and 14, and September 9. 1,800 workers involved. Transferred to National War Labor Board

Panel: Stacy, Connelly, Golden. Assistant, Cox.

Interim Findings and Recommendations

August 14

Hearings were begun in this case on August 11, 1941, and continued through August 14. The Board was notified at the opening of the hearings that a petition for certification would be filed before the National Labor Relations Board by the National Brotherhood of Operative Potters, A. F. L., to determine the appropriate representative for collective bargaining at the Barberton plant of the Ohio Brass Co. This petition was filed on August 12.

The present proceedings grew out of negotiations which began in February 1939, when Local 747 of the United Electrical, Radio & Machine Workers of America was certified as the bargaining agency for the employees of the company at its Barberton plant. Negotiations continued intermittently until June 10, 1941, when the union called a strike to enforce its demand for a collective-bargaining agreement. Representatives of the United States Conciliation Service and the Office of Production Management were unable to effect a settlement of the dispute. Since certification of the dispute to the National Defense Mediation Board by the Secretary of Labor, the company has taken the position that further proceedings before this Board with respect to a collective bargaining agreement are inappropriate until the question of representation has been decided by the National Labor Relations Board.

This Board has been informed by the Office of Production Management that shipment of essential materials for the operation of electric utilities has been interrupted by the strike and that resumption of operations at the Ohio Brass Co. would relieve pressure on other producers of similar defense materials and would greatly aid the defense program.

In the interest of promoting national defense, it is the opinion of the panel that the strike should be terminated and production resumed by the company as rapidly as practicable. To this end, the panel makes the following ad interim recommendations:

1. All employees should be returned to their former jobs without discrimination and without prejudice to seniority rights. All employees should report to the plant not later than August 25, 1941, that they are available for work.

2. Wage adjustments, if any, resulting from the outcome of further negotiations between the company and Local 747, or from proceedings before the National Defense Mediation Board, should be retroactive to the date upon which operations are resumed at the Barberton works of the company.

3. After the disposition by the National Labor Relations Board of the petition filed by the National Brotherhood of Operative Potters, the National Defense

Mediation Board will resume hearings to take appropriate action under the provisions of the Executive order of March 19, 1941.

The company at first objected to all three points. N. L. R. B. dismissed the brotherhood's petition and this Board rescheduled hearings. Meantime the company followed recommendation No. 1 and reinstated all employees.

At the second hearing after mediation failed, an investigator was appointed. Before he concluded his report, however, the C. I. O. withdrew the case when its members left the Board.

CASE No 59

ERWIN COTTON MILLS CO., Durham, N. C. TEXTILE WORKERS UNION OF AMERICA, LOCAL 246, C. I. O.

Certified August 6. No strike. Hearings August 18–22. 2,000 workers involved. Closed August 24

Panel: Wyzanski, Lapham, Lyons. Assistant, David C. Acheson.

Negotiations between the company and the union on union security, arbitration, security, and wages coming to no conclusion, the union voted a strike for August 6.

The union demanded a 40 cents per hour minimum and a 10-percent raise. The panel was not sympathetic to the demand. The Fair Labor Standards Act had recently boosted the minimum to 37½ cents and the company had just raised it to 38½ cents and had given a 10-percent increase. The agreement on this issue involved arbitration on job classifications for which the union was eager. The new classifications were to be dovetailed into the wage scales of the contract.

The union was unable to offer support for its demand for a union shop or union maintenance provision. The panel suggested a check-off and this was agreed to with an escape clause similar to that in case No. 47, *Cheney Brothers*. This allowed escape for reasons not connected with working conditions. If a dispute as to the right to withdraw authority to check off cannot be settled then the parties are to refer it to a person to be nominated by Frank P. Graham, or, if he cannot make the nomination, by the American Arbitration Association.

CASE No. 60

UNITED STATES GYPSUM CO. (17 plants) GAS, BY-PRODUCTS, COKE AND CHEMICAL WORKERS UNION, DISTRICT NO. 50, U. M. W. A., C. I. O.

Certified August 6. Strike June 26–September 2. Hearing August 18, 19. 3,000 workers involved. Transferred to National War Labor Board

Panel: Graham, C. E. Adams, Rieve. Assistant, Cox.

The union had been named exclusive representative for bargaining in 17 of the 42 plants of the employer. The union demanded that the company make an agreement in respect to wages, vacations, and union security covering the 17 plants. The company refused to enter upon such a negotiation. On June 26, the employees at 4 plants struck. The others followed. The company pointed out that the National Labor Relations Board had dismissed a petition filed by the union for certification of the 17 plants as a single unit. The N. L. R. B. in a letter to the union, however, stated that this action constituted no legal obstacle to joint conferences looking to the negotiation of a model collective bargaining contract effective in all plants. The Board, to meet the position taken by the company that it must make a separate contract for each plant and at the same time to keep negotiations at Washington under the auspices of the Board, made an—

Interim Recommendation

August 19

The issues between the parties are involved in the five points submitted by the union as the basis for the settlement of the strike.

1. Master agreement for the 17 plants on strike.
2. 10 cents per hour general increase.
3. Liberalized vacation provisions.
4. Arbitration machinery for unadjusted grievances.
5. Provision for union security.

The Board so far has considered only the first proposal regarding the matter of bargining on a 17-plant basis for a master agreement. Since the first issue, if settled to the satisfaction of both parties, will establish a machinery of collective bargaining which will make it posisble for the parties to settle the other issues by direct negotiation, the Board has decided for the present to issue only a recommendation having to do with the machinery of collective bargaining. In the event that parties thereafter are unable to settle the remaining issues, the Board will recall the parties with the purpose of continuing mediation of the dispute. The union contends that the settlement of the whole strike, and the establishment of a collective bargaining relationship that will promote industrial peace in the future, requires the negotiation of a master multiplant contract. The company on the other hand contends that for these purposes collective bargaining should be carried out on an individual plant basis at the plants. The Board finds that a number of the basic matters of collective bargaining are determined by the central policy of the corporation, and that these basic matters are also subject for the consideration and policies of the national union.

The company has taken the position that it will not make 1 contract for all the 17 plants even on those matters which may be common to all 17 plants. In order to meet this situation, and at the same time keep the negotiations in Washington under the auspices of the Mediation Board, the Board recommends that the company shall bring to Washington forthwith, in addition to their executive officers, the appropriate officers of the 17 plants involved, and that the union shall bring to Washington, in addition to their national officers, representatives of each of its 17 local unions.

The company may ask the union representatives from any plant to establish in a reasonable way that they are entitled to recognition. Bargaining shall then proceed between each plant management and the union representatives of each plant.

The union accepted but the company rejected this recommendation. The Board thereupon tried the course of ordering an investigation.

Interlocutory Findings and Order

August 28

This dispute comes before the National Defense Mediation Board on a certificate from the Secretary of Labor dated August 6, 1941, that the dispute threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense.

United States Gypsum Co., the employer, mines gypsum and fabricates plasters, wallboards, and similar products for use in building construction. It operates 42 plants spread over the country—mines, factories, and warehouses—and controls a very large proportion of the available supply. Full production is, therefore, important to the defense housing program and thus to the national defense.

Gas, By-Products, Coke and Chemical Workers Union, District No. 50, U. M. W. A., C. I. O., alleges that it has been named exclusive representative for the purposes of collective bargaining by the employees at 17 of the company's 42 plants. It has had contracts at at least 2 of those plants and has in the past been recognized at a majority of the 17. The employees at some of the other plants are affiliated with the American Federation of Labor and at others are not organized.

In the spring of 1941 District No. 50 demanded that the company sign one master agreement covering all the plants represented by it. Negotiations were held from time to time but repeatedly broke down on this point. On June 26,

1941, the employees at 14 plants struck; a few days later they were followed by those at 3 other plants. The strike affects 40 percent of the national production of gypsum-plaster and wallboard.

At the hearings before the National Defense Mediation Board it appeared that there were five issues between the company and the representatives of its employees.

1. *Master agreement for the 17 plants on strike.*—The union argued that the settlement of the whole strike and the establishment of a collective bargaining relationship which would promote industrial peace in the future required the negotiation of a master multiplant contract. The company contended that to achieve these purposes, collective bargaining should be carried out on an individual plant basis at the various plants. It pointed out that the National Labor Relations Board dismissed a petition filed by the union for certification for a single unit of 17 plants. A letter from that Board to the union, however, establishes that "The Board's action of June 20, 1941, in dismissing the petition referred to above should not in any manner be construed as constituting a legal obstacle to representatives of the United States Gypsum Co. and the representatives of District 50, United Mine Workers of America, participating in joint conferences looking towards the settlement of the current strike through the negotiation of a model collective bargaining contract, which contract would apply and be equally effective in all plants now on strike."

2. *General wage increases.*—The union asked for a general wage increase of 10 cents per hour. In support of its demand it argued (*a*) that there is an urgent need for wage increases, (*b*) that the United States Gypsum Co. is paying less than is paid for labor in comparable occupations, and (*c*) that the United States Gypsum Co. is clearly in a position to pay higher wages. The company did not reply to these arguments but indicated its belief that wage questions could be settled after the procedure for collective bargaining was determined.

3. *Vacations.*—The union demanded that the company's vacation plan be liberalized and that a uniform plan be put into effect at the 17 plants. The company took the same position in respect to vacation that it did in respect to wages.

4. *Arbitration of grievances.*—The union argued that in the interest of industrial peace any contract between it and the company should provide some machinery for the arbitration of grievances so that it would not be necessary for the union in each instance to accept the company's final judgment or else call a strike. The company replied that the management had the responsibility of making the final decision on all grievances and that it could not surrender it.

5. *Union security.*—At the hearings, the union added to its previous demands a request for some measure of union security. It stated that this was made necessary by the strike and the tactics of the company during the strike.

On August 19, 1941, the Board issued an interim recommendation covering the first of the 5 issues in the controversy. In order to meet the position taken by the company that it must make a separate contract for each plant and in order at the same time to keep the negotiations at Washington under the auspices of the Board, the Board recommended "that the company shall bring to Washington forthwith, in addition to their executive officers, the appropriate officers of the 17 plants involved, and that the union shall bring to Washington, in addition to their national officers, representatives of each of its 17 plants." The recommendation requires the union to waive for the present its demand for a master contract. The union accepted the recommendation in the interests of national defense. The recommendation that the company commence negotiations for the separate plant contracts under the auspices of the Board has been refused by the company. It therefore becomes necessary for the Board to proceed to consideration of the four remaining issues in the controversy and to act upon them in accordance with paragraph 2 (d) of the Executive order of March 19, 1941. The Board has determined that the following measures should be taken thereunder:

1. The Board will appoint a special representative to act in its behalf, under the provisions of paragraph 2 (d) of the Executive order of March 19, 1941, to investigate the four remaining issues between the employer and its employees, and practices and activities thereof with respect to the controversy or dispute above identified; to conduct hearings, take testimony, and make findings of fact for the information of the Board. The special representative may, to any extent requested by the Board, supplement his findings on any or all points of the controversy by any such suggestions or recommendations as may seem to him appropriate.

2. Each party shall be given full opportunity to present to the special representative any data which such party considers relevant to the issue.

3. The report of the special representative shall be made available to both parties after it has been filed with the Board.

4. The Board will request the investigator to complete the investigation and make a report within 30 days unless the time is extended by the Board at the request of the investigator.

5. Upon receipt of the report of the special representative, the Board will resume consideration of the dispute in an effort to adjust and settle it by agreement between the parties. Should it prove impossible to reach such an agreement, the Board will then proceed to make its findings of fact and recommendations in accordance with paragraph 2 (d) of the Executive order of March 19, 1941.

Upon the basis of the foregoing action, the National Defense Mediation Board asks the union and its members to resume and continue the production of these essential defense materials until an agreement is reached or the Board has made its final recommendations.

The Board appointed Owen D. Young to investigate all issues. He held informal hearings in New York, and later formal hearings, after which he prepared tentative findings. Before filing his report, however, the C. I. O. members of the Board withdrew and the case was in abeyance till its transfer to the new board.

CASE No. 61

CONSOLIDATED EDISON CO. OF NEW YORK, INC., New York, N. Y.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 3, A. F. L.

BROTHERHOOD OF CONSOLIDATED EDISON EMPLOYEES

Certified August 7. Strike July 29–August 11. Hearings August 14, 15; and September 16. 6,500 workers involved. Closed September 26

Panel: Davis, Mead, Lynch. Assistant, Gill.

Local No. 3 called a general strike of electrical construction workers in New York City, for the purpose of focusing public attention on their dispute with the company concerning employment on construction jobs. Certification of the dispute to this Board on August 7 resulted in the termination by local No. 3 of the general strike. Local No. 3 continued to picket the company's Sherman Creek project; it, however, had no members on that job so that the job continued without interruption.

The Board held two hearings. Between them, it had Arthur Meyer investigate and report. The Board issued the following recommendations, which were neither accepted nor rejected by the parties, and the Board took no further action:

Recommendations

September 26

This case was certified to the National Defense Mediation Board by the Secretary of Labor on August 7, 1941.

Hearings before the Board were held in Washington, D. C., on August 14 and 15, 1941.

The issue in the dispute concerns the demand of local No. 3 for jurisdiction over certain electrical work at two projects now in process of construction by the company (generating stations at Sherman Creek and Waterside), and for a commitment from the company that similar work in the future will be given to members of local No. 3. This work is now being done by electricians on the company's regular pay-roll, who are members of the Brotherhood of Consolidated Edison Employees, with which organization the company has a collective bargaining contract. The brotherhood is the certified representative of the company's employees pursuant to a National Labor Relations Board election. The members of local No. 3 are not employees of the company, but are customarily engaged by independent contractors to do electrical work upon jobs which the company from time to time lets out to such contractors. The contract between the brotherhood and the company provides that "wherever it is deemed by the

Edison Co. to be practicable work on company premises and in the streets, which can be economically performed by company employees, will not be let out."

It is the contention of local No. 3 that the decision of the company to permit the electrical work at the Sherman Creek, Waterside, and similar jobs to be done by its own employees, members of the brotherhood, represents a departure from an established practice of many years to let out such work to independent contractors, who would employ members of local No. 3. The company contests this assertion, and claims that it is bound by its contract with the exclusive bargaining agent to give this work to its own employees, since it is work on the company premises and can, in the company's judgment, be economically performed by company employees. The company states that it has in the past given a great deal of work to members of local No. 3, that it is currently doing so on various other projects, and that it intends to continue to do so in the future whenever it is appropriate in the light of its contract with the brotherhood and the exigencies of the particular work to be performed.

On August 18, 1941, the Board appointed Arthur S. Meyer, chairman of the New York State Mediation Board, as a special agent of this Board to investigate the issues in this dispute and to make findings and recommendations to this Board. Mr. Meyer submitted a report on September 2, 1941, copies of which were made available to the parties.

In his report, Mr. Meyer reviewed in detail the evidence and arguments of the parties, and concluded that the claim of local No. 3 to the jobs at Sherman Creek and Waterside was not well taken.

Without finding that the company is bound by contract to give all its construction work to the brotherhood union, Mr. Meyer has stated that the company could scarcely, as a practical matter, enter into any labor engagement affecting the brotherhood union without securing its approval. At the same time he noted that the company was the sole owner that failed, either directly or through contractors, to employ the members of local No. 3 on construction work and pointed out that, through its association with the building trades council, local No. 3 might, without impropriety, prevent the company from employing some of the building-trades unions unless it employed all. Accordingly, to avoid serious controversies that would arise if the company contracted some of its construction work but reserved the electrical work for its own employees, he recommended that this Board make further attempts at mediation in an effort to reach an understanding between the parties as to a practical method of avoiding such controversies.

The parties were summoned to Washington for a further hearing on September 16, 1941. It was not possible to secure a mutual agreement of the parties on the issue of local No. 3's claim to the work now being performed by company employees at the Waterside and Sherman Creek jobs. The Board also explored the possibilities of working out between the parties some formula for the allocation of future work in accordance with the proposal of Mr. Meyer that further mediation be attempted to that end, but it became apparent that mediation at this stage could not succeed in securing any agreement upon such a formula.

In view of the circumstances set forth above, the Board hereby makes the following recommendations:

1. The claim of local No. 3 to jurisdiction over the electrical work on the jobs at Waterside and Sherman Creek is not well taken, and the Board recommends no change in the present allocation of that work.

2. The Board finds no basis, in the absence of any immediate controversy over other jobs bearing on defense production, for recommending a particular line of demarcation to govern the allocation of future electrical work as between the brotherhood and local No. 3.

3. The Board does recommend, however, that whenever such a question arises in the future as to jobs on which the company employs the other building-trades unions for construction work, the company shall, before allocating such work, consult with both the brotherhood and local No. 3 as interested parties to that allocation, and endeavor to work out a solution which is fair and calculated to avoid industrial strife. In the event that a mutual agreement cannot be reached in any such case, the Board recommends that the parties shall promptly avail themselves of the offices of the New York State Mediation Board in resolving the controversy.

CASE No. 62

TODD GALVESTON DRY DOCKS, INC., Galveston, Tex. — GALVESTON METAL TRADES COUNCIL, A. F. L.

Certified August 7. Strike July 15–August 11. Hearing August 15, 16. 1,850 workers involved. Closed August 23

Panel: Fisher, Hamilton, Wilson. Assistant Leiserson.

Todd Galveston Dry Docks, Inc., a subsidiary of the Todd Shipyards Corporation, was wholly engaged in ship repair work. It had had, since 1937, verbal agreements with the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, the International Association of Machinists, and several other unions affiliated with the A. F. L. Metal Trades Department. In May and June 1941 this company and the unions involved had participated in the Gulf Coast Zone Labor Standards conferences, which had been initiated by the Shipbuilding Stabilization Committee of O. P. M., the Navy Department, and the Maritime Commission. These negotiations had been concluded in June, with the understanding that the zone labor standards agreed upon, subject to ratification, were to be included in all agreements negotiated locally between the unions and the several shipbuilding and ship repair companies, and it was agreed that the standards and contracts were to continue for 2 years.

The negotiations between Todd Galveston Dry Docks, Inc., and the unions in the present case had begun about July 10. These negotiations lasted for less than 1 week, because it was the employer's understanding that the zone-standards conferences had completed the negotiations, while the union wished to continue bargaining on the union-shop question and on the question of a premium or extra pay for work in tankers and double bottoms, which is done under confined, peculiarly disagreeable conditions. A strike was called July 16. The O. P. M. Labor Division requested the national officers of the metal-trades unions to arrange a return to work on the understanding that the case would be certified to the Board.

On August 7 the case was certified, and 4 days later, the men returned to work.

The unions and the company agreed to dispose of the question of premium rates for work in confined spaces through the ordinary grievance procedure, the company undertaking to give such complaints serious consideration.

On the main issue which led to the strike—the union shop—the union claimed that it had had an oral understanding with the company since February 1938 which amounted to a union-shop agreement. The company did not deny that it had cooperated to some extent with the unions but did deny that it had a closed-shop agreement. It stated itself unwilling to enter into any written closed-shop contract, such arrangements being unknown on the Gulf coast. The Board recommended the following provision, which the parties incorporated into their contract signed August 16 and effective, upon ratification by the local unions, on August 23.

Recommendation

August 16

The National Defense Mediation Board having held hearings concerning the dispute between Todd Galveston Dry Docks, Inc., and the several unions affiliated with the American Federation of Labor involved, recommends for the approval of the parties the inclusion in their union agreement of the following:

"The company recognizes that a large majority of its employees for some years past have been members of the unions with which it now has a labor agreement, and relations have in general been mutually satisfactory. In consequence of the foregoing, the union and the company agree that it is for their mutual interest to maintain existing practices and agree to do so. The company looks with favor on its employees becoming members of the unions parties to this agreement."

CASE No. 63

ROCKFORD DROP FORGE CO., Rockford, Ill. — INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, LOCAL 614, A. F. L., and INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. L.

Certified August 9. No strike. Hearing August 19, 20. 300 workers involved. Closed August 24

Panel: Stacy, Ching, Brown. Assistant, Leiserson.

On June 9 the International Brotherhood of Blacksmiths, Drop Forgers and Helpers was certified as the result of an N. L. R. B. election in the company's forge shop. On June 18 the union submitted a copy of a proposed contract to the company. Delays by the company in setting a date for negotiations resulted in a strike July 21. On July 31 the strike was called off at the request of the Conciliation Service.

On July 26 the employees in the machine shop invited the machinists to represent them, and on August 1 a consent election was held which the machinists won.

In the course of negotiations before the Board, through mediation by the panel, the unions dropped their union-shop demand and the parties agreed to schedules of wage rates for the forge shop and the machine shop which amounted to increases ranging from 10 cents to 30 cents per hour, which were what the union had asked for. Having agreed to a disposition of the union shop and wage issues, the parties within 3 hours agreed upon and signed a full working agreement covering grievance procedure, hours, seniority, and termination clause. On August 24 the membership ratified the agreement.

CASE No. 64

CURTISS-WRIGHT CORPORATION (CURTISS PROPELLER DIVISION), Caldwell, N. J. — INTERNATIONAL ASSOCIATION OF MACHINISTS, AIRCRAFT LODGE No. 703, A. F. L., and PROPELLER CRAFT, INC.

Certified August 13. Strike August 8–14. Hearing August 22, 23, 28, September 5. 740 workers involved. Closed September 5

Panel: Fisher, Hamilton, Watt. Assistant, Leiserson.

The plant at Clifton was established in October 1938, and the plant at Caldwell, in September 1940. A contract with Propeller Craft, an independent union, was put into effect for the employees at Clifton in 1938, then extended to Caldwell in 1940. Aircraft Lodge No. 703 was organized largely among employees of the steel-blade department at Caldwell. By March 1941 it claimed to represent a majority of the employees at Caldwell and filed charges with the N. L. R. B. alleging company domination of Propeller Craft. These charges were subsequently withdrawn and on May 29 a petition was filed with the N. L. R. B. for certification as exclusive bargaining representative at the Caldwell plant. On July 17 the Board ordered an election among the employees of the company at both the Clifton and the Caldwell plants, accepting the contentions of Propeller Craft and the company that both plants were the appropriate unit. On August 7 an election was held at which Lodge No. 703 received 527 votes, while Propeller Craft received 1,094.

On the following day a committee of Lodge No. 703 made formal wage demands upon the plant superintendent at Caldwell. This superintendent advised Lodge No. 703 he could not deal with them because they were not the certified bargaining representatives. The same day employees of the steel-blade department walked out, succeeding in shutting down the plant. Representatives of the O. P. M. immediately intervened in the situation. At a conference held in Washington on August 13 in the offices of Mr. Hillman, the representatives of the I. A. M. agreed to return to work if the case were certified to the Board.

At the conclusion of the second day of hearing, August 23, the representatives of the company announced they would open negotiations with Propeller Craft, looking to an increase in wages. The panel thereupon recessed the hearing until September 5. At the request of Lodge No. 703, however, a hearing was held on

August 28. At this meeting the representatives of the I. A. M. presented evidence to show that wage increases were long overdue at the company's plant in Caldwell and that wages had been the cause of the strike on August 8.

On August 29 the company and Propeller Craft reached a new wage agreement providing for a 10-cent hourly increase in wages for all employees hired prior to May 15. At the hearing on September 5 the representatives of the company informed the Board of this action. The representatives of the I. A. M. took the position that these increases were entirely unacceptable. The panel thereupon adjourned the hearing and closed the case.

CASE No. 65

SOLVAY PROCESS CO., INC., Baton Rouge, La.

OIL WORKERS INTERNATIONAL UNION, LOCAL 424, C. I. O.
CHEMICAL WORKERS UNION, LOCAL 22609, A. F. L.

Certified August 15. Strike September 1–3. Hearing August 22–24. 275 workers involved. Transferred to National War Labor Board

Panel: Stocking, Lapham, Brophy. Assistant, Kirstein.

In April 1938 the union charged the company with unfair labor practice, and in 1940 the National Labor Relations Board directed the company to deal with the union. This decision was appealed, and the circuit court handed down a decision which was not clear to the parties.

A strike was threatened for August 16, 1941, but was postponed at the Board's request. After the hearing, the parties were recessed to await the recommendation. Before receiving the recommendation, the union, on September 1, attempted to strike the plant. This strike was terminated at the request of the Board on September 3. The following recommendation was submitted to the parties on September 17.

Recommendation

September 17

This dispute between Solvay Process Co. and its employees at its plant in Baton Rouge, La., comes before the National Defense Mediation Board on certificate from the Secretary of Labor dated August 15, 1941, that it threatens to burden or obstruct the production or transportation of materials essential to national defense.

The broad issue in controversy is whether the company shall commence bargaining with Local No. 424, Oil Workers International Union, C. I. O., as the representative of its employees at the Baton Rouge plant. The Board held hearings on August 23 and 24 but was unable to settle the controversy by agreement between the parties.

Proceeding under paragraph 2 (d) of the Executive order of March 19, 1941, the Board makes the following findings of fact:

1. Solvay Process Co., Inc., at its plant in Baton Rouge, La., manufactures chemicals, chiefly chlorine, caustic soda, and soda ash. Production at this plant is essential to national defense not only because brine is supplied to the ethyl-gasoline plant at Baton Rouge, but also because the chlorine is an important and scarce chemical under mandatory priority.

2. Continuously since March 1938, Local No. 424, Oil Workers International Union, C. I. O., has asserted that it was and is the exclusive representative for the purpose of collective bargaining of all the company's employees at the Baton Rouge plant, exclusive of clerical and supervisory employees, laboratory employees, brine-well employees, and mill, water, and wharf employees.

In 1938 Local No. 424, C. I. O., filed with the National Labor Relations Board an amended charge that the company had committed unfair labor practices under the National Labor Relations Act in that it (*a*) had interfered with the employees' exercise of their right to form, join, and assist a labor organization, (*b*) had dominated and contributed support to a company union, and (*c*) had refused to bargain collectively with Local No. 424, C. I. O., the representative of its employees. The National Labor Relations Board issued its complaint alleging the same violations. Hearings were held. In December of 1938 the trial examiner made his intermediate report, and during the same month the company and the alleged company-dominated union filed exceptions. A year later the

National Labor Relations Board heard argument and on March 22, 1940, rendered a decision sustaining the complaint.[1] It ordered among other things that the company "upon request bargain collectively with Oil Workers International Union, Local No. 424, as the exclusive representative of all the employees at the (company's) Baton Rouge, La., plant, exclusive of clerical and supervisory employees, laboratory employees, brine-well employees, and mill, water, and wharf employees, in respect to rates of pay, wages, and hours of work and other conditions of employment."

The company thereafter filed in the United States Circuit Court of Appeals for the Fifth Circuit a petition to review the order of the National Labor Relations Board. The case was not argued until the fall of 1940. On January 4, 1941, the court handed down an opinion dismissing the petition for review and directing that a decree be entered enforcing the order of the National Labor Relations Board.[2] The court said in its opinion: "We think the steadfast unwillingness of the manager to negotiate with this committee (of the union) and his continuing failure to consent to impartial determination of the propriety of their requests for recognition, when viewed in the light of his active disparagement of union organizations, disclosed a determined course of deliberate noncompliance from which the inference that it was an unwarranted refusal to bargain could be drawn by reasonable men."

On February 20, 1941, the company filed a petition for rehearing, which was denied. On March 27, 1941, the court of appeals entered its decree enforcing the order of the National Labor Relations Board with this modification: After ordering the company to bargain with local No. 424, the decree provided "that Solvay Process Co. or any labor organization at its Baton Rouge, La., plant * * * may petition the Board for a certification of representatives, in which event the company may abide the decision of the Board and comply with any supplemental order to enforce certification by the Board, in lieu of bargaining collectively with Oil Workers International Union, Local No. 424, as herein ordered." The proviso was added at the request of the company and over the objection of the National Labor Relations Board. On May 20, 1941, the company filed a petition for a writ of certiorari in the Supreme Court of the United States. On June 2, 1941, that petition was denied and the decree ordering the company to bargain with local No. 424 remained in force.

During these protracted legal proceedings there have been organizing activities among the employees by Chemical Workers Union No. 22609, A. F. L., which now contends that the majority of the 250 production employees of the company have become members of that local. On June 10, 1941, 8 days after the Supreme Court denied certiorari in the proceedings before the Fifth Circuit Court of Appeals, the American Federation of Labor filed with the National Labor Relations Board a petition for investigation and certification of representatives, claiming to represent the company's employees at its Baton Rouge plant. The National Labor Relations Board dismissed the petition on June 27, 1941, pointing out that the company "has taken no steps to comply with the said decree" of the circuit court of appeals.

On July 9, 1941, the company filed an employers' petition for investigation and certification of representatives of the employees at its Baton Rouge plant, alleging that both Local No. 424, C. I. O., and the Chemical Workers Union, No. 22609, A. F. L., claimed to represent such employees. On July 12, 1941, the National Labor Relations Board dismissed that petition.

3. Following the dismissal of the petitions last mentioned, Local No. 424, C. I. O., renewed its demand upon the company to bargain with it. Upon refusal, it threatened direct action; it took a strike vote but the strike was postponed while the case was before the United States Conciliation Service and until August 29, 1941.

4. Chemical Workers Union No. 22609, A. F. L., was not certified as party to the dispute, but its position was set forth in a telegram to the Board by E. H. Williams, organizer for the American Federation of Labor. It claims to represent the workers at the Baton Rouge plant and threatened "Any decision favorable to minority group (the C. I. O. union) will result in strike by A. F. L."

5. The company takes the following positions:

(*a*) That if it proceeds to recognize the C. I. O. as bargaining agency for its employees, it will be confronted by a strike led by Chemical Workers Union No. 22609. That, in its judgment, such a strike will interfere more seriously with

[1] In the *Matter of Solvay Process Co., Baton Rouge, La.*, 21 N. L. R. B., No. 90.
[2] *Solvay Process Co.* v. *National Labor Relations Board*, 117 F. (2d) 83 (C. C. A. 5).

its plant operations than the threatened strike led by C. I. O. That, there is, moreover, a real danger that a strike by A. F. L. at the Baton Rouge plant will be supported by a sympathetic strike at the stone quarry at Winnfield, La., where the company has a contract with the A. F. L. and upon which its operations at the Baton Rouge plant are dependent.

(*b*) That, despite the decisions of the National Labor Relations Board, it is under no legal obligation to bargain. It argues that the proviso in the decree of the circuit court of appeals, quoted above, must be read as requiring the National Labor Relations Board to hold an election before the company is to be under any obligation to bargain collectively with local No. 424, and that the decisions dismissing the petitions filed in June and July were in violation of the decree and contrary to law.

The National Defense Mediation Board is here confronted with a dispute in which a conflict of organizing activities between the Congress of Industrial Organizations and the American Federation of Labor is involved, and in which the National Labor Relations Board still has jurisdiction of a complaint of unfair labor practices brought against the company by the C. I. O. In such a case the principles which must determine the action of the Mediation Board, and which should determine the action of all the parties, are very clear. The Mediation Board, as a matter of course, gives full faith and credit to the action of the National Labor Relations Board at whatever stage the proceedings before that Board may have reached. In this period of emergency the spirit of the National Labor Relations Act and respect for prevailing opinion demand universal and ungrudging acceptance by all employers of the processes and implications of collective bargaining. Any refusal at this time by any employer to accord to labor its full rights of self-organization and collective bargaining stipulated in the act is an inexcusable interference with production of materials necessary to the welfare of the Nation. The decision of the National Labor Relations Board dismissing the two petitions filed in June and July involved an interpretation by that Board, adverse to the company's present contention of the ambiguous language above quoted from the decree of the circuit court of appeals, and the company assumes a heavy weight of responsibility when it continues to refuse to bargain with the C. I. O. union. The C. I. O. union may very naturally feel that the company's insistence upon further jurisdictional procedure is but another manifestation of the company's "steadfast unwillingness" to bargain which was characterized by the court of appeals "as a determined course of deliberate noncompliance."

Indeed, if this were the usual case of final decision by the National Labor Relations Board, in which the only further legal proceeding possible would be a proceeding for contempt because of the company's defiance of the decision of the National Labor Relations Board, we could not find any justification for the company's refusal to bargain in the first point advanced by the company which has to do with an asserted apprehension that if the company bargains with the C. I. O. there will be a strike by the A. F. L. The obligation of employers which we have just mentioned is accompanied by a correlative obligation of the complaining union, in cases of this character, to follow its legal remedies under the National Labor Relations Act to their conclusion, in preference to direct action; and there is a corresponding obligation on all other labor organizations to accept without reserve the final outcome of the proceedings before the National Labor Relations Board. The National Defense Mediation Board cannot interfere in any way with those proceedings.

The Mediation Board has, however, under paragraph 2 (e) of the Executive order of March 19, 1941, the power to request the National Labor Relations Board, in any controversy or dispute relating to the appropriate unit or appropriate representatives to be designated for purposes of collective bargaining, to expedite as much as possible the determination of the appropriate unit or appropriate representatives of the workers. In this case, which is complicated by the ambiguity of the decree of the Fifth Circuit Court of Appeals, and after conference with the officials of the National Labor Relations Board, the National Defense Mediation Board is of the opinion that the most expeditious procedure would be to secure from the court of appeals a prompt interpretation of the disputed phraseology.

Therefore, the National Defense Mediation Board, acting under paragraph 2 (e) of the Executive order of March 19, 1941, in view of the company's continuing refusal to bargain with the C. I. O. union, and in view of the fact that there exists this alternative legal procedure which seems capable of affording a definite settlement to the issue of the right to an election raised by

the company, will request the National Labor Relations Board to obtain a clarification of the decree by bringing the questions before the circuit court of appeals at once. All parties should accept short notices and cooperate to expedite the proceedings. The National Defense Mediation Board is confident that the court will find it possible in the interests of national defense to hear the cause and render a decision quickly.

Pending decision in the manner provided by law, the status quo should be maintained. The President has declared an unlimited emergency. Continued production at the Baton Rouge plant of the Solvay Process Co. is an essential part of the national defense. The National Defense Mediation Board, therefore, recommends that all the workers remain at their posts pending the court's decision, both those affiliated with the C. I. O. and those affiliated with the A. F. L. The Board also recommends that the company cooperate in every way to expedite the decision.

The National Defense Mediation Board reserves jurisdiction of the controversy in order to consider all questions arising subsequent to the decision of the court.

On October 7, the circuit court clarified the language of its previous decision and directed the company to bargain with the union. Negotiations proceeded after this decision and on January 19, 1942, had not yet resulted in a contract. The company informed the Board that the A. F. L. had again petitioned the N. L. R. B. for a determination of representation and that there was a likelihood that all parties, the company, the C. I. O., and the A. F. L. would consent to an election.

CASE No. 66

ALUMINUM CO. OF AMERICA (5 plants) — ALUMINUM WORKERS OF AMERICA, LOCAL 2, C. I. O.

Certified August 16. No strike. Hearing August 23–26. 18,925 workers involved. Transferred to National War Labor Board

Panel: Davis, Ching, Carey. Assistant, Cox.

The facts are stated in the Board's opinion.

Interim Findings and Recommendations

August 27

This dispute comes before the National Defense Mediation Board on a certification of the Secretary of Labor dated August 16, 1941, that the dispute threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense.

The dispute involves employees of the company at five of its plants in which aluminum and aluminum products are produced and in which the workers are represented by the Aluminum Workers of America, C. I. O. These plants are at Detroit, Mich.; Edgewater, N. J.; New Kensington, Pa.; Alcoa, Tenn.; and Badin, N. C. The company has other plants at which the employees are represented (1) by other unions affiliated with the Congress of Industrial Organizations, (2) by unions affiliated with the American Federation of Labor; and in addition there are some plants of the company in which the employees are not organized.

The agreement between the Aluminum Workers of America, C. I. O., and the company covering the five plants involved in this dispute is the outgrowth of collective bargaining resulting in contractual relations which began in 1934. The contract does not set forth wage rates.

The issue in the present dispute arises out of wage differentials among the plants in which the employees are represented by the Aluminum Workers of America, C. I. O., sometimes referred to herein as "the union."

The union contends that the wage differential between the company's southern plants at Alcoa and Badin and the company's northern plants at Detroit, Edgewater, and New Kensington should be eliminated, that a minimum starting rate of pay of 75 cents per hour should be established at such plants, and that all other rates should be adjusted accordingly. It urges three arguments.

1. There is no economic justification for lower payments in the South.

2. The company can afford to eliminate the differential. It makes large profits on its southern operations.

3. The company charges but one price for its products regardless of where they are made.

The company contends that the wage differential should not be eliminated. In response to the union's demand it urges the following arguments:

1. It is paying wages equal to or above the prevailing rates in each community.

2. In view of differences in the cost of living and other factors there is ample justification for the differentials existing between these southern and northern plants of the company.

3. The wage rates in question cannot properly or justifiably be based upon the company's costs of production, profits, or selling prices.

4. Present wages at these plants and the wage history of the company show that no increase is justified at this time.

At the same time, and quite apart from the question of wage differentials, the union demands on behalf of the employees at the company's plant in New Kensington, Pa., an extra 10 cents per hour for the afternoon and night shifts, referred to as the B and C shifts. This demand has not been discussed in the proceedings before the National Defense Mediation Board, for the reason that it was the purpose of the union to have its side of this question presented by representatives of the New Kensington local, and upon failure of the main proceedings to bring about an agreement on the issue of wage differentials, with the resultant necessity for a factual investigation under section 2 (*d*) of the Executive order of March 19, 1941, it has been decided to have the factual investigation cover also this separate issue.

The National Defense Mediation Board held hearings on August 23, 25, and 26, 1941. The transcript of so much of those proceedings as were put on the record, together with the documents which were presented during those proceedings, will be made available to the fact investigator referred to below. It proved impossible to reach an agreement between the parties by collective bargaining.

The National Defense Mediation Board makes the following interim recommendation, which both parties have agreed to accept;

I. (1) The National Defense Mediation Board will appoint a special representative, hereinafter called "investigator" to act on its behalf under the provisions of paragraph 2 (*d*) of the Executive order of March 19, 1941, to investigate the issues between the employer and its employees, and practices and activities thereof with respect to the controversy or dispute certified or above identified, to conduct hearings, take testimony, and make findings of fact for the information of the National Defense Mediation Board. The investigator may, to any extent requested by the National Defense Mediation Board, supplement his findings on any or all points of the controversy by any such suggestions or recommendations as may seem to him appropriate.

(2) Each party will appoint an individual to assist, advise, and cooperate with the investigator in his investigation and in the preparation of his findngs.

(3) Ether party will present and make available to the investigator all data which it considers relevant to the issues.

(4) The report of the investigator shall be made available to both parties, after it has been filed with the Board.

II. (1) The hearing before the National Defense Mediation Board shall be recessed until it receives the report of such investigator.

(2) There shall be no change at the five plants represented by Aluminum Workers of America in the conditions existing under the present contract, or in the now prevailing wages, without mutual consent, and no strike, lock-out, or other work stoppage at such plants until an agreement between the parties has been reached with respect to this dispute or until the National Defense Mediation Board has made its final recommendations.

(3) The investigator shall file his report with the National Defense Mediation Board on or before October 11, 1941, unless the time is extended by the Natioinal Defense Mediation Board after consulting both parties.

(4) Upon receipt of the report of the investigator, the National Defense Mediation Board will resume the consideration of the dispute in an effort to adjust and settle it by agreement between the parties. Should it prove impossible to reach such an agreement, the Board will then proceed to make its findings of fact and recommendations in accordance with paragraph 2 (*d*) of the Executive order of March 19, 1941.

(5) During these proceedings the Board has stated to both parties its conviction that whatever settlement of this wage dispute is finally arrived at should be embodied in a written contract for 1 year.

Paul Hays, a member of the New York State Board of Mediation, appointed special representative, made the investigation and filed his report with the Board November 16. On November 25 the chairman of the panel and of the Board met representatives of Alcoa and of the Aluminum Workers and released the report to them. He explained that they could withdraw the case from consideration by the Board only by settling it. Shortly thereafter direct negotiations between the parties were opened in Pittsburgh, but they did not result in a settlement.

CASE No. 67

PACIFIC STATES CAST IRON PIPE CO., Provo, Utah — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1654, C. I. O.

Certified August 18. Strike July 15–August 19. Hearing September 8–10. 438 workers involved. Transferred to National War Labor Board

Panel: Fisher, Mead, Lyons. Assistant, Leiserson.

In February 1940 an independent union which had a written agreement with this company affiliated itself with the S. W. O. C. and won an N. L. R. B. election. The company refused to sign a new contract with this union. Local 1654 filed charges with the N. L. R. B. alleging intimidation, discriminatory discharges, and refusal to bargain.

On July 15, 1941, after the N. L. R. B. trial examiner's report found the company guilty of these charges, the union struck. At the Board's request production was resumed pending hearing.

After 3 days of hearing and negotiation, the company and the union on September 10 agreed on all provisions of a proposed contract except wages for all employees and the overtime rates for truck drivers. On these points the parties accepted an interim recommendation providing for investigation and findings by a special agent of the Board. All other questions were reduced to writing and embodied in a signed agreement, dated September 10.

Interim Findings and Recommendations

September 10

Following certification to this Board, extensive hearings and informal conferences have been held before the Board on the questions at issue in the negotiation of a contract between the company and the union. By collective bargaining, the parties have agreed on all clauses of the proposed contract except those relevant to wages and the application of the overtime provisions to truck drivers.

In order that the Board may be fully informed upon the wage issue, the Board will appoint a special agent to investigate the question of what will be an appropriate wage scale (including bonus payments) for the company to pay.

In the meantime, the company and the union should endeavor to reach an agreement on the matter by collective bargaining.

If an agreement is not reached by the time the Board has received the report of the special agent, the Board will make findings and recommendations on the above issues, and also such other findings and recommendations as it may think proper.

James H. Wolfe, Justice of the Supreme Court of the State of Utah, appointed special representative September 20, submitted his report November 14. No further action was taken due to the withdrawal of the C. I. O. from the Board.

CASE No. 68

AMERICAN CAR AND FOUNDRY CO., Chicago, Ill. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 805, C. I. O.

Certified August 19. Strike July 10–August 22. Hearing August 28–30. 600 workers involved. Closed September 3

Panel: Fisher, Lapham, Lyons. Assistant, Leiserson.

In March 1941 the parties signed their first collective bargaining agreement, which was followed May 8 by a supplemental agreement covering rates of pay. The latter provided alternative hourly rates and piece-work rates which latter

were expected to yield far in excess of the hourly rates. For example, riveters under the contract were expected to receive $1.14¾ per hour on piece work, though their hourly rate was 75 cents. The piece-work earnings were expressly not guaranteed by the company, but were predicated upon an estimated production of 18 cars per day.

After the contract was signed, on several orders the men failed to get expected earnings because the daily production fell far below the schedule. Several unauthorized stoppages occurred in June, and finally on July 10 the union called a strike. On July 14 the union served a formal demand on the company which amounted practically to asking a guaranty of production.

A panel of the Conciliation Service on July 22 recommended investigation by the Department of Labor, which suggestion was accepted by the union and rejected by the company. On August 20, the day after certification, the Board successfully requested an immediate resumption of production, with the understanding that any wage adjustments made would become retroactive to the date of resumption of operations. At 2:30 a. m. on August 30, after a 2-day hearing, the following recommendation was accepted by the employer and, subject to ratification, by the union, which ratified it.

Recommendation

August 30

The National Defense Mediation Board recommends that:

1. The employees shall continue to remain at work under the terms and provisions of the existing written agreements between the International Union, United Automobile Workers of America, Local 805, and the American Car & Foundry Co. (Chicago plant) for the balance of the term of said agreements.

2. All grievances which at this date are unsettled and all future grievances shall be settled in accordance with the grievance procedure set forth in article IV of the agreement dated March 20, 1941.

3. In the event a question is not settled by representatives of the international union and the company as provided in the agreement (article IV) dated March 20, 1941, it shall be submitted to arbitration. If the parties are unable to agree upon an arbitrator within 3 days after the representatives of the international union and the company have considered the question and failed to reach an agreement, the National Defense Mediation Board shall appoint a competent person to act as arbitrator whose decision shall be final and binding upon both parties.

The Board was eventually asked to appoint an arbitrator. On December 9 it appointed Prof. Elmo P. Hohman of Northwestern University.

CASE No. 69

PULLMAN STANDARD CAR MANUFACTURING CO., Bessemer, Ala.	STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1466, C. I. O. INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 359, A. F. L. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-287, A. F. L.

Certified August 21. Strike August 11–25. Hearing September 4. 1,260 workers involved. Closed October 8

Panel: Wyzanski, Teagle, Lapham, Lynch, Rieve. Assistant, Kirstein.

The case is described in the panel chairman's—

Memorandum and Report

September 5

1. This case was certified to the Board by the Secretary of Labor, August 21, 1941.

2. Hearings were held on September 4, 1941, by a panel of the Board, consisting of Charles E. Wyzanski, Jr., representing the public; Roger D. Lapham

and Walter C. Teagle, representing employers; and George Q. Lynch and Emil Rieve, representing employees.

3. On August 11, 1941, a strike occurred at the Bessemer, Ala., plant of the Pullman Standard Car Manufacturing Co. Approximately 1,260 workers were directly or indirectly affected by the strike. Following certification, this Board on August 21 sent telegrams to the parties requesting that they resume work and appear before the Board. These requests were complied with and the strike was terminated on August 25, 1941.

4. Two issues were presented: One with respect to the appropriate unit for collective bargaining at the Bessemer plant; the other with respect to the termination of James Johnson's employment.

5. As to the first issue, it appeared that the Steel Workers Organizing Committee had filed a petition with the National Labor Relations Board, Tenth Region, on August 10, 1941. At a hearing held August 28 before a trial examiner of that Board, representatives of the Steel Workers Organizing Committee, the International Brotherhood of Electrical Workers, the International Association of Machinists, and a federal union affiliated with the American Federation of Labor, presented evidence to support their positions in regard to the appropriate bargaining unit for the plant. The company also presented testimony. As yet that Board has not made its decision and direction of election. Before this Board all the parties agreed that the proper course was to await the National Labor Relations Board's decision in regard to the proper bargaining unit.

6. The National Defense Mediation Board assured the parties that in accordance with paragraph 2 (*e*) of the Executive order of March 19, 1941, it would request the National Labor Relations Board to expedite as much as possible the determination of the appropriate unit and appropriate representatives of workers.

7. The second issue related to the termination of employment of James Johnson, a bucker (or riveter's helper). The company contends that Johnson voluntarily resigned. The Steel Workers Organizing Committee contends that the company terminated Johnson's employment in violation of the National Labor Relations Act.

8. After vainly attempting to secure agreement by the parties as to the disposition of this second issue, the National Defense Mediation Board suggested that if James Johnson or his representative, the Steel Workers Organizing Committee, is of the view that the company violated the National Labor Relations Act in terminating Johnson's employment, he or the union should promptly file charges to that effect with the National Labor Relations Board, the tribunal created for the determination of such cases.

9. To avoid delay, this Board agreed to request the National Labor Relations Board to expedite the holding of a hearing on such charge if filed.

10. This Board also suggested that the company and the union agree to accept short orders of notice in the anticipated case before the National Labor Relations Board and that in that case the parties formally stipulate to accept as final and binding without further review any report and recommendations which the trial examiner may make.

11. The company agreed to this suggestion; the Steel Workers Organizing Committee agreed that if, in accordance with this Board's suggestion, the matter were presented to the National Labor Relations Board, the Steel Workers Organizing Committee would expedite the determination of the controversy; and the other unions stated that they had no interest in this phase of the dispute.

CASE No. 70

HENRY VOGT MACHINE CO., Louisville, Ky. — STEEL WORKERS ORGANIZING COMMITTEE, LOCAL 1693, C. I. O.

Certified August 22. Strike August 11–September 4. 1,000 workers involved. Closed September 4

The plant was struck as a result of the inability of the parties to agree on a contract. As a hearing date could not be arranged for 2 weeks, the Board requested the parties to resume negotiations. Before the Board heard the case all the issues were agreed upon in Louisville.

CASE No. 71

PULLMAN STANDARD CAR MANUFACTURING CO., Michigan City, Ind. — BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, LOCAL 290, A. F. L.

Certified August 26. Strike August 14–September 13. Hearing September 8, 9, 10. 1,800 workers involved. Closed September 13

Panel: Wyzanski, Lapham, Brown. Assistant, Kirstein.

In March 1941 the National Labor Relations Board certified the union, and negotiations for a contract began. On August 14, a strike was called over unsettled issues. An agreement on all points was reached between the parties before the Board as a result of the company's agreeing to the union's demand for machinery and the union's withdrawing its demand for a union shop. The chairman of the panel had pointed out that a union shop was unusual in a first agreement as well as unlawful in the related railroad industry, and had suggested that an arbitration of grievances would help the union to maintain itself. The agreement was ratified on September 12.

CASE No. 72

ALUMINUM CO. OF AMERICA, Vancouver, Wash. — ALUMINUM TRADES COUNCIL, A. F. L.

Certified September 3. No strike. Hearings September 18, 19. 730 workers involved. Closed September 23

Panel: Fisher, Ching, Woods. Assistant, Gill.

The facts are adequately recounted in the—

Recommendations

September 23

1. This case was certified to the National Defense Mediation Board by the Secretary of Labor on September 3, 1941.

2. The dispute is between the Aluminum Co. of America, at its Vancouver, Wash., plant, and the Aluminum Trades Council, a bargaining agency consisting of several unions in the plant affiliated with the American Federation of Labor. On February 5, 1941, pursuant to a check of the unions' records against the company pay roll by consent of the parties, the regional director for the National Labor Relations Board at Seattle, Wash., announced that the Aluminum Trades Council had been designated by a majority of the company's employees as their collective bargaining representative, and the company has since that time recognized the status of the Aluminum Trades Council as the exclusive bargaining agency for the employees at the Vancouver plant.

3. The Vancouver plant is a comparatively new unit of the Aluminum Co. of America, having been put into operation in August 1940. The present negotiations are accordingly directed toward the first collective bargaining contract between the parties at this particular plant.

4. The negotiations began in the latter part of February 1941 and continued from time to time until the case was certified to this Board.

5. Hearings were held before the Board in Washington on September 18 and 19, 1941.

6. Both the representatives of the union and of the company stated to the Board that while there were various questions which had not yet been finally worked out between them, the only issue which appeared to be incapable of solution between the parties themselves was the demand of the union for a union shop. The Board finds that the sole issue presenting an obstacle to complete agreement is the union-shop issue.

7. The company has consistently refused to grant the union's demand for a union shop or for any modified form thereof.

8. The company has 18 other aluminum plants in operation in various sections of the country.

9. In eight of these plants the Congress of Industrial Organizations is recognized as the collective bargaining agency, and in three of the plants, other than

the Vancouver plant, the American Federation of Labor is the recognized bargaining agency. The company has agreements covering all of these other plants in which bargaining agencies have been recognized, and none of these agreements contains any provision for a union shop or any modified form thereof.

10. The company has been before this Board in three other cases. Agreements have been reached in two of those cases under the auspices of the Board, neither agreement containing any provision for a union shop or any modified form thereof. The issues in the third case are still under investigation.

11. There is a master agreement between the company and the Congress of Industrial Organizations covering all the company's plants at which the Congress of Industrial Organizations is the recognized collective bargaining agency. Within approximately 2 months negotiations are to take place between the company and the Congress of Industrial Organizations for a new master agreement covering these plants.

12. There is likewise a master agreement between the company and the American Federation of Labor covering the three plants, other than the Vancouver plant, at which the American Federation of Labor is the recognized collective bargaining agency.

13. The hearings before this Board in the present case on September 18 and 19, 1941, failed to effect any agreement between the parties upon the union's demand for a union shop at the Vancouver plant.

In view of the above findings of fact, the Board hereby makes the following recommendations:

1. The Board recommends that a new master agreement between the company and the American Federation of Labor, covering the Vancouver plant as well as the other plants of the company at which the American Federation of Labor is the recognized collective bargaining agency, shall be negotiated at a mutually satisfactory time. This procedure will accord not only with the fact that there is at present a master agreement covering the three plants, other than the Vancouver plant, at which the American Federation of Labor is the recognized bargaining agency, but also with the practice followed by the company and the Congress of Industrial Organizations, as to the plants at which the Congress of Industrial Organizations is the recognized collective bargaining agency. No considerations were presented to the Board indicating any impracticability in extending this type of master agreement to the Vancouver plant.

2. The Board recommends that, to cover the interim period pending the negotiation of such a new master agreement, the company and the union sign a separate contract covering the Vancouver plant, embodying the points upon which substantial agreement between the parties has already been reached, and that negotiations concerning the union's demand for a union shop be deferred for consideration in the negotiations for a new master agreement.

3. The Board asks that both parties cooperate to the fullest extent to resolve the controversy through the peaceful and orderly means outlined above, and to insure the uninterrupted production of aluminum which is vital to the defense of the nation.

On September 29 the company accepted the recommendation. On October 9 the union rejected the proposal of a master agreement and stated that the recommendation for a contract covering these points on which agreement had already been reached was "being given serious consideration." No strike was called, and no further action was taken by the Board.

Though the union expressed rejection of the master agreement proposal, there was no further development.

CASE No. 73

KANSAS CITY POWER & LIGHT CO., Kansas City, Mo.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B–412, A. F. L.
INDEPENDENT UNION OF UTILITY EMPLOYEES

Certified September 5. Strike September 17–18. Hearing September 15, 16. 350 workers involved. Closed September 29

Panel: Stocking, Hamilton, Woods. Assistant, Kirstein.

A strike was threatened on September 5 by the Brotherhood because it wished to represent certain of the company's employees who were being represented by the Independent Union of Utility Employees. At the close of the hearings, the Board issued the following recommendation.

Recommendation

September 16

On September 5, 1941, the Secretary of Labor certified to this Board that the dispute between the Kansas City Power & Light Co., and Local Union B–412 of International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and Independent Union of Utility Employees, threatened to burden or obstruct the production or transportation of equipment or materials essential to national defense and had not been adjusted by the Commissioners of Conciliation of the Department of Labor. Thereupon, the Board set a date for a hearing of this matter and notified the parties of the said hearing and requested their attendance thereon. In doing so, the Board wired both parties in part as follows: "In the meantime the Board calls upon all parties in the interest of national defense to remain at work and to prevent any interruption of the supply of power for defense production pending the Board's consideration of the case."

The division of the Board designated to hear this case was composed of George W. Stocking, representing the public; Rolland J. Hamilton, representing employers; and Herbert Woods, representing employees. Hearings were held in Washington, D. C., on September 15 and 16, 1941.

Background of controversy.

This company, located in Kansas City, Mo., furnishes practically all of the electric power used in the community in which it is located. Furthermore, in Kansas City, the water system is operated by electric pumps the power for which is furnished by this company. Among other defense plants dependent for power upon this company is the Government ammunition plant at Lake City, Mo.

In 1937, the International Brotherhood of Electrical Workers petitioned the National Labor Relations Board to certify it as the proper agency for purposes of collective bargaining in the production department of the company. Shortly after the filing of this petition, charges of unfair labor practice were filed with the National Labor Relations Board by the International Brotherhood of Electrical Workers, charging that the company dominated an independent union and further that it had discharged some 16 employees in a discriminatory manner and illegally.

In 1936 this case was heard by the National Labor Relations Board and in 1939 that Board handed down a decision ordering the company to disestablish the company union. The company appealed to the Circuit Court of Appeals for the Eighth Circuit from this decision of the National Labor Relations Board. In 1940, the circuit court of appeals affirmed the decision of the National Labor Relations Board as modified and an election was held to determine the proper bargaining agency for employees in the production department of the company. This election was won by the International Brotherhood of Electrical Workers and negotiations for a contract proceeded at once. Such a contract was executed by the parties on September 7, 1940, of 1 year's duration.

At about the same time as these events were occurring, another group of employees called upon representatives of the company, stating that they represented a majority of the company's employees, exclusive of those in the production department. This group of employees were representatives of the Independent Union of Utility Employees. The company requested the National Labor Relations Board to check membership cards in this union against the company's pay roll with a view towards its being certified as the proper bargaining agency for the company's employees, exclusive of the production department. The National Labor Relations Board refused to comply with this request and the company conducted a check of membership cards against its pay roll. They found that out of approximately 1,300 employees the Indepenent Union of Utility Employees had 900 signed membership cards. The company then negotiated a master agreement with this union which was executed on August 3, 1940, for 1 year's duration. It contained a provision that it would automatically renew itself from year to year unless either party served notice on the other that it was to be terminated. On October 2, 1940, the International Brotherhood of Electrical Workers filed a petition with the National Labor Relations Board asking to be certified as the proper agency for purposes of collective bargaining in the building maintenance department of the company and in the control division overhead department. On October 9, 1940, a further petition was filed by the International Brotherhood of Electrical Workers for the western division overhead department.

In December 1940 the Independent Union of Utility Workers filed a petition with the National Labor Relations Board asking that they be designated as the proper agency for purposes of collective bargaining for all manual employees of the company or for all manual employees exclusive of the production department. The National Labor Relations Board, in considering these petitions, combined them. A hearing was set in this matter for December 1940, but by mutual consent this was postponed until January 1941. At this time the International Brotherhood of Electrical Workers filed with the National Labor Relations Board charges of unfair labor practice against the company. The National Labor Relations Board then refused to conduct its hearing that was scheduled for January pending decision on the unfair labor practice charge. The National Labor Relations Board thereafter instituted contempt proceedings against the company before the Circuit Court of Appeals for the Eighth Circuit charging that the company had not followed the court's instructions and had not disestablished the company union. This case is scheduled for a hearing on October 11, 1941.

In August 1941 the National Labor Relations Board dismissed the petition of the Independent Union of Utility Employees which asked the Board to certify them as the proper bargaining agency for all manual employees, or for all manual employees exclusive of the production department. On August 23, 1941, the International Brotherhood of Electrical Workers withdrew their petition for certification as the proper bargaining agency in the three divisions of the company above mentioned. In the same month the Independent Union of Utility Employees filed a similar petition with the National Labor Relations Board, which is still pending before that Board. In September 1941 the company filed a petition with the National Labor Relations Board asking that the Board name an appropriate unit with a view towards holding an election and finding the proper agency for purposes of collective bargaining. On September 9, 1941, the National Labor Relations Board dismissed this petition.

To summarize, the two matters that are still pending are (1) a petition by the Independent Union of Utility Employees to the National Labor Relations Board, similar in most respects to the one that the Board previously dismissed, and (2) the contempt proceedings instituted by the National Labor Relations Board before the Circuit Court of Appeals for the Eighth Circuit.

The position of the International Brotherhood of Electrical Workers, Local B–412.

The International Brotherhood of Electrical Workers, Local B–412, contends:

1. That an overwhelming majority of the company's employees in the steam distribution department and in the overhead distribution department wish to be represented, for purposes of collective bargaining, by the International Brotherhood of Electrical Workers, Local B–412.

2. That because of the lengthy legal proceedings which the International Brotherhood of Electrical Workers, Local B–412, went through to gain recognition in the production department of the company, they are unwilling to wait longer or go through additional legal processes to gain recognition for purposes of collective bargaining in the steam distribution department and in the overhead distribution department.

3. That the contract which the Independent Union of Utility Employees enjoys with the company is not, in fact, a binding contract because the Independent Union of Utility Employees has never been certified as the proper bargaining agency by the National Labor Relations Board and because the Independent Union of Utility Employees is in fact a company-dominated union.

4. That therefore the company should immediately enter into negotiations with a view towards making a contract with the International Brotherhood of Electrical Workers, Local B–412, for the company's employees in the steam distribution department and in the overhead distribution department.

The position of the Independent Union of Utility Employees.

The Independent Union of Utility Employees contend:

1. That their union is in every sense an independent union and is not subject to company domination.

2. That the contempt proceedings which are presently pending before the Circuit Court of Appeals for the Eighth Circuit will determine finally the status of their union.

3. That, pending determination of the contempt charge by the Circuit Court of Appeals for the Eighth Circuit, no change in the bargaining agency as it is presently established should be made.

4. That, while they do not deny that the International Brotherhood of Electrical Workers, Local B–412, does in fact have as members a majority of the company's employees in the steam distribution department and in the overhead distribution department, the Independent Union of Utility Employees contends that they had valid contracts with the company entered into as recently as June 24, 1941, which are binding on the company.

5. That the steam distribution department and the overhead distribution department are not proper units for collective bargaining, but belong properly with the departments of which they are a subordinate part.

The company's position.

The company contends:

1. That before entering into any final agreement with the International Brotherhood of Electrical Workers, Local B–412, for the company's employees in the steam distribution department and in the overhead distribution department, the contempt proceedings which are now before the Circuit Court of Appeals for the Eighth Circuit should be disposed of.

2. That until these contempt proceedings are disposed of the contract which the Independent Union of Utility Employees enjoys with the company is valid and therefore negotiating another contract with the International Brotherhood of Electrical Workers, Local B–412, would be in breach of contract and in breach of good faith.

3. That it makes absolutely no difference to the company which organization of its employees it recognizes for purposes of collective bargaining as long as it does not enter into an illegal contract or breach a present valid contract.

The issues in the controversy.

1. Should the company negotiate at once with the International Brotherhood of Electrical Workers, Local B–412, for that organization's members in the company's steam distribution department and overhead distribution department?

2. Is the Independent Union of Utility Employees in fact a company-dominated union as is charged by the National Labor Relations Board in its petition to the Circuit Court of Appeals for the Eighth Circuit?

3. Is the steam distribution department and the overhead distribution department, taken together with the production department, an appropriate bargaining unit for the International Brotherhood of Electrical Workers, Local B–412, to represent?

Findings and recommendation.

The Board finds that the issues in this controversy are matters which properly come within the jurisdiction of the Circuit Court of Appeals for the Eighth Circuit and the National Labor Relations Board.

In view of the fact that those issues are now before these bodies and in view of the fact that an early date has been set by the court for hearing on the charges of contempt made by the National Labor Relations Board, and in view of the importance of the continued operation of the Kansas City Power & Light Co., both to the defense program and to the health and welfare of the communities, the Board urges that the parties to the controversy permit the issues to be resolved without cessation of the operations of the Kansas City Power & Light Co.

A few hours after the issuance of this recommendation, the union struck the power plant which virtually left Kansas City without electricity. On September 18, the strike was terminated at the request of the Board, and Mr. John Lapp was appointed to investigate the issues in dispute. His report on September 29 confirmed the Board's recommendation.

CASE No. 74

PRESSED STEEL CAR CO., McKees Rocks, Pa.	CAR AND FOUNDRY WORKERS UNION, LOCAL No. 1, and STEEL WORKERS ORGANIZING COMMITTEE, LOCAL No. 1844, C. I. O.

Certified September 5. Strike August 29–September 8. No hearing. 2,600 workers involved. Closed October 31

The Steel Workers Organizing Committee had been attempting to organize this company since 1938. In June 1938 the N. L. R. B. directed an election between

the S. W. O. C. and the independent union. The election was called off until charges of discrimination could be heard. On February 23, 1940, after election, the Board certified the independent union. The independent secured a contract in April 1941, which would expire in March 1942, but S. W. O. C. continued organizing.

On August 4 S. W. O. C. called a strike for recognition which was called off on August 15 when the parties were invited to a conference under the auspices of the Conciliation Service. The Conciliation Service made recommendations. S. W. O. C. claimed that the company had failed to observe them and struck again on August 29. S. W. O. C. filed a petition for certification with N. L. R. B. September 3. The Board secured an agreement to return to work on September 8. The N. L. R. B. heard the petition despite its rule that it would not ordinarily investigate a question of representation while a contract was extant, and on October 31 dismissed the petition.

CASE No. 75

LAMSON & SESSIONS CO., Cleveland, Ohio — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 217, C. I. O.

Certified September 8. No strike. Hearing September 17–20. 1,000 workers involved. Closed September 21

Panel: Graham, Lapham, Rieve. Assistant, Kirstein.

Following a strike in the company's east-side plant in June, the N. L. R. B. held an election which was won by the union. In August an election with like result was held at the west-side plant. Negotiations for a contract covering both plants followed, but were unsuccessful, and a strike was threatened. The principal issues in dispute were wages, union security, rate of pay for Saturday work, and a separation allowance for draftees. There were also a number of minor issues relating to shop conditions.

At the hearing the company rejected the union shop demands, pointing out that this was the first contract; it agreed to call to the attention of employees the benefits conferred by the union, and to discipline those who interfered with "the status and responsibility of the union as sole bargaining agent certified by the N. L. R. B." On wages the union demanded a 15 cents per hour increase. The company had already given 4 cents. The settlement provided for 10 cents more. This agreement was ratified the next day.

CASE No. 76

AMERICAN BRAKE SHOE & FOUNDRY CO., Mahwah, N. J. — INTERNATIONAL MOLDERS' AND FOUNDRY WORKERS' UNION, LOCAL 315, A. F. L.

Certified September 10. Strike July 28–September 24. Hearing October 1–3. 440 workers involved. Closed October 9

Panel: Fisher, Hamilton, Googe. Assistant, Gill.

On June 22 a contract between the company and a federal labor union (A. F. L.) expired, and the Molders' Union advised the company that it had taken jurisdiction from the federal union. Negotiations between the company and the Molders' Union took place between June 22 and July 28, at which time a strike was called. On August 7 the National Labor Relations Board certified the Molders' Union as the exclusive bargaining agent. Negotiations were then reopened but without success.

As the Board was unable to arrange for a hearing immediately, it did not request resumption of production upon notifying the parties that it had received the case. But on September 23 when it summoned the parties it did so request and on September 24 work was resumed. An agreement was reached October 3, after hearing, without any Board recommendation. The main issues were union shop and wages. The union shop issue was settled with a "harmony" clause, in which the company agreed to discipline antiunion activity on company time. On wages, the company had already granted a 7 cents an hour increase, the union was demanding 10 cents, and the settlement was 8½ cents.

CASE No. 77

DUQUESNE LIGHT CO., Pittsburgh, Pa., and CURTISS-WRIGHT CORPORATION, Beaver, Pa.

INDEPENDENT ASSOCIATION OF EMPLOYEES OF DUQUESNE LIGHT CO. AND ASSOCIATED COMPANIES and BUILDING AND CONSTRUCTION TRADES COUNCIL, A. F. L.

Certified September 11, 12. Strike September 10–25. Hearings 16, 17, 18, 19. Number of workers involved unknown. Closed September 25

Panel: Wyzanski, Connelly, Watt. Assistant, Cox.

A strike of 134 construction employees affiliated with the Pittsburgh Building and Construction Trades Council (A. F. L.) was delaying the construction of a $5,000,000 plant to be operated by Curtiss-Wright Corporation, Curtiss Propeller Division, at Beaver, Pa., in the manufacture of steel propellers. The sole issue in the dispute was whether certain electrical facilities leading to and within the plant—about 500 man-hours of work—should be done by the A. F. L. building-trades unions or by employees of Duquesne Light Co. who belonged to Independent Association of Employees of Duquesne Light Co. and Associated Companies. The latter had threatened to strike and not cut in the power if they were not permitted to do the work. On September 13 the Board set a hearing for September 16 but did not request the A. F. L. unions to return to work. Mr. Arthur Meyer of the New York State Mediation Board, invited to assist the National Defense Mediation Board because of his familiarity with this type of dispute, attempted to mediate between the parties and bring about a solution not only of the particular controversy before the Board but of the broader dispute between the two unions over the distribution of electrical construction work in Pittsburgh.

The independent union, as the result of informal conferences with one member of the Board, signed a statement to be effective upon approval by the general committee of the independent union that "in view of the existing national emergency and the pressing need of continuous maximum production of implements of defense" the representatives of the independent association "do hereby offer and propose to permit labor incident to the installation of transformer equipment at the plant of Curtiss-Wright Corporation, Propeller Division, at Beaver, Pa., to be performed by the employees of Curtiss-Wright Corporation's general contractor." The offer was made voluntarily and not as the result of bargaining and with the understanding that it was not to be considered a precedent in the broader phases of the controversy. The offer was approved by the general committee of the independent union. Thereafter Curtiss-Wright Corporation and Duquesne Light Co. in independent negotiations reached an agreement by which the construction work in dispute would be performed by A. F. L. labor. On September 25 following that agreement the A. F. L. Building and Construction Trades Council called off the strike and construction was resumed.

CASE No. 78

BENDIX AVIATION CORPORATION (BENDIX PRODUCTS DIVISION), South Bend, Ind.

UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 9, C. I. O.

Certified September 15. Hearing September 24, 25, 26, 27. 8,400 workers involved. Closed October 8

Panel: Wyzanski, Ching, Carey. Assistant, Gill.

A strike was threatened over a controversy concerning an existing contract. Four days of hearing culminated in the following—

Recommendations

September 27

1. The company has employed female bench inspectors for inspection in departments 183, 193, and 194. The union says in doing so the company has violated article IV, sec. 1 (d) of the contract between the above parties, dated November 15, 1940. The company denies this. The question is one of interpretation of the contract. The Board is not agreed on the answer to this question. The Board

recommends that Mr. George W. Taylor shall make a final decision of this question to be binding on all parties for the period of the contract. If Mr. Taylor cannot serve, the three members of the Board who heard this case will unanimously select a substitute. The Board further recommends that if Mr. Taylor or his substitute decides against the company, the company shall pay such female bench inspectors for the time they have been or may be employed in those departments during the contract period amounts equivalent to the going rate for male bench inspectors. Such payments shall be regarded as the equivalent of damages for breach of contract and shall not be regarded as a ruling or precedent upon the wage rate appropriate for female bench inspectors in the plant.

2. There is in the background another larger problem. The company is planning to increase its output and make changes in its operations. These changes may involve new mass production methods, simplification, and a training and upgrading program. To carry through such a program promptly and fairly there should be a free, frank, and prompt discussion between the parties of all the aspects of this problem, including appropriate guarantees to the workers and appropriate steps to aid the maximum production of defense material. To aid in this negotiation, the three members of the Board who heard this case will appoint a representative (not Mr. Taylor, or his substitute), who shall sit in on such negotiations as a mediator and who shall report progress to the Board.

These recommendations were accepted by both parties, and on October 8 Mr. Taylor handed down his decision, after an investigation at the plant, ruling that the company had violated the contract. Also on October 8, the Board appointed Mr. William Conover (Assistant Director of the Training Within Industry Branch of the Labor Division of O. P. M.) as the Board's representative to sit in on the negotiations concerning the second problem described in the recommendations. The Board took no further action in the case, nor was it advised of the progress of negotiations after the withdrawal of the C. I. O.

CASE No. 79

HENDEY MACHINE CO., Torrington, Conn. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 398, C. I. O.

Certified September 18. Strike September 5–22. Hearings September 26, 27, October 23. 1,429 workers involved. Closed October 23

Panel: Stacy, Adams, Lyons. Assistant Leiserson.

On May 25, 1940, a contract for a 2-year period was entered into by the parties. This contract was modified in January 1941 to provide for a wage increase. In spite of this agreement, on September 5, the plant was struck because of a dispute over further wage increases.

As the Board considered it inadvisible, in view of the contract, to make recommendations for increased wages, the parties agreed to a Board recommendation to have an incentive system studied by an industrial engineering company.

Recommendation

September 27

The National Defense Mediation Board considers that the hearing in this matter should be continued subject to resumption upon notice from the Board to both parties.

The Board will forthwith designate a competent industrial engineer with experience in the machine-tool field satisfactory to both parties to investigate and report back to the Board as soon as possible, and in any event not later than 30 days from date, whether it is feasible to develop and install in the Hendey plant a plan designed to increase the earnings of the employees, and as to the time required to install it, the expense of such survey to be paid by the company.

It is to be understood that this arrangement is made without modification of the contractual rights and responsibilities of the parties, which are clear.

The plan presented by the industrial engineering firm of Stevenson, Jordan, and Harrison seemed satisfactory to both parties, as it would result in increased wages and lower production costs. The Board thereupon recommended that the plan be tried out.

Recommendation

October 23

Pursuant to the stipulation of September 27, 1941, the panel met on October 23, 1941, to receive the report of the engineers appointed to investigate and report on this matter.

After full discussion both parties express a willingness that the method suggested by Stevenson, Jordan, and Harrison for increasing production at the Hendey Machine Co. be put into effect and given a fair trial, with both parties faithfully cooperating to this end. Neither party, however, presently binds itself finally to accept the system or method unless mutually satisfactory.

With this understanding the case may be closed on the docket of the National Defense Mediation Board.

CASE No. 80

AMERICAN MERCHANT MARINE INSTITUTE, INC., New York, N. Y.
PACIFIC AMERICAN SHIPOWNERS ASSOCIATION, San Francisco, Calif.
WATERMAN STEAMSHIP CORPORATION, Mobile, Ala.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, A. F. L.
SAILORS UNION OF THE PACIFIC, A. F. L.

Certified September 23. Strike September 18–25. Hearing September 29, October 1–4. 20,000 workers involved. Closed October 17

Panel: Wyzanski, Mead, Watt (Patrick Murphy). Assistant, Kirstein.

This case arose out of demands made by the seaman's unions, one representing east-coast, the other west-coast seamen, for bonuses for unlicensed personnel in connection with voyages to places and in waters made dangerous by war.

The bonus system was inaugurated piecemeal, beginning with the Spanish Civil War. By the time this dispute matured a $60 monthly bonus had become general on trips to Iceland, Greenland, Europe, Africa, and the Orient. With some lines the bonus area in the Pacific Ocean lay west of the one hundred and sixtieth meridian west; with the majority west of the one hundred and sixtieth meridian east. A few isolated companies paid bonuses to belligerent ports in the West Indies. A bonus of $100 was paid for entry into the Port of Suez; $45 into Aden; in a few cases $200 had been paid into Vladivostok.

The Seafarers International Union of North America representing east-coast and Gulf-coast seamen demanded increased bonuses and inclusion of voyages to the West Indian ports. A ship of one of the east-coast companies was struck on June 12. Negotiations took place June 18 to June 20, and June 24 a conciliator of the Department of Labor was called in and secured the release of the ship. Another ship was held up on June 23. Conferences were had from July 1 to July 8, resulting in an agreement with 4 of the 5 eastern companies here involved to submit the whole question to a general conference to be called in Washington by the Maritime Commission and the Department of Labor. It was agreed that if this conference did not secure an agreement, the matter would be put to arbitration. The conference was held August 12–16 and agreement secured, but only for the licensed personnel. On August 19, a conference covering unlicensed personnel convened, but was adjourned ostensibly to secure data on war-risk insurance rates. Eventually the union refused to participate in the conference, apparently on the ground that the negotiation of a separate agreement for licensed personnel was contrary to the agreement of July 8. On September 4, four of the five eastern companies concerned invoked the arbitration clause in the agreement of July 8. The union refused to submit to arbitration and again tied up ships on September 13. On September 16 the Maritime Commission demanded release of the ships, which was refused. On September 17 it warned that unless an agreement were reached it would take over the ships, which it did September 18.

In the meantime, a similar dispute was taking place on the west coast between the Sailors Union of the Pacific and the Pacific American Shipowners Association, including nearly all west-coast shippers to foreign parts. These parties had a contract which required arbitration of disputes and forbade the striking

of ships. S. U. P. struck some ships while on the east coast on September 18. The owners refused to negotiate, assigning as reason the breach of the agreement.

On September 22 the Maritime Commission offered its good offices. When they were refused, the case was certified to the Board.

S. U. P. demanded:

1. That the bonus be increased from $60 to $90, monthly; that the danger zone begin at the one hundred sixtieth meridian west as was then the practice of the Waterman and Bernstein lines.

2. That the bonus to Suez and Said be $300; to Persian Gulf ports, $100; to west, south, and east African ports outside of the Red Sea, $50; to Vladivostok, $200; to any port under continuous bombardment, $300.

3. That where the cargo is contraband of war, wages be increased 200 percent.

4. That the amount of war-risk insurance taken out by the companies for each man be increased from $5,000 to $10,000.

5. That the allowance for clothes of a shipwrecked seaman be increased from $150 to $250 with $100 extra for carpenters' tools.

6. That where a seaman is interned by the enemy, his pay continue until he is released.

The S. I. U. demanded:

1. That bonus be increased from $60 to $150.

2. That the danger zone include the voyage to belligerent ports in Canada and the West Indies, though for these less dangerous voyages the bonus be $60 monthly rather than $150; that the zone include also any part of the Pacific Ocean in connection with runs from the east coast.

3. In addition to the special bonus ports specified in the demands of S. U. P., S. I. U. included Australian, New Zealand, and Japanese ports for which it asked $75 and African ports for which it asked $60 instead of the $50 demanded by S. U. P.

4. S. I. U. asked also for the 200-percent bonus for contraband cargoes, but seems to have interpreted it somewhat differently.

The companies were eager to have arbitration machinery for future disputes established. This the unions opposed.

At the close of the hearing the Board made its recommendations which were subsequently accepted by the parties:

Recommendations

October 4

1. Crews on American vessels sailing to foreign ports perform an essential role in the national defense effort. Sound relationships between representatives of these crews and owners of these vessels are of great consequence to the Nation.

2. The Seas Shipping Co., Inc., the Calmar Steamship Corporation, the South Atlantic Steamship Co., and the Alcoa Steamship Co., Inc., on the east coast are associated in the American Merchant Marine Institute, Inc. Most of the owners on the west coast are associated in the Pacific American Shipowners Association. The Waterman Steamship Corporation is not affiliated with either group.

3. The unlicensed personnel before the National Defense Mediation Board are represented by Seafarers International Union of North America and Sailors Union of the Pacific. (The licensed personnel are represented by other unions. Their problem is not dealt with here.)

4. Collective bargaining relationships have been established by most of these owners with one or the other of these unions. In most cases, collective bargaining contracts now exist or have just expired. For the negotiation of such general contracts the parties have worked out among themselves appropriate methods. These methods usually include the parties requesting the United States Department of Labor to station a commissioner of conciliation as an observer and mediator at the collective bargaining negotiations. These recommendations do not affect those methods or any unexpired contracts.

5. However, a special problem arises from the risk run by men who go to sea in time of war. This problem has not been solved by the existing or contemplated contracts. It is with this problem that these recommendations are concerned.

6. The first part of this problem is to provide for bonuses for war risk which will be fair under present conditions. The second part of this problem is to provide machinery for making equitable future adjustments if conditions change.

7. To meet the first part of the problem, the National Defense Mediation Board recommends that until changed, as provided in paragraph 8, the following war-bonus rules shall govern those who become signatory to these recommendations:

(*a*) There shall be five war-risk areas, namely:

(1) Trans-Atlantic voyages to Spain, Portugal, east south or west coasts of Africa, Red Sea, Persian Gulf, India, Iceland, and Greenland. (Whole voyage; except that if any vessel continues eastbound to the United States ports via India and the Pacific Ocean said bonus rates for such area will continue until the vessel passes the one hundred eightieth meridian, eastbound, and thereafter no further bonuses will be payable.)

(2) Trans-Atlantic voyages to Russia (Archangel, etc.). (Whole voyage.)

(3) Trans-Pacific voyages to Japan, Philippine Islands, China, Indo-China, East Indies, Malayan Peninsula. (After crossing the one hundred eightieth meridian westbound, until recrossing the same meridian eastbound.)

(4) Trans-Pacific voyages to New Zealand or Australia. (From arrival of vessel in Suva or the crossing of the one hundred eightieth meridian, westbound, until departure from Suva or crossing the one hundred eightieth meridian, eastbound.)

(5) Canada (Atlantic coast). (While vessel is north of latitude 35° N. when bound to or from a Canadian port.)

(*b*) An able-bodied seaman shall be paid a war-risk bonus at the rate of $80 a month in the first four areas and $33 in the fifth area. Other unlicensed personnel shall be paid the same bonus.

(*c*) There shall be paid to able-bodied seamen in addition to the area bonus just provided, the following port bonuses:

(1). For the port of Suez, or any other port which is subject to regular bombing, $100, plus $5 per day for each day beyond 5 days that the vessel is in that port.

(2). For any port in the Red Sea or in the Persian Gulf not covered by paragraph supra, $45. The same bonuses shall be paid other unlicensed personnel. The Board makes no recommendation as to port bonuses for Vladivostok or ports in Iceland.

8. To meet the second part of the problem, the National Defense Mediation Board recommends that the following machinery for making equitable future adjustments shall govern those who become signatory to these recommendations:

(*a*) Any signatory may ask for a change, an addition to, or subtraction from the present war-bonus rules set forth above if the present situation is changed by an act of Congress, executive action, the spread or contraction of the area of hostilities in the Eastern or Western Hemispheres, the entry into the war or withdrawal from the war of belligerents, or the rise or fall of sinkings of American vessels. Such proposed change shall be limited to the areas where conditions are alleged to have changed.

(*b*) The signatory asking for the change shall present his request in writing to the party from whom the change is sought. (Meetings shall occur at once.) If agreement between them is not reached 1 week after the request is presented, either party may present the matter to the United States Department of Labor, Division of Conciliation for conciliation. If conciliation is not successful in 1 week after the matter was presented to the Division of Conciliation, the Director of the Division may then refer the case to a board composed of three disinterested persons to be appointed by the President of the United States. Such Board shall have power to make recommendations.

9. The recommendations in paragraph 8 shall be effective until November 1, 1943. Paragraph 7 shall be effective until November 1, 1942. During the period of these recommendations there shall be in connection with and on account of war-bonus issues, no lock-out, strike, slowdown, or like action by either owners or men represented by those who become signatories to these recommendations.

10. Nothing in these recommendations shall be interpreted so as to reduce benefits now existing under collective bargaining contracts. Except as herein modified, existing contracts and arrangements shall continue.

11. These recommendations shall become effective upon all ships which sailed on or after August 16, 1941, or any earlier effective date set by special rider.

12. If any dispute arises as to the interpretation of these recommendations, and if the parties cannot adjust that dispute by collective bargaining, either party may refer it to the Division of Conciliation for conciliation, and, if conciliation fails, either party may refer it to the three-man board referred to in paragraph 8 for interpretation.

CASE No. 81

CONSOLIDATED AIRCRAFT CORPORATION, San Diego, Calif. — INTERNATIONAL ASSOCIATION OF MACHINISTS, AIRCRAFT LODGE 1125, A. F. L.

Certified September 24. No strike. Hearing October 2–3. 27,000 workers involved. Closed October 10

Panel: Stocking, Swope, Watt (Frank Fenton). Assistant, McConnell.

Aircraft Lodge 1125 for several years had been the bargaining representative of the workers. On June 12 the company and the union had signed a new contract. It provided a minimum rate of 55 cents an hour, a 5 cents an hour increase, and semiannual review of rates. The company agreed to allocate for each such review a sum computed at 5 cents per hour times two-thirds of its employees covered by the agreement at the time of the review. In the event standard rates of pay should be adopted by the aircraft industry under any executive law or ruling of the President of the United States or certain other agencies, such standard was to supersede the contract provisions.

After this contract went into effect, Lockheed and Vultee aircraft companies in September put into effect general 10-cent increases in wages and wages for beginners starting at 60 cents per hour and increasing periodically until they reach 75 cents per hour after 3 months, these increases to be retroactive to July 1, 1941. These contracts followed generally the terms worked out in No. 36, *North American Aviation.*

The union contended that standard rates of pay had been adopted by a Government agency and the contract should be opened up to conform with the Lockheed and Vultee companies' increases. The company contended that there had been no general stabilization agreement but seemed ready generally to increase its rates to conform with those adopted by Lockheed and Vultee.

On September 22, the union voted to call a strike for September 29, but agreed to continue production while the matter was before the Board.

The hearing October 2 and 3 turned into direct negotiations between the parties and resulted in the management's placing two proposals before the union representatives which they agreed to submit to their membership:

Proposal No. 1.—"As a substitute for the October 1941 review, Consolidated Aircraft will grant as of October 4, 1941, a 12-cent blanket increase for all men over 63 cents and a beginners' rate of 60 cents to 75 cents as of July 5, 1941, with reviews (without jackpots) in April and October of each year."

Proposal No. 2.—"As a substitute for the October 1941 review, Consolidated Aircraft will grant as of October 4, 1941, a 13-cent blanket increase for all men over 65 cents and a beginners' rate of 60 cents to 75 cents as of July 5, 1941, with reviews (without jackpots) in April and October of each year."

Both parties returned to California with the understanding that the Board retained jurisdiction until final settlement had been reached.

On October 6 the union rejected both proposals. It was evident that the union members preferred the second proposal put to them, but were dissatisfied with the retroactive date of the 13-cent blanket increase for employees earning over 65 cents an hour. On October 7, the chairman received a wire signed jointly by the management and the union requesting that the Board "suggest" August 9 as a compromise retroactive date to all employees affected by both the 60- and 75-cent beginners' rate and the 13-cent blanket increase. On October 8, the chairman sent the telegram as suggested. On October 10, the management and the union wired that the members had voted to agree on a 60- to 75-cent beginners' wage and 13-cent blanket raise for all men earning 65 cents or over, both increases to be effective as of August 9.

CASE No. 82

SHAW-BOX CRANE & HOIST DIVISION OF MANNING, MAXWELL, & MOORE, INC., Muskegon, Mich. — INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 644, A. F. L.

Certified October 1. Strike September 17–October 6. 583 workers involved. Closed October 7

A contract existed between the company and the union which would expire in February 1942. A strike was called over demands for increased wages and

the union shop. The company took the position that the contract in existence settled these matters until it expired. The Board attempted to affect a resumption of production. Negotiations so opened resulted in agreement on all points in controversy.

CASE No. 83

AGAR PACKING & PROVISION CORPORATION, P. BRENNAN CO., ILLINOIS MEAT PACKING CO., Chicago, Ill. — PACKINGHOUSE WORKERS ORGANIZING COMMITTEE, C. I. O.

Certified October 1, 1941. Strike August 28–October 12. Hearings October 8 and 9. 1,500 workers involved. Transferred to National War Labor Board

Panel: Fisher, Ching, Brophy. Assistant, McConnell.

The strike in progress when this case was certified to the Board was called when the employers, having taken back the rest of their employees, refused to reinstate union officers who had led an unauthorized strike which the national officers of the union had canceled. The union admitted that the original strike had been in violation of the collective contract and contended that the employers' discriminatory reinstatement practice, because contrary to the National Labor Relations Act, justified the second strike, whatever the no-strike and grievance provisions of the contract. The employers claimed the men denied reinstatement were contract breakers, troublemakers and saboteurs. The parties agreed that the question of reinstatement should be arbitrated, but the union insisted all its members should be reinstated pending the arbitration, while the employers insisted on excluding specified persons.

When the hearing did not bring about a voluntary settlement, the Board, passing over the legal problems, made the following—

Findings and Recommendations

October 12

The Board finds that:

The parties had had contractual relations since 1938 and at the time of this controversy had a contract in effect.

On August 28, 1941, the union went out on an unauthorized strike. The union concedes that this strike was unauthorized; and on September 3 the employees were ordered back to work by J. C. Lewis, National Chairman of the Packinghouse Workers Organizing Committee.

On September 4 all the employees returned to work except 18 officers of the union whom the companies refused to reinstate on the ground that they had instigated the strike. Because of this refusal a new strike was called on September 10 with the approval of Mr. Lewis. That strike commenced on September 11 and is still in effect, although the companies are conducting operations to a limited extent.

The Board recommends:

Strike to be called off at once. The cases of men in dispute to be submitted at once to an arbitrator to be selected by the Mayor of Chicago. The arbitrator is to decide whether under the provisions of the existing contract, taking all the circumstances into consideration, the companies were justified in refusing reinstatement of those men whose cases are in dispute. In the event that the arbitrator should decide on reinstatement of any or all, then those reinstated shall receive full pay from the time they were refused employment until they are reinstated.

These were supplemented by—

Additional Findings and Recommendations

October 31

The Board finds that:

The union promptly accepted the recommendations of the Board of October 12, 1941, and voted to return to work on October 13, 1941.

The companies, on October 18, 1941, filed objections and a protest rejecting the recommendations. The Board finds that these objections and protest are without merit.

During the hearings in Washington, the companies took the position that they were willing to reinstate all employees except 18 officers of the union (whom the companies refused to reinstate on the ground that they had instigated the strike) and that they were willing to submit to an arbitrator, to be appointed by the Mayor of Chicago, the question of their right not to employ the 18 persons mentioned. The union took the position that it was also willing to submit to such an arbitrator the rights of the 18 persons, provided they were reinstated in advance of arbitration. The only issue that prevented an agreement of the parties was this question of whether the cases of the 18 employees would be arbitrated before or after reinstatement.

After the Board had on October 12, 1941, made a recommendation substantially in accord with the company's position, the companies rejected the recommendation. The Board has been informed orally by the attorneys for both parties that the companies have refused to reinstate employees other than and in addition to the 18 persons mentioned.

In the interest of the production of military supplies for the National Defense, the Board, in accordance with its previous recommendation, recommends that the companies reinstate immediately all employees except the 18 mentioned, and submit the cases of the 18 to an arbitrator to be selected by the Mayor of Chicago.

When the employers continued to deny employment to the larger distrusted group, the union asked the Board for effective redress but did not call another strike up to January 12, 1942.

CASE No. 84

ARCADE MALLEABLE IRON CO., INC., Worcester, Mass. — STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

Certified October 3. Strike August 5–October 4. Hearing October 22, 23. 300 workers involved. Transferred to National War Labor Board

Panel: Stocking, Connelly, Lyons. Assistant, Cox.

During the strike, which began August 5, the S. W. O. C. won a National Labor Relations Board election and was certified as the bargaining agency. The strike was called off at the request of this Board following certification, and, after 2 days of fruitless mediation by the panel, the parties were sent home to await the appointment of a Board agent to investigate the issues. On November 3, the Board appointed Charles G. Rugg, of Boston, as its special representative for this purpose. The principal issues are wages, union shop, seniority, arbitration, and grievance procedure.

On January 12, Mr. Rugg's investigation was still in progress.

CASE No. 85

ALABAMA DRY DOCK & SHIPBUILDING CO., Mobile, Ala. — INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O.

Certified October 6. No strike. Hearing October 15, 16. 4,800 workers involved. Closed November 10

Panel: Wyzanski, Lapham, Lyons. Assistant, Cox.

The following statement signed by the panel sets forth the facts. Although the union expressed vigorous dissatisfaction, it conformed with the recommendation.

Recommendation

November 10

This case was certified to the National Defense Mediation Board on October 6, 1941. No strike was in progress on that date but one had been called for

6 p. m. that evening. At the request of the Board both parties continued production pending its consideration of the case except for a 1-day walk-out without sanction of the international union.

The division of the Board which heard this case was composed of Charles E. Wyzanski, Jr., representing the public; Roger D. Lapham, representing employers; and Hugh Lyons, representing employees.

Hearings were held on October 15 and 16, 1941. Pursuant to leave granted at the hearings both parties subsequently submitted additional information upon the issue.

Parties.

1. Alabama Dry Dock & Shipbuilding Co. operates two shipyards at Mobile, Ala., at which it currently employs about 4,800 men in the construction and repair of ships. It has contracts for 13 "ugly ducklings" and 36 high-speed tankers and is also engaged in repairing British ships.

2. Industrial Union of Marine and Shipbuilding Workers of America, Local 18, C. I. O., was certified by the National Labor Relations Board to be the representative of the company's employees for collective bargaining. I. U. M. S. W. claims to have signed as members 80 percent of the employees, but admits that most of them are delinquent. The company recognizes I. U. M. S. W. as bargaining agent and has had contractual relations with it for 3½ years.

Issue.

3. In this case there is one issue. I. U. M. S. W. requests that when the parties amend their collective bargaining contract of February 3, 1941, to add thereto the provisions of the Gulf States Shipbuilding Stabilization Agreement of July 18, 1941, Alabama Dry Dock & Shipbuilding Co. agree to a provision for a "union shop." By a union shop I. U. M. S. W. means an arrangement under which every present employee and, after a probationary period, every future employee, shall be required as a condition of employment to become, be, and remain a member in good standing of the union until August 1, 1943.

Facts.

4. February 3, 1941, Alabama Dry Dock & Shipbuilding Co. and I. U. M. S. W. executed a collective bargaining contract. The contract covers the usual subjects of hours, wages, and working conditions. It provides for recognition of I. U. M. S. W. as the exclusive representative of the employees in the unit covered by the contract. It incorporates by reference a statement that "membership or nonmembership in any organization is not a condition of employment." In article 2, the contract provides: "There shall be no strike or other curtailment of production, nor shall there be a lock-out, because of any dispute or grievance which is subject to arbitration or because of any labor dispute in which the company is not involved. The contract states it is binding until February 3, 1942, and thereafter from year to year unless terminated by one party.

5. May 13, 1941, representatives of the Office of Production Management, the Navy Department, the Maritime Commission, Alabama Dry Dock & Shipbuilding Co. and other companies, and I. U. M. S. W. and other unions, met at New Orleans to prepare a "Gulf Shipbuilding and Repair Zone Standards Agreement.

6. This conference prepared and on June 18, 1941, published "Gulf Shipbuilding and Repair Zone Standards Agreement." These zone standards set forth provisions with respect to wages, hours, and certain working conditions. In paragraph 7 the zone standards provide: "There shall be no lock-outs on the part of the employer nor suspension of work nor picketing of the company's plant on the part of the employees. This agreement is a guaranty that there will be neither strikes nor lock-outs." The zone standards, however, do not purport to cover all conditions which should go into an agreement.

7. With respect to existing labor contracts, the letter from Monsignor Wynhoven as chairman of the conference transmitting the zone standards to the Office of Production Management, the Secretary of the Navy, and the Maritime Commission states:

"The conferees further agree that as soon as practicable, following such approval and ratificaction of this Gulf Zone Standards agreement, any existing labor agreements between shipbuilders and ship repairers and representatives of their

employees shall be modified to conform with these zone standards, and any new labor agreements shall also conform to them; provided that such conformity with the zone standards shall not be required to extend beyond the termination date of the zone standards agreement itself."

8. Alabama Dry Dock & Shipbuilding Co. accepted these zone standards in June 1941. The general executive board of I. U. M. S. W. accepted the recommendations on June 24, 1941. On June 29, the zone standards were read out paragraph by paragraph, at a meeting of Local 18 of the Industrial Union Marine and Shipbuilding Workers of America, and by a formal vote at the meeting were unanimously approved.

9. August 4, 1941, the Office of Production Management announced that the "Gulf standards will be effective throughout the Gulf zone as of the first regular day shift as of the 1st of August 1941."

10. On September 5, 1941, during negotiations between the company and I. U. M. S. W. in which I. U. M. S. W. demanded a union-shop provision, the company in a written statement expressed its conviction that the contract should not be reopened to include any new terms other than the zone standards but expressed its willingness, in view of the national emergency, to open the agreement to include the following provision:

"Following the principles of collective bargaining, the company agrees to inform those of its employees who are now members of the union in good standing or who hereafter voluntarily become members of the union during the life of this contract, that the company regards with favor the maintenance of their membership in the union." I. U. M. S. W. rejected the offer.

Position of the parties.

11. I. U. M. S. W. argues from the premise that today it is not bound by any contract with the company. While agreeing that the wage provisions of the zone standards became effective on August 1, 1941, it urges that the "no strike" clause and grievance machinery can be effective only when incorporated in a collective bargaining contract. As for the February contract, I. U. M. S. W. says it is not in effect for these reasons: It is in some respects inconsistent with the zone standards; therefore since the old agreement is to be modified in part, every section of it is thrown open for negotiation; moreover the zone standards contemplate collective bargaining agreements to implement them, for example, rates of pay were to be fixed. Representatives of I. U. M. S. W. frankly stated that under their view the negotiation of the zone standards agreements for Atlantic and Pacific coasts and the Great Lakes and Gulf voided every shipbuilding and ship-repairing collective bargaining agreement then in existence. To support it they submitted a stenographic transcript of a telephone conversation held prior to the zone standards conference in which Capt. J. W. Powell, United States Navy, stated in the presence of representatives of the shipyards and the unions that the zone standards would be negotiated into a new contract so that all contracts would begin on the same date and have the same termination. They cited the example of New York Shipbuilding Corporation, which had reopened its contract on the Atlantic coast and granted a union-shop provision, as an example of the application of this understanding and urged that the company itself had recognized it by offering to reopen the February contract to include the clause encouraging voluntary maintenance of membership in the union.

12. The company rests its case on the one proposition that there is in effect until February 3, 1942, the contract of February 3, 1941, modified to accord with the zone standards but otherwise effective without change. In support of this proposition the company referred to the paragraph from Monsignor Wynhoven's letter quoted in paragraph 7 and submitted statements from Monsignor Wynhoven, Assistant Secretary of the Navy Bard, Captain Powell (the officer who took part in the telephone conversation on which I. U. M. S. W. relies), and an official of the company at the conference, all categorically confirming that the zone standards conference intended that existing contracts should not be reopened except to insert the zone standards. The company pointed out that its proposal referred to by the union to modify the February contract in one other respect was in no wise inconsistent with this position, for in the written offer the company expressly stated that it contended the contract did not terminate until February 3, 1942, and expressly limited its willingness to open the present agreement to an assent to modify it by encouraging voluntary maintenance of membership in the union.

13. The company concedes that in February of 1942, the expiration date of the contract, I. U. M. S. W. is free to propose changes in the contract, not inconsistent with the zone standards.

Reasoning.

14. The contract of February 3, 1941, states that at the company's yards "membership or nonmembership in any organization is not a condition of employment." The contract provides that it shall continue in force until February 3, 1942, and from year to year thereafter unless terminated by either party. I. U. M. S. W. has stated that it would not have been entitled to demand a union-shop provision if that contract remained in force. We agree with that view. Any other view would undermine the stability of collective bargaining agreements.

15. The ratification of the zone standards by both parties did not terminate the contract. The letter above mentioned from Monsignor Wynhoven states that the conferees agreed "that as soon as practicable * * * any existing labor contracts between shipbuilders, ship repairers and representatives of their employees shall be modified to conform with these zone standards and any new labor agreements shall also conform to them." This language shows an intention to modify existing contracts only so far as necessary to conform to the zone standards and to leave them in full force and effect in all other respects. That this was the intention of the Gulf Zone Standards Conference is also made unmistakably clear by the above-mentioned statements of Monsignor Wynhoven, Assistant Secretary Bard, and Captain Powell, copies of which are attached. Moreover, I. U. M. S. W. has been unable to find any support for its view. The company's offer was strictly limited to a proposal to encourage voluntary maintenance of membership and, being coupled with an expressed statement that the company insisted that the February contract was in force, in no way threw open the entire contract. We conclude, therefore, that this case is governed by the principle that a collective bargaining agreement once made should be given effect so long as it endures. On February 3, 1942, I. U. M. S. W. will be free to negotiate for a union shop if it desires and to bring the case here if negotiations reach an impasse.

16. The presence of a valid subsisting collective bargaining agreement distinguishes the present case from case No. 46 involving the Kearny plant of the Federal Shipbuilding & Dry Dock Corporation, for in that case the existing contract had expired and both parties agreed that all subjects appropriate for collective bargaining not covered by the Atlantic Coast Zone Standards were open for negotiation. I. U. M. S. W. also urged that case No. 37 involving the Bethlehem Steel Co., Shipbuilding Division, is controlling, but there was no proof here that all the companies in the particular industry in the Gulf region had executed closed-shop agreements as a result of collective bargaining.

17. We recommend that until February 3, 1942, the relations between the company and I. U. M. S. W. shall be governed by the existing contract of February 3, 1941, modified to the extent required by the Gulf Zone Standards of July 18, 1941, and no further.

ATTACHED STATEMENTS

OUR LADY OF LOURDES RECTORY,
RT. REV. MONSIGNOR PETER M. H. WYNHOVEN,
4423 LaSalle Street, New Orleans, La., October 19, 1941.

To Whom It May Concern:

Following is my impression and personal belief in re the relationship between the employer and the employee as affected by the Gulf Shipbuilding Stabilization Conference agreements, signed on June 18, 1941, and ratified and being made effective August 1, 1941.

1. That all zone standards be incorporated in contracts existing before August 1, 1941, and new contracts effective after that date.

2. That the Government had no intention of interfering with individual contracts between shipyard management and unions, hence contracts to remain in force till their natural expiration, unless both parties to a contract agree to make changes in their working agreements.

Therefore I personally feel that the contract signed by the Alabama Dry Dock & Shipbuilding Co., and Local 18, C. I. O., on February 1, 1941, to terminate on February 3, 1942, could only be opened for the purpose of inserting the zone standards. The contractual provisions of the existing agreement, to expire on February

3, 1942, are purely a matter of mutual agreement between employer and employees. Any new contract should embody the zone standards as officially ratified and promulgated by the national O. P. M.

(Signed) PETER M. H. WYNHOVEN.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D. C., October 24, 1941.

DEAR MR. LAPHAM:

You have handed me a memorandum with reference to the Gulf Zone Standards, asking for my understanding of the interpretation of certain questions that have arisen in connection with them. I quote these questions and follow them with my answers:

Question 1. Was it intended that there should be inserted in the existing contract only the zone standards and the supplementary provisions which the zone standards on their face specifically require; or was it intended that the existing contract should be entirely open except on such subjects as were precisely covered by the zone standards?

Answer. It was definitely intended that the zone standards should be included in existing contracts, as these standards were written, replacing all clauses in those contracts that were inconsistent with the approved zone standards. This did not in any way open up any other subjects under existing contracts.

Question 2. If in answering question 1 the conclusion is that the existing contract was open only to the extent necessary to include the zone standards and the supplementary provisions which the zone standards specifically require, do the other provisions of the old existing contracts expire on February 3, 1942 (as originally intended), or on August 1, 1943?

Answer. Since the zone standards definitely include a provision for the term it was to remain in force, the addition of these standards to an existing contract automatically extend it to the date of the termination of the zone standards. The zone standards are definitely "not separable" and must be treated as an indivisible whole.

Question 3. If the present contract is modified to include until its expiration date, February 3, 1942, the zone standards, then on February 3, 1942, when the contract expires are the zone standards (including the no-strike clause) then binding, or are they not binding until incorporated in a new agreement?

Answer. If it were decided that an existing contract should terminate on the date as originally specified therein, i. e., in the case cited, on February 3, 1942, the zone standards would continue to be binding (including the no-strike clause) until their specified expiration date. The company would continue to pay the higher wages, overtime, and shift premiums, and the agreement on the part of labor and industry that there should be no strikes or lock-outs would continue in force.

Yours very truly,

(Signed) J. W. POWELL,
Special Assistant to the Secretary of the Navy.

MR. ROGER LAPHAM,
National Defense Mediation Board, Social Security Building, Washington, D. C.

DEPARTMENT OF THE NAVY,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D. C., October 29, 1941.

MY DEAR MR. GREEN:

In a personal letter addressed to Admiral C. W. Fisher by Mr. Philip H. Van Gelder, secretary-treasurer of your organization, there were asked certain questions relative to interpretations of the Gulf Shipbuilding Zone Standards Agreement, for use in connection with a dispute now before the National Defense Mediation Board.

In order that your organization may be informed of the understanding of the Navy Department in respect to these matters, the questions presented are below categorically answered.

Question 1. Was it intended that there should be inserted in the existing contract only the zone standards and the supplementary provisions which the zone standards on their face specifically require; or was it intended that the existing contract should be entirely open except on such subjects as were precisely covered by the zone standards?

Answer. It was intended that there should be inserted in existing contracts only the zone standards and the supplementary provisions which the zone standards, on their face, specifically require. It was not intended that existing contracts should be reopened for complete reconsideration of all provisions contained therein, nor that the opportunity was available through the zone standards to modify any conditions of existing contracts upon which the new provisions of the zone standards agreements had no bearing.

Question 2. If in answering question 1 the conclusion is that the existing contract was open only to the extent necessary to include the zone standards and the supplementary provisions, which the zone standards specifically require, do the other provisions of the old existing contracts expire on February 3, 1942 (as originally intended), or on August 1, 1943?

Answer. It is the understanding that on the basis of the condition imposed by the answer to the above question 1, the expiration dates of existing contracts would remain unchanged in spite of modifications inserted therein pursuant to the provisions of the zone standards.

Question 3. If the present contract is modified to include until its expiration date, February 3, 1942, the zone standards, then on February 3, 1942, when the contract expires are the zone standards (including the no-strike clause) then binding, or are they not binding until incorporated in a new agreement?

Answer. The zone standards having been set up and ratified by all parties concerned independently of specific employer-employee contracts, their ratification establishes them as binding continuously for the period and under the conditions as stated in section 9 of the Gulf Shipbuilding and Repair Zone Standards Agreement. Accordingly it is considered that any review, renewal, or revision of labor contracts which may take place by agreement of the parties thereto would necessarily include as an accepted fact the provisions of the zone standards agreement during the life of that agreement. The agreement having been ratified independently, its provisions continue to be binding on the parties concerned until the agreement may be no longer in existence, regardless of the negotiation of other provisions in any specific labor agreements.

Very sincerely yours,

RALPH A. BARD,
Assistant Secretary of the Navy.

Mr. JOHN GREEN,
President, I. U. M. S. W. A., 534 Cooper Street, Camden, N. J.

CASE No. 86

CLEVELAND GRAPHITE BRONZE CO., Cleveland, Ohio — MECHANICS EDUCATIONAL SOCIETY OF AMERICA, LOCAL No. 5

Certified October 7. Strike October 3–8. Hearings October 15, 16, and November 27. 2,500 workers involved. Closed December 17

Panel: Graham, Hamilton, Watt (Googe). Assistant, Gill.

The issue concerned a change-over from piece-work rates to day rates within department 33 of the company's Cleveland plant. An agreement appeared to have been reached late in September, but was disapproved by higher officials of the company, and a strike was called on October 3. The men returned to work on October 8 at the request of the Board, pending consideration of the case. On October 16 an agreement was signed, and on October 26 ratified by the union membership.

A dispute arose later as to whether the company was carrying out the agreement concerning minimum rates for learners and probationary employees. Following a further hearing on November 27, an investigation at the plant in Cleveland by the panel assistant, and the submission of his written report, the parties reached an agreement on December 17 disposing of the matter without recommendations by the Board.

CASE No. 87

FAIRMONT ALUMINUM CO., Fairmont, W. Va. — ALUMINUM WORKERS OF AMERICA, C. I. O.

Certified October 7. No strike. Hearing October 16, 17. 375 workers involved. Closed October 29

Panel: Fisher, Mead, Brophy. Assistant, Leiserson.

This case was exclusively a wage dispute. The parties had had contractual relations for several years, and the controversy over wages arose pursuant to a reopening of that question in April 1941 as permitted by the current contract. Negotiations dragged along until fall while the parties cooperated in an effort to secure more defense business for the company so as to enable it to grant a wage increase. When the case was heard before the panel in October, the parties had agreed upon an 8-cent increase, and the only dispute concerned making it retroactive.

No agreement was reached during the hearing, but subsequently Mr. Mead secured an offer from the company, over the telephone, to make the increase retroactive to May in return for a provision freezing the wages for a full year from that date. This proposal was transmitted to, and accepted by, the union, and the union membership ratified the settlement on October 29.

CASE No. 88

AMERICAN CYANAMID CO. (CALCO CHEMICAL DIVISION), Bound Brook, N. J. — CHEMICAL WORKERS UNION, LOCAL 22051, A. F. L., and UNITED MINE WORKERS OF AMERICA, C. I. O.

Certified October 7. Strike September 29–October 13. Hearing October 20, 21, 22. 3,200 workers involved Closed October 24

Panel: Stacy, Lapham, Rieve (Googe). Assistant, Gill.

Negotiations between the A. F. L. and the company for a new contract began early in September 1941. Complications entered in when the C. I. O. demanded recognition and filed a petiton with the N. L. R. B. for an election. The stalemate in the negotiations which resulted from this development led to a strike by the A. F. L. which was ended upon the case's being certified.

On October 2 the N. L. R. B. dismissed the C. I. O. petition on the ground that it was unable to produce sufficient evidence of membership to warrant an election, and, shortly before the Mediation Board's hearing, it denied a motion by the C. I. O. to reconsider the dismissal of its petition. When apprised of the N. L. R. B.'s action, the C. I. O. representatives withdrew from the Mediation Board hearing, and the Board proceeded to consider the issues between the company and the A. F. L.

The principal issues were union security and wages.

On October 21 agreement was reached on the first issue in the form quoted below. This article was drafted by the Board, but the parties had already indicated their willingness to accept the substance of it.

The union asked a wage increase of 10 cents per hour. The company offered 7 cents and reopening if the cost of living went up 5 points. The Board prevailed upon the company to give an outright additonal 3 cents in 6 months. The contract was signed on that basis on October 22 by the parties and the panel and was promptly ratified. There follows the first article of this—

Agreement

October 22

ARTICLE 1

Union membership.—The company expects that employees who are or who become members of the union, will maintain such membership in good standing during the life of this contract. In the event an employee fails to maintain his union membership in good standing, the company will, upon request by the union, call in the employee for a conference with an appropriate official or officials of the company (and, if the union so desires, with a representative of the union present), who will remind the employee of the company's expectation that he

maintain his union membership, as stated above, in order to do his part in carrying out the obligations of the union as a party hereto. In the event any employee engages in activity in the plant calculated to undermine the status of the union as the bargaining agency, the company agrees to take appropriate disciplinary action. The union agrees to instruct its officers and members that it is a violation of the company's rules to engage in union activities during working hours exclusive of proper grievance procedure.

New employees will be presented with a copy of this contract by the company, upon hiring, and will be asked to cooperate with the union to carry out the obligations of the contract.

CASE No. 89

(See Case No. 4, p. 95.)

CASE No. 90

HILLSDALE STEEL PRODUCTS (SPICER MANUFACTURING CORPORATION), Hillsdale Mich., and SPICER MANUFACTURING CORPORATION, Toledo, Ohio	INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 663, A. F. L., and UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 701, C. I. O.

Certified October 14. Strike October 9–October 15. Hearing October 27, 28, 29. 3,200 workers involved. Closed January 12

Panel: Wyzanski, Lapham, Connelly, Googe, Brophy. Assistant, Cox.

This case involved both the Hillsdale plant and the Toledo plant of the Spicer Corporation. At the Hillsdale plant, the A. F. L. won a labor board election from the C. I. O. by a slight margin in April 1941 and signed a contract (not a closed-shop contract) in June. The C. I. O. had bargaining rights and a contract at the Toledo plant.

In August and again in October a number of C. I. O. members were discharged at the Hillsdale plant, and others were forcibly ejected from the plant by A. F. L. workers. A general free-for-all broke out at Hillsdale as a result of these events. In October the Hillsdale plant was struck by the C. I. O. and the Toledo plant likewise went down because the C. I. O. members there refused to handle the Hillsdale products.

The strike was called off at the request of this Board following certification, and the Board appointed an "impartial observer" to help keep the peace at Hillsdale. No settlement was reached in the 3 days of hearing before the panel. The parties were sent home on October 29 to await recommendations. However, the Board was subsequently advised that all the discharged men were back at work except two who got jobs elsewhere, and that the difficulty appeared to have subsided. Accordingly no recommendations were issued and the case was closed.

CASE No. 91

JOHN A. ROEBLING'S SONS CO., Roebling, N. J.	BROTHERHOOD OF RAILROAD TRAINMEN, SUBORDINATE LODGE No. 867

Certified October 15. No strike. Hearings November 5, 6, December 16, 17. 8,500 workers involved. Transferred to National War Labor Board

Panel: Stocking, Connelly, Woods. Assistant, Gill.

The Brotherhood of Railroad Trainmen was certified by the National Labor Relations Board as the bargaining agency for the company's intraplant railroad employees on June 19. Negotiations for a contract, the first between the parties, dragged along without success until the case was certified.

A number of the issues were worked out by the Board's mediation efforts, but the negotiations finally broke down because the B. R. T. representative admitted

lack of authority to negotiate any changes in certain of the union's proposed articles. On December 18 the Board adjourned the hearing until such time as the B. R. T. sent a representative fully authorized to negotiate on all the issues in dispute. A formal letter from the Board to the B. R. T. representative explaining this action, copies of which were given to both parties, is as follows:

Letter

December 18

In re: John A. Roebling's Sons Co., and
Brotherhood of Railroad Trainmen, Subordinate Lodge 867.

DEAR MR. REED:

This will confirm, for the purposes of the record, the decision of the Board as to the further procedure to be followed in the above-entitled case.

As to a number of the most important issues in dispute between the brotherhood and the company, you have informed the Board that under the laws of your brotherhood you are not permitted, without express authority from the president of the brotherhood, to make any deviation from certain of the brotherhood's standard rules, which you have proposed be incorporated in an agreement with the company, and that you have not received such authority. These standard rules are rules which have been agreed upon by representatives of common carrier class I railways and of the brotherhood, at proceedings to which the Roebling Co. whose railway operations are conducted merely as plant facilities, was not a party. They are in various respects unacceptable to the company in their present form. The Board has succeeded in working out an agreement on most of the disputed points, other than those involving the standard rules, but it is apparent that a complete agreement between the parties cannot be reached without an agreement upon the provisions which do involve the standard rules.

The Board obviously cannot function in its mediation capacity unless the representatives of each party are empowered to bargain collectively upon all the issues in dispute. The company representatives in this case are so empowered, and are prepared to negotiate concerning compromises on these issues. Since you are not so empowered, however, the Board has decided to recess the hearings until such time as the Brotherhood of Railroad Trainmen arranges to have present at the hearings a representative, either yourself or someone else, with authority to negotiate upon all the issues in dispute.

Meanwhile, the Board is retaining jurisdiction over the case with the understanding heretofore agreed to by both parties, that production at the company's plant will not be interrupted while the case remains before the Board.

Very sincerely yours,

NATIONAL DEFENSE MEDIATION BOARD,
By GEORGE W. STOCKING, *Public Representative.*
J. E. CONNELLY, *Employer Representative.*
HERBERT WOODS, *Employee Representative.*

MR. W. L. REED,
Vice President, Brotherhood of Railroad Trainmen,
820 Superior Avenue, West, Cleveland, Ohio

The case remained in this situation until its transfer.

CASE No. 92

INGALLS SHIP BUILDING CORPORATION, Pascagoula, Miss. — PASCAGOULA METAL TRADES COUNCIL, A. F. L.

Certified October 15. Strike October 13–15. Hearings October 28–29. 3,000 workers involved. Transferred to National War Labor Board

Panel: Fisher, Meyer, Googe (Calvin). Assistant, McConnell.

The facts leading up to and embracing the dispute are stated in the findings and recommendations. The Metal Trades Council by a majority vote of the membership refused to accept them, announcing it would accept nothing other

than the union-shop provision demanded by it. Thus, though the plant is in operation, there is no agreement.

Findings and Recommendations

November 12

STATEMENT

The Ingalls Ship Building Corporation is in the business of constructing ships at Pascagoula, Miss. At the present time it has contracts for the delivery of considerable tonnage to the United States Maritime Commission and the Navy. The Pascagoula Metal Trades Council is a council composed of representatives from the various local A. F. L. unions in the shipyards.

On October 13, 1941, a strike took place in the yards and on October 15 the Secretary of Labor certified the dispute to this Board, and at the Board's request the men returned to work on that day. Thereafter hearings were held before the Board on October 28 and 29, but the parties were unable to reach an agreement with respect to the points in issue and returned to Pascagoula with the understanding with the Board that neither party would take any action until it made its findings and recommendations.

FINDINGS

1. The Ingalls Ship Building Corporation was organized in 1938 and sometime in that year acquired properties in Pascagoula, Miss., a town of approximately 4,000 people located on the Gulf of Mexico. Thereafter it constructed ways and other facilities for shipbuilding and at the present time employs approximately 3,000 men. Both parties seem to agree that under present conditions the company will continue to expand and additional men will be employed.

2. In 1939 representatives of the Metal Trades Department of the A. F. L. carried on organizing work in the yards, and in July of 1940 the National Labor Relations Board certified it as the bargaining agency for the employees. It is stated that about 95 or 97 percent of the men belong to the various unions affiliated with the Metal Trades Department.

3. In July 1940 the Metal Trades Department and the corporation executed a contract which was comprehensive in its terms and was evidently designed to cover in detail the relationship between the company and the men. This contract contained a general provision with respect to wages and working conditions. It did not contain any clause relating to a union shop or other form of union security. Likewise, it did not have a provision under which the union agreed not to strike. By its terms the contract would remain in force until July 16, 1941, and would continue in effect thereafter until either party gave 15 days notice that it wished to negotiate a new agreement.

4. On June 18, 1941, various negotiations directed toward the stabilization of labor relations in the shipbuilding industries under the auspices of the Office of Production Management and other Government agencies resulted in what is known as the Gulf Shipbuilding and Repair Zone Standards Agreement. These zone standards consist of certain clauses deemed desirable for inclusion in labor contracts, among them a no-strike and no-lock-out clause.

5. On June 28, 1941, Pascagoula Metal Trades Council notified the company that it was prepared to renegotiate the contract which expired on June 16, and negotiations were entered into at that time which are still in progress, and it is out of them that the present difference arises. In the negotiations the company and the union have reached agreement with respect to all items except a union security clause and the no-strike, no-lock-out clause of the zone agreement. While both parties desire to uphold the zone standards, it is the union's contention that it should not be called upon to sign the no-strike clause without some correlative clause which guaranteed security to it. The present dispute arises solely out of the question of what should be the substantive provisions and wording of a proposed article 4, dealing with this subject.

6. Basically the union demands that article 4 contain a clause providing that membership in the union be a condition of employment. They, likewise, ask that the company give preference to union members in employment. The company, on the other hand, proposes that the clause contain an assurance on its part that it will cooperate and encourage the union but insists that it should not give a strict

union maintenance or shop provision. It is willing to give some form of preference of employment clause.

7. In support of its demand, the union contends:

(*a*) That in giving away the right to strike for 2 years it needs for its protection complete union security by contract. This is particularly true because the industry is new, in the process of expansion, and neither the company nor the membership of the union has been accustomed to union conditions over a long period of time.

(*b*) It is contended that a general assurance clause in the form which the company proposes would be insufficient for the protection of the union because of an alleged tendency on the part of the company to render lip service only to such clause while seeking really to hamper the growth of the union in various ways.

On its part the company contends:

(*a*) That as a matter of principle it cannot agree to impose any obligation of joining the union on the men which it employs.

(*b*) The company contends that the union's contentions that it has not and will not in good faith encourage and cooperate with the union are without foundation.

(*c*) The company is willing to give some form of preferential clause but could not completely bind itself because it had entered into an agreement with the officials of Jackson County, by the terms of which it agreed to give priority to county residents.

8. Toward the end of the hearing before the Board the company proposed the following wording for article 4, in line with its position outlined above:

"ARTICLE 4. The company advocates that those that are now members or who may become members of the union continue their membership and will cooperate with the union for the purpose of carrying out this agreement, provided it is understood that their obligation to cooperation will not require the company to discharge a man for nonpayment of dues or nonmembership in the union.

"The company will fully instruct its supervisory employees as to the terms and conditions of this agreement and will discipline any such employee violating the terms hereof or advocating a policy contrary to that set out herein.

"The company believes the interests of the employees are best served by being members of the union and looks with favor upon all employees covered by this agreement and all employees who are now members or who become members continuing their membership.

"All things being equal and when practicable, members of the said union will be given preference in the hiring of men when said members have registered with the employer's employment office and with the union's and are available within 24 hours. The company will not support or encourage any dual union and will not recognize any union of production or maintenance employees other than those with which it has contractual relations through the Metal Trades Department, affiliated with the American Federation of Labor, which is certified by the National Labor Relations Board as sole collective bargaining agent. The company will print copies of this agreement and will furnish each employee a copy thereof."

RECOMMENDATIONS

The Board has considered carefully the dispute between the parties and has come to the conclusion that the clause proposed by the company, if carried into operation with good faith upon the part of both parties, should form a basis for stable relations between the company and the union and guard the security of the union during the life of the contract. Therefore, the Board recommends that article 4 of the proposed contract be substantially in the form of the company's proposal outlined above with the addition of the following paragraph:

"In the event the union shall believe that any supervisory employee of the company is not in good faith carrying out the policies announced herein, upon written request of the union the company will join it in requesting the attendance at Pascagoula of some disinterested person designated by the National Defense Mediation Board for the purpose of investigating the complaint. If such person shall deem it necessary, then at a meeting attended by such employee, a representative of the company, a representative of the union, and such person designated by the National Defense Mediation Board, such supervisory employee shall be advised in what manner and to what extent he has deviated from such policies and shall be instructed not to repeat the offense. If the union shall so request, the National Defense Mediation Board will at the present time or at some other

time appoint such a disinterested person to proceed to Pascagoula to study the situation in advance of any complaint being made."

Amendment to Findings and Recommendations

November 15

In the findings and recommendations filed in this case by the Board November 12, 1941, it was stated in paragraph 3 thereof that the contract entered into between the Metal Trades Department and the corporation in July 1940 did not have a provision under which the union agreed not to strike. This statement was in error. Therefore, the Board hereby amends the findings and recommendations by striking out the sentence beginning "Likewise, it did —," paragraph 3 of the findings and recommendations.

CASE No. 93

AMERICAN ENGINEERING CO., Philadelphia, Pa. — INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, LOCAL 35, C. I. O.

Certified October 18. Strike September 27–October 22. 570 workers involved. Closed January 7

Panel: Adams, Fales, Brophy. Assistant, Leiserson.

The Board's request that the parties resume operation was heeded but the hearing early in November yielded no agreement on wages, the sole important issue. However, as negotiations for a renewal of the entire contract were scheduled to begin within a month, the Board recessed the hearing without making any recommendation, with the understanding that the wage question was to be taken up by the parties in connection with the impending negotiations for a renewal of the contract.

On November 22 the union advised the Board that negotiations for a new contract had reached a stalemate. Meanwhile the C. I. O. members of the Board had resigned. The Conciliation Service succeeded in bringing about an agreement on January 7.

CASE No. 94

SLOSS-SHEFFIELD STEEL & IRON CO., Birmingham, Ala. — UNITED MINE WORKERS OF AMERICA, LOCAL No. 12014, C. I. O.

Certified October 20. Strike October 21. Hearing October 28, 29, November 1, 2, 3, 4, 5. 900 workers involved. Closed December 17

Panel: Graham, Hamilton, Lyons. Assistant, Tomey.

This dispute was certified on October 20 and telegrams were dispatched to both parties immediately asking that they "refrain from any action which might aggravate the situation or render the controversy more difficult to solve." The union, however, refused to comply with the request of the Board and the plants were struck at midnight October 20. On October 21, the Board notified the parties that a hearing had been set for October 28, and requested the immediate and complete resumption of production. Production was resumed at 10 p. m., October 21.

The hearing began on October 28 in conjunction with that on the dispute involving the Alabama By-Products Company of Birmingham, Ala., and United Mine Workers of America, Local 12136, Case No. 95, which had been certified to the Board at the same time as the instant case and which, the union contended, should be heard with it. At the conclusion of the opening statements by all the parties, the Board decided that the two cases should not be heard simultaneously.

During the negotiations before the Board, none of the principal issues in dispute was resolved by collective bargaining. Therefore, the Board issued its—

Recommendation

November 10

1. A main point in the union demands is the so-called "union shop." During the course of the hearing before the Board the union modified their demand to

the "maintenance of membership" provision. The company remained adamant in its stand against any form of "union shop" or "maintenance of membership" basing their objection on the ground that such an arrangement does not exist in the pig-iron industry in the Birmingham area and that they are opposed to it as a matter of company policy. The union pointed to its maturity and high percentage of membership in the plants in question as the basis for granting this provision. The Board has given careful consideration to all the arguments and does not in this case recommend either of these proposals, but recommends the inclusion of the following statement in the contract between the company and the union:

"The company recognizes, does not object to, and will not interfere with the rights of the employees to become members of the union. The company will not tolerate any of its agents engaging, at any time, in any activities against the union signatory to this contract. The company agrees that there shall be no discrimination against any employee because of his acting as an officer or in any other legitimate capacity on behalf of the union. The company will not tolerate and will discipline any employee, who, on company time, carries on antiunion activities or seeks to interfere with the membership or status of this union.

"The company has good will toward membership in the certified union as a basic part of our industry and a vital partner in defense production. The company and union agree to cooperate for harmonious relations, for orderly and efficient shop discipline, and maximum defense production."

2. A second principal point of dispute was the execution of one single contract covering operations in the byproducts plant and blast furnaces, instead of executing two separate contracts as has been done heretofore. During the course of the hearings before the Board, the company agreed to this demand of the union. Accordingly, the Board recommends that one contract be executed covering both operations and with separate parts or divisions only where the operations are distinctly different and separate provisions are necessary. Unless operations are dissimilar, one provision shall be made applicable to both operations.

3. On the question of holidays, the union requested a provision for the payment of time and one-half for certain named holidays (Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day). The company again pointed to the absence of any similar provision in the pig-iron industry in the Birmingham area where continuous operations are involved, but did agree that should the practice become prevalent in that industry in Birmingham, the company would be willing to open negotiations on this question. The Board recommends that a provision be inserted in the contract providing for the opening of negotiations when and if the payment of time and one-half for these named holidays becomes prevalent in the pig-iron industry in the Birmingham district.

4. On the issue of wage adjustments, the Board is not prepared at this time to make final recommendations. The Board, however, makes an interim recommendation of an increase of 2 cents per hour for all regular employees covered by the byproducts plant and blast furnace contracts. This increase is not to effect the wage rate of men not regularly employed, or the wage rate of common labor hereafter employed, but the present 55-cent rate prevailing in the Birmingham district shall be retained for such common labor. The necessary data for the determination of any further wage adjustments are not now available to the Board. The payment of any further wage increase up to the 5 cents demanded by the union, or any part thereof, should be based upon the ability of the company to meet the increased costs out of its present earnings and upon other economic factors governing the operations of the company. Accordingly, the Board shall appoint a special representative to investigate the question of what, under all the circumstances, will be an appropriate increase for the company to pay. All parties shall be given an opportunity to present evidence on this question and on the basis of this evidence the special representative shall report his findings to this Board, at which time recommendations on this question will be made. The 2-cent increase and any further increase recommended shall be retroactive to October 22, 1941, the date operations were resumed following the strike.

5. With respect to vacations, the method of computing vacations as well as the number of days to be allowed, were issues in dispute. Again on this question the Board is not prepared to make its final recommendations, but as an interim proposal recommends the adoption of plan No. 2 proposed by the company, which provided for vacations in accordance with the following schedule: 2 to 4 years, 3 days; 4 to 8 years, 6 days; 8 to 10 years, 7 days; 10 to 15 years, 8 days; over 15 years, 10 days.

Any liberalization of vacations above that recommended and any changes in the method of computation shall be the subject of the study of the special representative, who shall take into account the ability of the company to meet the increased costs out of its present earnings and upon all other economic factors governing the operations of the company. Then upon the basis of this report, the Board will make final recommendations on this question.

6. On the question of collecting union dues, the Board recommends that the present system be retained with the 60-day-notice provision. This provision should be added to the present check-off authorization provision in accordance with the agreement reached between the parties prior to the hearings in Washington.

In issuing these recommendations, the Board urgently calls to the attention of the parties the vital importance of harmonious relations between the company and the union, and uninterrupted production in the national defense effort.

On November 11, the president of District 50, United Mine Workers of America, requested that the case be withdrawn from further consideration by the Board in view of the resignation of the C. I. O. representatives on the Board.

In a letter dated December 17, the company advised that direct negotiations between the company and union had resulted in an agreement of all matters in dispute.

CASE No. 95

ALABAMA BY-PRODUCTS CORPORATION, Birmingham, Ala. — UNITED MINE WORKERS OF AMERICA, LOCAL 12136, C. I. O.

Certified October 20. No strike. Hearing October 28–November 1. 250 workers involved. Closed November 12

Panel: Graham, Hamilton, Lyons. Assistant, Gill.

Negotiations for renewal of a contract between the union and the company, due to expire October 19, broke down and a threatened strike was averted by certification of the case to the Board. The principal issues were union shop, wage adjustments, and overpay for certain holidays.

A settlement was negotiated before the panel, and accepted by both parties, subject to ratification. The union-shop issue was settled with a maintenance of membership clause and a requirement that new employees join the union (to which the company had agreed before the case came to Washington); certain wage adjustments were made; and the holiday issue was settled by providing that, should any of the company's competitors in the area adopt a policy of paying time and one-half for the holidays in question, this company would immediately adopt the same policy.

Although the Board formally recommended the acceptance of this settlement, the terms had actually been worked out by mediation, the recommendation being merely a formality desired by the parties. The agreement was ratified sometime between November 1 and 12, at which time the Board was advised of the ratification and the case closed.

CASE No. 96

BELL AIRCRAFT CORPORATION, Buffalo, N. Y. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 501, C. I. O.

Certified October 24. No strike. Hearings November 10–12. 12,000 workers involved. Closed December 11

Panel: Stacy, C. E. Adams, Brophy. Assistant, McConnell.

The company has been bargaining collectively with the union since 1936 and was one of the first aviation employers to sign an agreement with the U. A. W.–C. I. O. On August 26, 1941, the union proposed a supplement to the existing agreement containing demands for a union shop, check-off, 20 cents an hour general wage increase, and an increase in the starting rate from 50 cents to 75 cents an hour. No progress was made in joint conferences or conferences with the Conciliation Service, so the case was certified to the Board.

The negotiations in Washington were recessed after 3 days because of the withdrawal of the C. I. O. members from the Board November 11. Thereafter the parties agreed to submit the decision to an arbitrator. On December 19, Thomas E. Murray, the arbitrator, succeeded in obtaining an agreement in lieu of arbitration which provided for a 65-cent starting wage to be increased to 75 cents after 60 days, and a general wage increase of 12½ cents an hour. The union agreed to withdraw its demands for a closed shop and not to reopen the question during the life of the agreement. The wage increases were made retroactive to September 2.

CASE No. 97

ROBINS DRY DOCK & REPAIR CO., New York, N. Y. — INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA, C. I. O.

Certified October 25. Strike October 27–November 3. Hearing November 10, 11. 6,000 workers involved. Transferred to National War Labor Board

Panel: Fisher, Fales, Lyons. Assistant, Cox.

In this case the union was certified by the National Labor Relations Board in August 1940, and negotiations proceeded without an agreement from December 1940. Termination of a strike which began just after the case was certified was worked out in informal conferences between the parties and the chairman and executive secretary of the Board.

At the hearing the issues (wages, grievance procedure, union shop, apprentices, prohibition of union activities on company property) were explored. Upon withdrawal of the C. I. O. members from the Board in connection with the *Captive Mines* dispute, this case was recessed along with all other C. I. O. cases then pending.

On January 12, 1942, the case remained unsettled, but production was proceeding without interruption.

CASE No. 98

UNION ELECTRIC CO., St. Louis, Mo. — TRI-STATE UTILITY WORKERS UNION

Certified October 28. No strike. 2,846 workers involved. Closed November 4

This controversy arose over wages. The company had recently entered into a wage agreement with the International Union of Operating Engineers and refused to make a more favorable agreement with the Tri-State Utility Workers Union. Just before the case was certified, the labor disputes division of the Office of Production Management had arranged for a conference between its consultants and the parties in St. Louis. The Board made these consultants its special representatives. At the conference in St. Louis on October 31 a formula was worked out which was agreeable to both parties. The parties on November 1 accepted the "report and recommendations" of this Board, which added an interpretative letter on November 4.

CASE No. 99

YORK CORRUGATING CO., York, Pa. — INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 1462, A. F. L.

Certified October 30. Strike October 9–November 6. 260 workers involved. Closed November 6

This strike was called over a dispute about wages. A contract was in force. The Board attempted to effect a resumption of production. The company offered a wage increase and insisted on a settlement before resuming operation. Before the Board heard the case, the parties, by direct bargaining in York, worked out an agreement on all matters in controversy.

CASE No. 100

WOLVERINE TUBE CO., Detroit, Mich. — UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL 174, C. I. O.

Certified October 30. Strike September 9–November 3. 1,000 workers involved. Transferred to the National War Labor Board

The strike was called over a failure to agree on wages. A contract expiring in May 1942 was in existence between the company and the union. The Board was able to effect a resumption in production pending a hearing, but before a hearing could be held the C. I. O. members of the Board withdrew and the hearing was postponed indefinitely.

CASE No. 101

CHRIS CRAFT CORPORATION, Algonac, Mich. — FEDERAL LABOR UNION No. 20783, A. F. L.

Certified October 30. Strike October 2–November 7. Hearings November 13, 21. 400 workers involved. Closed December 15

Panel: Stacy, Fales, Calvin. Assistant, Cox.

In this case the employer and the union entered into a contract for 2 years on January 1, 1941. Nevertheless, in August the union demanded increased wages and went on strike from October 2 until November 7, when the strike was terminated at the request of this Board.

The company, while pointing out that the existing contract gave it the right to reject any changes until January 1943, expressed a willingness to reexamine wages in the event it received additional defense contracts. On November 21, an agreement was reached before the panel providing that operations will continue under the present agreement, and that a new wage scale would be negotiated when and if the company receives additional defense contracts. This agreement was facilitated by the panel's undertaking to bring the company's situation to the attention of the O. P. M. with a view toward securing further defense orders for the company. After the agreement was executed, Judge Stacy advised Mr. Sidney Hillman of the situation, and the case was closed.

CASE No. 102

AMERICAN CAN CO., Chicago, Ill. — STEEL WORKERS ORGANIZING COMMITTEE, LOCALS No. 2041 and No. 1478, C. I. O.

Certified November 3. Strike September 16–November 5. 2,600 workers involved. Transferred to National War Labor Board

In the course of negotiations for a first collective bargaining agreement 17 men were dismissed. A strike resulted and the union filed unfair labor practice charges with the National Labor Relations Board. After the case was certified, the Mediation Board was able to effect a resumption of production by getting the company to agree to take the dismissed men back and getting the union to withdraw the unfair practice charges. A date for hearing on the deadlocked contract negotiations concerning wages was set by the Board, but before this date the C. I. O. members withdrew from the Board.

CASE No. 103

NEVADA CONSOLIDATED COPPER CORPORATION, Ely, Nev. — BROTHERHOOD OF LOCOMOTIVE ENGINEERS, DIVISION 596

Certified November 7. No strike. Hearings November 18, 19, 29. 6,000 workers involved. Transferred to National War Labor Board

Panel: Seward, Connelly, Lynch. Assistant, Cox.

This dispute arose out of a dispute as to whether under the agreement between the union and the company, the union's members were entitled to perform certain

work. Strike action was threatened. The Board asked the parties to continue production. The Board appointed Frank M. Swacker to investigate the question. He submitted his report on December 30. The Board was unable to act on it before its dissolution.

CASE No. 104

WATERFRONT EMPLOYERS ASSOCIATION OF WASHINGTON, Tacoma, Port Angeles, and Anacortes, Wash.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, A. F. L.

Certified November 10. No strike. Hearing November 24, 25. 1,315 workers involved. Transferred to National War Labor Board

Panel: Adams, Ching, Googe. Assistant, Cox.

This case concerned a dispute, primarily over wages, between the I. L. A. as the representative of the longshoremen, checkers, and supercargoes at Tacoma, Port Angeles, and Anacortes, and the Waterfront Employers Association of Washington, representing the shipping companies doing business at those ports. From 1937 until the summer of 1941, these three ports were blanketed in with all the other Pacific-coast ports in a single bargaining unit, for which the International Longshore Workers Union (C. I. O.) was certified by the N. L. R. B. as exclusive bargaining agent. In April 1941 the N. L. R. B. reversed its decision as to a coast-wide bargaining unit, and certified the I. L. A. as the bargaining representative for these three ports, as separate bargaining units. The remaining ports on the coast, which were all organized by the I. L. W. U., remained as a single unit. In the fall, negotiations for a contract at the three Washington ports broke down over a number of issues, but mainly over wages.

Meanwhile a wage dispute between the I. L. W. U. and the employers at other Pacific coast ports was submitted to arbitration in the summer of 1941, and at the time the I. L. A. case was certified to the Board, the I. L. W. U. arbitration proceeding was in progress before Dean Morse of the University of Oregon. Since the Morse arbitration would determine the wages for all other ports on the coasts, negotiation concerning wages at the three I. L. A. ports was difficult.

After 2 days of hearing, the parties signed the following agreement, execution of which was recommended by the Board, as was attested by the members of the panel.

Agreement

November 25

The International Longshoremen's Association, Pacific Coast District No. 38, and Waterfront Employers Association of the Pacific Coast, acting on behalf of Waterfront Employers of Washington and its members, having conducted negotiations looking to a contract relative to wages, hours, and conditions for longshoremen in the ports of Tacoma, Anacortes, and Port Angeles, and a contract for checkers represented by Local 38-36, in conformity with the recommendations made by the National Defense Mediation Board, agree to promptly complete negotiations for such contracts, incorporating all provisions except those fixing the basic straight and overtime wage rates and salaries, and to reduce the same to writing and file them with the National Defense Mediation Board; and they further agree to submit to the National Defense Mediation Board for determination and settlement, the initial basic wage rates and salaries to be incorporated in such agreements, it being understood that:

(*a*) The Board shall direct a survey of the industry involved and such additional hearings as it considers necessary.

(*b*) Pending determination of wages by the Board, there shall be no strikes or work stoppages or lock-outs.

On December 11 the Board appointed Prof. Donald H. MacKenzie, of the University of Washington, as its representative to conduct the survey referred to in the agreement. On January 12 Professor MacKenzie's survey was still in progress.

CASE No. 105

CENTRAL STATES EMPLOYERS' NEGOTIATING COMMITTEE — CENTRAL STATES DRIVERS' COUNCIL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

Certified November 18. No strike. Hearings December 2–5, 15–17. 225,000 men involved. Closed January 3, 1942

Panel: Davis, Seward, Lapham, Fales, Meany, Watt. Assistant, Neblett.

The facts are set forth in the following decision:

Decision

January 3, 1942

PRELIMINARY RECITAL

The Central States Employers' Negotiating Committee is an organization representing approximately 800 common and contract carriers engaged in motor-trucking operations in the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North and South Dakota, Nebraska, Iowa, Missouri, and Kansas.

The Central States Drivers' Council similarly represents approximately 330 locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (A. F. L.) in the same area.

These two organizations were formed in 1938 for the purpose of establishing by collective bargaining uniform standards of wages and working conditions in the trucking industry for the "over-the-road" truck drivers (i.e., those drivers engaged in transporting goods from city to city, rather than in making local deliveries within a town or city) within that area. In August 1938 the two committees negotiated a contract which became effective October 1, 1938, and ran to October 31, 1939. In 1939, this contract was renewed for a period of approximately 2 years, expiring on November 15, 1941. The negotiations for the renewal of this contract led to the present dispute.

Following a deadlock in these negotiations, the parties on November 15, 1941, entered into the following arbitration agreement:

"It is hereby agreed by the unions and employers involved in negotiating the contract to replace the existing contract affecting over-the-road motor freight drivers which expires midnight November 15, 1941, that there shall be no stoppage of work on the expiration of the present contract and in lieu thereof both the unions' and the employers' committees, through their respective chairmen, hereby agree to refer to the National Mediation Board[1] all conditions still in dispute. It is further agreed that the articles that appear attached hereto which have been tentatively agreed to shall be the basis for all operation commencing 12:01 a. m. of November 16, 1941. In addition to these articles, it is understood that the present wage scale shall apply pending the Mediation Board[1] determination. The decision of the National Mediation Board[1] shall be binding upon the parties hereto and shall be retroactive to 12:01 a. m., November 16, 1941.

"Immediate steps shall be taken to place this dispute before the National Mediation Board[1] for a speedy determination."

On November 18, 1941, the dispute was certified to this Board by the Secretary of Labor. Operations were continued without interruption, as provided in the arbitration agreement.

On November 30, 1941, the Board received a telegram from L. P. O'Brien, chairman of the Ohio Over-the-Road Employers, stating that for the past 2½ years the State of Ohio employers had had in effect a separate labor agreement with the teamsters governing drivers domiciled in Ohio, and that another separate agreement was being negotiated. They asked that it be definitely understood that the State of Ohio was not to be included in the proceedings before this Board. On December 13, 1941, while hearings were in progress before the Board, a number of employers from the State of Michigan likewise notified the

[1] During the course of subsequent proceedings both parties made clear that the use of the title "National Mediation Board" in this agreement was in error, and that the title "National Defense Mediation Board" should have been used.

Board that they were withdrawing from the Central States Employers' Negotiating Committee and from the proceedings before this Board.

This Board's responsibilities are fixed by the Executive Order of March 19, 1941, and by the certification of the Secretary of Labor. The employers in the States of Ohio and Michigan, previously signatories to the 12-State agreement, were included in the certification of the Secretary of Labor. Our responsibility cannot be affected by any purported "withdrawal." The relationship of these employers to the Central States Employers' Negotiating Committee is, of course, a matter which they must decide for themselves. Regardless of any action which they may take, however, the duty of this Board to endeavor to effect peaceful settlement of the dispute and to prevent any interruption of the transportation of war materials continues unchanged.

Hearings on the dispute were opened on December 1, 1941, before a division of this Board consisting of William H. Davis, chairman, and Ralph T. Seward, representing the public: Roger Lapham and Frederick F. Fales, representing employers; and George Meany and Robert Watt, representing employees.

The hearings were closed on December 17, 1941.

Following the closing of the hearings, the Central States Employers' Negotiating Committee through R. J. Appel, its secretary, on December 23, 1941, presented for inclusion in the record certain documents consisting, for the most part, of telegrams from individual employers stating the financial results of their operations during the month of November 1941. The union representatives have filed with the Board an objection to their acceptance and consideration. These telegrams relate to the operator's ability to pay. We had considered them, but they must be discounted by seasonal factors and the uncertainties due to shift from peacetime to wartime production. They have little weight, particularly in view of what we say hereinafter on the subject of ability to pay.

THE ISSUES

The articles of a new contract which had been agreed upon by both parties, and proposed articles still in dispute and which were submitted to this Board for decision, are attached hereto as appendixes A and B, respectively. [The appendixes have not been printed.] The points in dispute between the parties may be listed as follows:

1. The basic mileage and hourly wage rate for over-the-road drivers.
2. Whether any differential in this wage rate should be written into the contract in favor of operators in certain of the western states in the 12-State area.
3. The scope and amount of the differential in the basic wage rate to be paid to drivers of combinations of property-carrying units, such as tandems and double bottoms, other than straight trucks.
4. Whether drivers should be paid for preparatory time, i. e., for work done in the terminals in preparing the equipment for the trip, such as checking safety devices, etc.
5. The amount to be paid for employees called in to work and not actually put to work.
6. The amount of the minimum to be guaranteed to employees who are put to work, regardless of the length of time actually occupied by their runs.
7. The compensation for lay-over time spent away from the home terminal, including (1) the time when such guaranteed lay-over pay should begin, (2) the furnishing of meals, as well as lodging, by the employers, and (3) payment of lay-over compensation for Sundays and holidays.
8. Whether drivers on runs exceeding 180 miles should be required to make local pick-ups and deliveries.
9. Compensation to be paid for employees laid off because of impassable highways.
10. Compensation to be paid for employees engaged in deadheading operations.
11. The establishment of rules governing the taking of a rest period by over-the-road drivers.
12. The rules governing two-man operations and the compensation for such operations.
13. The nature of the lodging to be furnished by the employers and the amount which the employer may elect to pay in lieu of furnishing lodging.
14. Overtime pay for all hours worked in excess of 60 per week.
15. Vacations with pay.

16. Rules governing the hiring or leasing of equipment by operating companies and, in particular, fixing the amounts to be paid to the lessors of this equipment over and above the wage rates and other supplementary allowances fixed elsewhere in the contract.

17. Provisions governing the termination of the agreement.

THE BASIC WAGE RATE

Long as is this list, and important as are all of the issues listed, nevertheless the basic issue which divides the parties is the general wage rate for over-the-road drivers. Most of the argument and evidence presented to the Board is directed to this issue. With but few exceptions, the other issues are dependent upon it. Determination of the amounts to be paid for driving special equipment, for lay-offs due to impassable highways, for lay-overs away from the home terminal, or for time spent in preparing a truck to take the road, is impossible so long as the basic wage rate is in dispute. Once it is settled, these other issues should present little difficulty.

The wage rate established by the agreement which expired November 15 of this year was 3 cents a mile to drivers paid on a mileage basis and 80 cents an hour to those paid by the hour. The union has asked that these rates be increased to 5 cents a mile and $1 an hour. The employers are offering the present rates.

To support their respective positions, the parties have presented to the Board a wealth of data regarding the financial condition of the industry and its ability to pay higher wages; recent wage trends in this and other industries; changes in the hazards of truck driving and in the effort, skill, and responsibility required of the driver; seasonal changes in revenue and operating conditions in the industry; and changes in the cost of living in the 12-State area. In addition, the Board itself, in cooperation with representatives of both parties, secured considerable information bearing on these subjects from other Government agencies.

Among the sources of information to which the Board has thus had access are the official annual and quarterly reports of the Interstate Commerce Commission and a number of unpublished tables prepared for the Board by the staff of that Commission concerning employment, wages, expenses, and revenues of motor carriers in this area at periods since the last official reports were published. Official records of the Bureau of Labor Statistics regarding industrial wage trends and trends in the cost of living are before us, as is also the data collected by the Interstate Commerce Commission for the Wage and Hour Division of the Department of Labor in connection with the recent establishment of minimum wage scales in the trucking industry.

The employers' representatives have put in evidence the reports to the President of the Emergency Board appointed by him on September 10, 1941, under the Railway Labor Act, and have submitted information compiled from the answers to questionnaires sent to the individual employers during the course of the proceedings. A number of individual employers have submitted testimony and exhibits intended to clarify the special conditions obtaining in the localities in which they operate. The union, for its part, has furnished the Board with information concerning mileage and hourly earnings compiled from the records of numerous individual truck drivers and with much general material dealing with wage trends and with cost-of-living changes.

We have carefully studied this material. Our study has led us to these conclusions:

1. Over-the-road drivers' earnings have risen far more rapidly over the last 4 years than has the cost of living. The cost of living, however, is now rising at a rapidly increasing rate.

It thus appears from the evidence that on this question we must discount the more extreme arguments of both parties. On the one hand it seems clear that the real wages of the over-the-road drivers in this area have risen substantially since 1937, and that even without an increase it might be some time before living costs as a whole caught up to the increase in earnings to reduce real wages to the 1937 level. On the other hand, it seems unsound to take real wages in 1937, the year before the first general contract was negotiated, as necessarily the standard, or to assume that the lower standard of living then existing among the drivers was proper and should now be reestablished. We must differentiate between the standards reached by workers through individual bargaining or through bargaining in local and limited groups and those reached by industry-wide bargaining of the type with which we are here dealing. Absolute standards

of fair real wages, of course, do not exist. But when dealing with an organized industry it seems to us fairer and more desirable to take as the standard that balance between wages and living costs which has been reached through industry-wide bargaining, than to go back to the levels existing before such bargaining began.

It seems all too clear, from the record before us and from our experience as a Nation in prior wars, that the cost of living will increase further during the life of this contract. The extent of that increase we cannot judge.

We do conclude, however, that some wage increase to meet the rising cost of living is necessary and in order.

2. The ability of the individual carriers to pay increased wages varies greatly within the area. It seems certain, moreover, that this ability will be drastically affected by the dislocation and alteration of transportation requirements incident to the program of military production. The nature and extent of this alteration we are unable to determine, though from the evidence before us it seems certain that the change will not be uniform throughout the area and that some carriers will be affected very advantageously and others seriously injured.

In dealing with this question, however, we must of necessity consider the industry in this area as a whole and not the individual carriers. Moreover, as we stated at the hearing, we do not regard ability to pay as a factor in determining the "fairness" of a wage in the first instance. It does not determine the price which these carriers must pay for their fuel, buildings, or equipment. It should not determine the price they must pay for labor. Wages should not be made the only costs which must vary with an industry's returns. Once the minimum "fair wage" in terms of the cost of living, and the trend in competing industries has been determined, of course, ability to pay is indeed a factor in deciding whether or not wages should be set any higher. We frankly state that consideration of this industry's ability to pay has led us to restrict the increase we award to the minimum which these other factors have seemed to dictate.

We are here confronted by an industry which is sharing with the Nation the disruption and uncertainties incident to the present war. The economic life of the country is undergoing a vast transformation whose repercussions are certain to be felt in this industry as in all others. To some it has brought prosperity; to others, disaster. And this variation and uncertainty will be particularly true in a service industry such as this. In this situation past trends, as a basis for prophecy, are of doubtful utility. Our practical objective must be to conserve so far as possible those established economic relationships which have so far proved workable and sound; to conserve for the individual driver some degree of the established balance between his living costs and his wages; to conserve for the industry the established relationship between its own labor costs and those of competing industries. We must therefore turn to a consideration of the comparative wage trends in this and related industries.

3. In recent years, and particularly since 1937, wages for over-the-road drivers in the trucking industry in the 12 States have risen far more rapidly than wages in manufacturing industries in general, or in the transportation industries in particular. The argument of the union that the full increase demanded is necessary to keep these drivers abreast in their wages with advances in other industries can, therefore, not fully be accepted. On the other hand, it cannot be urged that because of their recent increases no further increase to these drivers should be granted. This area of the industry was organized upon an industry-wide basis for collective bargaining only 3 years ago. It is unsound to lay conclusive weight upon a comparison between the wage trend in an industry or company immediately following organization and the trend in other industries or companies which have been organized for a longer period. As a general rule, it is only after some years of collective bargaining that the proper competitive balance between a newly organized industry and those longer organized is established. When that balance is reached, of course, can only be judged by rule of thumb. But it seems fair to assume from the evidence before us that if the proper balance in labor costs between this industry and its chief competitor, the railroads, has in fact been reached, it was only when the advances established by the recently expiring contract became effective in 1940.

The relationship between the labor costs in the trucking and railroad industries existing in 1940 has been altered by the award of the President's Emergency Board in the recent railway wage dispute. This award granted to all railroad operating employees a wage increase of 9½ cents an hour, and to all nonoperating

employees 10 cents an hour. We believe that the prior relationship between the labor costs for employees in the two industries should be given very substantial weight in arriving at a proper wage increase in this arbitration.

After careful analysis of the evidence, we have concluded that adequate compensation for rising living costs and the reestablishment of the balance between wages for operating employees in the railroads and in the trucking industry in this area can be achieved by an increase in the basic wage scale for over-the-road drivers in the 12-State area of four-tenths of a cent per mile and 10 cents per hour. We will so award.

REGIONAL DIFFERENTIALS

The record leaves no doubt that a number of employers in this area, particularly those located in States west of the Mississippi, operate under substantially different conditions than those which confront operators in the remainder of the territory. This western area is predominantly agricultural; there are fewer industries requiring trucking services; the distances to be covered are greater; the roads are poorer; the winters, in the North at least, are harder and more damaging to road transportation; the population to be served is smaller. The Board has had the advantage of much testimony and numerous exhibits submitted by employers from the western and northwestern States emphasizing these disadvantages. While it is true that this testimony is considerably offset by evidence from the Interstate Commerce Commission showing that average operating revenues per carrier in this area have been higher for some time than in the East, the fact that numerous carriers operate to a disadvantage in the western and northwestern States, is nevertheless, we believe, established.

In the past, the union has recognized and met this situation by negotiating with individual employers or with State-wide groups of employers in these areas special supplementary agreements, commonly referred to as "riders", altering in favor of these employers the basic mileage and hourly wage rates. Such riders are in effect for certain employers or groups of employers operating in or into South Dakota, Iowa, Nebraska, and Minnesota. There are also riders covering certain runs in and out of Detroit, Mich., Racine, Wis., and Milwaukee, Wis., which provide for wage rates higher or working conditions more favorable to employees than those established in the basic area agreement. Any employer or groups of employers may through the ordinary processes of collective bargaining apply to the union for the negotiation of such special riders. Machinery is provided for the final determination of disputes concerning such riders by the central-area committee, composed of representatives of both of the parties before us.

The Central States Employers' Negotiating Committee has asked that this Board replace this present system by setting up within the area two zones and establishing for them two different basic wage rates. While we appreciate the need for maintaining fair wage differentials, we do not believe that the proposed method of determining them is the best. Industry-wide collective bargaining and the arbitral awards which may be incident to it should be limited, wherever possible, to the establishment of general standards of wages and working conditions for the entire industry. Variations from these standards by individual employers or localities where necessary should be arranged through local agreements. The permissibility of such variations, moreover, is preeminently a matter for the men engaged in the industry to judge, for they alone have the experience and the intimate knowledge of the difficulties and advantages arising out of local conditions which is necessary for a realistic decision. For this Board itself to attempt to examine the operating conditions in each State in this area and decide the scope and extent of the differential of the basic wage rate which individual localities should enjoy during the entire life of this contract would be to substitute rigidity where flexibility is necessary, and the judgment of observers for that of labor leaders and industrialists experienced in the industry.

The union has formally stated at the hearing that it is its intention to maintain by new riders differentials from the new basic wage rate similar to the differentials from the old rate contained in the riders to the expired contract. They have offered further to consider through the ordinary established procedures such applications for new riders as may be made. In view of this formal offer, we believe that the present system of negotiating regional differentials should be continued. We shall so rule.

VACATIONS WITH PAY

The union has asked that all employees with 1 year or more of service shall receive a vacation of 1 week at the maximum number of hours of pay at the regular rate of pay in advance, such vacations to be taken between May 1 and October 1 of each year, unless otherwise agreed to by the union and the employer. We believe that this demand should in substance be granted.

A vacation clause is rapidly becoming a standard provision of collective bargaining contracts in many industries. The desirability of a vacation from the standpoint of the health and welfare of the individual worker needs no argument. The increasing acceptance of the principle in industry, moreover, testifies to the growing conviction on the part of industrialists that vacations result in increased production and in better working morale among employees.

The employers have argued that a vacation, however desirable in ordinary times, should not be granted during this period of emergency. A similar argument was recently presented by the railroads to the President's Emergency Board in reply to the request of the nonoperating employees for a vacation. That Board replies "that if a vacation plan is inherently sound under more normal conditions, it is equally sound under emergency conditions that increase the strain upon the physical and mental powers of the employees." The Board supported its decision with the remarks of Prime Minister Winston Churchill with regard to holidays and vacations for British workers during the war in which the Prime Minister asserted that the war would have to be won largely by staying power and that for that purpose reasonable minimum holidays for the masses of the workers in Great Britain had been allowed. The Prime Minister concluded: "I am quite sure that if we had not done so we should have had a serious crack which would have cost far more in production than these brief periods of rest from labor."

We believe this reasoning is sound and that the war emergency presents an added argument for a vacation rather than a reason for denying one. The work of the over-the-road driver is arduous and tiring. We believe that the industry as a whole will benefit if for a short period once a year the drivers are relieved of the constant strain and responsibility of their work and allowed a few days for rest and relaxation. No convincing evidence has been presented to us, moreover, that a vacation for over-the-road truck drivers cannot practically be arranged.

It follows from the above, however, that we are deciding in favor of an actual vacation and not of a bonus in lieu of a vacation. Rest and relaxation comes with the taking of a vacation, not from extra pay for declining to take it. The vacation privilege, moreover, should be limited to those employees who have worked sufficiently during the prior year to require it. We shall rule, therefore, that a vacation of 6 consecutive working days shall be granted with pay to all employee who does not take the 6-day vacation shall not be entitled to the vacation total working days during the calendar year prior to November 15, 1941, and that any employee who does not take the 6-day vacation shall not be entitled to vacation pay. To assist the employers in making arrangements for such vacations, we shall rule that the vacations may be taken at any time during the year at dates to be fixed by the employer, who shall give due regard to the desires and preferences of the employees consistent with efficient operation. We further suggest that the union should hold itself in readiness to consider requests by individual employers for alterations in this vacation plan which are based upon operating requirements rather than upon costs.

THE OTHER ISSUES

As we have said before, the other issues which have been presented to us are, for the most part, dependent for their solution upon the fixing of the basic wage rate. Until that rate was fixed, they necessarily remained in dispute and thus were presented to us for decision. Now that the rate is fixed we see no major obstacle to their settlement by direct collective bargaining between the parties.

These issues concern for the most part working rules. Even more clearly than in the case of the area differentials, they are technical matters which can most realistically be decided by the employees and the employers themselves. We have determined, therefore, to make no ruling upon them, but to refer them back to the parties for further direct negotiations.

We are likewise referring back for direct negotiations the dispute concerning the articles governing the leasing of equipment. Serious legal objections have

been raised to paragraph 1 of these proposed articles, which governs the rates at which such trucking equipment can be leased. Counsel for the union indicated at the hearing his willingness to consider the redrafting of this proposed article in such a way as to eliminate these legal objections. We believe that if such legal objections can be removed, the subject is appropriate for inclusion in the collective bargaining contract as a means of protecting the basic wage scale. We suggest, therefore, that the parties jointly explore the possibility of so altering the draft of the article as to make it legally acceptable to all concerned.

AWARD

1. The contract between the parties shall be of 2 years' duration, effective November 16, 1941, to expire November 15, 1943, unless extended by agreement. Either party may open the contract for the purpose of negotiating changes at the end of the first year, provided notice in writing of the desired changes is given to the other party 60 days prior to November 15, 1942.

2. The contract shall include those articles as agreed upon prior to the submission of the dispute to the Board (appendix A) and appropriate paragraphs embodying the awards of the Board set forth herein. Those articles in dispute which were submitted to the Board but upon which the Board does not here rule, shall be the subject of further negotiations between the parties. (See appendix B). Such of these articles as may be agreed upon as a result of such negotiations shall be included in the contract.

3. There shall be an increase of 10 cents per hour in the hourly rates and an increase of four-tenths of a cent per mile in the mileage rate of all employees covered by the contract. There shall be an equal increase in the minimum hourly and mileage rates of such employees. As previously agreed by the parties, these increases shall be retroactive to November 16, 1941.

4. The Board recommends no change in the principle of differentials between geographic or State areas covered by the contract as heretofore accepted by the parties. Fair differentials should be established and maintained by agreement between the parties, arrived at through the same machinery of collective representation and to take the same form of supplementary agreements as has been the practice in the past.

5. A vacation of 6 consecutive working days shall be granted with pay to all employees covered by the contract who have worked 60 percent or more of the total working days during the calendar year, prior to November 15, 1941. Any employee who does not take the 6-day vacation shall not be entitled to the vacation pay. The vacation period of each employee shall be before November 15, 1942, and shall be set by his employer, with due regard to the desires and preferences of the employers consistent with efficient operation. The union shall consider requests by individual employers for alterations in this vacation plan which are based upon operating requirements rather than upon costs. Similarly, all such employees who have been so employed during the year preceding November 15, 1942, shall receive vacations with pay between November 15, 1942, and November 15, 1943.

CASE No. 106

AMERICAN SHIPBUILDING CO., Cleveland, Ohio — METAL TRADES DEPARTMENT, A. F. L.

Certified November 19. No strike. Hearing December 1, 3, 4, 5. 3,000 men involved. Closed December 31

Panel: Stacy, Fales, Wilson. Assistant, Tomey.

The previous contract between the company and the unions expired April 15, and negotiations between the parties continued intermittently until the case was certified to the Board. These negotiations had been delayed at different stages as a result of the Government-sponsored shipbuilding stabilization program and by the claims of a rival organization for representation.

At the initial hearing on December 1, the parties enumerated eight points in dispute and, at the request of the Board, eliminated most of these issues by direct negotiations on December 1 and 2. The two remaining issues were (1) closed shop and (2) wage rates.

Through mediation by the panel, the parties agreed to a form of maintenance of membership as follows:

"It is agreed that all employees of the company who are now members of the unions parties to this agreement, or who may hereafter become members and accept the benefits hereof, have an obligation to maintain such membership in good standing. In the event an employee fails to maintain his membership in the unions as stated, the company will, upon request by the unions, call in the employee (with a representative of the unions) for a conference with an appropriate official of the company, who will advise the employee of his obligation. New employees will be presented with a copy of this agreement by the company, upon hiring, and will be asked to cooperate with the unions to carry out the obligations of this contract.

"The company also agrees to contact the offices of the unions when in need of new employees."

On the question of wage rates, the company agreed to the elimination of certain classifications and to the reclassification of employees under a promotion program extending over a period of 90 days. The company also agreed to numerous adjustments in the basic wage rates of other workers.

The Board was notified on December 31 that all unions signatory to the agreement had ratified.

CASE No. 107

BURGESS BATTERY Co., Freeport, Ill. — INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1096, A. F. L.

Certified November 24. Strike October 13–November 25. Hearing December 1, 2, 3. 750 workers involved. Transferred to National War Labor Board

Panel: Fisher, Adams, Wilson. Assistant, Gill.

The strike was terminated on the day following certification by agreement of the parties.

At the time of the hearing the National Labor Relations Board had not yet acted on petitions for an election filed by the company and an independent union; it also had pending before it charges of unfair labor practices filed against the company by the I. A. M. While the company was unwilling to recognize and bargain with the I. A. M. until the N. L. R. B. had decided the question of representation, it was willing to cooperate meanwhile in a wage investigation so the Board issued—

Interim Recommendations

December 3

1. Questions concerning representation and charges of unfair labor practices now pending before the National Labor Relations Board will be left to the disposition of the National Labor Relations Board. The National Defense Mediation Board will request the National Labor Relations Board to expedite the disposition of such matters as much as possible.

2. Meanwhile, the National Defense Mediation Board will promptly appoint a special representative to make a thorough investigation of the company's wage rates at its Freeport, Ill., plant, taking into account all relevant factors bearing upon the question of appropriate revisions in such rates. The special representative will submit to the National Defense Mediation Board, as promptly as possible, a written report, containing his recommendations on wages.

3. The hearings before the National Defense Mediation Board will be recessed pending the receipts of the report of the special representative.

These recommendations were accepted by both parties; and on December 11 the Board appointed Robert J. Myers, Chief of the Division of Wage and Hour Statistics, Bureau of Labor Statistics, as its special representative to conduct the wage investigation.

CASE No. 108

NEVADA CONSOLIDATED COPPER CORPORATION, Santa Rita and Hurley, N. Mex. — CHINO METAL TRADES COUNCIL OF SANTA RITA AND HURLEY, N. MEX., A. F. L., BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and BROTHERHOOD OF RAILROAD TRAINMEN

Certified November 29. No strike. Hearing December 15, 16. 2,300 workers involved. Closed December 16

Panel: Rice, Fales, Brown. Assistant, Tomey.

This dispute arose over the company's refusal to bargain with any union because the National Labor Relations Board had not held a hearing or election to determine the bargaining agent. The Chino Metal Trades Council of Santa Rita and Hurley (A. F. L.) and the International Union of Mine, Mill and Smelter Workers (C. I. O.) wanted bargaining rights with this company, and the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen wanted representation for their own membership.

On July 28 it was proposed that the company agree to a consent election which would work out to the satisfaction of all the organizations claiming jurisdiction over the employees in this company. The Metal Trades Council (A. F. L.) wanted the election by crafts, while the Mine, Mill and Smelter Workers (C. I. O.) wanted the election to be held on a plant-wide basis. All interested parties agreed to take this proposal up with their international officers.

A Commissioner of Conciliation contacted the general manager of the company, Mr. Horace Moses, and the assistant general manager, Mr. P. E. Buchella, in reference to the proposed consent election. Both were agreeable to consent election if all parties claiming jurisdiction in any department signed a stipulation that they would abide by the results of the election.

The representatives of the M. M. S. W. local were then contacted and the Commissioner was advised that they would not consider a craft unit election. In view of the inability to obtain the necessary consent to an election, no further effort was made along that line. Further discussions were unsuccessful as both the A. F. L. and C. I. O. maintaind their original positions. At midnight Saturday, August 10, a strike occurred involving approximately 2,300 men. The strike was called by the A. F. L.

On August 11, Mr. Keenan, labor adviser for O. P. M. interested himself in the situation and developed a memorandum of agreement as follows:

"Representatives of the company, the O. P. M., the A. F. L. unions, and the railroad brotherhoods will appear before the Labor Board in Washington and urge that the Labor Board take action in clearing the deck on an immediate hearing by the Labor Board so that the bargaining unit can be established. If the Labor Board refuses to act then the matter will be immediately referred by O. P. M. to the National Defense Mediation Board and the same representatives will appear before the said Board and ask for a recommendation in order to avoid any further stoppage of work in this plant; and both sides subject to the Labor Board's right to intervene before the Mediation Board will be bound by the recommendation of the Mediation Board, as to the bargaining unit or units, representative or representatives."

It appears that the National Labor Relations Board proceeded to consider the case in the light of the above-mentioned memorandum and on August 25, the National Labor Relations Board advised the parties that as a result of the conference August 22, it was advising the regional director of the 22d district to proceed with a hearing immediately on the A. F. L. petition for certification.

In June 1940, N. L. R. B. had held the company guilty of violations of N. L. R. A. The circuit court of appeals set aside the Board's order. On November 17 it was learned that an appeal from a decision of the Circuit Court of Appeals, Tenth District, was taken by the National Labor Relations Board and was pending in the United States Supreme Court. The N. L. R. B. therefore, could not proceed further until this pending situation was determined. The Conciliation Service was advised that the parties were growing impatient and had threatened to strike. It was suggested that a temporary agreement be worked out which would provide recognition until the Supreme Court's decision was rendered.

A Commissioner of Conciliation was assigned to this dispute on November 22, in an effort to work out a temporary agreement. Upon contacting the parties, the Commissioner learned that the company was unwilling to enter into any kind of temporary settlement, as it took the position that the case had been acted upon by the N. L. R. B.

A strike was threatened for November 30, and to prevent a stoppage of work the case was accordingly certified on November 29. The Board asked the parties to refrain from any action which might aggravate the situation.

The company maintained that since no union represented a majority of its employees it could not under N. L. R. B. bargain with any, even for its members. The Board asked N. L. R. B. to render an opinion on this point. Robert B. Watts, General Counsel of N. L. R. B., replied that bargaining with the various unions for members only would not constitute a violation of N. L. R. A. For this opinion, it relied upon *Consolidated Edison Co.* v. *National Labor Relations Board* (305 U. S. 197, at p. 237). Mr. Watts' opinion said further, "the employer may not discriminate as among minority labor organizations but must treat all such claimants on a parity, since recognition of any to the exclusion of some would obviously constitute material support to the favorite organization. Such contrasting treatment might well involve interference, restraint, and coercion flowing from such support (cf. *Matter of The Carborundum Company* (36 N. L. R. B. 154) decided by the Board November 7, 1941)."

Thereupon the Board issued the following recommendations, which were accepted by both parties:

Recommendations

December 16

After due consideration of the letter of December 16, 1941, from the general counsel of the National Labor Relations Board, a copy of which is annexed [described above but not here printed], the National Defense Mediation Board recommends:

1. That the parties before this Board avoid causing any delays in the disposition of the case between the employer and the National Labor Relations Board now before the United States Supreme Court on a petition for certiorari and in the representation proceedings R–3004 to 3014 now pending before the National Labor Relations Board.

2. That, until the National Labor Relations Board certifies the workers' representatives for collective bargaining under section 9 of the National Labor Relations Act, the employer upon request of the several unions to which workers employed by the company belong, negotiate with the several unions as representatives of their own members.

3. That these negotiations for "members-only" contracts concerning wages and other terms and conditions of employment begin within 1 month of this date and proceed as rapidly as possible.

CASE No. 109

AMERICAN MOLASSES CO., AMERICAN SUGAR REFINING CO., REFINED SYRUPS SALES CORPORATION, New York, N. Y.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, A. F. L.

Certified December 8. No strike. 2,500 workers involved. Closed December 17

With the approval of the Board a panel of the Conciliation Service continued its settlement efforts after the case was certified, with the result that the case, primarily a wage dispute, was settled.

CASE No. 110

ANACONDA COPPER MINING CO. Butte, Mont.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 65, 122, and 200, A. F. L.

Certified December 13. No strike. Hearings December 17, January 12. 175 workers involved. Transferred to National War Labor Board

Panel: Stacy, Hamilton, Lynch. Assistant, Tomey.

The company negotiated new agreements with the C. I. O. representative of its miners, and the A. F. L. representative of its metal-trades men in the fall of

1941. These new contracts gave an increase of wage of 75 cents a day. The Electrical Workers, who until 1939 had participated in the A. F. L. master agreement but had bargained separately since then, demanded a basic wage of $9 a day (an increase of $2.25). The company offered $7.50 (an increase of 75 cents).

The controversy being wholly over wages, the Board, at the first hearing, upon finding mediation fruitless, appointed Prof. Isidor Loeb of Washington University (St. Louis) to investigate and recommend an appropriate wage. Upon receiving his report the Board made its—

Findings and Recommendations

January 12

The parties having failed to reach an agreement in collective bargaining, voluntary arbitration was suggested, but not accepted by both parties, whereupon the Board deemed it advisable to appoint a special representative to investigate the facts and report the same together with his findings and conclusions * * *. [The full report of the representative is quoted.] After considering the record in the case and all the evidence, the Board concurs in the findings and conclusions reached by the special representative and adopts them as its recommendation.

The company accepted and the union took under advisement this recommendation which proposed a 75-cent raise.

CASE No. 111

HAMMOND & IRVING, INC., Auburn, N. Y.

INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 153, A. F. L., and INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS. LOCAL 628, A. F. L.

Certified December 15. Strike December 2–15. Hearing January 5. 160 workers involved. Closed January 8

Panel: Rice, Fales, Calvin. Assistant Gill.

A strike had closed the plant from December 2 until December 15, at which time the strike was called off upon certification of the case to the National Defense Mediation Board. The principal issues were wages and the closed shop.

The company offered 3 cents per hour increase with a clause to reopen the question of wages in 6 months, both contingent on an open-shop clause. The union demanded 7½ cents per hour increase, a 3 months' reopening of the wage question, and maintenance of membership.

After a 1-day hearing, the Board sent the panel assistant to Auburn to make further investigation of the facts. Settlement was reached in Auburn and ratified by the union membership on January 8, providing for an increase of 5 cents an hour and a "voluntary" maintenance of membership clause. Under this clause employees would not be required to maintain membership in good standing unless they agreed to do so by voluntarily signing individual pledges.

CASE No. 112

JOHNS-MANVILLE PRODUCTS CORPORATION, Watson, Calif.

ROCK PRODUCTS WORKERS UNION, LOCAL 21643, A. F. L.

Certified December 20. Strike November 18–December 22. Hearing January 5, 6. 200 workers involved. Closed January 6

Panel: Seward, Connelly, Lynch. Assistant, Neblett.

The controversy arose over the terms of a collective agreement to replace the one that expired October 28. Inability to agree on wage and other terms led to a strike and then to reference to the Board. At the end of the hearing the parties agreed to renew the old contract with higher wage rates and with December 1, 1942, as the expiration date. The memorandum of agreement of January 6 was "witnessed and approved" by the Board.

CASE No. 113

HIGHWAY TRANSPORT ASSOCIATION OF PENNSYLVANIA, INC., York, Pa.
LANCASTER TRUCKOWNERS NEGOTIATING COMMITTEE, Lancaster, Pa.
HARRISBURG TRUCKOWNERS NEGOTIATING COMMITTEE, Harrisburg, Pa.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCALS NOS. 430, 771, and 776, A. F. L.

Certified (York) December 27. Supplementary certification (Lancaster and Harrisburg) December 30. No strike. Hearing January 8, 9. 800 workers involved. Transferred to National War Labor Board

Panel: Rice, Meyer, Wilson. Assistant, Neblett.

Each controversy related to wage terms of the annual collective contract for 1942. After a summary hearing and unsuccessful mediatory effort to reach an agreed method of settlement, the Board issued its—

Recommendation

January 12, 1942

Whereas, at the hearing in this case on January 8 and 9, 1942, before a division of this Board consisting of Messrs. William G. Rice, Jr., representing the public; Eugene Meyer, representing employers; and James Wilson, representing employees, both parties stated that some form of arbitration would provide a solution of the dispute before the Board, the division unanimously recommends:

1. That each of the three employer parties appoint one person and each of the three union parties one person who shall meet as quickly as possible to designate a person to serve as chairman of the boards of arbitration described below. Unless these six persons agree on such a chairman and notify the Board on or before January 19, 1942, that the designated person has agreed to serve, the designation shall be made by the National Defense Mediation Board.

2. That the chairman of the arbitration board so designated, together with a person appointed by Local No. 430 and a person appointed by the Highway Transport Association arbitrate and render final decision in the dispute at York.

3. That the chairman of the arbitration board so designated, together with a person appointed by Local No. 771 and a person appointed by the Lancaster Truckowners' Negotiating Committee arbitrate and render final decision in the dispute at Lancaster.

4. That the chairman of the arbitration board so designated, together with a person appointed by Local No. 776 and a person appointed by the Harrisburg Truckowners' Negotiating Committee arbitrate and render final decision in the dispute at Harrisburg.

5. That each decision rendered by the arbitrators be binding upon the parties concerned.

CASE No. 114

CAROLINA TRANSPORTATION ASSOCIATION, INC., Charlotte, N. C.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL UNION No. 71, A. F. L.

Certified January 6. No strike. 500 workers involved. Transferred to National War Labor Board

The controversy arose in negotiating the renewal of a collective contract, the principal issues being wages, hours, vacations, lay-overs, holidays, and retroactivity of wage increases.

Part V

Supplementary Documents

Supplementary Documents

As earlier noted there were four cases in which action was taken supplementary to that of the National Defense Mediation Board. These were: No. 36, *North American Aviation;* No. 46, *Federal Shipbuilding;* No. 51, *Air Associates;* and No. 20B, *Captive Mines.* The supplementary action referred to in each of these cases is given below.

CASE No. 36. NORTH AMERICAN AVIATION, INC.

The final action of the board in this case (see p. 159) was taken on June 28, 1941, when it made a recommendation regarding the matter of maintenance of union membership. This recommendation was accepted on July 1 by both the company and the union, and thereupon the President issued the following Executive order directing the Secretary of War to relinquish possession of the plant:

Executive Order

WHEREAS by Executive Order No. 8773, dated the 9th day of June 1941, the Secretary of War was directed by the President to take possession of and operate the Inglewood plant of North American Aviation, Inc., in the City of Los Angeles, State of California, to produce the aircraft and other articles and material called for by its contracts with the United States, or otherwise, and do all things necessary or incidental thereto, and to take such measures as might be necessary to protect workers returning to the plant; and

WHEREAS, on the 9th day of June 1941, the Secretary of War, acting pursuant to said direction, took possession of and is now in possession of the said plant of North American Aviation, Inc.; and

WHEREAS said Executive order provides that possession and operation thereunder shall be terminated by the President as soon as he determines that the plant will be privately operated in a manner consistent with the needs of national defense; and

WHEREAS, it now appears, and I so determine, that the plant will be privately operated in a manner consistent with the needs of national defense;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, as President of the United States, and as Commander-in-Chief of the Army and Navy of the United States, hereby direct the Secretary of War immediately to relinquish possession of the said plant of North American Aviation, Inc., and to issue the necessary orders for carrying out the aforesaid direction.

FRANKLIN D. ROOSEVELT.

CASE No. 46. FEDERAL SHIPBUILDING

As noted on page 192 the final action of the Board in this case was taken on December 9 when the chairman transmitted to the Secretary of the Navy certain findings regarding the union charge that 10 men had failed to retain their membership in good standing. At that time the Federal Shipbuilding Co. was being operated by the Navy Department under the Executive order of the President dated August 23, 1941.

On January 5, 1942, the President issued an Executive order stating that he was satisfied that the plant would now be privately operated in a manner consistent with the needs of the national defense and directed the Secretary of the Navy to relinquish possession of it. The Executive order was as follows:

Executive Order

WHEREAS by Executive Order No. 8868, dated the 23d day of August 1941, the Secretary of the Navy was directed by the President to take possession of and

operate the plant of the Federal Shipbuilding & Dry Dock Co., to produce the vessels, facilities, material, and equipment called for by the company's contracts with the United States or otherwise and do all things necessary or incidental to that end; and

WHEREAS on the 25th day of August 1941, the Secretary of the Navy, acting pursuant to said direction, took possession of and is now in possession of the said plant of the Federal Shipbuilding & Dry Dock Co.; and

WHEREAS said Executive order provides that possession and operation thereunder shall be terminated by the President as soon as he determines that the plant will be privately operated in a manner consistent with the needs of national defense; and

WHEREAS it now appears, and I so determine, that the plant will be privately operated in a manner consistent with the needs of national defense:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, as President of the United States and as Commander-in-Chief of the Army and Navy of the United States, hereby direct the Secretary of the Navy immediately to relinquish possession of the said plant of the Federal Shipbuilding & Dry Dock Co., and to issue the necessary orders for carrying out the aforesaid direction.

FRANKLIN D. ROOSEVELT.

In announcing the restoration of the plant, Secretary Knox issued the following statement:

"This is not the time for the Navy to be operating an industrial plant unless it is absolutely necessary. I am advised that the management and the employees and everyone concerned are anxious to relieve the Navy of this burden and are confident that restoration of the plant to its owners will insure maximum production. As a result of the recent industry-labor conference, there will be no war work stoppages anywhere and all disputes will be resolved by peaceful means. Any unsettled issues between the company and the union should be settled by negotiation and agreement; if not, they can be resolved without interrupting production by recourse to the machinery established by the President.

"We confidently expect the management and the men to see to it that this plant is operated at full speed to produce ships we must have and have quickly. On behalf of the Navy and the Maritime Commission, I want to thank the executive, supervisory, and production personnel, and the local C. I. O. union for their cooperation which has enabled Admiral Bowen to make a splendid record at Federal and to produce ships substantially ahead of schedule."

CASE No. 51. AIR ASSOCIATES, INC.

As explained in the summary of this case (p. 194) the Board's findings of October 9, 1941, were accepted by the union but rejected by the company. As a result, the Secretary of War, under Executive order, took over the plant on October 30 and operated it until about the end of December, a new management set up by the board of directors of the company having concluded a collective agreement with the employees on December 26 settling all points in dispute.

The Executive order of the President of October 30, 1941, directing the Secretary of War to take over the plant and also an unofficial summary of the collective agreement of December 26, 1941, referred to above, are given below.

Executive Order

October 30

WHEREAS on the 27th day of May 1941 a Presidential proclamation was issued, declaring an unlimited national emergency and calling upon all loyal citizens in production for defense to give precedence to the needs of the Nation to the end that a system of government which makes private enterprise possible may survive; and calling upon our loyal workmen and employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital, and calling upon all loyal citizens to place the Nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use, all of the physical powers, all of the moral strength, and all of the material resources of the Nation; and

WHEREAS, Air Associates, Inc., has contracted to furnish the United States and its contractors with parts and equipment necessary for the production of military aircraft vital to the defense of the United States and such parts and equipment have been in the course of manufacture at the Bendix, N. J., plants of said company, and the United States owns facilities there situated; and

WHEREAS, a controversy arose concerning the terms and conditions of employment between said company and its workers which they have been unable to adjust by collective bargaining and the controversy was duly certified to the National Defense Mediation Board established by Executive order of March 19, 1941; and whereas production was interrupted at said plants during the course of mediation before said Board by a strike and the Board, pending further mediation, recommended that the workers call off the strike and the company return all strikers upon application to their former jobs without discrimination, and whereas the workers affected, through their representatives, have accepted but the company has failed to carry out the Board's recommendation; and

WHEREAS, due to such failure on the part of the company, production has now been impaired and complete cessation of production is now imminent at said plants and the objectives of said proclamation of May 27, 1941, are thereby jeopardized and it is essential to the defense of the United States that normal production be assured and cessation averted; and

WHEREAS, for the time being and under the circumstances set forth, it is essential in order that full production at said plants be assured, that the plants be operated by or for the United States in such manner as may be expedient:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, pursuant to the powers vested in me by the Constitution and laws of the United States, as President of the United States and Commander-in-Chief of the Army and Navy of the United States, hereby authorize and direct the Secretary of War immediately, insofar as may be necessary or desirable, to take possession of and operate the Bendix, N. J., plants of Air Associates, Inc., through and with the aid of such person or persons or instrumentality as he may designate, and to produce the military airplane parts and equipment called for by the company's contracts or as may be otherwise required for the national defense, and do all things necessary or incidental to that end. The Secretary of War shall employ or authorize the employment of such employees, including a competent civilian adviser on industrial relations, as are necessary to carry out the provisions of this order, and, in furtherance of the purposes of this order, the Secretary of War may exercise any existing contractual or other rights of said company, or take such other steps as may be necessary or desirable including the use of troops.

Possession and operation hereunder shall be terminated by the President as soon as he determines that such possession and operation are no longer required in the interests of national defense.

FRANKLIN D. ROOSEVELT.

Agreement Between Air Associates and Union

The agreement signed on December 26, 1941, was executed between the company and the United Automobile, Aircraft and Agricultural Implement Workers (C. I. O.). It was signed for the company by Frederic G. Coburn, who was appointed president after the removal of the former president.

The general contents of the agreement are indicated in the following unofficial summary:

1. A maintenance-of-membership clause strengthened by a "harmony and good will" arrangement under which both the company and union agree to call attention of all employees to the existence of the contract.

2. Prohibition of strikes and lock-outs over application of the terms of the contract or over wage classifications. Grievances are to be handled under a shop steward system culminating in arbitration, with provision for prompt appointment of an impartial arbitrator to deal with each dispute.

3. An automatic adjustment of basic wages when the cost of living has changed by at least 5 percent, but only after established wage rates have been in effect for 6 months.

4. Overtime at the rate of double time is to be pair for Sundays and holidays, the regular 50-percent premium being paid for hours in excess of 8 daily and 40 weekly.

5. Employees inducted into the armed forces are to be paid a bonus consisting of 2 percent of wages earned from the time of the last vacation period to the time of induction.

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6. Seniority, on a plant basis, is made applicable to employees in the three plants as if the three plants were one.
7. Among the reasons for loss of seniority is the giving of a false reason in applying for leave of absence.
8. Union officers may not be made supervisors without the consent of the union.

CASE No. 20B. CAPTIVE MINES

The Board's connection with the Captive Mines case ceased with its recommendation of November 10, which by a vote of 9 to 2 was against the union demand in the matter of the closed shop, and which was followed by the resignation of the C. I. O. members from the Board.

The subsequent developments in the case were as follows:

On November 14 the President held a conference of union and steel industry officials at which he made the following statement:

"I have asked you gentlemen to come here this morning to give you certain facts covering the business of the Government of the United States operating under the Constitution. I will ask you when I have finished to withdraw, either to the Cabinet room or some place of your own choice, in order to confer in a final effort to insure continued production of coal for the manufacture of steel.

"In the first place, we all know that the United States is in a state of national emergency. The present and future defense of the United States and of this hemisphere is at stake. It is essential to national safety that we continue the defense production program without delay and at top speed.

"Coal for steel plants is a necessity because steel is an essential in the manufacture of munitions. Therefore, the cessation of production in the coal-mine industry would create a further danger to American defense, because at this vital time it would slow up production of war materials.

"I think that conclusion is unmistakable and is approved by the overwhelming majority of Americans.

"Because it is essential to national defense that the necessary coal production be continued and not stopped, it is therefore the indisputable obligation of the President to see that this is done.

"In spite of what some people say, I seek always to be a constitutional President.

"If legislation becomes necessary toward this end, the Congress of the United States will without any question pass such legislation. And, as some of you know, the pressure on me to ask for legislation during the past couple of months, for one reason or another, has been not only constant, but it has been very heavy.

"I am telling you this with absolutely no element of threat. To this conference I am stating a simple fact. I hope, therefore, that you will work out some method for the continued production of coal.

"In regard to the collective bargaining, which I am asking you to resume at the end of this meeting, I have two suggestions for you to consider.

"The first is that you continue negotiations, with the hope that you can arrive at a conclusion, and that if you do not arrive at a conclusion, you will submit the point, or points, at issue to an arbiter, or arbiters, or anybody else with any other name, and that in the meantime coal production continue.

"The second is that you consider other methods relating to employment. As I understand it, the wage question and the check-off are not involved in this at all.

"I tell you frankly that the Government of the United States will not order, nor will Congress pass legislation ordering, a so-called closed shop.

"It is true that by agreement between employers and employees in many plants of various industries the closed shop is now in operation. This is a result of the legal collective bargaining, and not of Government compulsion on employers or employees. It is also true that 95 percent or more of the employees in these particular mines belong to the United Mine Workers Union.

"The Government will never compel this 5 percent to join the union by a Government decree. That would be too much like the Hitler methods toward labor.

"I must reiterate that because of the need of continuing and speeding up the defense needs of the United States, because they are so clearly involved, and because lack of coal for our steel plants would injure the defense of the nation, it is a national necessity that the production of this coal be continued without delay.

"And so I am asking you—I never threaten—I am asking you to please talk over this problem of continuing coal production. If you can't agree today, please

keep on conferring tomorrow and Sunday. I don't want any action that is precipitate. I want every chance given.

"And let me have some kind of a report on Monday next—a report of agreement, or at least a report that you are making progress."

Following fruitless negotiations between the two groups on November 14, 15, and 16, the strike was renewed November 17. The C. I. O. annual convention, meeting in Detroit, voted full support of the strike.

During the week, the strike spread to many commercial mines in Pennsylvania, West Virginia, and Kentucky. On Wednesday, November 18, the President offered two alternative proposals for ending the dispute—freezing the status quo on open and closed shops in the mines for the duration, or binding arbitration. On Saturday, November 22, the policy committee of the union accepted arbitration by a board composed of John R. Steelman, Director of the Conciliation Service, Benjamin Fairless, president of United States Steel, and Mr. Lewis. The strike ended November 24. On December 7, the day of the Japanese attack on Pearl Harbor, the Board handed down a 2 to 1 decision, Mr. Fairless dissenting, which granted the union shop to the mine workers.

The correspondence between the President and the union and steel officials, referred to in the preceding paragraph, is given below together with the decision of the special arbitration board.

Text of the letter which President Roosevelt sent today to executives of steel companies owning coal mines and to John L. Lewis, head of the United Mine Workers.

November 18, 1941.

GENTLEMEN:

At my conference with you November 14 I asked you to consider two suggestions. First, I urged that you continue negotiations and that, if you did not arrive at a conclusion, you submit the point or points at issue to an arbitrator or arbitrators or anybody else with a different name, and that in the meantime coal production in the captive mines continue. Second, I urged that you consider other matters relating to employment, as the wage question and check-off were not involved.

You have now informed me that the negotiations broke down without an agreement. The point in dispute has not been submitted to arbitration. Production of coal at the captive mines has been interrupted by strike.

It is, of course, absolutely clear that no one is asking the coal miners to give up their union recognition or their union wage scales or their union working conditions.

Under the auspices of the National Defense Mediation Board, certain agreements were reached by the coal operators and the United Mine Workers of America for the Appalachian area and for other areas.

Under these agreements the United Mine Workers are recognized as the sole bargaining agent for all the workers in and about the mines. The agreements fix the highest basic daily wage and the highest tonnage rates paid miners anywhere in the world. They provide in many other ways for the security of the mine worker under union auspices. They include union check weighmen, union grievance machinery and mine committees, union participation in improved safety practices in the mines and in hospitalization. They eliminate scrip abuses. They provide annual vacations with pay, and other benefits. The steel companies have agreed to all these provisions and are prepared to sign the agreements.

A single issue, that of the closed shop, remains in dispute, but this issue concerns only 5 percent of the mine workers employed in the captive mines, which is one-half of 1 percent—one worker out of every 200—of all the mine workers in the United States.

The National Defense Mediation Board has recommended that these nonunion workers voluntarily join the United Mine Workers of America and share with their fellow workers the burdens as well as the benefits of the union, and I have personally endorsed this suggestion.

The operators also have given to the Mediation Board the assurance in most positive terms that they are not now opposed to, and do not intend to oppose, the voluntary growth of union membership at their mines.

The issue in dispute, however strong the feeling about it may be, does not justify a stoppage of work in a grave national crisis.

The protective wage clause of the Appalachian agreement has no bearing on this controversy. If the United Mine Workers sign with the operators of the captive mines an agreement which includes no provision for a closed shop, not a

single miner will lose any benefit or advantage which he now enjoys under the Appalachian agreement. The closed-shop contracts that have already been signed will stand.

In order still further to open the way for settlement of the dispute in the captive mines, I am doing two things:

(1) I am informing all those coal operators who have signed an agreement with the closed-shop provisions and the nonstrike penalty clause that they will be expected in the interest of national defense to continue to operate under those agreements without change.

(2) I am asking all the operators of the captive mines to reaffirm their assurances by notice to each of their employees that they are not opposed to union organization or collective bargaining, and that they do not wish to discourage or stand in the way of any employee who chooses to join the United Mine Workers of America.

But work in the captive mines must recommence.

I repeat what I said to the conference last Friday:

"Because it is essential to national defense that the necessary coal production be continued and not stopped, it is therefore the indisputable obligation of the President to see that this is done."

I am therefore asking all of you, as patriotic Americans, to accept one or the other of the following alternatives:

(*a*) Allow the matter of the closed shop in the captive mines to remain in status quo for the period of the national emergency, all other parts of the Appalachian agreement applying, or

(*b*) Submit this point to arbitration, agreeing in advance to accept the decision so made for the period of the national emergency without prejudice to your rights in the future.

For the common good, for the maintenance of defense production, it is imperative that one of these two alternatives be chosen and faithfully performed.

I am sending a similar letter to the United Mine Workers' representatives.

Yours sincerely,

FRANKLIN D. ROOSEVELT.

REPLY OF UNITED STATES STEEL

(Telegram)

November 18, 1942.

At your request "for the common good, for the maintenance of defense production" our coal mining subsidiaries will accept either of the two alternatives set forth in your letter of today to Messrs. Fairless, Grace, and Purcell, and to the United Mine Workers of America.

MR. LEWIS'S REPLY

November 18, 1941.

DEAR MR. PRESIDENT:

Your letter of this date addressed to Mr. Philip Murray, Mr. Thomas Kennedy, and the undersigned is received. Messrs. Murray and Kennedy are absent from the city, as are most members of the national policy committee of the United Mine Workers of America. The policy committee will reconvene in Washington at 10 a. m. Saturday. In the meantime, no officer of the union is qualified to give formal reply to the two alternative proposals which you submit.

Pending consideration of your communication by the full membership of the policy committee, I trust I may be pardoned in making the following observations which I express as my own opinions and which are in no manner binding upon the membership of our union. Your proposal (*a*) suggests an open-shop agreement in the steel companies' captive mines for the indefinite and undetermined period of the national emergency. I venture to reiterate the suggestion previously made you that no officer or representative of the U. M. W. possesses any grant of authority to execute an open-shop agreement for any period whatsoever. On the contrary, officers and representatives of the union are under express instructions of the most recent constitutional convention of the union, composed of delegates actually employed in the mines, to secure for our membership in the captive mining operations "the same contract as the commercial mines."

Resolutions containing these instructions were adopted by the convention with the unanimous approval of its 2,500 delegates. Representatives of the U. M. W.

of America cannot lightly undertake to disregard such express instructions from the men they have the honor to represent.

Your proposal (*b*) suggests that the union-shop provision now in controversy be referred to arbitration with agreement in advance that the umpire's decision will be respected for the period of the national emergency. Even if the mine workers' representatives possessed the authority to leave the question of the union shop to the arbitrament of an umpire, it is obvious that a judicial decision based upon the logic and merit of our contention would be difficult, under existing circumstances.

Your recent statements on this question, as the Chief Executive of the Nation, have been so prejudicial to the claim of the mine workers as to make uncertain that an umpire could be found whose decision would not reflect your interpretation of Government policy, Congressional attitude, and public opinion. Admittedly, such an umpire could not come from the ranks of labor—he inevitably would come from a position in life peculiarly susceptible to the claims and blandishments of those financial and industrial interests wielding great power and influence in the financial, industrial, social, and political life of the Nation.

In my opinion, the mine workers can not ignore these pertinent facts so hazardous to their rights and legitimate interests.

These views thus expressed, Mr. President, are merely my own. They unquestionably reflect the hopes of the multitudes of mine workers in our Nation in their desire to be treated fairly by industry and by their Government.

Respectfully yours,

JOHN L. LEWIS.

The President today sent the following letter to John L. Lewis, president, United Mine Workers of America:

November 22, 1941.

DEAR MR. LEWIS:

On November 18 I addressed a letter to the several steel companies and to the United Mine Workers of America, parties to the dispute in regard to the captive mines. In the public interest, I suggested two possible solutions to that dispute. Proposal (*b*) of that letter was as follows: "Submit this point to arbitration, agreeing in advance to accept the decision so made for the period of the national emergency without prejudice to your rights in the future."

Since that time the steel companies have advised me of their acceptance of my proposal (*b*), and you have advised me that the matter would be considered by your national policy committee today. In completion of this arrangement, I am appointing today a board of three members consisting of Dr. John R. Steelman, as the public representative, Mr. Benjamin Fairless, representative of the steel industry, and Mr. John L. Lewis, representing the mine workers. Dr. Steelman possesses the qualifications essential to the task of public representative and is of unquestioned integrity. Messrs. Fairless and Lewis rate as experts in their fields and are competent to represent their respective viewpoints of this controversy. I am suggesting that this board begin its work immediately and remain in continuous session until this task is completed.

May I request an immediate reply and acceptance from your national policy committee?

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

November 22, 1941.

The President this afternoon received the following letter from Mr. Lewis:

SIR:

The national policy committee of the United Mine Workers of America considered today your letter of this date, supplemental to your previous letter of November 18.

By unanimous vote this committee accepts your proposal to refer the captive mine controversy to a board, consisting of Dr. John R. Steelman, representing the public, and Messrs. Benjamin F. Fairless and John L. Lewis, representing the steel companies and the United Mine Workers, respectively.

In consideration of this arrangement, which we accept in the public interest, the national policy committee is recommending an immediate return to work of all mine workers employed in the captive and commercial mines, wherever situated.

Respectfully yours,

NATIONAL POLICY COMMITTEE,
By JOHN L. LEWIS.

In the matter of the arbitration
between the
UNITED MINE WORKERS OF AMERICA
and the
CAPTIVE COAL MINES
of
UNITED STATES STEEL CORPORATION, BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, NATIONAL STEEL CORPORATION, CRUCIBLE STEEL CO., WHEELING STEEL CORPORATION, WOODWARD IRON CO., YOUNGSTOWN SHEET & TUBE CO., SEMET-SOLVAY CO.

Board of Arbitration: Benjamin F. Fairless, John L. Lewis, and John R. Steelman, chairman.

OPINION OF JOHN R. STEELMAN, CHAIRMAN

New York, December 7, 1941

On November 22, 1941, this Board of Arbitration for the Captive Coal Mine Dispute, consisting of Benjamin F. Fairless, John L. Lewis, and myself, was appointed by the President. The Board has chosen me as chairman. The dispute to be arbitrated is between the United Mine Workers of America and certain captive coal mine operators, all of whom have agreed to abide by the determination of this Board.

The controversy relates to the inclusion of the so-called "union-shop" clause, together with the correlative "no-strike" and "penalty" clauses, in the contract to govern the relations between the operators and their mine employees, until April 1, 1943. These clauses are already a part of the Appalachian agreement and/or the district agreements based thereon covering about 90 percent of the coal industry. The parties hereto have already agreed to accept all other terms and conditions of those agreements. The arbitrators are thus called upon to determine whether 10 percent of the industry should execute the agreement containing the union shop and related clauses under which 90 percent is now operating.

This 90 percent of the industry which now works under union shop conditions consists of all commercial operators,[1] for whose mines the United Mine Workers of America is accepted as bargaining agent, and also a substantial majority of the operators of captive mines—mines controlled by railroads, utilities, certain steel companies, and other industrial concerns. The remaining 10 percent to which the controversy before this Board relates consists of the other captives. The union now has as members at least 95 percent of the employees of these captives and about 99.5 percent of all the employees whom it represents in the industry. In brief, only 1 employee out of every 200 in the industry for whom this union is bargaining agent does not belong to the union.

The United Mine Workers of America is a labor organization of more than 600,000 persons employed in the coal-mining industry. It has been in existence over 50 years and has, throughout that period, been the principal labor organization in this field. It is a so-called "open union," admitting to membership all workers in the industry without discrimination; its initiation fees and dues are moderate. It claims credit for many substantial advances which both the mine workers and the industry have made. Among these are increased wage scales, shorter hours, union check weighmen, various safety devices, and effective grievance machinery.

Through much of this period this union has had tacit agreements with numerous operators with whom it has engaged in collective bargaining which required new employees to join, resulting in substance in the union shop. In 1939 the union reached an agreement with the commercial operators, which agreement included the union-shop clause and the no-strike clause. In addition the union fortified the no-strike clause by a penalty clause in the district agreements. These agreements were accepted also by a majority of the captive mine operators. The captive mine

[1] There is one exception. The Carter Coal Co., a commercial operator but not a member of the Appalachian conference, was originally included in the present dispute but has not agreed to be bound by this award.

operators who are parties to the present dispute, however, rejected the clauses in question. These agreements expired on March 31, 1941.

Negotiations for new agreements began in March 1941. Agreements for the succeeding 2 years have been executed by the union and all operators except the present disputants. These agreements contain the union-shop, no-strike, and penalty clauses.

Union membership in the mines of the operators involved here had by this time increased to a point where the union felt warranted in insisting that this clause be made uniformly operative wherever the United Mine Workers of America is accepted as bargaining agent. It is evident that in this instance the union is requesting the union shop in the normal course of its development. Whatever may be the facts in other labor disputes, I find no basis for the charge that the union here is attempting to take advantage of the present national emergency for organizational purposes.

II

The union has requested a union shop—not a closed shop. The distinction is of sufficient importance to justify some words of clarification. A closed shop is one under which only union members may be considered for employment. This often means that the union limits the power of the employer's selection or, to use language before us, restricts his labor market. It is not unusual in many fields of our industrial economy for the union to act in effect as the hiring agency for the employer. However in the Appalachian agreement and the district agreements based thereon, union membership is not a prerequisite of hire but only of continued tenure. The Appalachian agreement provides that the union shop clause "becomes effective and operative after an individual has been employed and starts to work." In other words, under the provision in dispute here, the union requires membership only of persons employed, but does not control, limit, or determine the labor market accessible to any employer. In fact, the union admits to membership only persons actually employed. This is the union shop as distinguished from the closed shop. The United Mine Workers of America is an "open union" and the issue narrowly before us, therefore, is that of a union shop agreement with an open union.

The argument is often made that a closed shop or even a union shop interferes with management functions. The agreement which the union here presents, however, contains this clause:

"The management of the mine, the direction of the working force, and the right to hire and discharge are vested exclusively in the operator and the United Mine Workers of America shall not abridge these rights."

For many years this clause has been included in agreements executed by the United Mine Workers of America. It was not altered in the Appalachian agreement of 1939 when the union-shop clause was added. No claim has been made that the union has not done its full part to make the above management clause effective. One is led to the judgment that there is no intention on the part of the union or danger of its usurping management functions.

III

It has been argued that for an employer to agree to hire only men who will join a union is a violation of principle. But, as a matter of fact, contracts providing for a union shop have a recognized status in American industrial practice, and in American law. We are not to decide this case in or for a social vacuum, but for an economy in which the Congress has guaranteed and protected the right of labor organization and collective bargaining, and in which relationships ranging all the way from union recognition to the absolute closed shop have been legalized. Moreover the time and place and condition to which our decision is to apply include not only the above-mentioned Congressional sanctions, but we find recent labor dispute settlements and labor-management arrangements worked out and approved or sanctioned by various Government agencies, embodying closed shops, union shops, and compulsory maintenance of membership arrangements, depending upon the particular set of circumstances at hand. In the light of these facts it is easily understood why the United Mine Workers of America should have reason to expect that a union-shop proposal would be determined on its merits, whatever they might be.

A recent survey of the Twentieth Century Fund covering 10 of the largest industries in the country shows that more than one-third of all employees work un-

der either closed-shop or union-shop conditions. The Bureau of Labor Statistics reported in October 1939 that more than one-half of the 7,000 then current union agreements on file contained such provisions. It was also estimated at that time by the Bureau that about three million of the nearly eight million organized workers in the United States were then working under such terms.

Thus, under normal conditions and in normal times the union shop admittedly constitutes a fair subject of collective bargaining. These, however, are not normal times. These are times of grave national emergency, and I am fully aware that determination of this dispute on the merits cannot sensibly be isolated from that fact.

IV

On the merits of the issue as it stands between the parties, with full cognizance of the implications of the existing emergency, and after complete and anxious consideration of all the facts and contentions put before us, I concur in the following views on this very case expressed by the National Defense Mediation Board without dissent by a single member:

"When we look at the resulting situation from the point of view of the 1 individual in 200 who has not chosen to join the union, in spite of the action of the overwhelming majority of his fellow-workers and the fact that he enjoys the benefits of the contracts negotiated and administered by the United Mine Workers of America at great expense, it is hard to think of a reason why the individual should persist in refusing to join the union.

* * * * * * *

"It was apparent that there had been actual experience on this subject in the mines of the commercial operators and of many operators of captive mines, who have within recent years accepted and operated under the union-shop agreement.

"Inquiry from these operators produced evidence which can fairly be summarized by saying that while there have been some protests from individuals, there has been no loss of employees and no perceptible detrimental effect upon the efficient operation of the mines, while the penalty clause has to some extent, but not entirely, prevented the interruption of production.

"From this immediately practical point of view, and since the acceptance of the union-shop provision in the coal mines is, in our opinion, divorced by the peculiar and exceptional conditions of this case from effect as a precedent in other industries, it would seem to be the part of wisdom for the operators involved in this dispute to accept the offer of the United Mine Workers with its added assurance of full and uninterrupted production at the mines throughout the period of the contract."

* * * * * * *

The majority opinion of the National Defense Mediation Board nevertheless recommended rejection of the union-shop clause. The reasons advanced in support of that action require consideration.

One reason was that the union shop provision "* * * should be arrived at by collective bargaining with full retention of the right to strike—not by governmental compulsion."

The case as it now stands before us as arbitrators, however, is obviously in an entirely different posture. No member of this Board does now or ever has functioned in the capacity of government policy maker. We are not called upon, indeed could not usurp the functions of those proper governmental agencies for making national labor policy. Our determination is binding upon the parties only by reason of their agreement that it be so. This arbitration is simply an incident of the processes of collective bargaining. In short, the union shop if arrived at as a result of the determination of this Board is not the fruit of compulsion; it is the fruit of a voluntary submission to arbitration in the course of a collective bargaining procedure.

The majority opinion of the National Defense Mediation Board observed that the right to strike is a normal concomitant of collective bargaining. That, of course, is true. And the issue which is central in this dispute is in ordinary times settled, where collective bargaining fails, by such a test of economic power of the disputants. By this voluntary submission to arbitration, however, the parties have agreed upon a substitute for the strike; they have thereby acknowledged that the social and economic costs of a decisive strike in the coal industry cannot be tolerated in this period of national emergency. Whatever our decision, there will be no strike or lock-out in the coal mines. The disputants have thus made an important contribution to national safety in a time of national peril. If this precedent is followed, it will be a voluntary submission to arbitration, and not a strike, which will become a normal incident of collective bargaining where the parties

cannot otherwise come to an accord. If this precedent is followed, there should be no further occasion for important stoppages of production. So much—and it is much needed—is already an important sign.

Another reason advanced by the National Defense Mediation Board for its conclusion was that "* * * the emergency should not be used either to tear down or to artificially stimulate the normal growth of unionism in defense industries". I am wholly in accord with this principle. But it is necessary here to examine this principle as it applies to the facts of this specific case. If we agree that no one should be permitted to take advantage of the Nation's crisis for the purpose of changing the status quo, we are still confronted with the question, "What is the status quo with regard to unionism in the coal industry?" When only one-half of 1 percent of the coal miners involved do not belong to the union, and all the others do, a union shop is for all practical purposes in existence already. Nor is the view different in my judgment if we look only to the union membership situation in the captive mines here directly involved where such membership is admitted to be 95 percent. The union-shop provision obviously is not being sought under these circumstances as an organizing weapon "to artificially stimulate the normal growth of unionism." The union shop is being sought here, in every realistic sense, to confirm and consolidate the position the union has already achieved. The union petitions for a contract whereby the organizational strength which it now has may not be jeopardized by future events.

The status quo as I see it in this case will not be affected in any important way by the granting of the union shop by these few employers. On the contrary the status quo is in reality preserved should these few employers contract themselves out of any power to alter it. The National Defense Mediation Board stated that by virtue of the Wagner Act "many of the things that were done in opposition to the United Mine Workers of America in 1920 cannot be done again." I agree; but I cannot bring myself to conclude that the United Mine Workers of America is without rational basis for believing that the Wagner Act is not a complete substitute for the safeguards to organizational integrity which flow from the union-shop agreement.

As, in my view, to grant the union shop under the circumstances of this case involves no significant change in the status quo but in essence is a measure for maintenance of the status quo, I am unable to see how the national emergency requires the union here to do without it, even though the Wagner Act is on the books. On the contrary, confining myself to the narrow facts of this case, I feel that to grant the union shop in these few mines may well serve the national emergency by contributing to unity and assuring continuity of maximum coal production.

AWARD OF BOARD OF ARBITRATION FOR THE CAPTIVE COAL MINE DISPUTE

Under date of November 22, 1941, the President of the United States, appointed as a Board of Arbitration for the Captive Coal Mine Dispute, John R. Steelman, Benjamin F. Fairless, and John L. Lewis.

The following parties have agreed to this arbitration and to be bound by the determination of the Board.

U. S. Coal & Coke Co., Tennessee Coal, Iron & Railroad Co., H. C. Frick Coke Co., National Mining Co. (subsidiaries of U. S. Steel Corporation); Industrial Collieries Corporation (subsidiary of Bethlehem Steel Corporation); Republic Steel Corporation; Woodward Iron Co.; Weirton Coal Co. (subsidiary of National Steel Corporation); Youngstown Mines Corporation, Buckeye Coal Co. (subsidiaries of Youngstown Sheet & Tube Co.); Crucible Fuel Co. (subsidiary of Crucible Steel Co.); Consumers Mining Co. (subsidiary of Wheeling Steel Corporation); Semet-Solvay Co., Kingston-Pocohantos Coal Co. (subsidiaries of Allied Chemical & Dye Corporation); and United Mine Workers of America.

The only issue in dispute between the parties is as follows: "Shall the captive mine operators involved and the United Mine Workers of America enter into agreements requiring union membership of all employees except the exempted classifications as specified by the Appalachian agreement?"

The award of this Board is as follows: "That the United Mine Workers of America and the operators involved in this dispute proceed immediately to accept and execute an agreement the same as the Appalachian agreement and/or the applicable agreements related thereto.

Signed: JOHN R. STEELMAN.
JOHN L. LEWIS.
Dissenting: BENJAMIN F. FAIRLESS.

Dated:
New York, N. Y., December 7th, 1941.

DISSENTING OPINION OF BENJAMIN F. FAIRLESS

December 7, 1941

I dissent from the decision of the majority of this board of arbitration, appointed by the President of the United States.

That decision imposes a closed shop on the so-called captive coal mine operators, who are parties to this arbitration. Their operations have heretofore always been conducted on the open-shop principle over a long period of years. There is no possible justification for a change in this basic labor relationship at a time of national crisis.

That decision further imposes an unregulated labor monopoly upon the entire bituminous coal industry.

That decision does not confer one single benefit on the workers in the "captive" coal mines. Their wages, hours, or working conditions are in no way improved. The only beneficiary is the already powerful United Mine Workers of America, whose membership already embraces about 95 percent of the workers in the bituminous-coal industry.

That decision violates the fundamental right of the American worker to a job regardless of membership or nonmembership in any organization.

That decision violates the freedom of choice by the American worker of his own representatives in collective bargaining, a freedom which the Congress has taken great pains to protect.

That decision runs counter to the statement publicly made by President Roosevelt on November 17, 1941, when he said:

"I tell you frankly that the Government of the United States will not order, nor will Congress pass legislation ordering, a so-called closed shop. It is true that by agreement between employers and employees in many plants of various industries the closed shop is now in operation. This is a result of the legal collective bargaining, and not of Government compulsion on employers or employees. It is also true that 95 percent or more of the employees in these particular mines belong to the United Mine Workers Union. The Government will never compel this 5 percent to join the union by Government decree. That would be too much like the Hitler methods toward labor."

The United Mine Workers of America do not need a closed shop in the "captive" coal mines for their own security. The present dominant position of that union has been attained under open-shop conditions.

In my judgment, that decision will give great and renewed impetus to the closed-shop controversy throughout American industry and will cause unnecessary labor unrest and agitation, with the consequent curtailment of production of various materials vitally needed for national defense.

In view of the constitution of this Board of Arbitration and the appointment of its members by the President of the United States, that decision is bound to be considered as the imposition of a closed shop by Government action.

In my opinion, the Congress in these days of national emergency should alone undertake to change a long-established open shop into a closed shop, or a closed shop into an open shop. Furthermore, deliberate and wise action on a complicated and controversial issue cannot be expected when all of us are, or should be, straining every effort to attain our paramount objective, namely, complete national security and the destruction of Hitlerism.

INDEX OF CASES